

SANTA FE COUNTY
RESOLUTION NO. 2013- 66

A RESOLUTION COMMITTING TO INCORPORATE THE HYDE PARK ESTATES COOPERATIVE DOMESTIC WATER ASSOCIATION SERVICE AREA INTO THE SANTA FE COUNTY WATER AND WASTEWATER UTILITY SERVICE AREA UPON EXECUTION OF PROPER LEGAL INSTRUMENTS DETAILING TRANSFER OF WATER ASSETS AND INFRASTRUCTURE FROM THE HYDE PARK ESTATES COOPERATIVE DOMESTIC WATER ASSOCIATION TO SANTA FE COUNTY

WHEREAS, the service area of the Hyde Park Estates Cooperative Domestic Water Association ("Hyde Park Water Association") in northern Santa Fe County is currently outside the boundaries of the Santa Fe County Water and Wastewater Utility's ("County Utility") Water Service Area;

WHEREAS, the Board of County Commissioners ("BCC") takes responsibility for the management of the County's water resources as one of its highest priorities;

WHEREAS, the Hyde Park Association desires to transfer their water system to Santa Fe County in order to ensure that their customers continue to receive the current level of service;

WHEREAS, Resolution 2012-58 sets forth the County's policy of expending resources on the operation, maintenance and improvement of private water systems only if the water system becomes a customer of the County and the County takes control of the water source;

WHEREAS, Santa Fe County ("the County") owns, operates, and is actively acquiring infrastructure capable of supplying safe and reliable water for human consumption, agriculture, industrial uses, construction, and other uses of its Utility customers;

WHEREAS, the Board of the Hyde Park Water Association resolved to become part of the Santa Fe County Utility at their September 10, 2012 meeting;

WHEREAS, the County Utility has begun an orderly expansion with the ultimate goal of achieving financial autonomy and of serving as many residents of Santa Fe County as possible and economically feasible; and

WHEREAS, the orderly expansion of the County Utility's Water Service Area boundaries will ultimately allow for water system improvement projects and millions of dollars in public and private capital investments.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County, as follows:

1. The County Utility Water Service Area boundaries shall expand to include the boundaries of the Hyde Park Water Association area, which area is identified on the map

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attached hereto as Exhibit A, immediately following the County's acquisition of the Hyde Park Water Association water system.

2. Upon execution of this Resolution the County shall complete an asset inventory and inspection of the Hyde Park Water Association water system for use in attempting to negotiate a contract transferring the water system to the County.

3. The County and the Hyde Park Water Association shall attempt to negotiate and bring before the BCC for consideration a contract substantially in the form of the template attached hereto as Exhibit B, detailing the conditions of the County's acquisition of the Hyde Park Water Association water system, which contract shall conform to the requirements of any relevant policies adopted by Santa Fe County;

4. The County's acquisition of the Hyde Park Water Association water system shall include all necessary easements for ownership and maintenance of the system and transfer of all water rights held or used by the Hyde Park Water Association to the County.

PASSED, APPROVED AND ADOPTED this 30th day of July 2013

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: Kathy Holian
Kathy Holian, Chair

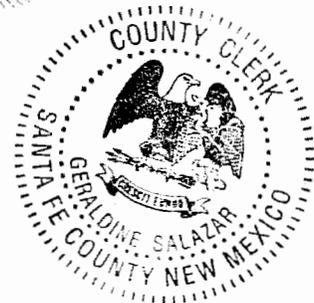
Attest:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk



Approved as to Form:

Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 37

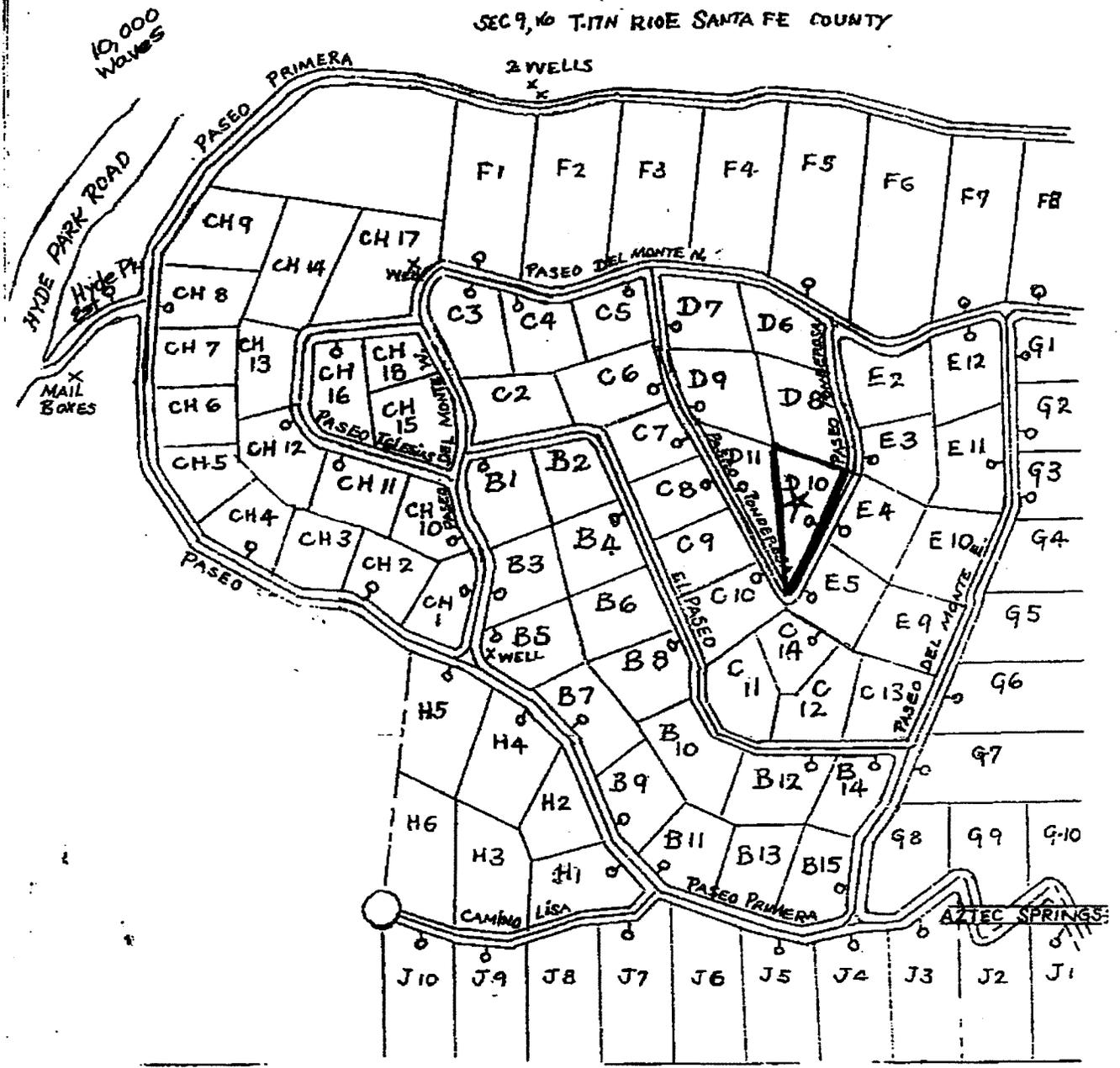
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Record On The 31ST Day Of July, 2013 at 02:04:10 PM
And Was Duly Recorded as Instrument # 1713743
Of The Records Of Santa Fe County

Deputy Marcella Salazar Witness By Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

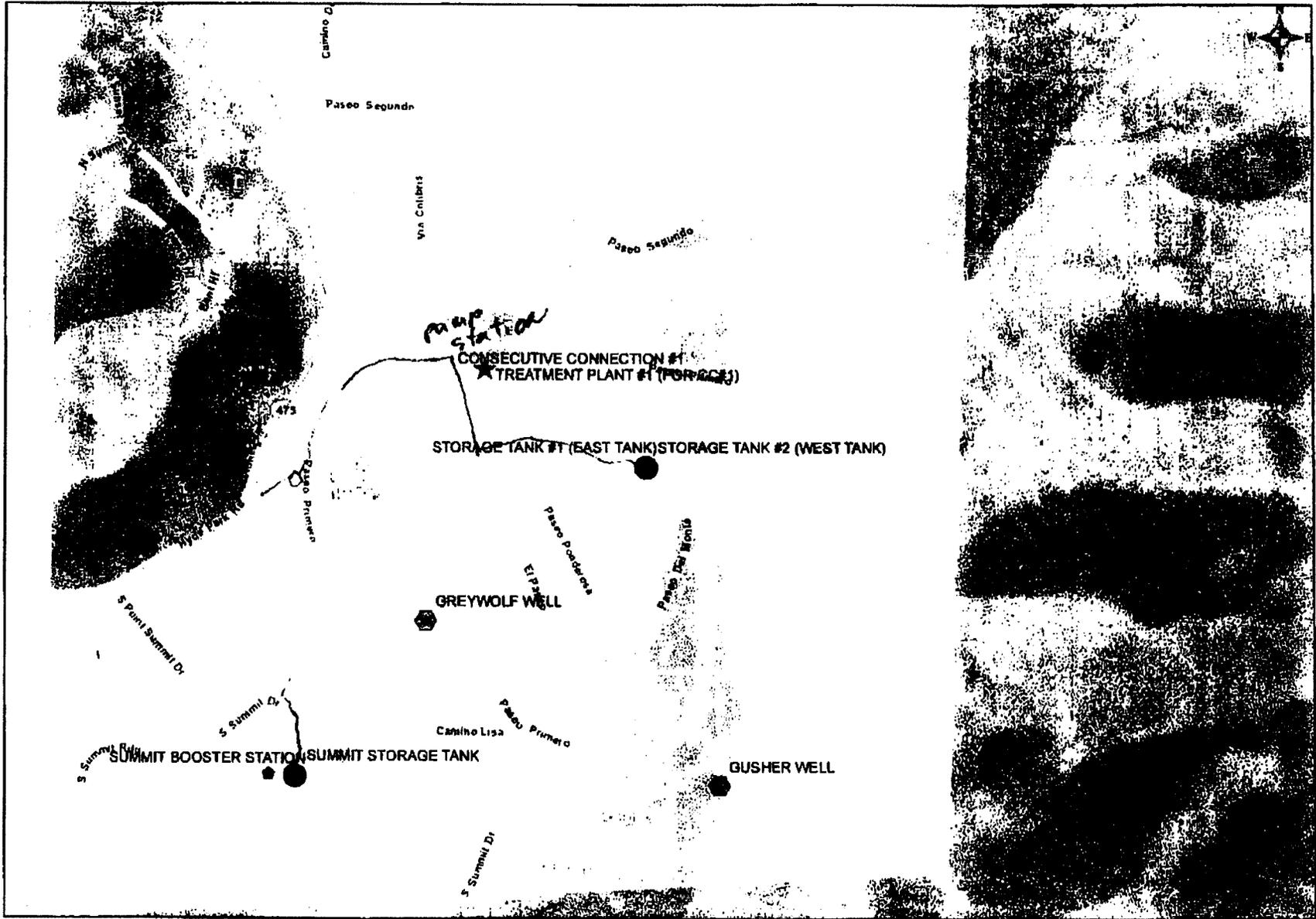
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HYDE PARK ESTATES

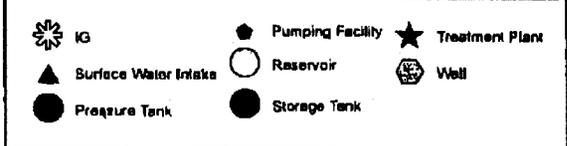
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Hyde Park Estates



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**AGREEMENT FOR THE PURCHASE AND SALE OF A WATER SYSTEM
TOGETHER WITH ITS ASSETS AND ALL APPLICABLE WATER RIGHTS
as between**

**HYDE PARK ESTATES COOPERATIVE DOMESTIC WATER ASSOCIATION, Seller
and**

SANTA FE COUNTY, BUYER

Dated as of _____, 2013

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2025 RELEASE UNDER E.O. 14176

**AGREEMENT FOR THE PURCHASE AND SALE OF A WATER SYSTEM
TOGETHER WITH ITS ASSETS AND APPLICABLE WATER RIGHTS**

THIS AGREEMENT FOR PURCHASE AND SALE OF A WATER SYSTEM TOGETHER WITH ITS ASSETS AND RELATED WATER RIGHTS (the "Agreement"), dated for convenience and reference purposes only the _____ day of _____, 2012, is made and entered into by and between Hyde Park Estates Cooperative Domestic Water Association, (the "Seller") and Santa Fe County, New Mexico, a political subdivision of the State of New Mexico ("Buyer").

WHEREAS, Seller is a cooperative association formed pursuant to NMSA 1978, Sections 53-4-1 et seq. that collects, treats, stores, supplies, distributes and sells water to an identifiable set of customers who pay the Seller for water and costs associated with the delivery and upkeep of delivering water ("Water system" or "System");

WHEREAS, Seller owns and maintains the System to serve its identifiable customers in the area or subdivision of Santa Fe County known as Hyde Park Estates;

WHEREAS, Buyer is a political subdivision of the State of New Mexico and is authorized to collect, treat, store, supply, distribute and sell water to the public ("Water System" or "System"), as well as to operate and acquire a Water System including its infrastructure and/or assets;

WHEREAS, subject to the terms and conditions set forth herein, Seller desires to sell, and Buyer desires to purchase, substantially all of the assets and rights of Seller used in connection with Seller's Water System";

NOW THEREFORE, in consideration of the mutual covenants, warranties, representations and agreements set forth herein, and intending to be legally bound, Buyer and seller, (collectively referred to as the "Parties") agree as follows:

[Remainder of page intentionally left blank.]

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Article 1
THE TRANSACTION

1.1 Incorporation of Recitals

The recitals set forth above are incorporated herein by reference and are a part of this Agreement.

1.2 Sale and Purchase of Assets and Water Rights

At Closing, as defined in Section 1.11 of this Agreement, subject to the terms and conditions of this Agreement, Seller shall sell, assign, transfer, deliver and convey to Buyer and Buyer shall purchase the Assets, as defined in Section 1.3 of the Agreement, and water rights for the Purchase Price, as defined in Section 1.8 of this Agreement.

1.3 Description of Assets

The term "Assets" means, subject to Sections 1.4 and 1.5 of the Agreement, all of the Seller's right, title and interest in, under and to all of the assets, properties and rights related to or used in connection with the Water System as a going concern of every kind, nature and description existing on the Closing Date, as defined in Section 1.11 of this Agreement, wherever such assets, properties and rights are located and whether such assets, properties and rights are real, personal or mixed, tangible or intangible. The Assets are being sold subject to "Permitted Encumbrances," as defined in Section 2.1(g) of the Agreement. Subject to the terms and conditions of this Agreement, the Assets are being sold in "AS-IS" and "WHERE-IS" condition, including environmental condition, operating condition and condition of repair. Buyer may not rely on any representations made by Seller in connection therewith, except for representations and warranties contained in this Agreement.

Without limiting the generality of the foregoing, the Assets shall include the following:

- a) *[here describe all land and real property (which will be listed on Schedule ___) including type of deed and language such as "Seller conveys water facility easements and reserves sewer facility easements for its continued use, rights of use, licenses, permits, hereditaments, tenements, privileges and other appurtenances belonging or related to the Water System such as appurtenant rights in and to public streets, except as limited by Section 1.3 of this Agreement;"]*
- b) all water tanks, water distribution towers, water lines, pumping stations, pumps, water lines, water mains, service lines, distribution facilities, meters, curb boxes, curb stops, services lines, public fire hydrants, valves, fittings, water meters, and

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all appurtenances along with other tangible personal property related to the Water System;

- c) (reserved);
- d) All equipment, machinery, vehicles, tools, motors, spare parts, materials, supplies, fixtures and improvement, construction in progress, jigs, molds, patterns, gauges, production fixtures, office equipment, computer systems with their related software, telephone systems and other tangible personal property related to the Water System;
- e) to the extent transferable, all of Seller's rights under any written or oral contract, agreement, lease, plan, instrument, registration, license, sub-license (including any railroad crossing license or sub-license, permit, certificate, document, commitment, arrangement, undertaking, practice, authorization or approval of any nature relating to the Water System and entered into in the ordinary course of business consistent with past practice, but specifically excluding the Excluded Contracts (as listed in Schedule _____ of this Agreement);
- f) to the extent transferable, all of Seller's water rights, water withdrawal rights, water reservation rights, water appropriation rights and rights to water flow relating to the Water System;
- g) to the extent transferable, all Seller's rights under any permit, franchise, license, sub-license, approval, authorization, order, registration, certificate, variance, document and any other similar rights obtained from any authority relating to the Water System, and all pending applications therefor;
- h) all job classification, service length and wage information relating to Seller's Employees;
- i) all information, books, records, ledgers, files, documents, correspondence, data, plans, models, system maps, engineering records, Mylars, planning, studies, architectural plans, drawings and specifications, customer records and data, supplier lists, records of operations, quality control records and procedures, equipment maintenance records, manual and warranty information, laboratory books, intellectual property and goodwill (including, to the extent transferable, any licenses and sub-licenses granted or obtained with respect thereto) and inspection processes relating to the Water System; and
- j) accumulated and unexpended availability fees (e.g., _____) which shall be deposited by Seller into an escrow account subject to the terms of the Escrow Agreement, a form of which is in Schedule ____ of this Agreement.

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1.4 Excluded Assets

Notwithstanding the foregoing, the Assets shall not include any of the assets, properties or rights listed on Schedule ____ (the "Excluded Assets").

1.5 Description of Water Rights

At Closing, subject to the terms and conditions of the Agreement, Seller shall sell, assign, transfer, deliver and convey to buyer and Buyer shall purchase all water rights owned by Seller, whether they be consumptive use water rights of surface waters, ground water rights, or water rights appropriated for beneficial use. Documentation of Seller's complete water rights are attached at Schedule ____ .

1.6 Assumption of Contracts

Buyer shall assume the contractual rights, duties, liabilities and obligations of Seller with respect to the transferable contracts, agreements and commitments relating to the Water System, all such contacts, agreements and commitments being more specifically listed or described in Schedule ____ ("Assumed Contracts"), except that (i) Buyer shall not assume any liabilities or obligations for any breach or default by, or payment obligation of, Seller under such Assumed Contracts occurring or arising on or prior to the Closing Date; and (ii) Buyer shall not assume any liabilities or obligations for any contracts, agreements or commitments listed on Schedule ____ ("Excluded Contracts").

1.7 Assumption of Liabilities

- a) Buyer shall assume and agree to pay or discharge only the following liabilities and obligations of Seller: (i) all rights, duties, liabilities and obligations of Seller under the Assumed Contracts schedule not required to be performed prior to the Closing Date; (ii) any change orders on projects in progress that were entered into between the date hereof and the Closing Date and that were requested by Buyers and approved by Seller before the Closing Date; and, (iii) any change orders that are approved or requested by Buyer after the Closing Date ("Assumed Liabilities").
- b) Seller shall retain and discharge: (i) all rights, duties, liabilities and obligations required to be performed under the Excluded Contracts; (ii) all rights, duties, liabilities and obligations of Seller under the Assumed Contracts required to be performed prior to the Closing Date; (iii) any change orders on projects in progress that were approved by Seller but were not requested by Buyer before the Closing Date; and, (iv) all the liabilities and obligations arising out of the ownership, operation or use of the Assets or Water System prior to the Closing Date, excepting only the Assumed Liabilities ("Retained Liabilities").

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1.8 Purchase Price

The total purchase price for the Assets and water rights to be paid by Buyer to Seller is the amount of _____ Dollars (\$ _____) ("Unadjusted Purchase Price"), which shall be subject to adjustment as set forth in Section 1.9 of this Agreement ("Purchase Price").

Upon execution of this Agreement, Buyer shall pay to Seller the amount of _____ Dollars (\$ _____) to be held by [_____ Bank] (the "Escrow Agent") under the Escrow Agreement in Schedule ____ of this Agreement. Said amount, together with earnings thereon shall be the "Deposit". Buyer shall be responsible for all costs, fees or other charges for services provided by the Escrow Agent.

1.9 Adjustments to Unadjusted Purchase Price

The Purchase Price to be paid to Seller, as set forth in Section 1.8 of this Agreement shall be determined by reducing and/or increasing the Unadjusted Purchase Price, on a dollar for dollar basis, as follows:

- a) reduce the Unadjusted Purchase Price by the amount of refundable customer advances, deposits, or accumulated and unexpended availability fees held by Seller which are not placed in escrow or otherwise remitted to Buyer at the closing;
- b) (reserved);
- c) reduce the Unadjusted Purchase Price by the amount of any contract retainage held by Seller for the Assumed Contracts which is not placed in escrow or otherwise remitted to Buyer at Closing;
- d) increase the Unadjusted Purchase Price by the amount of the verifiable cost to Seller of any capital improvements which Seller makes to the Water System after the date first written above and prior to Closing; provided, that any such capital improvement is pre-approved by Buyer. This subsection shall not apply to repairs, replacements and items occurring in the normal course of business to provide adequate service to Seller's customers;

- e) reduce the Unadjusted Purchase Price by the amount of all accrued Employee benefits, as stated on Schedule ____, for which (i) the Employee is entitled during the calendar year of Closing; and, (ii) the employee has not taken, used or been compensated prior to Closing;
- f) reduce the Unadjusted Purchase Price by the amount of the Deposit that is paid to Seller at Closing;
- g) increase the Unadjusted Purchase Price by the amount of any transition fees agreed to by the parties.

1.10 Proration of Expenses

The Parties agree hereto that the following expenses shall be calculated and prorated as of the Closing Date, with Seller responsible for such expenses for the period up to the Closing Date, and Buyer to be responsible for the period on and after the Closing Date:

- a) electric, fuel, gas, telephone, water and other utility charges, in each case, to the extent relating to and incurred by operation of the Water System; and
- b) rentals and other charges under the Assumed Contracts pursuant to Section 1.6 of this Agreement.

1.11 Closing

The date of closing of this transaction ("Closing Date") shall occur on or before forty-five (45) days after satisfaction (or waiver) of the conditions to Closing set forth in Article 4 of this Agreement, or such other date mutually agreed to by the Parties in writing.

On the Closing Date, at a time of day to be mutually agreed upon by the Parties, subject to the terms and conditions of this Agreement, the act of closing pertaining to this transaction ("Closing") shall occur and title and possession of the Assets shall be sold, assigned, transferred, delivered and conveyed to Buyer.

The Closing shall take place at the offices of Buyer, or such other location as the Parties may mutually agree in writing, which writing can consist of an email, letter or memorandum.

1.12 Deliveries at Closing by Seller to Buyer

Subject to the terms and conditions of this Agreement, at the Closing, Seller shall deliver or cause to be delivered to Buyer:

- a) bills of sale and instruments of assignment to the Assets, duly executed by Seller (an acceptable form of bill of sale is attached hereto in Schedule ____);

- b) consents of transfer, of all transferable or assignable contracts, agreements, licenses and permits to the extent specifically required hereunder;
- c) title certificates to any motor vehicles included in the Assets, duly executed by Seller, (together with any other transfer forms necessary to transfer title to such vehicle);
- d) (i) an assignment of water facility easements rights associated with the Assets, subject to Permitted Encumbrances; and (ii) deed(s), in recordable form, duly executed by Seller, with a covenant against Seller's acts, sufficient to convey to Buyer good and valid title to all fee parcels in the Assets, subject to Permitted Encumbrances; except for parcels that were conveyed to Seller by way of a deed without warranty, or covenant of title, and for which Seller shall provide a quit claim deed(s), duly executed by Seller, and in recordable form, subject to Permitted Encumbrances;
- e) Seller's Closing Certificates/Resolutions pursuant to Section 4.1(d) of this Agreement;
- f) All agreements and other documents required by this Agreement;
- g) Seller's updated meter reading information pursuant to Section 3.2(j) of this Agreement;
- h) a receipt for the payment of the Purchase Price;
- i) all such other instruments of conveyance as shall be, in the reasonable opinions of Buyer and its counsel and Seller and its counsel, necessary to transfer to Buyer the Assets in accordance with this Agreement and where necessary or desirable, in recordable form;
- j) any agreements transferring water rights to Seller are attached as Schedule ____;
- k) the Assignment and Assumption Agreement (a form of which is attached hereto in Schedule ____);
- l) the General Assignment Agreement (a form of which is attached hereto in Schedule ____);
- m) the Warranty Deed (a form of which is attached hereto in Schedule ____);
- n) the Deed of Easement (a form of which is attached hereto in Schedule ____);

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- o) if applicable, a lease for a portion of Seller's Property Yard, a form of which is attached hereto in Schedule ____ ; and
- p) the balance of accumulated and unexpended availability fee for the expansion of the Water System delivery capacity, which shall be held in escrow pursuant to the Availability Fee Escrow Agreement, a form of which is attached hereto in Schedule ____ .

1.13 Deliveries at Closing by Buyer to Seller

Subject to the terms and conditions of this Agreement, at the Closing, Buyer shall deliver or cause to be delivered to Seller:

- a) a wire transfer or negotiable draft of immediately available funds in an amount equal to the Purchase Price to such account (or accounts) as shall be designated by Seller;
- b) Buyer's Closing Certificates/Resolutions pursuant to Section 4.2 (c) of this Agreement;
- c) all agreements and other documents required by this Agreement; and
- d) all such other documents that are, in the reasonable opinion of Seller and its counsel, necessary to consummate the transactions contemplated by this Agreement.

**Article 2
REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of Seller

Seller represents and warrants to Buyer as follows:

- a) **Organization and Good Standing.** Seller is a cooperative domestic water association formed pursuant to NMSA 1978, Section 53-4-1 et seq. and is in good standing under the laws of the State of New Mexico.
- b) **Authorization and Enforceability.** Seller has the full power and lawful authority to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly authorized the execution of the Agreement, including but not limited to executing such other necessary agreements, instruments and documents in connection herewith, taking votes if required on its actions at an open meeting in compliance with the Open Meetings Act, and attending any necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy,

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insolvency, fraudulent conveyance, reorganization or affecting creditor's rights generally.

- c) **Noncontravention.** Seller's performance of its obligations contemplated hereby, as of the Closing Date, shall not (i) require any further approvals or consents from any other party; (ii) violate any law, ordinance or regulation; or, (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or other agreement or commitment to which Seller is a Party; except where the approvals, consents, violations or conflicts would not have a Material Adverse Effect (as defined in Section 8.10 of this Agreement) on the ability of the Parties to consummate the transactions contemplated by this Agreement.
- d) **No Pending Litigation or Proceeding.** Except as listed on Schedule ____, to the best of Seller's knowledge, there is no action, claim, litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending or threatened against Seller which could reasonably be expected to have a Material Adverse Effect on the Assets, water rights and the Water System or the transaction contemplated by this Agreement.
- e) **Brokerage.** Seller has not made any agreement or taken any other action which might cause any person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder which could result in liability to Buyer.
- f) **Permits and Compliance with Law.** To the best of Seller's knowledge, all of Seller's permits relating to the operation of the Water System are in full force and effect, except those the failure of which to be in full force and effect would not individually or in the aggregate have a Material Adverse Effect.

Except as disclosed in Schedule ____, to the best of Seller's knowledge, Seller possesses and is in substantial compliance with all permits required to operate the Water System as presently operated, and to own, lease, or otherwise hold the Assets under all applicable laws, rule, regulations, ordinances, and codes (including environmental laws), except to the extent that any failure to possess, or to comply with, any permit, laws, rules, regulations or orders would not, individually or in the aggregate have a Material Adverse Effect.

To the best of Seller's knowledge, there are no proceedings pending or threatened that seek the revocation, cancellation, suspension or any adverse modification of any permits presently possessed by Seller and relating to the operation of the Water System, other than those revocations, cancellations, suspensions or modifications which would not individually or in the aggregate have a Material Adverse Effect.

Except as disclosed in Schedule ____, to the best of Seller's knowledge, the Water System is conducted by Seller in substantial compliance with all applicable laws,

including zoning, building and similar laws and environmental laws, rules, regulations, ordinances, codes, judgments and orders except for such failures to comply which do not individually or in the aggregate have a Material Adverse Effect.

- g) **Title to and Condition of Assets.** Seller owns and shall convey, subject to matters of public record other than mortgages, liens, and security interests: (i) good and valid title to the real property included in the Assets which was required by seller by way of a deed with warranty or covenant of title; (ii) by quitclaim deed, its interests in the real property included in the Assets which was acquired by Seller by way of a deed without warranty or covenant of title; (iii) good and valid leasehold interest in any leased real property included in the Assets; and, (iv) good title to, or valid interest in, the water rights and any personal property included in the Assets.

Any mortgages, liens and security interests with the Assets will be removed as of the Closing, to the effect that the Assets will be conveyed free and clear of all mortgages, liens, pledges and security interests, excepting only the following which shall constitute "Permitted Encumbrances": (i) those imposed by law and incurred in the ordinary course of business for indebtedness not yet due to carriers, warehousemen, laborers, or material men and the like; (ii) those in respect of pledges or deposits under the Workers' Compensation Act [Chapter 52, Article 1 *et seq.* NMSA 1978] or similar legislation; (iii) those for property taxes, assessments or governmental charges not yet subject to penalties for nonpayment; (iv) those affecting real property, which is owned by third parties, containing easements or rights-of-way relating to the Assets; (v) matters that would be revealed by a physical inspection, or complete and accurate survey, of the real property; (vi) rights of way and easements that do not materially interfere with the existing use of the real property; (vii) zoning and other governmental restrictions; (viii) matters common to any plat or subdivision in which the real property is located; and (ix) taxes, assessments, and other public charges on real property not yet due as of the Closing; provided, however, in no even shall Permitted Encumbrances include monetary liens.

- h) **Contracts.** To the best of Seller's knowledge, the Assumed Contracts are valid and enforceable in accordance with their terms.
- i) **Employees.** The regular or full-time employees who Seller expects will be employed by Seller on the Date of Closing are listed on Schedule ____.
- j) **Customer Advances.** Seller has (i) completed construction of all water facilities construction projects for which Seller received customer advances; or, (ii) placed in an escrow account all unexpended, refundable customer advances for projects in progress pursuant to Section 3.2(h) of this Agreement. Except as listed on Schedule ____, to the best of Seller's knowledge, Seller is not a party to contracts or agreements for future payment of refunds under main extension agreements,

customer deposit agreements or other commitments which would result, on the Closing Date, in an outstanding refund.

- k) **Condition of Assets.** To the best of Seller's knowledge, all of the buildings, machinery, equipment, tools, furniture, improvements and other tangible assets of the system, which are included in the Assets, are being sold in working condition, normal wear and tear excepted.
- l) **Environmental Matters.** Except as listed on Schedule ____, and with such exceptions as are not reasonably likely, individually or in the aggregate to have a Material Adverse Effect:
- i. Seller has not knowingly disposed of or arranged for the disposal of or released any hazardous substance, other than in conformity with applicable laws and regulations at any real estate included in the Assets, or at any other facility, location or site to be transferred to Buyer pursuant to the terms of this Agreement.
 - ii. Seller has not received any written notice or request for information with respect to, and to the best of Seller's knowledge, Seller has not been designated a potentially liable party for remedial action or response costs, in connection with any real property included in the Assets, or, as of the date hereof, with respect to the Assets or the operation of the Water System, at any other facility, location or other site under the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or comparable state statutes or rules.
 - iii. To the best of Seller's knowledge, except for such use or storage of hazardous substances as is incidental to the operation of the Water System, which use and storage is or has been in compliance with applicable laws and regulations, no real property included in the Assets has been used for the storage, treatment, generation, processing, production, or disposal of any hazardous substances or as a landfill or other waste disposal site in violation of any law, rule or regulation.
 - iv. To the best of Seller's knowledge, underground storage tanks, other than tanks for the storage of potable water, are not, and have not been in the past located on or under any real property in violation of any law, rule or regulation.
 - v. To the best of Seller's knowledge, there are no pending or unresolved claims against Seller or the Water System for investigatory costs, clean-up, removal, remedial or response costs, or natural resource damages arising out of any releases or threat of release of any hazardous substances at any real property included in the Assets or, as of the date hereof, with respect to the Water System or the Assets or any other facility, location or other site.

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- vi. Section 2.1 contains the sole and exclusive representations and warranties of Seller with respect to any matters arising under or related to any environmental, health and safety requests, regulated substances and environmental conditions.

2.2 Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

- a) **Organization and Good Standing.** Buyer is a political subdivision of the State of New Mexico and is authorized to collect, treat, store, supply, distribute and sell water to the public, as well as to operate and acquire a Water System including its water rights, infrastructure and/or assets.
- b) **Authorization and Enforceability.** Buyer has the full power and lawful authority to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly authorized the execution of this Agreement including but not limited to executing such other necessary agreements, instruments and documents in connection herewith, taking votes if required on its actions at an open meeting in compliance with the Open Meetings Act, and attending any necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer, in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditors generally.

- c) **Noncontravention.** Buyer's performance of its obligations contemplated hereby, as of the Closing Date, shall not (i) require any further approvals or consents from any other party; (ii) violate any law, ordinance or regulation; and (iii) conflict with or result in a breach of any contract, lease of permit to which Buyer is a party.
- d) **No Pending Litigation Proceedings.** Except as listed on Schedule ____, to the best of Buyer's knowledge, there is no claim, litigation, arbitration, proceeding, judgment, injunction, audit or governmental investigation pending or threatened against Buyer which could reasonably be expected to have a Material Adverse Effect on the transaction contemplated by this Agreement.
- e) **Brokerage.** Neither Buyer nor any of its employees or agents have made any agreement or taken any other action which might cause any person to become entitled to a broker's or finder's fee or commission as a result of the transactions contemplated hereunder which could result in liability to Seller.
- f) **Financing.** Buyer has, or at the Closing Date will have, sufficient resources to pay the Purchase Price to Seller.
- g) **Condition of Assets.** Buyer is purchasing the Assets in their "AS-IS" condition, including their environmental condition, operating condition and condition of repair, and

is not relying on any representation of Seller in connection therewith except for representations and warranties contained in this Agreement.

ARTICLE 3 COVENANTS

3.1 Mutual Covenants of Seller and Buyer

The Parties mutually covenant and agree that, except as otherwise approved by the other party in advance and in writing:

- a) **Cooperation.** The parties shall cooperate and shall cause their respective officers, employees, agents and representatives to cooperate to ensure the orderly transition of the Assets from Seller to Buyer and to minimize any disruption to the customers of the Water System from the transactions contemplated by the Agreement.
- b) **Further Assurances.** The parties shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

After the Closing, the Parties shall take such other actions and execute such other documents as may be reasonably requested by the other party (i) in order to transfer more effectively to Buyer or to put Buyer more fully in possession of any of the Assets; or, (ii) in connection with the preparation of any tax return, audit or examination by any governmental or taxing authority.

- c) **Expenses.** The Parties shall each bear their own respective accounting, legal and other expenses incurred in connection with the transactions contemplated by this Agreement.
- d) **Unbilled Services.** Seller shall maintain its normal billing cycle prior to Closing. After closing, Buyer shall, without cost to Seller, issue bills to the customers transferred from Seller to Buyer for water service which was (i) provided by Seller to the transferred customers prior to Closing; (ii) provided during the billing period in which closing occurs; and, (iii) not previously billed by Seller ("Unbilled Service").

Buyer does not guarantee the collectability of Seller's Unbilled Service. Buyer will not terminate water service for Seller's uncollectible accounts, except as may be required by law.

3.2 Covenants of Seller

Seller hereby covenants and agrees that, except as otherwise approved in advance in writing by Buyer:

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2025 RELEASE UNDER E.O. 14176

- a) **Continuation of Business.** Seller shall operate the Water System until the Closing Date in the ordinary course of business, consistent with past practice, so as to preserve (i) its business organization intact; and, (ii) the relationships of the Water System with suppliers, customers and others.
- b) **Continuation of Insurance.** Seller shall keep in existence and maintain current all policies of insurance insuring the Assets and the Water System against liability and property damage, fire and other casualty through the Closing Date, consistent with the policies in effect on the date first written above.
- c) **Standstill Agreement.** Until the Closing Date, unless this Agreement is earlier terminated pursuant to Article 5 of this Agreement, Seller shall not, directly or indirectly, solicit offers for the Assets, water rights or the Water System, or respond to inquiries from, share confidential information with, negotiate with or in any way facilitate inquires or offers from, third parties who express or who have heretofore expressed an interest in acquiring any or all of the Assets, water rights or the Water System.
- d) **Access.** Seller shall (i) give to Buyer and its representatives, from the date first written above until the Closing Date, full access during normal business hours, upon reasonable notice, to all the properties, books, data, contracts, agreements, documents and records connected to the Assets, water rights and/or the Water System; and, (ii) make available to Buyer and its representatives all other information with respect to the Assets, water rights and/or the business and affairs of the Water System as Buyer may reasonably request. Provided, such access does not interfere with Seller's operation of the Water System and the Assets in the ordinary course of business.
- e) **Contractual Consents.** Seller shall, at all times, use its best efforts and diligently pursue all approvals, authorizations and consents of transfer to all material transferable or assignable contracts, agreements, licenses and permits to the extent specifically required by the terms of such contacts, agreements, licenses or permits.
- f) **Customer Advances.** Prior to closing, Seller shall either (i) complete construction of all water facilities construction projects for which Seller received customer advances; or, (ii) place the amount of all unexpended, refundable customer advance for projects in progress together with the amount of any other refunds which are outstanding as of the Closing Date in an escrow account or otherwise remit such amount to Buyer.
- g) **Projects in Progress.** The capital improvements projects and/or studies which may still be in progress at the time of Closing are listed on Schedule ____.

Should there be any capital improvements projects and/or studies still in progress at the time of Closing, Seller shall place into an escrow account for each project

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the balance of the contracted project costs including retainage if any held and including any change orders approved by Seller up to the Closing Date. Payments on the contracts will be made from the escrow account after the Closing. Prior to closing, Seller shall be required to approve any and all change orders that are known to be necessary at that time in order to complete the scope of each capital improvement project in progress at or prior to Closing.

Any change order requested by Buyer that changes the scope of the project and is not required to be approved by Seller in the normal course of business prior to Closing and all change orders generated after the Closing will be the responsibility of Buyer to pay. After the Closing, it will be the responsibility of Buyer to complete any project contract and to approve any change orders.

Seller will not be responsible for any change orders approved by Buyer. Any costs incurred for the close out of the project not specifically included in the escrow account will also be the responsibility of Buyer. Prior to the Closing, the Parties will calculate and agree to the amounts of the outstanding balances on projects in progress before the escrow account is established.

- h) **Regulatory Consents.** To the extent applicable, Seller shall, at all times, use its best efforts and diligently pursue all approvals, authorizations, consents and permits required to be obtained by Seller for Seller to sell the Assets.
- i) **Meter Reading Information.** Within thirty (30) days of the execution of this Agreement, Seller shall provide to Buyer with a complete list of customers, including names, service addresses, billing addresses, meter sizes and meter serial numbers in meter reading route sequence. This complete list shall be updated at closing and provided to Buyer at Closing so as to be true and correct on the Closing Date.

3.3 Covenants of Buyer

Buyer hereby covenants and agrees that, except as otherwise approved in advance in writing by Seller:

- a) **Regulatory Consents.** Buyer shall, at all times, use its best efforts and diligently pursue all approvals, authorizations, consents and permits required to be obtained to consummate the transaction contemplated by this agreement, including, without limitation, the approval of every regulatory agency of federal, state or local government that may be required.

Buyer shall (i) as promptly as practicable, make or cause to be made such filings and submissions under laws, rules and regulations applicable to it as may be required to consummate the terms of this Agreement; and, ii) keep Seller apprised of the status of any filing or submission to any governmental or regulatory agency.

- b) **Maintenance of Books and Records.** No files, books, documents or records existing on the Closing Date and relating to the Assets or related water rights, or the operation of the Water System, shall be destroyed by Buyer for a period of five (5) years after the Closing Date without first giving Seller at least thirty (30) days prior written notice, during which time Seller shall have the right to examine during normal business hours and copy at its own expense such files, books, documents or records.

- c) **Confidentiality.** Until the Closing Date, Buyer will maintain in confidence, and will to the extent permitted by law cause the directors, officers, employees, agents and advisors of Buyer to maintain in confidence, and not use to the detriment of Seller, any written, oral or other information that is designated by Seller to be private, proprietary such as a trade secret, privileged unless (i) such information is already known to Buyer or to others not bound by a duty of confidentiality; (ii) such information becomes publicly available through no fault of Buyer; (iii) the use of such information is necessary or appropriate in making any filing or obtaining any approval, authorization or consent required for the consummation of the transactions contemplated by this Agreement; (iv) the furnishing or use of such information is required by public records laws or by legal proceedings; or, (v) Seller otherwise consents in writing to use of such information.

For purpose of this Section, the following information is designated by Seller as private, proprietary, privileged or obtained in confidence from Seller: (i) information not required to be disclosed by seller under New Mexico law; (ii) information entitled to confidential treatment under statute, regulation, case law, administrative court order or other legal authority including, but not limited to, the social security numbers, home addresses and home/mobile telephone numbers of Seller's employees and customers; and (iii) any other information reasonably designated or identified in writing by Seller as private, proprietary, privileged or confidential.

If this Agreement is terminated pursuant to Article 5 of this Agreement, Buyer will return such private, proprietary, privileged or confidential information to Seller.

- d) **Taxes.** Buyer shall be responsible for all state and local sales, use, transfer, real property transfer, documentary stamp, recording and other taxes arising from and with respect to the sale and purchase of the Assets.

3.4 Special Covenants of Buyer for the Water System

Buyer hereby covenants and agrees to comply with the following special covenants relating to the Water System:

- a) **Rates.** Buyer shall charge reasonable rates for water service in the area served by the Water System, subject to any required government approvals.

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- b) **Application of Rules.** Nothing in this Section shall prevent Buyer from applying its rules, regulations, ordinances and resolutions regarding conditions of service after Closing.

3.5 Reserved

Reserved.

3.6 Special Covenants of Buyer for the System

In addition to the special covenants in Section 3.4 of this Agreement, Buyer hereby covenants and agrees to comply with the following additional special covenants relating to the Water System:

- a) **Employees.** Prior to Closing, Seller shall make reasonable attempts to assist employees in finding new employment. Seller shall be responsible to the employees for all employee benefits that accrue prior to Closing. Employees of Seller are encouraged to apply for available employment with Buyer in any position for which an employee is qualified.

**ARTICLE 4
CONDITIONS PRECEDENT**

4.1 Conditions Precedent to Buyer's Obligations

The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions any one or more of which may be waived in writing in whole or in part, by Buyer, in its sole discretion:

- a) **Representations and Warranties.** Seller's representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant to the provisions of this Agreement shall be true in all material respects at and as-of the time of Closing, except for changes in the ordinary course of business after the date first written above that are in conformity with the covenants, warranties, representations and agreements contained in this Agreement.
- b) **Performance of Agreements.** Seller shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed, or complied with by it prior to or at the Closing.

- c) **Adverse Change**. There shall not have been a material adverse change, occurrence or casualty, financial or otherwise, to the Water System or the Assets, whether covered by insurance or not.
- d) **Closing Resolutions**. Seller shall have delivered to Buyer a duly signed resolution of the Seller adopted by its governing body relating to this Agreement and the transactions contemplated hereby; and, certifying the incumbency and authority of the individual from Seller executing this Agreement and any documents delivered by Seller hereunder.
- e) **Closing Deliveries**. Seller shall have delivered the documents and other items described in Section 1.12 of this Agreement.
- f) **No Litigation**. There shall not be any pending, or to the best of Seller's knowledge, threatened action, proceeding or investigation by or before any court, arbitrator, governmental body or agency which seeks to restrain, prohibit or invalidate the transactions contemplated hereby or which, if adversely determined, would result in a breach of a representation, warranty or covenant of either party herein.
- g) **Regulatory Consents**. Seller shall have obtained the written, final and unappealable approvals, authorizations and consents, including consents for permit transfers that are required to consummate the transactions contemplated by this Agreement, for the sale of the Water System and water rights to Buyer and the approval of every regulatory agency of federal, state or local government that may be required in the opinion of either Buyer or Seller.
- h) **Contractual Consents and Voter Approval**. Seller shall have obtained written approvals, authorizations, resolutions and consents of transfer to all material transferable or assignable contracts, agreements, licenses and permits to the extent specifically required by the terms of such contracts, agreements, licenses or permits.
- i) **Defeasance**. As of the Closing, all mortgages, liens and security interests associated with the Assets, water rights or the Water System will be removed subject to the exceptions listed in Section 2.1(g) of the Agreement.

4.2 Conditions Precedent to Seller's Obligations

The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions any one or more of which may be waived in writing in whole or in part by Seller, in its sole discretion:

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- a) **Representations and Warranties.** Buyer's representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant to the provisions of this Agreement shall be true in all material respects at and as-of the time of Closing, except for changes in the ordinary course of business after the date first written above that are in conformity with the covenants, warranties, representations and agreements contained in this Agreement.
- b) **Performance of Agreements.** Buyer shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.
- c) **Closing Resolutions/Certificates.** Buyer shall have delivered to Seller a duly signed resolution of the Buyer adopted by its Board of County Commissioners at a properly noticed open meeting relating to this Agreement and the transactions contemplated hereby; and, certifying the incumbency and authority of the individual from Buyer executing this Agreement and any documents delivered by Buyer hereunder.
- d) **Closing Deliveries.** Buyer shall have (i) paid the Purchase Price to Seller as described in Sections 1.8, 1.9, 1.10 and 1.12 of this Agreement; and, (ii) delivered the documents and other items described in or required by Section 1.13 of this Agreement.
- e) **No Litigation.** There shall not be any pending, or to the knowledge of Buyer, threatened action, proceeding or investigation by or before any court, arbitrator, governmental body or agency which seeks to restrain, prohibit or invalidate the transactions contemplated hereby or which, if adversely determined, would result in a breach of a representation, warranty or covenant of either party herein.
- f) **Regulatory Consents.** Buyer shall have obtained the written, final and unappealable approvals, authorizations and consents, including consents for permit transfers, that are required to consummate the transactions contemplated by this Agreement, and the approval of every regulatory agency of federal, state or local government that may be required in the opinion of either Buyer or Seller.
- g) **Other Consents.** Buyer shall have obtained any other approvals, authorizations and consents that are required to enable Buyer to consummate the transactions contemplated by this Agreement and to operate the Water System.

**ARTICLE 5
TERMINATION**

5.1 Termination

This Agreement may be terminated prior to the Closing Date only as follows and in each case only by written notice:

- a) by the mutual written consent of both Seller and Buyer;
- b) by either Seller or Buyer, if the Closing has not occurred, other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement, on or before the first (1st) anniversary of the date first written above, or such later date as the Parties may agree upon;
- c) by either Seller or Buyer, if a material breach of any covenant, warranty, representation, agreement or provision of this Agreement, that individually or in the aggregate would have a Material Adverse Effect, has been committed by the other party and such breach has not been (i) cured within thirty (30) days after the non-breaching party gives written notice of said breaching party; or, (ii) waived by the non-reaching party;
- d) by Buyer, if any of the conditions in Section 4.1 of this Agreement (i) have not been satisfied as of the Closing Date; or, (ii) have become impossible (other than through the failure of Buyer to comply with its obligations under this Agreement); and buyer has not waived such condition on or before the Closing date; and
- e) by Seller, if any of the conditions in Section 4.2 of this Agreement (i) have not been satisfied as-of the Closing Date; or, (ii) have become impossible, other than through the failure of Seller to comply with its obligations under this Agreement; and, Seller has not waived such condition on or before the Closing Date.

5.2 Effect of Termination

Each party's right of termination under Section 5.1 of this Agreement is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies.

If this Agreement is terminated pursuant to Section 5.1 of the Agreement, all further obligations of the Parties under the Agreement shall terminate, except that the obligations in Sections 3.1(c) (Expenses), 3.3(c) (Confidentiality) and 8.14 (Jurisdiction) of this Agreement shall survive. Provided, however, that if this Agreement is terminated by a party pursuant to Section 5.1(c) of this Agreement, the terminating party's right to pursue all legal remedies and damages will survive such termination unimpaired.

If this Agreement is terminated pursuant to Section 5.1(a),(b),(d) or (e) of the Agreement, and there is no written objection to the termination filed by a party with the Escrow Agent, Seller shall within five (5) business days after such termination repay to Buyer the Deposit. In all other events of termination pursuant to Section 5.1 of this Agreement, the Deposit shall remain in escrow until the final resolution of any claim for damages, including a right to attorney fees, if applicable.

**ARTICLE 6
INDEMNIFICATION**

6.1 Definition of Damages

For purposes of this Agreement, "Damages" means the aggregate amount of all damages, claims, losses, obligations, liabilities (including any governmental penalty, fines or punitive damages), deficiencies, interest, costs and expenses arising out of or relating to a matter and any actions, judgments, costs and expenses (including reasonable attorney's fees and all other expenses incurred in investigating, preparing, or defending any litigation or proceeding, commenced or threatened) incident to such matter or to the enforcement of this Agreement.

6.2 Indemnification by Seller

To the extent permitted by New Mexico law, Seller agrees to indemnify, defend and hold harmless Buyer, and its employees, officers, Board of County Commissioners whether jointly or separately and agents from and against any and all Damages arising out of or resulting from:

- a) any representation, breach of warranty, or non-fulfillment of any covenant or agreement made by Seller in this Agreement or in any deliveries furnished pursuant to Section 1.12 of this Agreement;
- b) any and all liabilities of Seller of any nature, whether due or to become due, whether accrued, absolute, contingent or otherwise, existing prior to the Closing Date or arising out of any transaction entered into, any state of acts existing or any even occurring prior to the Closing Date, other than Assumed Liabilities;
- c) the Retained Liabilities; and
- d) the successful enforcement of this Section of this Agreement.

Seller's obligations under this Section of the agreement shall be discharged, and all amounts payable hereunder, including costs and fees in the defense of any litigation, shall be paid to Buyer as they are incurred by Buyer.

6.3 General Indemnification Procedures

- a) During the applicable survival period specified in Article 7 of this Agreement, Buyer ("Indemnified Party"), in seeking indemnification pursuant to Article 6 of this Agreement, shall give prompt written notice to the Seller from whom such indemnification is sought ("Indemnifying Party") of the assertion of any claim, the incurrance of any Damages, or the commencement of any action, suit or proceeding, of which it has knowledge in respect of which indemnity may be sought hereunder, and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such required noticed shall relieve the Indemnifying Party of any liability hereunder only to the extent that the Indemnifying Party has suffered actual prejudice thereby.

The Indemnifying Party (Seller) shall have the right exercisable by written notice to the Indemnifying Party after receipt of notice from the Indemnified Party of the commencement of or assertion of any claim or action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "Third Party Claim"), to assume the defense of such Third Party Claim which involves and continues to involve solely monetary damages; provided, that (i) the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, solely the Indemnifying Party shall be obligated to satisfy and discharge the Third Party Claim; (ii) such Third Party Claim does not include a request or demand for injunctive or other equitable relief; and, (iii) the Indemnifying Party makes reasonably adequate provision to assure the Indemnified Party of the ability of the Indemnifying Party to satisfy the full amount of any adverse monetary judgment that is reasonably likely to result.

- b) Neither the Indemnified Party nor the Indemnifying Party shall settle any Third Party Claim without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.
- c) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate (but not control), at its own expense, in the defense of any Third Party Claim which the other party is defending as provided in this Agreement.
- d) In no event shall either Party be liable to the other for any reason under this Agreement for any form of special, incidental, indirect, consequential, or punitive damages of any kind whether or not foreseeable, even if informed in advance of the possibility of such damages and whether arising in contract, tort including negligence, equity or otherwise.

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**ARTICLE 7
SURVIVAL**

7.1 Survival

All covenants, warranties, representations and agreements made by the parties in this agreement or in any Schedule, document, statement, certificate or resolution furnished in connection with the transaction contemplated by this Agreement shall survive the Closing.

7.2 Limitations on Survival

- a) The covenants, warranties, representations and agreements set forth in Section 3.6(b), (c) and (d) of this Agreement shall survive the Closing for an unlimited period of time.
- b) The covenants, warranties, representations and agreements set forth in Section 2.1, Section 3.1(a) through (c), and Section 3.3(b) of this Agreement shall survive the Closing for a period of five (5) years.
- c) The covenants, warranties, representations and agreements set forth in Section 3.4(b) of this Agreement shall survive the Closing for a period of three (3) months.
- d) Article 6 of this Agreement shall survive the Closing for the applicable period(s) of the indemnified covenants, warranties, representations and agreements as limited by this Article 7.
- e) The covenants, warranties, representations and agreements that are not explicitly limited by Section 7.2(a) through (d) of herein shall survive the closing for a period of one (1) year.

7.3 Covenant Running with the Land

Reserved.

**ARTICLE 8
MISCELLANEOUS**

8.1 Schedules

All Exhibits and Schedules (“Schedules”) annexed or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

Schedules are made to the best of the Parties’ knowledge as of the date first written above. Prior to Closing, the parties shall promptly deliver an amended or supplemented Schedule when any change in fact, condition or information requires an amendment or supplement to such Schedule.

8.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties concerning the sale and purchase of the Assets, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties on the subject matter hereof.

8.3 Amendment

This Agreement may be amended or modified only by a writing executed by all of the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

8.4 Extension or Waiver of Performance

Either Seller or Buyer may extend the time for or waive the performance of any of the obligations of the other, waive any inaccuracies in the warranties or representations by the other, or waive compliance by the other with any of the covenants, conditions or agreements contained in this Agreement, provided that any such extension or waiver shall be in writing and signed by the waiving party in the case of a waiver, or by both Seller and Buyer in the case of an extension.

8.5 Assignment or Delegation

The Parties shall not assign, delegate or otherwise transfer any of their duties, rights or obligations under this Agreement without the prior written consent of the other party.

8.6 Successors and Assigns; Binding Effect

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

8.7 Governing Law

This Agreement shall be governed and construed under the laws of the State of New Mexico.

8.8 Notices

All notices provided for in this Agreement shall be in writing, addressed to Seller or Buyer, as the case may be, at the addresses set forth in this Paragraph and may be (a) delivered in person; (b) sent by United States registered or certified mail, return receipt requested; (c) sent by recognized overnight courier or delivery service from which a receipt may be obtained; or, (d) sent by facsimile or telefax transmission during regular business hours (9 a.m. to 5 p.m., Monday-Friday, excluding weekends and holidays observed by Santa Fe County). Notice sent by facsimile shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation.

If to Sellers:

Address:

If to Buyer:

Santa Fe County,
Attn: Stephen C. Ross, County Attorney
102 Grant Ave.
P.O. Box 276
Santa Fe, NM 87504-0276
Telephone: 505-986-6279
Facsimile: 505-986-6362

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The parties shall have the right to designate a new address for the receipt of notices by written notice to the other party as provided in Section 8.8 of this Agreement.

8.9 Captions

The headings and captions used with the subsections, sections, articles and schedules of this Agreement are for convenience or reference only and shall not be deemed to modify or limit the provisions of this Agreement.

8.10 Construction

In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.

Any reference to any federal, state, local or foreign law shall be deemed to refer to all amendments, as well as to all rules and regulations promulgated thereunder, unless the context requires otherwise.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context may require. The word "including" shall mean "included," without limitation.

"Material Adverse Effect" means a change or effect, or series of related changes or effects, which has or is reasonably likely to have a material adverse change in or effect upon the business, assets, condition (financial or otherwise), or results of operations of the Water System, water rights or Assets, taken as a whole, provided, however, that none of the following, either alone or in combination, shall be considered in determining whether there has been a "Material Adverse Effect": (i) events, circumstances, change or effects that generally affect similarly situated water systems, including changes in law or generally accepted accounting principles; (ii) general economic or political conditions or events, circumstances, changes or effects affecting the financial, securities, lending or commodities markets or other market conditions generally; (iii) changes arising from the consummation of the transactions contemplated by, or the announcement of, this Agreement; (iv) changes caused by a material worsening of current conditions caused by acts of terrorism or war, whether or not declared, occurring after the date of this Agreement; (v) any existing circumstance, event or occurrence with respect to which the Buyer has knowledge as of the date of this Agreement; and (vi) any adverse circumstance, change or effect that is cured by Seller or buyer prior to the Closing in accordance with this Agreement.

8.11 Cumulative Remedies

The remedies afforded in this Agreement are cumulative to each other and to all other remedies provided by law.

8.12 No Waiver

Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy; nor shall it be construed as a waiver of our acquiescence in any such breach or default, or any similar breach or default occurring later; nor shall any waiver of a single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

8.13 Time of the Essence

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Time is of the essence in this Agreement.

8.14 Jurisdiction and Venue

The Parties each irrevocably submit to the exclusive jurisdiction of (a) the First Judicial District Court in Santa Fe, New Mexico, and (b) where appropriate, an appellate court for the State of New Mexico.

When the above-mentioned courts may properly exercise jurisdiction over an action, suit or proceeding relating to this Agreement, the Parties agree not to commence or maintain any such action, suit or proceeding in a court or forum other than the above-mentioned courts.

8.15 Third Party Beneficiaries

Nothing herein expressed or implied is intended or should be construed to confer upon or give to any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

8.16 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the parties only when a copy or a counterpart has been signed by each party and delivered to each other party. Signatures, copies and counterparts may be transmitted by mail, facsimile or overnight courier service and when so transmitted are as effective as if a manually-signed, original document had been delivered.

8.17 Incorporation of Exhibits and Schedules

All exhibits and schedules attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

WHEREFORE, in consideration of the foregoing and intending to be legally bound by the terms herein, the Parties have caused this Agreement to be executed as set forth below.

SELLER:

YYYYYYYYYYYYYY,

BUYER:

SANTA FE COUNTY, NEW MEXICO,
a political subdivision of the State of
New Mexico

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO**

By: _____
Title: _____
Date: _____

By: _____
Title: KATHY HOLIAN
Chairperson
Date: _____

Approved as to form:

By: _____
Title: STEPHEN C. ROSS
County Attorney
Date: _____

Attest:

By: _____
Title: GERALDINE SALAZAR
County Clerk
Date: _____

SCHEDULES

A through ZZZ

REC'D CLERK RECORDED 8/13/2013

SCHEDULE A
(other schedules when added should be labeled in alphabetical order)

2025 RELEASE UNDER E.O. 14176