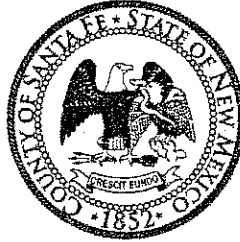


**Henry P. Roybal**  
Commissioner, District 1

**Anna Hansen**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Anna T. Hamilton**  
Commissioner, District 4

**Ed Moreno**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## **MEMORANDUM**

**DATE:** 10/27/2017

**TO:** Board of County Commissioners

**VIA:** Katherine Miller, County Manager

**FROM:** Michael K. Kelley, Public Works Department - Director MK 10/30/17

**ITEM AND ISSUE:** BCC Meeting November 14, 2017

**Approval of an Amendment to Memorandum of Agreement 2016-0179-PW/BT between Santa Fe County and the Greater Chimayo Mutual Domestic Water Consumers Association to Allow Additional Uses of Funding Balance (Public Works/Erik Aaboe)**

### **SUMMARY:**

The purpose of this amendment is to allow the Greater Chimayo Mutual Domestic Water Consumer's Association ("Association") to use funds that remain after the completion of a waterline extension project to acquire water rights and to design and construct improvements to one of their water supply wells.

### **BACKGROUND:**

On June 14, 2015, the County and the Association entered into a Memorandum of Agreement wherein the County agreed to reimburse the Association for the planning, design and construction of an improvement of the Association water system, specifically their "Water System Improvements - Phase IIa" Project. This project consisted of a waterline extension. The project was completed and all related expenses for the portion in Santa Fe County were reimbursed to the Association by August of 2017. Approximately \$136,000 of GOB funding remains in the purchase order for the MOA.

The Association appreciates the support of Santa Fe County and has identified two capital project needs for the remaining funding; acquisition of water rights and the design and construction of improvements to one of their water supply wells. If approved, the Association would procure these improvements and assets and would request reimbursement from the County up to the remaining balance using the procedures established in the MOA.

**ACTION REQUESTED:**

Approval of Amendment 1 to Memorandum of Agreement 2016-0179-PW/BT.

Enc. MOA 2016-0179-PW/BT

**AMENDMENT NO. 1  
TO MEMORANDUM OF AGREEMENT  
BETWEEN SANTA FE COUNTY AND THE  
GREATER CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION**

This Amendment is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between **Santa Fe County**, a political subdivision of the State of New Mexico (the "County") and the **Greater Chimayo Mutual Domestic Water Consumers Association** (the "Association").

**WHEREAS**, on June 14, 2015, the County and the Association entered into Memorandum of Agreement No. 2016-0179-PW/BT ( the "MOA") to provide for their agreement that the County would provide financial assistance to the Association for the Association's planning, design construction and ancillary professional services for certain water system improvements; and

**WHEREAS**, according to Article 5 of the MOA (Amendment), the MOA may be amended by an instrument in writing signed by the parties; and

**WHEREAS**, by this Amendment No. 1 the parties wish to amend the MOA to provide for additional costs for which the Association can request reimbursement from the County, and

**WHEREAS**, both parties wish to enter into this Amendment No. 1.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. Exhibit A referenced in Articles 1 and 2 of the MOA is amended by inserting the following provision as subpart "(a)" to read as follows:

(a) By Amendment No. 1 to this MOA, the capital improvements authorized as reimbursable costs under this MOA include the Association's acquisition of water rights and the design and construction of improvements to the Greater Chimayo Well #4. The costs associated with transferring such water rights to the Association, include without limitation the services of a hydrologist, consultants and attorney to prepare documents pertaining to water rights acquisition and transfer and submittals to the Office of the State Engineer.

2. All other provisions of the MOA not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have duly executed this Amendment No. 1 as of the date of last signature by the parties.

**SANTA FE COUNTY:**

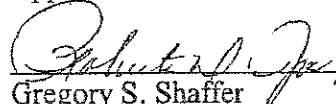
\_\_\_\_\_  
Henry P. Roybal, Chair  
Santa Fe County Board of County Commissioners

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

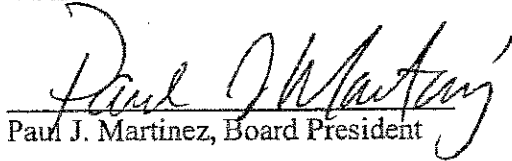
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Date

Approved as to form:

  
\_\_\_\_\_  
Gregory S. Shaffer  
Santa Fe County Attorney

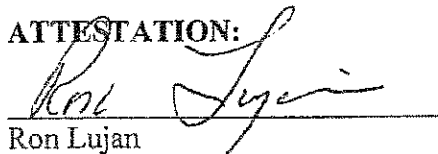
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Date

**GREATER CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION**

  
\_\_\_\_\_  
Paul J. Martinez, Board President

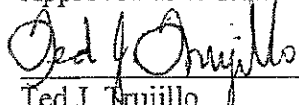
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Date

**ATTESTATION:**

  
\_\_\_\_\_  
Ron Lujan  
Board Member

10/13/17  
\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
Ted J. Trujillo  
Attorney for the Association

10-13-17  
\_\_\_\_\_  
Date

**MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF SANTA FE AND THE GREATER  
CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS  
ASSOCIATION**

**THIS MEMORANDUM OF AGREEMENT** (“the Agreement”) is entered into by and between the **County of Santa Fe** (“the County”), a political subdivision of the State, and the **Greater Chimayo Mutual Domestic Water Consumers Association** (“the Association”), a political subdivision of the State of New Mexico organized under the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 through 3-29-21.

**WHEREAS**, The Association was organized to respond to the emergency needs of the community of Greater Chimayo for a safe and reliable domestic water supply, which need was recognized in the 2001 declarations of emergency by the Governor of New Mexico, the New Mexico Department of Environment, the New Mexico Department of Health, the County of Santa Fe, and the County of Rio Arriba; and

**WHEREAS**, the need to support small community water systems is identified as a key issue in Chapter 11 of the County’s Sustainable Growth Management Plan (“SGMP”), and providing assistance to community water systems is Policy 41.8 in the SGMP; and

**WHEREAS**, on September 30, 2014, the Board of County Commissioners approved Resolution No. 2014-103 endorsing the concept of regionalization of water services within the County; and

**WHEREAS**, the County desires to assist with the development of a regional water system solution to address water supply and water quality concerns in the Greater Chimayo service area, and the Association desires to receive such assistance from the County and to continue as partners with the County in water infrastructure planning, construction, and maintenance in the region; and

**WHEREAS**, the parties desire to work together to achieve a unified regional water system in the Santa Cruz River Valley to serve all communities located in that area; and

**WHEREAS**, the County is prepared to provide and the Association is prepared to use funding provided by the County for capital improvements; and

**WHEREAS**, it is in the interest of the public health, safety, and welfare for the parties to cooperate as set forth herein.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. THE COUNTY AGREES:**

- A. To provide up to \$625,000 in capital funds to reimburse the Association for the planning, design, construction, and ancillary professional services for the capital improvements described at Exhibit A.
- B. To process requests for reimbursement from the Association in a timely manner and to follow the reimbursement process described at Exhibit B.

**2. THE ASSOCIATION AGREES:**

- A. To use the County-provided capital funds as reimbursement for the planning, design, construction, and ancillary professional services for the capital improvements described at Exhibit A.
- B. To assure that all capital improvements are design, constructed, installed, operated, and maintained in accordance with all applicable laws and codes.
- C. To submit draft design plans to the County for review and comment and to timely respond to the County's comments (if any); provided, however, that the County shall have no duty to conduct such review; and provided further that the Association shall remain solely responsible for assuring that the improvements are designed, constructed, installed, operated and maintained in accordance with all applicable laws and codes.
- D. To proceed with any capital improvements as soon as possible after the effective date of this Agreement.
- E. To submit to the County requests for reimbursement in a timely manner, to provide the necessary supporting documentation as requested by the County, and to follow the reimbursement process described at Exhibit B.
- F. Upon completion of the capital improvement project funded under this Agreement, provide a written certification of such completion to the County.

**3. EFFECTIVE DATE:** The effective date of this Agreement is the last date written below.

**4. LIABILITY:**

- A. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, or creates any right of indemnity.
- B. There are no third-party beneficiaries to this Agreement. Without limiting the generality of the foregoing, no action to enforce the terms of this Agreement or for damages for breach of this Agreement may be brought against either party by any person who is not a party to this Agreement.

5. **AMENDMENT:** This Agreement may not be altered, changed, or amended except by a written agreement executed by the parties.
6. **APPLICABLE LAW AND VENUE:** New Mexico law shall apply to this Agreement. Any litigation regarding this Agreement shall be brought exclusively in New Mexico State District Court, First Judicial District, Santa Fe, New Mexico.
7. **INTEGRATION:** This Agreement sets forth the entire agreement between the parties and any prior agreements and understandings between the parties, whether written or oral, regarding the subject matter of this Agreement are fully integrated into this Agreement.
8. **INSURANCE:** Prior to commencement of construction of any improvements described in Exhibit A, the Association shall obtain and continue to maintain during the term of this Agreement a commercial general liability insurance policy that, at a minimum, covers bodily injury and property damage arising out of or relating to the capital improvements constructed with funding under this Agreement. The policy shall have a liability limit in the amount of not less than \$1,000,000 per occurrence and name the County as an additional insured. The Association shall provide proof of such general liability insurance acceptable to the County. The Association may satisfy the Section by requiring the contractor to obtain comparable insurance, naming the County as an additional insured.

**9. TERMINATION AND SURVIVAL:**

A. The County may terminate this Agreement by:

- (1) Providing written notice of a material breach to the Association. If the Association does not cure the breach to the County's satisfaction within 90 days of such notice, this Agreement shall terminate automatically at the end of the 90<sup>th</sup> day.
- (2) Providing written notice that the Board has not appropriated sufficient funds; provided, however, that valid requests for reimbursement submitted prior to such notice shall be paid, subject to Section 11.

B. The Association may terminate this Agreement by providing written notice of termination to the County.

C. Unless terminated earlier as provided above, this Agreement shall terminate automatically upon the first occurrence of:

- (1) The Association fails to make a valid request for reimbursement within two years after the effective date of this Agreement.

D. The Association's duty to maintain insurance under Section 9 shall survive one year after termination of this Agreement.

10. **BATEMENT ACT:** Pursuant to NMSA 1978, Section 6-6-11(1953), nothing in this Agreement shall require the County to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, shall be void.

11. **COUNTERPARTS:** This Agreement may be executed in counterparts.

**SANTA FE COUNTY**

By: Miguel M. Chavez  
Miguel M. Chavez, Chair  
Board of County Commissioners

Date: 6/14/16

ATTEST:  
Geraldine Salazar  
Geraldine Salazar, Santa Fe County Clerk

Date: 6-14-2016

APPROVED AS TO FORM:  
Greg S. Shaffer  
Greg S. Shaffer, Santa Fe County Attorney

Date: 5/11/2016

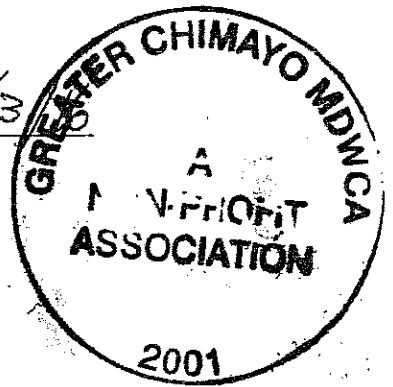
**GREATER CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION**

By: Paul J. Martinez  
Paul J. Martinez, Board President

Date: 5/3/16


ATTEST:  
Charlie Vigil  
Charlie Vigil, Board Member / Treasurer

Date: 5/3





**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ted J. Trujillo  
Attorney for the Association

Date: 5-3-16

**Exhibit A**

**Description of Capital Improvement Project**

As referenced in Article 1. A. of the Memorandum of Agreement between the County of Santa Fe and the Greater Chimayo Mutual Domestic Water Consumers Association ("MOA"), the County will provide up to \$625,000 in capital funds to reimburse the Association for the following capital improvements:

Planning, design, construction, and ancillary professional services for that portion of the "*Water System Improvements – Phase II-A Greater Chimayo Mutual Domestic Water Consumers Association*" Project Number CHI095-11, designed by Clayton H. Ten Eyck, PE of Molzen Corben that are within the boundaries of Santa Fe County.

**Exhibit B****Reimbursement Process**

In accordance with Paragraph 1.B of the Memorandum of Agreement between the County of Santa Fe and the Greater Chimayo Mutual Domestic Water Consumers Association ("MOA"), the following reimbursement process will be followed.

1. All contracts and procurements related to the Scope of Work described in Exhibit A of the MOA shall be managed by the Greater Chimayo Mutual Domestic Water Consumers Association ("the Association"), and the Association shall receive and pay all invoices from all vendors related thereto.
2. Upon receipt of an invoice as described above, the Association shall review and certify for sufficiency.
3. Within 5 work days of invoice receipt, the Association shall submit to Santa Fe County ("the County") a pay application that shall consist of the following:
  - a. A cover memo that describes the purpose and summarizes the pay application.
  - b. A copy of the invoice(s) and all supporting documentation submitted by the contractor / vendor to the Association that justify payment.

For convenience, the Association may submit multiple invoices in one pay application, as long as the cover memo clearly describes the invoices contained in the pay application.

4. The County shall review the pay application and, upon satisfaction that the pay application is complete and sufficient, shall confirm the adequacy of the pay application and certify that it meets County standards for payment within 5 calendar days or return to the Association for correction. The County will issue the funds necessary to pay the invoices contained in the certified pay application. The funds will be issued in the form of a check to the Association, and shall be issued within 12 calendar days of certification of the pay application. The County will not be responsible for payment of late fees.
5. Upon receipt of funds, the Association will pay all invoices and submit copies of the corresponding cancelled checks to the County prior to or simultaneous to submitting further applications for payment.
6. Pay applications and copies of cancelled checks shall be directed in duplicate to:

Mark Hogan, Director  
 Public Works Projects Division  
 Santa Fe County  
 PO Box 276  
 Santa Fe, NM 87504

And

Samuel L Montoya, Capital and Grants Manager  
 Finance Division  
 Santa Fe County  
 PO Box 276  
 Santa Fe, NM 87504

7. Funds to the Association shall be directed to:

Paul J. Martinez, President  
 Greater Chimayo Mutual Domestic Water Consumers Association  
 PO Box 580  
 Chimayo, NM 87522





