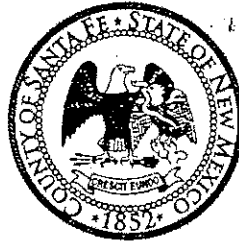


Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: November 29, 2016

TO: Board of County Commissioners (BCC)

FROM: Sandra J. Ely, Aamodt Project Manager, Public Works Department

ITEM AND ISSUE: BCC Meeting December 13, 2016

Resolution 2016-_____, A Resolution Approving the Pojoaque Basin Regional Water Authority Joint Powers Agreement (Utilities Division/Sandra Ely)

SUMMARY:

The purpose of this resolution is to approve the Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA). The JPA would create the Pojoaque Basin Regional Water Authority (Authority), define its purpose and powers and prescribe the manner in which those powers are exercised. The Authority would be managed by a Board of Directors.

BACKGROUND AND DISCUSSION:

On March 14, 2013, the Board of County Commissioners approved and signed the revised Aamodt Settlement Agreement (Agreement) and the Cost-Sharing and System Integration Agreement concerning the Regional Water System (RWS). These approvals launched efforts by the County, the State, the United States, and the Pueblos of San Ildefonso, Pojoaque, Nambe and Tesuque to plan, design and construct the RWS and negotiate the agreements necessary to own and operate the RWS. The next milestone in the implementation of the Aamodt Settlement Agreement is the consideration and possible approval of the JPA by the Board of County Commissioners (BCC).

At the October 25, 2016 BCC meeting, the Commissioners received a PowerPoint presentation containing detailed information concerning the Agreement, including the County's historic support for the Agreement of the RWS as well as the milestones achieved and those that remain. The Commissioners were also provided with the September 23, 2016 draft of the JPA and an Index and Summary of the draft JPA. In addition, at this same meeting, the Pueblos of San Ildefonso, Pojoaque, Nambe and Tesuque provided statements and the public provided comments regarding the Agreement and the JPA.

At the November 29, 2016 BCC meeting, the Commissioners discussed the November 7, 2016 draft of the JPA including revisions based on public comment received during the October 25, 2016 BCC

meeting (Exhibit B). At this same meeting Commissioner Roybal introduced two proposed amendments to the JPA relative to the make-up of the Regional Water Authority Board (Exhibits C and D).

The subject Resolution (Exhibit A) both approves and authorizes the Board chair to sign the Pojoaque Basin Regional Water Authority Joint Powers Agreement.

ACTION REQUESTED:

Approval of the subject resolution.

Exhibits:

Exhibit A- Resolution Approving the Pojoaque Basin Regional Water Authority Joint Powers Agreement

Exhibit B- Pojoaque Basin Regional Water Authority Joint Powers Agreement, November 7, 2016 Draft

Exhibit C- Draft of Proposal No.1 of 2 Introduced by Commissioner Roybal on November 29, 2016- State Senator and State Representative Each Appoint One County Customer Director

Exhibit D- Draft of Proposal No.2 of 2 Introduced by Commissioner Roybal on November 29, 2016- Board of County Commissioners Appoints One County Commissioner Director and Two County Customer Directors

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY
RESOLUTION NO. 2016 - _____**

**A RESOLUTION APPROVING THE POJOAQUE BASIN
REGIONAL WATER AUTHORITY JOINT POWERS
AGREEMENT**

WHEREAS, by Santa Fe County (County) Resolution No. 2012-53, the Board of County Commissioners (Board) approved the amended Settlement Agreement (Settlement Agreement), dated April 19, 2012, between the County, the State of New Mexico (State), the City of Santa Fe (City), the Pueblos of Nambé, Pojoaque, San Ildefonso and Tesuque, and numerous private parties in the case of *New Mexico ex rel. State Engineer v. Aamodt*, No. 66cv06639 MC/LCS-ACE (D.N.M.) (*Aamodt* Adjudication); and

WHEREAS, the County executed the Settlement Agreement on March 14, 2013; and

WHEREAS, Congress approved the Settlement Agreement by enactment of the Aamodt Litigation Settlement Act (the Act), as part of the Claims Resolution Act of 2010, Public Law No. 11-291, Title VI, Sections 601 through 626; and

WHEREAS, on March 21, 2016, the Federal District Court in the *Aamodt* Adjudication approved the Settlement Agreement and incorporated it into a Partial Final Judgment Decree of Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque (collectively, Pueblos); and

WHEREAS, Section 9.5 of the Settlement Agreement requires the County and the Pueblos to create the Pojoaque Basin Regional Water Authority (the Authority) in accordance with the provisions of the Settlement Agreement and the August 27, 2009, Cost-Sharing and System Integration Agreement (Cost-Sharing Agreement) between the United States, the State, the Pueblos, the County, and the City; and

WHEREAS, pursuant to the New Mexico Joint Powers Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Pueblos and County staff have negotiated the proposed Pojoaque Basin Regional Water Authority Joint Powers Agreement (JPA), attached hereto, to create the Authority in accordance with the Act, the Settlement Agreement, and the Cost-Sharing Agreement; and

WHEREAS, Article 19(H) of the JPA requires the respective Pueblo and County governing bodies to adopt resolutions approving the JPA, "including the limited waiver of sovereign immunity provided therein."

NOW, THEREFORE, BE IT RESOLVED by the Board that the Pojoaque Basin Regional Water Authority Joint Powers Agreement attached to this Resolution is hereby approved, including the limited waiver of sovereign immunity provided in Article 19(H) of the JPA.

PASSED, APPROVED, AND ADOPTED THIS ____ **DAY OF** _____, 2016.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Miguel M. Chavez, Chair

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

Gregory S. Shaffer, Santa Fe County Attorney

Date: _____

November 7, 2016, Santa Fe County Draft

**POJOAQUE BASIN REGIONAL WATER AUTHORITY
JOINT POWERS AGREEMENT**

This Agreement is entered into by, between, and among the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and Santa Fe County under the New Mexico Joint Powers Agreements Act. The effective date of this Agreement is the date on which it is approved by the New Mexico Secretary of Finance and Administration.

RECITALS

WHEREAS, the County has the authority to own and operate water and wastewater facilities pursuant to NMSA, § 4-36-10(A), § 4-37-1, and Chapter 3, Article 26 and Article 7; and

WHEREAS, the Pueblo Parties have the authority to own and operate water and wastewater facilities pursuant to their inherent sovereignty; and

WHEREAS, the Parties are signatories to the Settlement Agreement; and

WHEREAS, the Parties are signatories to the Cost-Sharing Agreement, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

WHEREAS, the Act approved the Settlement Agreement and the Cost-Sharing Agreement; and

WHEREAS, the Act authorizes the United States Secretary of the Interior to construct the Regional Water System; and

WHEREAS, the Act, the Cost-Sharing Agreement, and the Settlement Agreement call

for formation by the Parties of the Authority to supply water for domestic, municipal, industrial, irrigation, commercial, and all other approved uses throughout the areas served by the Regional Water System and as otherwise authorized by the Act; and

WHEREAS, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Authority shall be exercised consistent with the terms and conditions of the Act, Settlement Agreement, Cost-Sharing Agreement, and Operating Agreement; and

WHEREAS, the Parties desire that the Authority have the power to carry out the purposes and functions as authorized by the Act and as set forth herein in order to provide service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

AGREEMENT

NOW, THEREFORE, as required by the Act and Settlement Agreement, and in consideration of the mutual covenants and obligations set forth here and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

As used herein, the following terms have the following meanings unless the context clearly indicates otherwise:

A. “Aamodt Case” means the federal litigation styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS

(D.N.M.).

B. "Act" means Title VI, Aamodt Litigation Settlement, of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.

C. "Agreement" means this Joint Powers Agreement.

D. "Authority" means the Pojoaque Basin Regional Water Authority created by this Agreement and defined in Section 1.13 of the Cost-Sharing Agreement.

E. "Board" means the Authority's Board of Directors.

F. "Cost-Sharing Agreement" means that certain Cost-Sharing and System Integration Agreement, signed by the parties on March 14, 2013.

G. "County" means Santa Fe County, a political subdivision of the State of New Mexico.

H. "County Distribution System" has the same meaning as set forth in Section 1.5 of the Cost-Sharing Agreement.

I. "Director", in the context of quorum and voting requirements and limitations, includes alternate directors attending meetings with voting rights.

J. "Operating Agreement" means that agreement required by Section 612 of the Act; the text of Section 612 is attached hereto as Exhibit A.

K. "Parties" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and County collectively; "Party" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, or County individually. In Article 19, unless otherwise stated, "Parties" means the Pueblo Parties, County, and the Authority, collectively; and "Party" means a Pueblo Party, County, or

Authority, individually.

L. "Pueblo Water Facility" has the same meaning as set forth in Section 1.13 of the Cost-Sharing Agreement.

M. "Regional Water System" means the system defined in Section 602(18) of the Act.

N. "Service Area" means the area to be served by the Regional Water System, including the County Distribution System and Pueblo Water Facilities.

O. "Settlement Agreement" means that certain Settlement Agreement dated April 19, 2012, and signed by the Parties on March 14, 2013, in the Aamodt Case.

ARTICLE 2 – AUTHORIZATION: FORMATION

Pursuant to the provisions of the Joint Powers Agreements Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties hereby create the Authority, a legal entity, separate and distinct from the Parties, organized and empowered as set forth herein.

ARTICLE 3 - PURPOSES

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply for domestic, municipal, industrial, irrigation, commercial and all other approved uses throughout the areas served by the Regional Water System, regardless of jurisdictional boundaries, and as otherwise authorized by the Act;

2. The construction, management, ownership, operation and maintenance of diversion, collection, treatment, storage, and transmission facilities as well as all related real and personal property, facilities and equipment as may be reasonably necessary to achieve the

purposes of and discharge the powers of the Authority; and

3. Providing service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, and the Act.

ARTICLE 4 – DURATION

This Agreement shall continue in full force and effect unless terminated pursuant to Article 24.

ARTICLE 5 - POWERS

To the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement, the Authority is empowered and authorized:

A. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of the Regional Water System, wherever located; provided, however, that the County Distribution System and Pueblo Water Facilities shall remain the separate property of the County and respective Pueblo;

B. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of wastewater collection and treatment systems, wherever located; provided, however, that each Party must separately authorize the provision of wastewater services within its jurisdiction.

C. To own, acquire, and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;

D. To bill and collect payments from all customers served by the Regional Water System wherever located, or to bill and collect payments from the Parties, or both, as may be provided in the Operating Agreement; provided, however, that any billing of and collection from a water customer served from the County Distribution System must conform to policies of the County and any billing of and collection from a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

E. To establish policies and enforcement mechanisms for delivery and use of water, provided that any suspension of service to a water customer served from the County Distribution System must conform to policies of the County and any suspension of service to a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

F. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation;

G. To make expenditures, incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements, and expansion of the facilities of the Authority and to otherwise carry out the purposes of the Authority;

H. To provide services to others and lease to others any of the Authority's assets;

I. To open and maintain bank accounts, and to invest the Authority's funds, for its

benefit, to the extent and in the manner that County funds may be invested under New Mexico law;

J. To sell any of the Authority's assets deemed by the Board to be unnecessary, excess, obsolete, or scrap;

K. To employ and enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;

L. To apply for and to receive grants, appropriations, or other funds;

M. To provide for retirement, insurance, and other benefits for its employees;

N. To sue and be sued in any court of competent jurisdiction in accordance with and to the extent allowed by applicable law, including, without limitation, the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978; and

O. To do any and all other lawful things consistent with its purposes and powers as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

ARTICLE 6 - BOARD OF DIRECTORS

A. **Composition and Appointment.** The business and affairs of the Authority shall be controlled by the Board, which shall be composed of seven (7) directors. Each Party shall appoint one director. The County's director shall be the County Commissioner for District 1; provided, however, that a majority of the Board of County Commissioners of the County may vote to appoint another County Commissioner as the County's primary director. The County's alternate director shall also be a County Commissioner. Except as provided in

the previous two sentences, each Party shall establish its own qualifications for directors and alternate directors. The directors selected by the Parties ("Party Director(s)"), by a majority vote, shall appoint two directors who shall be water customers served by the Regional Water System or persons who have elected to be served by the Regional Water System pursuant to Section 3.1.7.2.1 of the Settlement Agreement and shall be residents of the Service Area for at least five (5) years immediately prior to appointment to the Board by the Party Directors. No director shall attempt to control or influence the Authority except through the official actions of the Board.

B. Terms of Directors. The term of each Party Director shall be indefinite or as otherwise determined by the Party appointing that director. A Party Director shall continue to serve after expiration of the Party Director's term until a successor has been appointed. Each Party Director shall serve at the pleasure of the Party that appointed the Party Director and may be replaced at any time by formal action of the appointing Party. The two directors appointed by the Party Directors shall serve four year terms, except initially one director shall serve a two year term. Upon the expiration of the terms either four year or two year, the Party Directors shall appoint or reappoint a director pursuant to the process described in subsection A. A director shall be deemed to have resigned upon missing three consecutive duly called meetings of the Board. The General Manager shall give written notice of such resignation to the Board, and in the event the director is a Party Director, to the Party that appointed such director. The Party shall appoint a replacement director or alternate director within thirty (30) days of such resignation notice. If a director appointed by the Party Directors has been deemed to have resigned pursuant to this subsection or otherwise resigned or vacated office, the

vacancy shall be filled for the unexpired term pursuant to the process described in subsection A.

C. **Officers.** Officers of the Board shall consist of a Chairperson and Vice-Chairperson. Except for the first Chairperson and Vice-Chairperson, the terms of the offices of Chairperson and Vice-Chairperson shall be for one year, from February 1 until January 31 the following year unless otherwise determined by the Board. The terms of the first Chairperson and Vice-Chairperson shall end on January 31 of the year following the year in which their terms begin. The offices of Chairperson and Vice-Chairperson shall rotate every year among the Parties. At the first meeting of the Board, one director from each Party shall draw from a hat numbers to determine the order in which the offices of Chairperson and Vice-Chairperson shall rotate among the Parties. Should the Chairperson and Vice-Chairperson be absent from a meeting, the directors (or their alternates) in attendance shall elect a director to serve as Chairperson at the meeting. The officers shall perform the following respective functions:

1. **Chairperson.** The Chairperson shall preside over all meetings of the Board, shall execute documents and agreements on behalf of the Authority as authorized by the Board, and shall otherwise represent the Board, as authorized by the Board.

2. **Vice-Chairperson.** The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

D. **Alternate Directors.** Each Party may, in addition to appointment of a regular director, appoint one alternate director. Alternate directors shall serve and act in the absence or incapacity of the Parties' regular director and, when so acting, shall have all the

powers, duties and responsibilities of the regular director; provided, however, that an alternate director shall not assume the office of Chairperson or Vice-Chairperson. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the regular director.

E. Compensation and Expenses. The Authority shall not pay directors salaries or other compensation for their service as directors or expenses associated with such service, such as per diem or mileage. Each Party shall develop compensation and expense reimbursement policies for its directors and shall be solely responsible for paying any compensation and reimbursing any expenses due under those policies for its director and alternate.

F. Board Meetings. The Board shall meet monthly or as may be determined by the Board at publically accessible and convenient locations within the Pojoaque Basin, and at times as shall be determined by the Board. Special meetings of the Board may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors. Emergency meetings called to address emergency matters, as defined in the New Mexico Open Meetings Act, Chapter 10, Article 15, may be called upon not less than one day's notice; provided, however, that an emergency meeting may be called on less than one day's notice if at least one director or alternate director appointed by each Party will be present at the emergency meeting. Directors may attend Board meetings by telephone or video conference, in accordance with policies to be established by the Board. Board meetings shall be in compliance with the New Mexico Open Meetings Act and in accordance with Robert's Rules of Order. Notice of the meeting, the meeting agenda, and, to the extent

available, meeting material in the form of a packet shall be sent before each meeting to every director.

G. Quorum; Special Majority Required. A quorum for the conduct of business at any meeting of the Board shall be four (4) directors, present either in person or by telephone or video conference except that at least one director must be present in person at a meeting place announced to the public. Each director shall have one vote. Voting by proxy is prohibited; provided, however, that an alternate director serving in place of an absent director shall not constitute proxy voting. Except as provided in Section 6.H, the action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board, except that affirmative votes by the directors appointed by Pueblo de San Ildefonso and the County shall be required for any of the following actions:

1. to approve the annual budget and any budget amendments of the Authority; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Board;

2. to hire or terminate or enter into, modify, or terminate the contract for the General Manager of the Authority;

3. to approve delegation of any power of the Authority;

4. to borrow money in an amount in excess of \$125,000 or to convey, pledge, or encumber any of the Authority's assets; and

5. to enter into, terminate or modify the System Operator Agreement, the Fiscal Services Agreement, or any contract for an amount greater than \$125,000, exclusive of applicable gross receipts tax or governmental gross receipts tax, with an entity that is not a

Party or entity controlled by a Party.

The Board may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority under Subsections 4 and 5 above.

H. Contract Party or Affiliated Entity. Notwithstanding Section 6.G, no director may vote to enter into, modify, assign, or terminate a contract between the Authority and the Party that appointed that director. Any action to enter into, terminate, assign, or modify any contract with a Party or an entity controlled by a Party shall require the affirmative vote of directors appointed by the other four (4) Parties.

I. Duties. The Board shall manage and oversee the Authority to assure that the Authority carries out its duties and exercises its powers in accordance with this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, the Act, and all other applicable laws and agreements; adopt, and from time to time amend, the Authority's policies, By-Laws, and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; approve or disapprove any and all acquisitions, dispositions, or the pledging of real property or interests therein by the Authority; approve or disapprove all Authority contracts, including contracts with consultants, engineers, legal counsel, and for other services but excluding employment contracts delegated to the General Manager; and to exercise or delegate the powers of the Authority and duties of the Board in accordance with this Agreement.

J. Committees. The Board may establish such advisory committees of the Board as it deems appropriate. Any action proposed by a committee shall be advisory only unless

and until presented to and approved by the Board. Notice and conduct of such advisory committee meetings shall be in compliance with the New Mexico Open Meetings Act.

ARTICLE 7 – GENERAL MANAGER AND OTHER AUTHORITY EMPLOYEES

A. The Authority shall hire and set compensation for a General Manager and such other employees as the Board deems necessary and that are within the Authority's approved budget. The General Manager shall report solely to the Board and be an at will employee who serves at the pleasure of the Board. The Board shall have supervisory authority over the General Manager and shall have the sole right to make any necessary personnel decisions concerning the General Manager.

B. The General Manager shall have the following duties: oversee and manage the Authority's day-to-day affairs; hire, supervise, discipline, and fire employees of the Authority consistent with the personnel policies adopted by the Board, and with the employment preferences benefiting members of the San Ildefonso Pueblo and other Party-Pueblos in accordance with Section 3.4 of the Cost-Sharing Agreement; manage and assist in negotiating all Authority contracts (including the Fiscal Services Agreement and System Operator Agreement); and perform such other duties and tasks as the Board may from time to time delegate to the General Manager.

C. All other employees of the Authority shall report to the appropriate supervisory level designated in the organizational chart and have such duties as may be assigned by the supervisor or the General Manager.

ARTICLE 8 – PROCUREMENT; EMPLOYMENT PREFERENCES; TAXES

A. The Authority shall procure goods and services in accordance with the New

Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq.

B. Pursuant to Section 3.4 of the Cost-Sharing Agreement, to the extent authorized by law, the Authority shall provide an employment preference to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

C. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities undertaken by the Authority for delivery to the Parties, unless the tax, fee, or special assessment is specifically authorized in the Operating Agreement.

This section does not prohibit any taxes, fees, or special assessments imposed by a Party in connection with the sale of water by that Party to the Party's customers.

ARTICLE 9 – FINANCIAL ACCOUNTABILITY

A. As provided in NMSA 1978, Section 11-1-4 (as amended), the Authority shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete, and correct records and statements pertaining to receipts, disbursements, and all other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority's finances to be performed in accordance with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and implementing regulations; the audit shall be provided to each Party and shall be made available to the public.

C. Upon reasonable notice, the records and statements prepared by the Authority

shall be open to inspection at any reasonable time by the Parties, their accountants, and agents and Board directors and their alternates.

D. The Authority shall prepare and present such reports as may be required by law, regulation, or contract to any governmental agency, and shall also render to the Parties, at reasonable intervals, such reports and accounting as the Parties may from time to time request.

ARTICLE 10 – FISCAL AGENT

A. The Authority and County shall endeavor to enter into a Fiscal Services Agreement for the County to serve as Fiscal Agent to provide procurement, payroll, financial and accounting, record keeping, and other fiscal and administrative services as determined by the Board and the County. After expiration or termination of the Fiscal Services Agreement with the County or in the event the Authority and County do not enter into a Fiscal Services Agreement, the Authority may affirmatively resolve to be its own Fiscal Agent, in whole or in part, or may enter into a Fiscal Services Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

B. The Fiscal Services Agreement with the County may be terminated pursuant to Section 6.H, or pursuant to the terms of the Fiscal Services Agreement; provided, however, that the Fiscal Services Agreement shall provide that the Agreement shall not terminate on less than one (1) year's written notice, except for the material breach thereof; and provided further that, if the Authority terminates the Fiscal Services Agreement with the County for convenience and does not affirmatively resolve to be its own Fiscal Agent, the termination shall not go into effect until a new Fiscal Services Agreement is approved pursuant to Section 6.G.5 and the successor Fiscal Agent is ready, willing, and able to

perform its duties under the Agreement. Upon providing or receiving notice of the intent to terminate, the Board shall exercise diligence in identifying and contracting with a new Fiscal Agent. Except as provided above, in the event the Fiscal Services Agreement terminates before a new Agreement is in place, the Board shall act as Fiscal Agent in the interim.

C. The Fiscal Agent shall manage all revenues, maintain all accounts, and receive and disburse all funds on behalf of the Authority, at the direction of the Board. The Fiscal Agent and the Authority may contract for additional services. In performing any procurement services, the Fiscal Agent shall abide by Section 3.4 of the Cost- Sharing Agreement, which requires that, to the extent authorized by law, the Authority provide an employment preference to qualified members of the San Ildefonso Pueblo, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

D. The Fiscal Agent shall be entitled to reasonable compensation for fulfilling the duties required herein, as provided in the Fiscal Services Agreement.

E. The funds of the Authority shall be held by the Fiscal Agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement or third parties. All contributions of and other payments by the Parties shall be initially deposited directly into a general fund created by the Fiscal Agent for the Authority.

ARTICLE 11- ANNUAL BUDGET AND FINANCIAL PROVISIONS

A. Each Party shall contribute its share of the amount necessary to meet the Authority's operating expenses and reserve fund requirements. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and Section 612 of the Act, the basis for each Party's contribution

shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority's operations and expenses shall be in compliance with an annual budget for each fiscal year beginning July 1 and ending June 30. The fiscal year shall be cited by the calendar year in which the fiscal year ends; e.g., the fiscal year beginning on July 1, 2016, and ending on June 30, 2017, shall be Fiscal Year 2017. The annual budget shall include all expenses necessary to operate, manage, and maintain the Regional Water System and to maintain reserve funds at target levels.

C. No later than five months prior to the beginning of the next fiscal year, the Board shall consider and approve the annual budget for the next fiscal year, which shall be sufficient to cover all annual expenses and required reserves of the Authority. At least one month prior to the Board's consideration, the General Manager shall prepare, submit to the Board, and provide a copy to each Party a detailed proposed budget for the Board's consideration, including a calculation of each Party's proportionate contribution in accordance with the Operating Agreement. The General Manager shall prepare the proposed budget after consulting with the Parties. The Parties may provide written comments on the General Manager's proposed budget to the Board, copies of which shall be provided to the General Manager and the other Parties. The Board shall thereafter approve and adopt a budget after considering the written and oral comments of the General Manager and the Parties, making such changes to the General Manager's proposed budget as the Board deems appropriate. In the event that the annual budget is not approved prior to commencement of the fiscal year, the prior year's budget shall constitute the budget for the fiscal year without further action of the Board until such time as the Board adopts a budget for the fiscal year. By the beginning of

each fiscal year, each party shall (i) appropriate adequate funds to meet its financial obligations to the Authority as reflected in the Authority's budget for the fiscal year or (ii) give notice to the Authority and other Parties that it has failed to do so.

D. The Authority may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds.

E. No Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.

F. The Authority shall maintain the following reserve funds:

1. a Repair and Replacement Fund in an amount determined by the Board to be adequate, which shall be utilized to repair and replace obsolete, worn out, or unusable equipment of the Authority;

2. an Emergency Fund in an amount determined by the Board to provide immediate resources for unforeseen infrastructure failures or other emergencies;

3. an Operational Stability Fund, which shall no later than the twentieth anniversary of the first approved annual budget (and thereafter) have on deposit an amount no less than one-year's operating costs or such greater amount as may be established by the Board, to provide funds in the event of a revenue shortfall or significant increase in expenses. However, the existence and use of the Operational Stability Fund shall not relieve a Party of its obligations to provide funding to the Authority or preclude the Authority or other Parties from pursuing available remedies against a Party that breaches its obligation to provide funding. If the Board authorizes use of the Operational Stability Fund such that the balance in the fund is

less than the required amount, it shall establish a schedule for restoring the fund to the required amount. As used in this subparagraph, one-year's operating costs means the five year rolling average operating costs of the Authority calculated using costs from its annual audit; and

4. such other reserve funds as may be required under the Operating Agreement to assure that dependable and reliable service is maintained throughout the areas served by the Regional Water System.

G. The Authority or its Fiscal Agent shall, in accordance with generally accepted accounting principles and all laws applicable to public money and accounts, maintain adequate and correct accounts of its funds, properties and business transactions. Upon reasonable notice and in accordance with applicable law, the accounts shall be open to inspection at any reasonable time by directors, alternate directors, and the Parties, their accountants, or their agents.

ARTICLE 12- REGIONAL WATER SYSTEM OPERATOR

A. The Authority and County shall endeavor to enter into a System Operator Agreement for the County to serve as System Operator and be responsible for the operation, maintenance, replacement, and repair of the Regional Water System. The first System Operator shall cooperate with the U.S. Bureau of Reclamation in training and certification of employees to achieve a smooth transition for operating the Regional Water System. The County as System Operator shall be entitled to compensation from the Authority to cover all of the County's direct and indirect costs of operating the Regional Water System, as provided in the System Operator Agreement and the Authority's approved budget.

B. The System Operator Agreement with the County (and any other System

Operator Agreement) shall provide that it cannot be terminated by either the Authority or the System Operator on less than two (2) years' notice except for the material breach thereof; and provided further that, if the Authority terminates the System Operator Agreement with the County for convenience and does not affirmatively resolve to be the System Operator, the termination shall not go into effect until a new System Operator Agreement is approved pursuant to Section G(5) of Article 6 and the successor System Operator is ready, willing, and able to perform its duties under the Agreement. In the event the Authority provides or receives notice of intent to terminate the System Operator Agreement, the Authority shall exercise diligence in identifying and contracting with a new System Operator. Except as provided above, in the event the System Operator Agreement terminates before a new Agreement is in place, the Authority shall be responsible for operating the Regional Water System.

C. System Operator Agreements shall provide employment preferences in accordance with Section 3.4 of the Cost-Sharing and System Integration Agreement, which requires that, to the extent authorized by law, employment preferences be given to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo

D. After expiration or termination of the System Operator Agreement with the County, the Authority may affirmatively resolve to be its own System Operator, in whole or in part, or may enter into a System Operator Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

ARTICLE 13 – PUBLIC RECORDS

A. All documents of the Authority within the definition of “public records” set out in NMSA 1978, Section 14-3-2(G), as such may be amended or recompiled from time to time, shall be retained as public records in accordance with state law and shall be subject to inspection to the extent provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 1, as such may be amended or recompiled from time to time. The services provided by the Fiscal Agent under the Fiscal Services Agreement and the System Operator under the System Operator Agreement shall include compliance with the Inspection of Public Records Act on behalf of the Authority with respect to public records of the Authority within the Fiscal Agent’s or System Operator’s custody.

B. For each Board meeting, the meeting agenda, minutes, and meeting material shall be posted on the Authority’s website in compliance with the New Mexico Open Meetings Act and for a minimum of two years after the date of the meeting. Until such time as the Authority has a website, the County agrees to create and maintain an Authority webpage on its website, on which it shall post the Authority’s meeting materials as provided in the previous sentence.

ARTICLE 14 – COOPERATION, ACCESS, EASEMENTS, COUNTY INTERIM USE

A. The Parties agree to cooperate to assure consistent, reliable and continuous service and operation throughout the areas served by the Regional Water System. To assure such service and operation, the Parties hereby grant the Authority (including its employees, contractors, and agents) the right to enter upon the lands of the Parties within rights-of-way established for the Regional Water System and through reasonable access routes designated by

the Pueblo or County for use by the Authority to access such rights-of-way, including lands held in trust by the United States, as may reasonably be necessary or appropriate to operate the Regional Water System, including for purposes of maintaining, repairing, or replacing infrastructure and equipment, operating heavy machinery and maintenance vehicles, reading meters, and commencing or terminating service, provided that prior to entry onto a Party's lands, notice as is reasonable and practicable under the circumstances shall be given to the representative of the Party designated in writing by that Party to the Authority and prior to entry onto that Pueblo's lands in compliance with that Pueblo's access protocols.

B. The Parties agree to cooperate to encourage and facilitate customer connections to the Regional Water System. The Parties shall grant such rights-of-way and easements (collectively, "easements") as may reasonably be necessary for customers to connect to the Regional Water System, both as constructed by the U.S. Bureau of Reclamation and as the System may be extended in the future by the Authority or, with respect to the County Distribution System, the County. In consideration of the Parties' mutual obligations under this Agreement, the Cost-Sharing Agreement, and the Operating Agreement, and the mutual benefits to be derived from expanding the Regional Water System to increase the customer base, the Parties shall grant such easements for so long as needed for the Regional Water System, at no cost and the Pueblos each agree to consent to the grant of such easements by the Secretary of the Interior in compliance with the Act of June 7, 1924 (43 Stat. 636), the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. §§ 323-328) and 25 C.F.R. Part 169, provided that each Pueblo retains the right to determine the exact location on its land, such location to be a reasonable one, and reasonable mitigation requirements for easements determined to be

necessary for the benefit and use of and by the Authority.

C. The Parties shall cooperate in facilitating interim uses by the Parties of any unused capacity in the Regional Water System upon written request and approval of the Party or Parties wishing to provide or take water for interim use. The Authority shall approve such interim uses by the Parties contingent solely on the requirement that such use shall be authorized and carried out in accordance with a permit issued by the New Mexico State Engineer. Pursuant to Sections 612(c)(2)(C) and (D) of the Act, the Parties agree that the Operating Agreement will require such approval by the Authority.

D. To the extent that additional authorization is required to provide the right of entry to the Authority, grant the easements, or approve of interim uses required under Sections A, B and C of this Article, respectively, the Parties shall cooperate in obtaining such authorizations and shall execute such additional agreements or instruments as may reasonably be necessary or appropriate.

ARTICLE 15 - LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. By entering into this Agreement, no Party waives, relinquishes or limits its sovereign immunity, except as expressly provided in Article 19 of this Agreement. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 19.

B. By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the Authority's or another Party's acts or omissions.

C. Any liability incurred by the Authority is subject to the immunities and

limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended.

D. This Agreement does not modify, in any way, the Parties' liabilities or sovereign immunity as to third parties, which is governed by federal and state law, including the New Mexico Tort Claims Act. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

E. All agreements entered into by the Parties to effectuate the Settlement Agreement, Cost-Sharing Agreement, and this Agreement shall contain dispute resolution provisions and limited waivers of sovereign immunity substantially the same as those contained in Article 19 of this Agreement.

ARTICLE 16 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY

A. The officers and directors of the Board shall be immune from any liability to third-parties for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal and state law, including the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as amended, recompiled, or replaced.

B. To the extent required by NMSA 1978, Section 41-4-4, the Authority shall provide a defense to its public employees, as defined in NMSA 1978, Section 41-4-3(F), and shall pay any award, settlement, or final judgment against its public employees.

C. With respect to claims and other matters for which a defense and payment of awards, settlements, and final judgments are not required by NMSA 1978, Section 41-4-4, the Authority may indemnify its officers and directors for personal liability and for reasonable

expenses, costs and attorney's fees incurred in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been a director or officer acting in good faith, to the fullest extent permitted by applicable law.

D. The indemnification provided for in Section C of this Article 16 is not self-executing and does not independently provide officers and directors with the right to indemnification. Indemnification shall only be provided and be available pursuant to policies and procedures adopted by the Board, which shall include notice requirements as well as the right of the Authority (or its insurance carriers) to control the defense and resolution of claims brought against officers and directors.

ARTICLE 17-INSURANCE

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority may purchase additional insurance for the directors and officers of the Board and the Authority against any suit which may be brought against them in connection with their duties under this Agreement.

C. The Authority shall carry and maintain fire and extended insurance coverage on all Authority buildings, structures and improvements, and on upon all of the contents and

other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers' Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et seq., if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as necessary or appropriate for the General Manager and any other employees of the Authority.

F. The expense of obtaining and maintaining the required insurance, along with the expense of all employee benefits, shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage required under this Article shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

ARTICLE 18 – NO THIRD-PARTY BENEFICIARY

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person or other entity, any rights whatsoever, such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**ARTICLE 19 – ARBITRATION AND OTHER METHODS OF ALTERNATIVE
DISPUTE RESOLUTION**

A. Subject to Paragraph O of this Article 19, the Parties agree to submit any and all disputes and controversies among the Parties arising under this Agreement to binding arbitration by a panel of three arbitrators in accordance with the provisions below, including, but not limited to, disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement. The panel of arbitrators shall be comprised of licensed New Mexico attorneys with at least fifteen years of experience practicing in New Mexico. The attorneys shall have no past or current relationship to any Party and shall not have represented any client against any Party.

B. After compliance with subsection O, any Party or combination of Parties may commence arbitration by making a written demand and serving it on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. The demand shall summarize the matter in controversy, describe the remedy sought, and include the name of at least one proposed neutral arbitrator.

C. Within 30 days after receiving a demand for arbitration, the other Parties shall mail by certified mail, return receipt requested, a written answer to the demanding Party, either individually or jointly with other Parties, stating their position on the matter in controversy and naming at least one neutral arbitrator. Any Party that fails to provide a timely written answer shall have conclusively waived its right to participate in the arbitration but shall nevertheless be bound by the final decision of the arbitrators.

D. Within 45 days after the demand for arbitration, the Parties shall confer and attempt to agree on three neutral arbitrators; provided, however, that if the Parties agree only on two arbitrators, those two arbitrators shall select the third arbitrator in accordance with the requirements of Section A of this Article. If within 60 days after arbitration is demanded the Parties have not agreed on at least two neutral arbitrators, any Party may make application via motion or otherwise request the United States District Court for the District of New Mexico for appointment of a panel of three neutral arbitrators in accordance with NMSA 1978, Section 44-7A-12, 9 U.S.C. Section 5, and this Agreement.

E. The arbitration-related costs and expenses of each Party, including attorney's fees and witness fees, costs, or expenses, shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties who have determined to participate in the arbitration pursuant to Section (B) of this Article. Neither the arbitrators nor the courts shall have the authority to award reasonable attorney's fees and other reasonable costs or expenses of arbitration or litigation. Nor shall the arbitrators or courts have the authority to award punitive damages or other exemplary relief and any monetary relief awarded against a Party other than the Authority shall be limited to any contribution owed by any Party for its required contribution under Article 11 of this Agreement.

F. The arbitration hearing shall be held at such time and place within the County as designated by the arbitrators on at least 20 days' written notice to the Parties.

G. The award rendered by a majority of the arbitrators appointed pursuant to this Agreement, including an award that quantifies and requires a Party to pay its proportionate contribution under Article 11 of this Agreement pursuant to an approved budget of the Board

and lawful appropriations made by the Party, shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award. The Parties shall comply with such award within thirty (30) days of the date thereof or such other time as the majority of arbitrators may specify.

H. The Parties waive their sovereign immunity only as to suits brought in the United States District Court for the District of New Mexico and only for the limited purposes of: (1) compelling arbitration pursuant to this Agreement; (2) having a panel of three neutral arbitrators appointed pursuant to Section D of this Article; and (3) obtaining judicial declaratory and/or injunctive relief to enforce, confirm, vacate, or modify an award of the arbitrators; provided, however, that if the United State District Court for the District of New Mexico determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason, the Parties waive their sovereign immunity so as to allow these same suits to be brought in the First Judicial District Court of New Mexico, Santa Fe County; provided, further, that any reference in this Article 19 to the United States District Court for the District of New Mexico shall be deemed to include the First Judicial District Court of New Mexico, Santa Fe County, in the event the federal court determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason. Unless a civil action involving the agreement to arbitrate is already pending, the initial motion to the court for one or more of the purposes specified in this Article shall be served on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. Attached hereto as Exhibits B through F are Resolutions of the respective governing bodies of the Parties (other than the Authority) approving this Agreement,

including the limited waiver of sovereign immunity provided herein.

I. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

J. Except as provided in Section H of this Article, the Parties expressly waive their right to file suit in federal, state, and tribal court to resolve any dispute or controversy that is subject to arbitration under this Agreement. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any dispute or controversy arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

K. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

L. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

M. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this Agreement.

N. This Agreement shall be subject to the Federal Arbitration Act, 9 U.S.C.

Sections 1-16 and the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7A-1 through 44-7A-22. In the event of a conflict between the two acts, the New Mexico Uniform Arbitration Act shall apply unless the conflict relates to a provision of the New Mexico Uniform Arbitration Act that may be waived or varied by the parties; provided, however, that no Party waives its sovereign immunity from suit in state court except as provided in paragraph H of this Article.

O. Nothing in this Article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. As a condition precedent to proceeding to arbitration as set forth above, the parties agree to proceed as follows:

1. The Party or Parties asserting a claim arising under this Agreement shall first serve written notice on the other Parties;

2. The notice shall identify the specific Agreement provision alleged to have been violated or in dispute and shall specify in detail the asserting Party's contention and any factual basis for the claim; and

3. Representatives of the Parties shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party or Parties asserting a claim within ninety (90) days of the original notice, such Party(ies) may initiate arbitration as provided by this Article 11. The Parties may agree to use a mediator as part of these informal dispute resolution procedures.

P. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in Section H

of this Article.

ARTICLE 20 - AMENDMENTS

This Agreement may only be amended by a mutual written agreement of all the Parties. No amendment shall be effective until approved by the New Mexico Secretary of Finance and Administration.

ARTICLE 21 - SEVERABILITY

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable, or otherwise unenforceable by a Court of competent jurisdiction, then the remainder of this Agreement shall continue in full force and effect and this Agreement shall thereafter be construed as if such unlawful, voided, or unenforceable provision(s) had never been a part hereof; provided, however, that this Agreement shall terminate if the Agreement, as severed, would violate the requirements of the Act, the Settlement Agreement, or the Cost-Sharing Agreement.

ARTICLE 22 – EFFECTIVE DATE: EFFECT OF AGREEMENT

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the New Mexico Secretary of Finance and Administration. This Agreement may be executed in counterparts, which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In construing or interpreting any ambiguity in this Agreement, no

presumption shall be made in favor of, or against, any Party or Parties.

ARTICLE 23 – NOTICES

A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County: Santa Fe County Utilities Director
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504
Phone: 505.992.9870
Fax: 505.992.3028

With A Copy To: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6200
Fax: 505.986.6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6279
Fax: 505.986.6362

To Pueblo of Nambe : Pueblo Governor
15A NP 102 West
Santa Fe, New Mexico 87506
Phone: 505.455.2036
Fax: 505.455.2038

With A Copy To: McElroy, Meyer, Walker & Condon, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Phone: 303.442.2021
Fax: 303.444.3490

To Pueblo of Pojoaque: Pueblo Governor

78 Cities of Gold Road
Santa Fe, New Mexico 87506
Phone: 505.819.2276
Fax: 505.819.2299

With A Copy To:

Chief General Counsel
Pueblo of Pojoaque
Legal Department
58 Cities of Gold Rd., Suite 5
Santa Fe, New Mexico 87506
Phone: 505.819.2254
Fax:

**To Pueblo de San
Ildefonso:**

Office of Governor
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: (505) 455-2273
Fax: (505) 455-7351

With A Copy To:

Realty Department
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: 505.455.4138
Fax: 505.455.4163

Chestnut Law Offices, P.A.
121 Tijeras Ave. NE, Suite 2001
Albuquerque, New Mexico 87102
Phone: 505.842.5864
Fax: 505.843.9249

To Pueblo of Tesuque

Pueblo Governor
Route 42, Box 360T
Santa Fe, New Mexico 87506
Phone: 505.955.7732
Fax: 505.955.2331

With A Copy To:

Phone:
Fax:

To the Authority:

To the person(s) and at the address(es) or fax number(s) established pursuant to subparagraph D of this Article.

B. Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

C. A Party may change the persons to whom or addresses or fax numbers at which notice shall be given by giving all other Parties and the Authority notice of the change in accordance with this Article.

D. The Authority shall establish, and may change, the persons to whom and addresses or fax numbers at which notice shall be given to it by giving all Parties notice in accordance with this Article.

ARTICLE 24 - TERMINATION

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party; and
2. approval by an Act of Congress or if one or more of the conditions precedent set forth in Section 623 of the Act have not been fulfilled by the applicable deadline set forth therein.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the

extent necessary to wind down the affairs of the Authority, make an effective disposition of property, provide a full accounting, and distribute surplus funds in proportion to the contributions made.

C. Upon termination of this Agreement pursuant to an Act of Congress, the property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

ARTICLE 25 – ASSIGNMENT PROHIBITED

No Party shall assign this Agreement or any right or obligation under this Agreement, and any attempted assignment is null and void.

ARTICLE 26 – NON-APPROPRIATION CLAUSE

A. So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's obligations arising under this Agreement in future fiscal years are contingent upon sufficient appropriations and authorizations being made by the Board of County Commissioners of the County. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. The County's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties. This subparagraph A shall not apply to money available to the County as a result of payment received from the United States pursuant to the Act; provided, however, that nothing herein obligates the County to appropriate or expend such money for the initial planning, design, and construction of the Regional Water System.

B. Each Pueblo's obligations arising under this Agreement in future fiscal years are

contingent upon sufficient appropriations and authorizations being made by its Tribal Council. Each Pueblo is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. Each Pueblo's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties. This subparagraph B shall not apply to money available to meet a Pueblo's obligations in the Aamodt Settlement Pueblos' Fund or to money withdrawn from that fund by or otherwise made available to a Pueblo pursuant to Section 615 of the Act.

ARTICLE 27 – COMPLIANCE WITH APPLICABLE LAWS

The Authority shall exercise its powers and conduct its operations in accordance with all laws applicable to the Authority, the Fiscal Agent, and the System Operator.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

PUEBLO OF POJOAQUE

PUEBLO DE SAN ILDEFONSO

Joseph Talachy, Governor

James R. Mountain, Governor

PUEBLO OF NAMBE

PUEBLO OF TESUQUE

Phillip A. Perez, Governor

Fredrick Vigil, Governor

SANTA FE COUNTY

(name) _____
(title) _____, _____

ARTICLE 14 APPROVED BY THE SECRETARY OF THE INTERIOR

(Signature)

Date

(Print Name)

**APPROVED BY THE NEW MEXICO
SECRETARY OF FINANCE AND ADMINISTRATION**

(Signature)

Date

(Print Name)

(Print Title)

Appendix

An Act

This Act may be cited as "The Claims Resettlement Act of 2010."

TITLE VI—AAMODT LITIGATION SETTLEMENT

Subtitle A—Pojoaque Basin Regional Water System

SEC. 612. OPERATING AGREEMENT.

(a) **IN GENERAL.**—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) **APPROVAL.**—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) **CONTENTS.**—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.



10/16



**Draft of Proposal No. 1 of 2 Introduced by Commissioner Roybal on November 29, 2016 -
State Senator and State Representative Each Appoint One County Customer Director**

**POJOAQUE BASIN REGIONAL WATER AUTHORITY
JOINT POWERS AGREEMENT**

This Agreement is entered into by, between, and among the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and Santa Fe County under the New Mexico Joint Powers Agreements Act. The effective date of this Agreement is the date on which it is approved by the New Mexico Secretary of Finance and Administration.

RECITALS

WHEREAS, the County has the authority to own and operate water and wastewater facilities pursuant to NMSA, § 4-36-10(A), § 4-37-1, and Chapter 3, Article 26 and Article 7; and

WHEREAS, the Pueblo Parties have the authority to own and operate water and wastewater facilities pursuant to their inherent sovereignty; and

WHEREAS, the Parties are signatories to the Settlement Agreement; and

WHEREAS, the Parties are signatories to the Cost-Sharing Agreement, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

WHEREAS, the Act approved the Settlement Agreement and the Cost-Sharing Agreement; and

WHEREAS, the Act authorizes the United States Secretary of the Interior to construct the Regional Water System; and

WHEREAS, the Act, the Cost-Sharing Agreement, and the Settlement Agreement call for formation by the Parties of the Authority to supply water for domestic, municipal, industrial, irrigation, commercial, and all other approved uses throughout the areas served by the Regional Water System and as otherwise authorized by the Act; and

WHEREAS, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Authority shall be exercised consistent with the terms and conditions of the Act, Settlement Agreement, Cost-Sharing Agreement, and Operating Agreement; and

WHEREAS, the Parties desire that the Authority have the power to carry out the purposes and functions as authorized by the Act and as set forth herein in order to provide service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

AGREEMENT

NOW, THEREFORE, as required by the Act and Settlement Agreement, and in consideration of the mutual covenants and obligations set forth here and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

As used herein, the following terms have the following meanings unless the context clearly indicates otherwise:

A. “Aamodt Case” means the federal litigation styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo*

de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

B. "Act" means Title VI, Aamodt Litigation Settlement, of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.

C. "Agreement" means this Joint Powers Agreement.

D. "Authority" means the Pojoaque Basin Regional Water Authority created by this Agreement and defined in Section 1.13 of the Cost-Sharing Agreement.

E. "Board" means the Authority's Board of Directors.

F. "Cost-Sharing Agreement" means that certain Cost-Sharing and System Integration Agreement, signed by the parties on March 14, 2013.

G. "County" means Santa Fe County, a political subdivision of the State of New Mexico.

H. "County Distribution System" has the same meaning as set forth in Section 1.5 of the Cost-Sharing Agreement.

I. "Director", in the context of quorum and voting requirements and limitations, includes alternate directors attending meetings with voting rights.

J. "Operating Agreement" means that agreement required by Section 612 of the Act; the text of Section 612 is attached hereto as Exhibit A.

K. "Parties" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and County collectively; "Party" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, or County individually. In Article 19, unless otherwise stated, "Parties" means the Pueblo Parties,

County, and the Authority, collectively; and "Party" means a Pueblo Party, County, or Authority, individually.

L. "Party Director" means the Directors appointed by the Parties.

Comment [SFC1]: To be able to distinguish between Party Directors and County Customer Directors appointed by the State delegation as necessary in Article 6.

LM. "Pueblo Water Facility" has the same meaning as set forth in Section 1.13 of the Cost-Sharing Agreement.

MN. "Regional Water System" means the system defined in Section 602(18) of the Act.

NO. "Service Area" means the area to be served by the Regional Water System, including the County Distribution System and Pueblo Water Facilities.

OP. "Settlement Agreement" means that certain Settlement Agreement dated April 19, 2012, and signed by the Parties on March 14, 2013, in the Aamodt Case.

ARTICLE 2 – AUTHORIZATION: FORMATION

Pursuant to the provisions of the Joint Powers Agreements Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties hereby create the Authority, a legal entity, separate and distinct from the Parties, organized and empowered as set forth herein.

ARTICLE 3 - PURPOSES

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply for domestic, municipal, industrial, irrigation, commercial and all other approved uses throughout the areas served by the Regional Water System, regardless of jurisdictional boundaries, and as otherwise authorized by the Act;

2. The construction, management, ownership, operation and maintenance

of diversion, collection, treatment, storage, and transmission facilities as well as all related real and personal property, facilities and equipment as may be reasonably necessary to achieve the purposes of and discharge the powers of the Authority; and

3. Providing service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, and the Act.

ARTICLE 4 – DURATION

This Agreement shall continue in full force and effect unless terminated pursuant to Article 24.

ARTICLE 5 - POWERS

To the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement, the Authority is empowered and authorized:

A. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of the Regional Water System, wherever located; provided, however, that the County Distribution System and Pueblo Water Facilities shall remain the separate property of the County and respective Pueblo;

B. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of wastewater collection and treatment systems, wherever

located; provided, however, that each Party must separately authorize the provision of wastewater services within its jurisdiction.

C. To own, acquire, and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;

D. To bill and collect payments from all customers served by the Regional Water System wherever located, or to bill and collect payments from the Parties, or both, as may be provided in the Operating Agreement; provided, however, that any billing of and collection from a water customer served from the County Distribution System must conform to policies of the County and any billing of and collection from a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

E. To establish policies and enforcement mechanisms for delivery and use of water, provided that any suspension of service to a water customer served from the County Distribution System must conform to policies of the County and any suspension of service to a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

F. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation;

G. To make expenditures, incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements, and expansion of the facilities of the Authority and to otherwise carry out the purposes of the Authority;

- H. To provide services to others and lease to others any of the Authority's assets;
- I. To open and maintain bank accounts, and to invest the Authority's funds, for its benefit, to the extent and in the manner that County funds may be invested under New Mexico law;
- J. To sell any of the Authority's assets deemed by the Board to be unnecessary, excess, obsolete, or scrap;
- K. To employ and enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;
- L. To apply for and to receive grants, appropriations, or other funds;
- M. To provide for retirement, insurance, and other benefits for its employees;
- N. To sue and be sued in any court of competent jurisdiction in accordance with and to the extent allowed by applicable law, including, without limitation, the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978; and
- O. To do any and all other lawful things consistent with its purposes and powers as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

ARTICLE 6 - BOARD OF DIRECTORS

A. Composition and Appointment. The business and affairs of the Authority shall be controlled by the Board, which shall be composed of seven (7) directors. Each Party shall appoint one director. The County's director shall be the County Commissioner for District 1; provided, however, that a majority of the Board of County Commissioners of the

County may vote to appoint another County Commissioner as the County's primary director. The County's alternate director shall also be a County Commissioner. Except as provided in the previous two sentences, each Party shall establish its own qualifications for directors and alternate directors. The State Senator for the State Senate District encompassing the largest geographic portion of the Service Area and the State Representative for the State House District encompassing the largest geographic portion of the Service Area shall each appoint one (1) County Customer Director other than the State Senator and State Representative, each of whom (i) cannot reside on Pueblo Land, as defined in the Act; (ii) cannot hold another elected or appointed position with or be employed by a Party, a Party's company, or a Party's instrumentality; and (iii) must be a resident of the Service Area for at least five (5) years immediately prior to appointment to the Board and continuously throughout the County Customer Director's term as director. The directors selected by the Parties ("Party Director(s)"), by a majority vote, shall appoint two directors who shall be water customers served by the Regional Water System or persons who have elected to be served by the Regional Water System pursuant to Section 3.1.7.2.1 of the Settlement Agreement and shall be residents of the Service Area for at least five (5) years immediately prior to appointment to the Board by the Party Directors. No director shall attempt to control or influence the Authority except through the official actions of the Board.

Comment [SFC2]: To broaden the pool of potential directors to include all potential customers of the County Distribution System and avoid potential failure of appointment due to the potential applicant pool being too small.

Comment [SFC3]: To avoid actual or apparent conflicts of interest.

Comment [SFC4]: Existing requirements clarification that residency must be continuous.

B. Terms of Directors. The term of each Party Director shall be indefinite or as otherwise determined by the Party appointing that director. A Party Director shall continue to serve after expiration of the Party Director's term until a successor has been appointed. Each Party Director shall serve at the pleasure of the Party that appointed the Party Director

and may be replaced at any time by formal action of the appointing Party. The ~~two-County~~ Customer Director appointed by the State Senator shall serve a four year term, except that the initial director appointed by the State Senator shall serve a two year term. The County Customer Director appointed by the State Representative shall serve a two year term, except that the initial director appointed by the State Representative shall serve a one year term ~~directors appointed by the Party Directors shall serve four year terms, except initially one director shall serve a two year term.~~ Upon the expiration of the County Customer Directors' terms, either ~~four one, two, or four years~~ year or two year, the State Senator or State Representative ~~Party Directors~~ shall appoint or reappoint a County Customer director-Director that meets the qualifications established pursuant to the process described in subsection A. A director shall be deemed to have resigned upon missing three consecutive duly called meetings of the Board. The General Manager shall give written notice of such resignation to the Board; and in the event the director is a Party Director, to the Party, State Senator, or State Representative that appointed such director. The Party, State Senator, or State Representative shall appoint a replacement director or alternate director within thirty (30) days of such resignation notice. If a County Customer director-Director ~~appointed by the Party Directors~~ has been deemed to have resigned pursuant to this subsection or otherwise resigned or vacated office, the vacancy shall be filled for the unexpired term ~~pursuant to the process described in subsection A~~ by appointment by the State Senator or State Representative.

C. Officers. Officers of the Board shall consist of a Chairperson and Vice-Chairperson. Except for the first Chairperson and Vice-Chairperson, the terms of the offices of Chairperson and Vice-Chairperson shall be for one year, from February 1 until January 31

the following year unless otherwise determined by the Board. The terms of the first Chairperson and Vice-Chairperson shall end on January 31 of the year following the year in which their terms begin. The offices of Chairperson and Vice-Chairperson shall rotate every year among the ~~Parties~~ Party Directors. At the first meeting of the Board, one ~~Party~~ Director from each Party shall draw from a hat numbers to determine the order in which the offices of Chairperson and Vice-Chairperson shall rotate among the ~~Parties~~ Party Directors. Should the Chairperson and Vice-Chairperson be absent from a meeting, the directors (or their alternates) in attendance shall elect a director to serve as Chairperson at the meeting. The officers shall perform the following respective functions:

Comment [SFC5]: To clarify that County Customer Directors are not eligible for these offices.

1. **Chairperson.** The Chairperson shall preside over all meetings of the Board, shall execute documents and agreements on behalf of the Authority as authorized by the Board, and shall otherwise represent the Board, as authorized by the Board.

2. **Vice-Chairperson.** The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

D. Alternate Directors. Each Party may, in addition to appointment of a regular ~~Party director~~ Director, appoint one alternate director. Alternate directors shall serve and act in the absence or incapacity of the Parties' regular ~~Party director~~ Director and, when so acting, shall have all the powers, duties and responsibilities of the regular ~~Party director~~ Director; provided, however, that an alternate director shall not assume the office of Chairperson or Vice-Chairperson. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the regular ~~Party director~~ Director.

E. **Compensation and Expenses.** The Authority shall not pay directors salaries or other compensation for their service as directors or expenses associated with such service, such as per diem or mileage. Each Party shall develop compensation and expense reimbursement policies for its directors and shall be solely responsible for paying any compensation and reimbursing any expenses due under those policies for its director and alternate.

F. **Board Meetings.** The Board shall meet monthly or as may be determined by the Board at publically accessible and convenient locations within the Pojoaque Basin, and at times as shall be determined by the Board. Special meetings of the Board may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors. Emergency meetings called to address emergency matters, as defined in the New Mexico Open Meetings Act, Chapter 10, Article 15, may be called upon not less than one day's notice; provided, however, that an emergency meeting may be called on less than one day's notice if at least one director or alternate director appointed by each Party will be present at the emergency meeting. Directors may attend Board meetings by telephone or video conference, in accordance with policies to be established by the Board. Board meetings shall be in compliance with the New Mexico Open Meetings Act and in accordance with Robert's Rules of Order. Notice of the meeting, the meeting agenda, and, to the extent available, meeting material in the form of a packet shall be sent before each meeting to every director.

G. **Quorum; Special Majority Required.** A quorum for the conduct of business at any meeting of the Board shall be four (4) directors, present either in person or by telephone

or video conference except that at least one director must be present in person at a meeting place announced to the public. Each director shall have one vote. Voting by proxy is prohibited; provided, however, that an alternate director serving in place of an absent director shall not constitute proxy voting. Except as provided in Section 6.H, the action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board, except that affirmative votes by the directors appointed by Pueblo de San Ildefonso and the County shall be required for any of the following actions:

1. to approve the annual budget and any budget amendments of the Authority; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Board;
2. to hire or terminate or enter into, modify, or terminate the contract for the General Manager of the Authority;
3. to approve delegation of any power of the Authority;
4. to borrow money in an amount in excess of \$125,000 or to convey, pledge, or encumber any of the Authority's assets; and
5. to enter into, terminate or modify the System Operator Agreement, the Fiscal Services Agreement, or any contract for an amount greater than \$125,000, exclusive of applicable gross receipts tax or governmental gross receipts tax, with an entity that is not a Party or entity controlled by a Party.

The Board may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority under Subsections 4 and 5 above.

H. **Contract Party or Affiliated Entity.** Notwithstanding Section 6.G, no director may vote to enter into, modify, assign, or terminate a contract between the Authority and the Party that appointed that director. Any action to enter into, terminate, assign, or modify any contract with a Party or an entity controlled by a Party shall require the affirmative vote of directors appointed by the other four (4) Parties.

I. **Duties.** The Board shall manage and oversee the Authority to assure that the Authority carries out its duties and exercises its powers in accordance with this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, the Act, and all other applicable laws and agreements; adopt, and from time to time amend, the Authority's policies, By-Laws, and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; approve or disapprove any and all acquisitions, dispositions, or the pledging of real property or interests therein by the Authority; approve or disapprove all Authority contracts, including contracts with consultants, engineers, legal counsel, and for other services but excluding employment contracts delegated to the General Manager; and to exercise or delegate the powers of the Authority and duties of the Board in accordance with this Agreement.

J. **Committees.** The Board may establish such advisory committees of the Board as it deems appropriate. Any action proposed by a committee shall be advisory only unless and until presented to and approved by the Board. Notice and conduct of such advisory committee meetings shall be in compliance with the New Mexico Open Meetings Act.

ARTICLE 7 – GENERAL MANAGER AND OTHER AUTHORITY EMPLOYEES

A. The Authority shall hire and set compensation for a General Manager and such other employees as the Board deems necessary and that are within the Authority's approved budget. The General Manager shall report solely to the Board and be an at will employee who serves at the pleasure of the Board. The Board shall have supervisory authority over the General Manager and shall have the sole right to make any necessary personnel decisions concerning the General Manager.

B. The General Manager shall have the following duties: oversee and manage the Authority's day-to-day affairs; hire, supervise, discipline, and fire employees of the Authority consistent with the personnel policies adopted by the Board, and with the employment preferences benefiting members of the San Ildefonso Pueblo and other Party-Pueblos in accordance with Section 3.4 of the Cost-Sharing Agreement; manage and assist in negotiating all Authority contracts (including the Fiscal Services Agreement and System Operator Agreement); and perform such other duties and tasks as the Board may from time to time delegate to the General Manager.

C. All other employees of the Authority shall report to the appropriate supervisory level designated in the organizational chart and have such duties as may be assigned by the supervisor or the General Manager.

ARTICLE 8 – PROCUREMENT; EMPLOYMENT PREFERENCES; TAXES

A. The Authority shall procure goods and services in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq.

B. Pursuant to Section 3.4 of the Cost-Sharing Agreement, to the extent authorized by law, the Authority shall provide an employment preference to qualified

members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

C. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities undertaken by the Authority for delivery to the Parties, unless the tax, fee, or special assessment is specifically authorized in the Operating Agreement.

This section does not prohibit any taxes, fees, or special assessments imposed by a Party in connection with the sale of water by that Party to the Party's customers.

ARTICLE 9 – FINANCIAL ACCOUNTABILITY

A. As provided in NMSA 1978, Section 11-1-4 (as amended), the Authority shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete, and correct records and statements pertaining to receipts, disbursements, and all other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority's finances to be performed in accordance with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and implementing regulations; the audit shall be provided to each Party and shall be made available to the public.

C. Upon reasonable notice, the records and statements prepared by the Authority shall be open to inspection at any reasonable time by the Parties, their accountants, and agents and Board directors and their alternates.

D. The Authority shall prepare and present such reports as may be required by

law, regulation, or contract to any governmental agency, and shall also render to the Parties, at reasonable intervals, such reports and accounting as the Parties may from time to time request.

ARTICLE 10 – FISCAL AGENT

A. The Authority and County shall endeavor to enter into a Fiscal Services Agreement for the County to serve as Fiscal Agent to provide procurement, payroll, financial and accounting, record keeping, and other fiscal and administrative services as determined by the Board and the County. After expiration or termination of the Fiscal Services Agreement with the County or in the event the Authority and County do not enter into a Fiscal Services Agreement, the Authority may affirmatively resolve to be its own Fiscal Agent, in whole or in part, or may enter into a Fiscal Services Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

B. The Fiscal Services Agreement with the County may be terminated pursuant to Section 6.H, or pursuant to the terms of the Fiscal Services Agreement; provided, however, that the Fiscal Services Agreement shall provide that the Agreement shall not terminate on less than one (1) year's written notice, except for the material breach thereof; and provided further that, if the Authority terminates the Fiscal Services Agreement with the County for convenience and does not affirmatively resolve to be its own Fiscal Agent, the termination shall not go into effect until a new Fiscal Services Agreement is approved pursuant to Section 6.G.5 and the successor Fiscal Agent is ready, willing, and able to perform its duties under the Agreement. Upon providing or receiving notice of the intent to terminate, the Board shall exercise diligence in identifying and contracting with a new Fiscal Agent. Except as provided above, in the event the Fiscal Services Agreement terminates before

a new Agreement is in place, the Board shall act as Fiscal Agent in the interim.

C. The Fiscal Agent shall manage all revenues, maintain all accounts, and receive and disburse all funds on behalf of the Authority, at the direction of the Board. The Fiscal Agent and the Authority may contract for additional services. In performing any procurement services, the Fiscal Agent shall abide by Section 3.4 of the Cost- Sharing Agreement, which requires that, to the extent authorized by law, the Authority provide an employment preference to qualified members of the San Ildefonso Pueblo, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

D. The Fiscal Agent shall be entitled to reasonable compensation for fulfilling the duties required herein, as provided in the Fiscal Services Agreement.

E. The funds of the Authority shall be held by the Fiscal Agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement or third parties. All contributions of and other payments by the Parties shall be initially deposited directly into a general fund created by the Fiscal Agent for the Authority.

ARTICLE 11- ANNUAL BUDGET AND FINANCIAL PROVISIONS

A. Each Party shall contribute its share of the amount necessary to meet the Authority's operating expenses and reserve fund requirements. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and Section 612 of the Act, the basis for each Party's contribution shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority's operations and expenses shall be in compliance with an annual budget for each fiscal year beginning July 1 and ending June 30. The fiscal year shall be cited

by the calendar year in which the fiscal year ends; e.g., the fiscal year beginning on July 1, 2016, and ending on June 30, 2017, shall be Fiscal Year 2017. The annual budget shall include all expenses necessary to operate, manage, and maintain the Regional Water System and to maintain reserve funds at target levels.

C. No later than five months prior to the beginning of the next fiscal year, the Board shall consider and approve the annual budget for the next fiscal year, which shall be sufficient to cover all annual expenses and required reserves of the Authority. At least one month prior to the Board's consideration, the General Manager shall prepare, submit to the Board, and provide a copy to each Party a detailed proposed budget for the Board's consideration, including a calculation of each Party's proportionate contribution in accordance with the Operating Agreement. The General Manager shall prepare the proposed budget after consulting with the Parties. The Parties may provide written comments on the General Manager's proposed budget to the Board, copies of which shall be provided to the General Manager and the other Parties. The Board shall thereafter approve and adopt a budget after considering the written and oral comments of the General Manager and the Parties, making such changes to the General Manager's proposed budget as the Board deems appropriate. In the event that the annual budget is not approved prior to commencement of the fiscal year, the prior year's budget shall constitute the budget for the fiscal year without further action of the Board until such time as the Board adopts a budget for the fiscal year. By the beginning of each fiscal year, each party shall (i) appropriate adequate funds to meet its financial obligations to the Authority as reflected in the Authority's budget for the fiscal year or (ii) give notice to the Authority and other Parties that it has failed to do so.

D. The Authority may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds.

E. No Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.

F. The Authority shall maintain the following reserve funds:

1. a Repair and Replacement Fund in an amount determined by the Board to be adequate, which shall be utilized to repair and replace obsolete, worn out, or unusable equipment of the Authority;

2. an Emergency Fund in an amount determined by the Board to provide immediate resources for unforeseen infrastructure failures or other emergencies;

3. an Operational Stability Fund, which shall no later than the twentieth anniversary of the first approved annual budget (and thereafter) have on deposit an amount no less than one-year's operating costs or such greater amount as may be established by the Board, to provide funds in the event of a revenue shortfall or significant increase in expenses. However, the existence and use of the Operational Stability Fund shall not relieve a Party of its obligations to provide funding to the Authority or preclude the Authority or other Parties from pursuing available remedies against a Party that breaches its obligation to provide funding. If the Board authorizes use of the Operational Stability Fund such that the balance in the fund is less than the required amount, it shall establish a schedule for restoring the fund to the required amount. As used in this subparagraph, one-year's operating costs means the five year rolling average operating costs of the Authority calculated using costs from its annual audit; and

4. such other reserve funds as may be required under the Operating Agreement to assure that dependable and reliable service is maintained throughout the areas served by the Regional Water System.

G. The Authority or its Fiscal Agent shall, in accordance with generally accepted accounting principles and all laws applicable to public money and accounts, maintain adequate and correct accounts of its funds, properties and business transactions. Upon reasonable notice and in accordance with applicable law, the accounts shall be open to inspection at any reasonable time by directors, alternate directors, and the Parties, their accountants, or their agents.

ARTICLE 12- REGIONAL WATER SYSTEM OPERATOR

A. The Authority and County shall endeavor to enter into a System Operator Agreement for the County to serve as System Operator and be responsible for the operation, maintenance, replacement, and repair of the Regional Water System. The first System Operator shall cooperate with the U.S. Bureau of Reclamation in training and certification of employees to achieve a smooth transition for operating the Regional Water System. The County as System Operator shall be entitled to compensation from the Authority to cover all of the County's direct and indirect costs of operating the Regional Water System, as provided in the System Operator Agreement and the Authority's approved budget.

B. The System Operator Agreement with the County (and any other System Operator Agreement) shall provide that it cannot be terminated by either the Authority or the System Operator on less than two (2) years' notice except for the material breach thereof; and provided further that, if the Authority terminates the System Operator Agreement

with the County for convenience and does not affirmatively resolve to be the System Operator, the termination shall not go into effect until a new System Operator Agreement is approved pursuant to Section G(5) of Article 6 and the successor System Operator is ready, willing, and able to perform its duties under the Agreement. In the event the Authority provides or receives notice of intent to terminate the System Operator Agreement, the Authority shall exercise diligence in identifying and contracting with a new System Operator. Except as provided above, in the event the System Operator Agreement terminates before a new Agreement is in place, the Authority shall be responsible for operating the Regional Water System.

C. System Operator Agreements shall provide employment preferences in accordance with Section 3.4 of the Cost-Sharing and System Integration Agreement, which requires that, to the extent authorized by law, employment preferences be given to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo

D. After expiration or termination of the System Operator Agreement with the County, the Authority may affirmatively resolve to be its own System Operator, in whole or in part, or may enter into a System Operator Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

ARTICLE 13 -- PUBLIC RECORDS

A. All documents of the Authority within the definition of "public records" set out in NMSA 1978, Section 14-3-2(G), as such may be amended or recompiled from time to time,

shall be retained as public records in accordance with state law and shall be subject to inspection to the extent provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 1, as such may be amended or recompiled from time to time. The services provided by the Fiscal Agent under the Fiscal Services Agreement and the System Operator under the System Operator Agreement shall include compliance with the Inspection of Public Records Act on behalf of the Authority with respect to public records of the Authority within the Fiscal Agent's or System Operator's custody.

B. For each Board meeting, the meeting agenda, minutes, and meeting material shall be posted on the Authority's website in compliance with the New Mexico Open Meetings Act and for a minimum of two years after the date of the meeting. Until such time as the Authority has a website, the County agrees to create and maintain an Authority webpage on its website, on which it shall post the Authority's meeting materials as provided in the previous sentence.

ARTICLE 14 – COOPERATION, ACCESS, EASEMENTS, COUNTY INTERIM USE

A. The Parties agree to cooperate to assure consistent, reliable and continuous service and operation throughout the areas served by the Regional Water System. To assure such service and operation, the Parties hereby grant the Authority (including its employees, contractors, and agents) the right to enter upon the lands of the Parties within rights-of-way established for the Regional Water System and through reasonable access routes designated by the Pueblo or County for use by the Authority to access such rights-of-way, including lands held in trust by the United States, as may reasonably be necessary or appropriate to operate the Regional Water System, including for purposes of maintaining, repairing, or replacing

infrastructure and equipment, operating heavy machinery and maintenance vehicles, reading meters, and commencing or terminating service, provided that prior to entry onto a Party's lands, notice as is reasonable and practicable under the circumstances shall be given to the representative of the Party designated in writing by that Party to the Authority and prior to entry onto that Pueblo's lands in compliance with that Pueblo's access protocols.

B. The Parties agree to cooperate to encourage and facilitate customer connections to the Regional Water System. The Parties shall grant such rights-of-way and easements (collectively, "easements") as may reasonably be necessary for customers to connect to the Regional Water System, both as constructed by the U.S. Bureau of Reclamation and as the System may be extended in the future by the Authority or, with respect to the County Distribution System, the County. In consideration of the Parties' mutual obligations under this Agreement, the Cost-Sharing Agreement, and the Operating Agreement, and the mutual benefits to be derived from expanding the Regional Water System to increase the customer base, the Parties shall grant such easements for so long as needed for the Regional Water System, at no cost and the Pueblos each agree to consent to the grant of such easements by the Secretary of the Interior in compliance with the Act of June 7, 1924 (43 Stat. 636), the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. §§ 323-328) and 25 C.F.R. Part 169, provided that each Pueblo retains the right to determine the exact location on its land, such location to be a reasonable one, and reasonable mitigation requirements for easements determined to be necessary for the benefit and use of and by the Authority.

C. The Parties shall cooperate in facilitating interim uses by the Parties of any unused capacity in the Regional Water System upon written request and approval of the Party

or Parties wishing to provide or take water for interim use. The Authority shall approve such interim uses by the Parties contingent solely on the requirement that such use shall be authorized and carried out in accordance with a permit issued by the New Mexico State Engineer. Pursuant to Sections 612(c)(2)(C) and (D) of the Act, the Parties agree that the Operating Agreement will require such approval by the Authority.

D. To the extent that additional authorization is required to provide the right of entry to the Authority, grant the easements, or approve of interim uses required under Sections A, B and C of this Article, respectively, the Parties shall cooperate in obtaining such authorizations and shall execute such additional agreements or instruments as may reasonably be necessary or appropriate.

ARTICLE 15 - LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. By entering into this Agreement, no Party waives, relinquishes or limits its sovereign immunity, except as expressly provided in Article 19 of this Agreement. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 19.

B. By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the Authority's or another Party's acts or omissions.

C. Any liability incurred by the Authority is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended.

D. This Agreement does not modify, in any way, the Parties' liabilities or

sovereign immunity as to third parties, which is governed by federal and state law, including the New Mexico Tort Claims Act. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

E. All agreements entered into by the Parties to effectuate the Settlement Agreement, Cost-Sharing Agreement, and this Agreement shall contain dispute resolution provisions and limited waivers of sovereign immunity substantially the same as those contained in Article 19 of this Agreement.

ARTICLE 16 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY

A. The officers and directors of the Board shall be immune from any liability to third-parties for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal and state law, including the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as amended, recompiled, or replaced.

B. To the extent required by NMSA 1978, Section 41-4-4, the Authority shall provide a defense to its public employees, as defined in NMSA 1978, Section 41-4-3(F), and shall pay any award, settlement, or final judgment against its public employees.

C. With respect to claims and other matters for which a defense and payment of awards, settlements, and final judgments are not required by NMSA 1978, Section 41-4-4, the Authority may indemnify its officers and directors for personal liability and for reasonable expenses, costs and attorney's fees incurred in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been a director or officer acting in good faith, to the fullest extent permitted by

applicable law.

D. The indemnification provided for in Section C of this Article 16 is not self-executing and does not independently provide officers and directors with the right to indemnification. Indemnification shall only be provided and be available pursuant to policies and procedures adopted by the Board, which shall include notice requirements as well as the right of the Authority (or its insurance carriers) to control the defense and resolution of claims brought against officers and directors.

ARTICLE 17 - INSURANCE

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority may purchase additional insurance for the directors and officers of the Board and the Authority against any suit which may be brought against them in connection with their duties under this Agreement.

C. The Authority shall carry and maintain fire and extended insurance coverage on all Authority buildings, structures and improvements, and on upon all of the contents and other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers'

Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et seq., if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as necessary or appropriate for the General Manager and any other employees of the Authority.

F. The expense of obtaining and maintaining the required insurance, along with the expense of all employee benefits, shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage required under this Article shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

ARTICLE 18 – NO THIRD-PARTY BENEFICIARY

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person or other entity, any rights whatsoever, such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

ARTICLE 19 – ARBITRATION AND OTHER METHODS OF ALTERNATIVE DISPUTE RESOLUTION

A. Subject to Paragraph O of this Article 19, the Parties agree to submit any and all

disputes and controversies among the Parties arising under this Agreement to binding arbitration by a panel of three arbitrators in accordance with the provisions below, including, but not limited to, disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement. The panel of arbitrators shall be comprised of licensed New Mexico attorneys with at least fifteen years of experience practicing in New Mexico. The attorneys shall have no past or current relationship to any Party and shall not have represented any client against any Party.

B. After compliance with subsection O, any Party or combination of Parties may commence arbitration by making a written demand and serving it on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. The demand shall summarize the matter in controversy, describe the remedy sought, and include the name of at least one proposed neutral arbitrator.

C. Within 30 days after receiving a demand for arbitration, the other Parties shall mail by certified mail, return receipt requested, a written answer to the demanding Party, either individually or jointly with other Parties, stating their position on the matter in controversy and naming at least one neutral arbitrator. Any Party that fails to provide a timely written answer shall have conclusively waived its right to participate in the arbitration but shall nevertheless be bound by the final decision of the arbitrators.

D. Within 45 days after the demand for arbitration, the Parties shall confer and attempt to agree on three neutral arbitrators; provided, however, that if the Parties agree only on two arbitrators, those two arbitrators shall select the third arbitrator in accordance with the

requirements of Section A of this Article. If within 60 days after arbitration is demanded the Parties have not agreed on at least two neutral arbitrators, any Party may make application via motion or otherwise request the United States District Court for the District of New Mexico for appointment of a panel of three neutral arbitrators in accordance with NMSA 1978, Section 44-7A-12, 9 U.S.C. Section 5, and this Agreement.

E. The arbitration-related costs and expenses of each Party, including attorney's fees and witness fees, costs, or expenses, shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties who have determined to participate in the arbitration pursuant to Section (B) of this Article. Neither the arbitrators nor the courts shall have the authority to award reasonable attorney's fees and other reasonable costs or expenses of arbitration or litigation. Nor shall the arbitrators or courts have the authority to award punitive damages or other exemplary relief and any monetary relief awarded against a Party other than the Authority shall be limited to any contribution owed by any Party for its required contribution under Article 11 of this Agreement.

F. The arbitration hearing shall be held at such time and place within the County as designated by the arbitrators on at least 20 days' written notice to the Parties.

G. The award rendered by a majority of the arbitrators appointed pursuant to this Agreement, including an award that quantifies and requires a Party to pay its proportionate contribution under Article 11 of this Agreement pursuant to an approved budget of the Board and lawful appropriations made by the Party, shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award. The Parties shall comply with such award within thirty (30) days of the date thereof or such other time as the majority of

arbitrators may specify.

H. The Parties waive their sovereign immunity only as to suits brought in the United States District Court for the District of New Mexico and only for the limited purposes of: (1) compelling arbitration pursuant to this Agreement; (2) having a panel of three neutral arbitrators appointed pursuant to Section D of this Article; and (3) obtaining judicial declaratory and/or injunctive relief to enforce, confirm, vacate, or modify an award of the arbitrators; provided, however, that if the United State District Court for the District of New Mexico determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason, the Parties waive their sovereign immunity so as to allow these same suits to be brought in the First Judicial District Court of New Mexico, Santa Fe County; provided, further, that any reference in this Article 19 to the United States District Court for the District of New Mexico shall be deemed to include the First Judicial District Court of New Mexico, Santa Fe County, in the event the federal court determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason. Unless a civil action involving the agreement to arbitrate is already pending, the initial motion to the court for one or more of the purposes specified in this Article shall be served on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. Attached hereto as Exhibits B through F are Resolutions of the respective governing bodies of the Parties (other than the Authority) approving this Agreement, including the limited waiver of sovereign immunity provided herein.

I. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the

hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

J. Except as provided in Section H of this Article, the Parties expressly waive their right to file suit in federal, state, and tribal court to resolve any dispute or controversy that is subject to arbitration under this Agreement. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any dispute or controversy arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

K. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

L. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

M. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this Agreement.

N. This Agreement shall be subject to the Federal Arbitration Act, 9 U.S.C. Sections 1-16 and the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7A-1 through 44-7A-22. In the event of a conflict between the two acts, the New Mexico Uniform Arbitration Act shall apply unless the conflict relates to a provision of the New Mexico

Uniform Arbitration Act that may be waived or varied by the parties; provided, however, that no Party waives its sovereign immunity from suit in state court except as provided in paragraph H of this Article.

O. Nothing in this Article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. As a condition precedent to proceeding to arbitration as set forth above, the parties agree to proceed as follows:

1. The Party or Parties asserting a claim arising under this Agreement shall first serve written notice on the other Parties;

2. The notice shall identify the specific Agreement provision alleged to have been violated or in dispute and shall specify in detail the asserting Party's contention and any factual basis for the claim; and

3. Representatives of the Parties shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party or Parties asserting a claim within ninety (90) days of the original notice, such Party(ies) may initiate arbitration as provided by this Article 11. The Parties may agree to use a mediator as part of these informal dispute resolution procedures.

P. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in Section H of this Article.

ARTICLE 20 - AMENDMENTS

This Agreement may only be amended by a mutual written agreement of all the

Parties. No amendment shall be effective until approved by the New Mexico Secretary of Finance and Administration.

ARTICLE 21 - SEVERABILITY

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable, or otherwise unenforceable by a Court of competent jurisdiction, then the remainder of this Agreement shall continue in full force and effect and this Agreement shall thereafter be construed as if such unlawful, voided, or unenforceable provision(s) had never been a part hereof; provided, however, that this Agreement shall terminate if the Agreement, as severed, would violate the requirements of the Act, the Settlement Agreement, or the Cost-Sharing Agreement.

ARTICLE 22 – EFFECTIVE DATE: EFFECT OF AGREEMENT

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the New Mexico Secretary of Finance and Administration. This Agreement may be executed in counterparts, which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Party or Parties.

ARTICLE 23 – NOTICES

A. Any notice, demand, request, or information authorized or related to this

Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County: Santa Fe County Utilities Director
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504
Phone: 505.992.9870
Fax: 505.992.3028

With A Copy To: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6200
Fax: 505.986.6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6279
Fax: 505.986.6362

To Pueblo of Nambe : Pueblo Governor
15A NP 102 West
Santa Fe, New Mexico 87506
Phone: 505.455.2036
Fax: 505.455.2038

With A Copy To: McElroy, Meyer, Walker & Condon, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Phone: 303.442.2021
Fax: 303.444.3490

To Pueblo of Pojoaque: Pueblo Governor
78 Cities of Gold Road
Santa Fe, New Mexico 87506
Phone: 505.819.2276
Fax: 505.819.2299

With A Copy To: Chief General Counsel
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Pojoaque Basin Regional Water Authority Joint Powers Agreement

Draft of Proposal No. 1 of 2 Introduced by Commissioner Roybal on November 29, 2016 -
State Senator and State Representative Each Appoint One County Customer Director

Pueblo of Pojoaque
Legal Department
58 Cities of Gold Rd., Suite 5
Santa Fe, New Mexico 87506
Phone: 505.819.2254
Fax:

**To Pueblo de San
Ildefonso:**

Office of Governor
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: (505) 455-2273
Fax: (505) 455-7351

With A Copy To:

Realty Department
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: 505.455.4138
Fax: 505.455.4163

Chestnut Law Offices, P.A.
121 Tijeras Ave. NE, Suite 2001
Albuquerque, New Mexico 87102
Phone: 505.842.5864
Fax: 505.843.9249

To Pueblo of Tesuque

Pueblo Governor
Route 42, Box 360T
Santa Fe, New Mexico 87506
Phone: 505.955.7732
Fax: 505.955.2331

With A Copy To:

Phone:
Fax:

To the Authority:

To the person(s) and at the address(es) or fax
number(s) established pursuant to subparagraph D of
this Article.

B. Notice shall be deemed to have been given based upon the method of delivery,

as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

C. A Party may change the persons to whom or addresses or fax numbers at which notice shall be given by giving all other Parties and the Authority notice of the change in accordance with this Article.

D. The Authority shall establish, and may change, the persons to whom and addresses or fax numbers at which notice shall be given to it by giving all Parties notice in accordance with this Article.

ARTICLE 24 - TERMINATION

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party; and
2. approval by an Act of Congress or if one or more of the conditions precedent set forth in Section 623 of the Act have not been fulfilled by the applicable deadline set forth therein.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the extent necessary to wind down the affairs of the Authority, make an effective disposition of property, provide a full accounting, and distribute surplus funds in proportion to the contributions made.

C. Upon termination of this Agreement pursuant to an Act of Congress, the property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

ARTICLE 25 – ASSIGNMENT PROHIBITED

No Party shall assign this Agreement or any right or obligation under this Agreement, and any attempted assignment is null and void.

ARTICLE 26 – NON-APPROPRIATION CLAUSE

A. So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's obligations arising under this Agreement in future fiscal years are contingent upon sufficient appropriations and authorizations being made by the Board of County Commissioners of the County. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. The County's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties. This subparagraph A shall not apply to money available to the County as a result of payment received from the United States pursuant to the Act; provided, however, that nothing herein obligates the County to appropriate or expend such money for the initial planning, design, and construction of the Regional Water System.

B. Each Pueblo's obligations arising under this Agreement in future fiscal years are contingent upon sufficient appropriations and authorizations being made by its Tribal Council. Each Pueblo is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. Each Pueblo's decision as

to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties. This subparagraph B shall not apply to money available to meet a Pueblo's obligations in the Aamodt Settlement Pueblos' Fund or to money withdrawn from that fund by or otherwise made available to a Pueblo pursuant to Section 615 of the Act.

ARTICLE 27 – COMPLIANCE WITH APPLICABLE LAWS

The Authority shall exercise its powers and conduct its operations in accordance with all laws applicable to the Authority, the Fiscal Agent, and the System Operator.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

PUEBLO OF POJOAQUE

PUEBLO DE SAN ILDEFONSO

Joseph Talachy, Governor

James R. Mountain, Governor

PUEBLO OF NAMBE

PUEBLO OF TESUQUE

Phillip A. Perez, Governor

Fredrick Vigil, Governor

SANTA FE COUNTY

(name) _____
(title) _____

ARTICLE 14 APPROVED BY THE SECRETARY OF THE INTERIOR

(Signature) Date

(Print Name)

**APPROVED BY THE NEW MEXICO
SECRETARY OF FINANCE AND ADMINISTRATION**

(Signature)

Date

(Print Name)

(Print Title)

Appendix

An Act

This Act may be cited as "The Claims Resettlement Act of 2010."

TITLE VI—AAMODT LITIGATION SETTLEMENT

Subtitle A—Pojoaque Basin Regional Water System

SEC. 612. OPERATING AGREEMENT.

(a) IN GENERAL.—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) APPROVAL.—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) CONTENTS.—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

Pojoaque Basin Regional Water Authority Joint Powers Agreement

Draft of Proposal No. 1 of 2 Introduced by Commissioner Roybal on November 29, 2016 -
State Senator and State Representative Each Appoint One County Customer Director

(d) EFFECT.--Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

**Draft of Proposal No. 2 of 2 Introduced by Commissioner Roybal on November 29, 2016 -
Board of County Commissioners Appoints One County Commissioner Director and Two
County Customer Directors**

**POJOAQUE BASIN REGIONAL WATER AUTHORITY
JOINT POWERS AGREEMENT**

This Agreement is entered into by, between, and among the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, and Santa Fe County under the New Mexico Joint Powers Agreements Act. The effective date of this Agreement is the date on which it is approved by the New Mexico Secretary of Finance and Administration.

RECITALS

WHEREAS, the County has the authority to own and operate water and wastewater facilities pursuant to NMSA, § 4-36-10(A), § 4-37-1, and Chapter 3, Article 26 and Article 7; and

WHEREAS, the Pueblo Parties have the authority to own and operate water and wastewater facilities pursuant to their inherent sovereignty; and

WHEREAS, the Parties are signatories to the Settlement Agreement; and

WHEREAS, the Parties are signatories to the Cost-Sharing Agreement, which sets forth provisions for funding and implementation of certain provisions of the Settlement Agreement; and

WHEREAS, the Act approved the Settlement Agreement and the Cost-Sharing Agreement; and

WHEREAS, the Act authorizes the United States Secretary of the Interior to construct

the Regional Water System; and

WHEREAS, the Act, the Cost-Sharing Agreement, and the Settlement Agreement call for formation by the Parties of the Authority to supply water for domestic, municipal, industrial, irrigation, commercial, and all other approved uses throughout the areas served by the Regional Water System and as otherwise authorized by the Act; and

WHEREAS, in order to ensure a reliable firm supply of water to all users of the Regional Water System, the powers and duties of the Authority shall be exercised consistent with the terms and conditions of the Act, Settlement Agreement, Cost-Sharing Agreement, and Operating Agreement; and

WHEREAS, the Parties desire that the Authority have the power to carry out the purposes and functions as authorized by the Act and as set forth herein in order to provide service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

AGREEMENT

NOW, THEREFORE, as required by the Act and Settlement Agreement, and in consideration of the mutual covenants and obligations set forth here and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

As used herein, the following terms have the following meanings unless the context clearly indicates otherwise:

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Pojoaque Basin Regional Water Authority Joint Powers Agreement

Draft of Proposal No. 2 of 2 Introduced by Commissioner Roybal on November 29, 2016
Board of County Commissioners Appoints One County Commissioner Director and Two County Customer Directors

CE tidinxs

A. "Aamodt Case" means the federal litigation styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.).

B. "Act" means Title VI, Aamodt Litigation Settlement, of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.

C. "Agreement" means this Joint Powers Agreement.

D. "Authority" means the Pojoaque Basin Regional Water Authority created by this Agreement and defined in Section 1.13 of the Cost-Sharing Agreement.

E. "Board" means the Authority's Board of Directors.

F. "Cost-Sharing Agreement" means that certain Cost-Sharing and System Integration Agreement, signed by the parties on March 14, 2013.

G. "County" means Santa Fe County, a political subdivision of the State of New Mexico.

H. "County Distribution System" has the same meaning as set forth in Section 1.5 of the Cost-Sharing Agreement.

I. "Director", in the context of quorum and voting requirements and limitations, includes alternate directors attending meetings with voting rights.

J. "Operating Agreement" means that agreement required by Section 612 of the Act; the text of Section 612 is attached hereto as Exhibit A.

K. "Parties" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the

Pueblo of Nambé, the Pueblo of Tesuque, and County collectively; "Party" means the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, the Pueblo of Tesuque, or County individually. In Article 19, unless otherwise stated, "Parties" means the Pueblo Parties, County, and the Authority, collectively; and "Party" means a Pueblo Party, County, or Authority, individually.

L. "Party Director" means the County Commissioner Director appointed by the County and the Director appointed by each Pueblo Party.

Comment [SFC1]: To be able to distinguish between Party Directors and County Customer Directors as necessary in Article 6.

M. "Pueblo Water Facility" has the same meaning as set forth in Section 1.13 of the Cost-Sharing Agreement.

M.N. "Regional Water System" means the system defined in Section 602(18) of the Act.

NO. "Service Area" means the area to be served by the Regional Water System, including the County Distribution System and Pueblo Water Facilities.

OP. "Settlement Agreement" means that certain Settlement Agreement dated April 19, 2012, and signed by the Parties on March 14, 2013, in the Aamodt Case.

ARTICLE 2 – AUTHORIZATION: FORMATION

Pursuant to the provisions of the Joint Powers Agreements Act (Section 11-1-1 through 11-1-7 NMSA 1978), the Parties hereby create the Authority, a legal entity, separate and distinct from the Parties, organized and empowered as set forth herein.

ARTICLE 3 - PURPOSES

A. The Authority is organized for the purposes of:

1. Providing a firm and reliable water supply for domestic, municipal, industrial, irrigation, commercial and all other approved uses throughout the areas served by the Regional Water System, regardless of jurisdictional boundaries, and as otherwise authorized by the Act;

2. The construction, management, ownership, operation and maintenance of diversion, collection, treatment, storage, and transmission facilities as well as all related real and personal property, facilities and equipment as may be reasonably necessary to achieve the purposes of and discharge the powers of the Authority; and

3. Providing service throughout the areas served by the Regional Water System, pursuant to Section 2.5.4 of the Cost-Sharing Agreement.

B. The purposes of the Authority shall be broadly interpreted to include all things necessary to carry out the intent of, and to implement and utilize the rights of the Parties under this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, and the Act.

ARTICLE 4 – DURATION

This Agreement shall continue in full force and effect unless terminated pursuant to Article 24.

ARTICLE 5 - POWERS

To the extent consistent with and subject to the Settlement Agreement, the Cost-Sharing Agreement, the Act, and the Operating Agreement, the Authority is empowered and authorized:

A. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of the Regional Water System, wherever located; provided, however, that the County Distribution System and Pueblo Water Facilities shall remain the separate property of the County and respective Pueblo;

B. To own, construct, operate, manage, replace, repair, and maintain all facilities, equipment, and infrastructure of wastewater collection and treatment systems, wherever located; provided, however, that each Party must separately authorize the provision of wastewater services within its jurisdiction.

C. To own, acquire, and dispose of real property and interests therein, as is reasonably necessary, desirable, and appropriate for the accomplishment of its purposes and the exercise of its powers;

D. To bill and collect payments from all customers served by the Regional Water System wherever located, or to bill and collect payments from the Parties, or both, as may be provided in the Operating Agreement; provided, however, that any billing of and collection from a water customer served from the County Distribution System must conform to policies of the County and any billing of and collection from a water customer served from a Pueblo Water Facility must conform to policies of the applicable Pueblo;

E. To establish policies and enforcement mechanisms for delivery and use of water, provided that any suspension of service to a water customer served from the County Distribution System must conform to policies of the County and any suspension of service to a water customer served from a Pueblo Water Facility must conform to policies of

the applicable Pueblo;

F. To establish policies and enforcement mechanisms with respect to use by Parties in excess of their allocation;

G. To make expenditures, incur debt and to pledge, assign or lease as security or otherwise grant security interests in any or all of the Authority's assets for the purpose of financing construction, maintenance, replacement, improvements, and expansion of the facilities of the Authority and to otherwise carry out the purposes of the Authority;

H. To provide services to others and lease to others any of the Authority's assets;

I. To open and maintain bank accounts, and to invest the Authority's funds, for its benefit, to the extent and in the manner that County funds may be invested under New Mexico law;

J. To sell any of the Authority's assets deemed by the Board to be unnecessary, excess, obsolete, or scrap;

K. To employ and enter into contracts with others to perform functions consistent with the Authority's purposes and powers as set forth herein;

L. To apply for and to receive grants, appropriations, or other funds;

M. To provide for retirement, insurance, and other benefits for its employees;

N. To sue and be sued in any court of competent jurisdiction in accordance with and to the extent allowed by applicable law, including, without limitation, the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978; and

O. To do any and all other lawful things consistent with its purposes and powers

as set forth herein; provided that none of the revenues of the Authority shall inure to the benefit of any individual or entity, except as compensation for services rendered or payment for goods, property or legal rights, or reimbursement of expenses.

ARTICLE 6 - BOARD OF DIRECTORS

A. Composition and Appointment. The business and affairs of the Authority shall be controlled by the Board, which shall be composed of seven (7) directors. Each Party other than the County shall appoint one director. The County shall appoint three directors, a County Commissioner Director and two County Customer Directors. The County's County Commissioner director-Director shall be the County Commissioner for District 1; provided, however, that a majority of the Board of County Commissioners of the County may vote to appoint another County Commissioner as the County's primary County Commissioner director-Director. The County's alternate County Commissioner Director-director shall also be a County Commissioner. The Board of County Commissioners of the County shall also appoint two County Customer Directors, each of whom (i) cannot reside on Pueblo Land, as defined in the Act, (ii) cannot hold another elected or appointed position with or be employed by a Party, a Party's company, or a Party's instrumentality, and (iii) must be a resident of the Service Area for at least five (5) years immediately prior to appointment to the Board and continuously throughout the County Customer Director's term as director. Except as provided in the previous two-three sentences, each Party shall establish its own qualifications for directors and alternate directors. The directors selected by the Parties ("Party Director(s)"), by a majority vote, shall appoint

Comment [SFC2]: To broaden the pool of potential directors to include all potential customers of the County Distribution System and avoid potential failure of appointment due to the potential applicant pool being too small.

Comment [SFC3]: To avoid actual or apparent conflicts of interest. This would apply uniformly to all Parties, such that a County employee could not be appointed as a Customer Director.

Comment [SFC4]: Existing requirement with clarification that residency must be continuous.

~~two directors who shall be water customers served by the Regional Water System or persons who have elected to be served by the Regional Water System pursuant to Section 3.1.7.2.1 of the Settlement Agreement and shall be residents of the Service Area for at least five (5) years immediately prior to appointment to the Board by the Party Directors. No director shall attempt to control or influence the Authority except through the official actions of the Board.~~

B. Terms of Directors. The term of each Party Director shall be indefinite or as otherwise determined by the Party appointing that director. A Party Director shall continue to serve after expiration of the Party Director's term until a successor has been appointed. Each ~~Party Director~~ director shall serve at the pleasure of the Party that appointed the ~~Party Director~~ director and may be replaced at any time by formal action of the appointing Party. The two County Customer Directors ~~directors appointed by the Party Directors~~ shall serve ~~four~~ two year terms, except initially one director shall serve a ~~two~~ one year term. Upon the expiration of the County Customer Directors' terms, either ~~four~~ two year or ~~two~~ one year, the Board of County Commissioners ~~Party Directors~~ shall appoint or reappoint a County Customer ~~director~~ Director that meets the qualifications established pursuant to the process described in subsection A. A director shall be deemed to have resigned upon missing three consecutive duly called meetings of the Board. The General Manager shall give written notice of such resignation to the Board; and ~~in the event the director is a Party Director, to the Party that~~ appointed such director. The Party shall appoint a replacement director or alternate director within thirty (30) days of such resignation notice. If a County Customer ~~director~~ Director ~~appointed by the Party Directors~~ has been deemed to have resigned pursuant to this subsection or otherwise resigned or vacated office, the vacancy shall be filled for the unexpired term

Comment [SFC5]: Since all directors are appointed by a Party under this proposal.

~~pursuant to the process described in subsection A~~ by appointment by the Board of County Commissioners of the County.

C. **Officers.** ~~Officers of the Board shall consist of a Chairperson and Vice-Chairperson. Except for the first Chairperson and Vice-Chairperson, the terms of the offices of Chairperson and Vice-Chairperson shall be for one year, from February 1 until January 31 the following year unless otherwise determined by the Board. The terms of the first Chairperson and Vice-Chairperson shall end on January 31 of the year following the year in which their terms begin. The offices of Chairperson and Vice-Chairperson shall rotate every year among the Parties~~Party Directors. At the first meeting of the Board, one Party Director from each Party shall draw from a hat numbers to determine the order in which the offices of Chairperson and Vice-Chairperson shall rotate among the PartiesParty Directors.

Comment [SFC6]: To clarify that County Customer Directors are not eligible for these offices.

Should the Chairperson and Vice-Chairperson be absent from a meeting, the directors (or their alternates) in attendance shall elect a director to serve as Chairperson at the meeting. The officers shall perform the following respective functions:

1. **Chairperson.** The Chairperson shall preside over all meetings of the Board, shall execute documents and agreements on behalf of the Authority as authorized by the Board, and shall otherwise represent the Board, as authorized by the Board.

2. **Vice-Chairperson.** The Vice-Chairperson shall act in place of the Chairperson in the event of the Chairperson's absence or disability.

D. **Alternate Directors.** Each Party may, in addition to appointment of a regular ~~Party director~~Director, appoint one alternate director. Alternate directors shall serve

and act in the absence or incapacity of the Parties' regular ~~Party director~~ Director and, when so acting, shall have all the powers, duties and responsibilities of the regular ~~Party director~~ Director; provided, however, that an alternate director shall not assume the office of Chairperson or Vice-Chairperson. Alternate directors may attend all meetings of the Board and may participate in discussions of the Board but may vote only in the absence or incapacity of the regular ~~Party director~~ Director.

E. Compensation and Expenses. The Authority shall not pay directors salaries or other compensation for their service as directors or expenses associated with such service, such as per diem or mileage. Each Party shall develop compensation and expense reimbursement policies for its directors and shall be solely responsible for paying any compensation and reimbursing any expenses due under those policies for its director and alternate.

F. Board Meetings. The Board shall meet monthly or as may be determined by the Board at publically accessible and convenient locations within the Pojoaque Basin, and at times as shall be determined by the Board. Special meetings of the Board may be called by the Chairperson or upon the written request of two or more directors on ten days' notice to the directors. Emergency meetings called to address emergency matters, as defined in the New Mexico Open Meetings Act, Chapter 10, Article 15, may be called upon not less than one day's notice; provided, however, that an emergency meeting may be called on less than one day's notice if at least one ~~Party director~~ Director or alternate ~~Party director~~ Director appointed by each Party will be present at the emergency meeting. Directors may attend Board meetings by telephone or video conference, in accordance with policies to be

established by the Board. Board meetings shall be in compliance with the New Mexico Open Meetings Act and in accordance with Robert's Rules of Order. Notice of the meeting, the meeting agenda, and, to the extent available, meeting material in the form of a packet shall be sent before each meeting to every director.

G. Quorum; Special Majority Required. A quorum for the conduct of business at any meeting of the Board shall be four (4) directors, present either in person or by telephone or video conference except that at least one director must be present in person at a meeting place announced to the public. Each director shall have one vote. Voting by proxy is prohibited; provided, however, that an alternate director serving in place of an absent director shall not constitute proxy voting. Except as provided in Section 6.H, the action of a majority of the directors present at a meeting at which a quorum is present shall constitute the official action of the Board, except that affirmative votes by the Party directors ~~Directors~~ appointed by Pueblo de San Ildefonso and the County shall be required for any of the following actions:

1. to approve the annual budget and any budget amendments of the Authority; provided that in the event that an annual budget is not approved, the prior year's budget shall be implemented without the need for further action by the Board;
2. to hire or terminate or enter into, modify, or terminate the contract for the General Manager of the Authority;
3. to approve delegation of any power of the Authority;
4. to borrow money in an amount in excess of \$125,000 or to convey,

pledge, or encumber any of the Authority's assets; and

5. to enter into, terminate or modify the System Operator Agreement, the Fiscal Services Agreement, or any contract for an amount greater than \$125,000, exclusive of applicable gross receipts tax or governmental gross receipts tax, with an entity that is not a Party or entity controlled by a Party.

The Board may not engage in any activities that practically constitute a single undertaking in two or more segments or phases for the purpose of avoiding the necessity of approval by a special majority under Subsections 4 and 5 above.

H. Contract Party or Affiliated Entity. Notwithstanding Section 6.G, no director may vote to enter into, modify, assign, or terminate a contract between the Authority and the Party that appointed that director. Any action to enter into, terminate, assign, or modify any contract with a Party or an entity controlled by a Party shall require the affirmative vote of Party D directors appointed by the other four (4) Parties.

I. Duties. The Board shall manage and oversee the Authority to assure that the Authority carries out its duties and exercises its powers in accordance with this Agreement, the Settlement Agreement, the Cost-Sharing Agreement, the Operating Agreement, the Act, and all other applicable laws and agreements; adopt, and from time to time amend, the Authority's policies, By-Laws, and Rules and Regulations as it deems necessary to conduct the affairs of the Authority; approve or disapprove any and all acquisitions, dispositions, or the pledging of real property or interests therein by the Authority; approve or disapprove all Authority contracts, including contracts with consultants, engineers, legal counsel, and for

other services but excluding employment contracts delegated to the General Manager; and to exercise or delegate the powers of the Authority and duties of the Board in accordance with this Agreement.

J. Committees. The Board may establish such advisory committees of the Board as it deems appropriate. Any action proposed by a committee shall be advisory only unless and until presented to and approved by the Board. Notice and conduct of such advisory committee meetings shall be in compliance with the New Mexico Open Meetings Act.

ARTICLE 7 – GENERAL MANAGER AND OTHER AUTHORITY EMPLOYEES

A. The Authority shall hire and set compensation for a General Manager and such other employees as the Board deems necessary and that are within the Authority's approved budget. The General Manager shall report solely to the Board and be an at will employee who serves at the pleasure of the Board. The Board shall have supervisory authority over the General Manager and shall have the sole right to make any necessary personnel decisions concerning the General Manager.

B. The General Manager shall have the following duties: oversee and manage the Authority's day-to-day affairs; hire, supervise, discipline, and fire employees of the Authority consistent with the personnel policies adopted by the Board, and with the employment preferences benefiting members of the San Ildefonso Pueblo and other Party-Pueblos in accordance with Section 3.4 of the Cost-Sharing Agreement; manage and assist in negotiating all Authority contracts (including the Fiscal Services Agreement and System

Operator Agreement); and perform such other duties and tasks as the Board may from time to time delegate to the General Manager.

C. All other employees of the Authority shall report to the appropriate supervisory level designated in the organizational chart and have such duties as may be assigned by the supervisor or the General Manager.

ARTICLE 8 – PROCUREMENT; EMPLOYMENT PREFERENCES; TAXES

A. The Authority shall procure goods and services in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq.

B. Pursuant to Section 3.4 of the Cost-Sharing Agreement, to the extent authorized by law, the Authority shall provide an employment preference to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

C. **Taxes, Fees, and Special Assessments.** Neither the Authority nor any of the Parties may impose any taxes, fees, or special assessments on water produced or services or activities undertaken by the Authority for delivery to the Parties, unless the tax, fee, or special assessment is specifically authorized in the Operating Agreement.

This section does not prohibit any taxes, fees, or special assessments imposed by a Party in connection with the sale of water by that Party to the Party's customers.

ARTICLE 9 – FINANCIAL ACCOUNTABILITY

A. As provided in NMSA 1978, Section 11-1-4 (as amended), the Authority shall

be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete, and correct records and statements pertaining to receipts, disbursements, and all other financial matters.

B. Each year, the Board shall cause an annual audit of the Authority's finances to be performed in accordance with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and implementing regulations; the audit shall be provided to each Party and shall be made available to the public.

C. Upon reasonable notice, the records and statements prepared by the Authority shall be open to inspection at any reasonable time by the Parties, their accountants, and agents and Board directors and their alternates.

D. The Authority shall prepare and present such reports as may be required by law, regulation, or contract to any governmental agency, and shall also render to the Parties, at reasonable intervals, such reports and accounting as the Parties may from time to time request.

ARTICLE 10 – FISCAL AGENT

A. The Authority and County shall endeavor to enter into a Fiscal Services Agreement for the County to serve as Fiscal Agent to provide procurement, payroll, financial and accounting, record keeping, and other fiscal and administrative services as determined by the Board and the County. After expiration or termination of the Fiscal Services Agreement with the County or in the event the Authority and County do not enter into a Fiscal Services Agreement, the Authority may affirmatively resolve to be its own Fiscal Agent, in whole or in part, or may enter into a Fiscal Services Agreement with one of the Pueblo Parties or another

entity, as determined by the Authority.

B. The Fiscal Services Agreement with the County may be terminated pursuant to Section 6.H, or pursuant to the terms of the Fiscal Services Agreement; provided, however, that the Fiscal Services Agreement shall provide that the Agreement shall not terminate on less than one (1) year's written notice, except for the material breach thereof; and provided further that, if the Authority terminates the Fiscal Services Agreement with the County for convenience and does not affirmatively resolve to be its own Fiscal Agent, the termination shall not go into effect until a new Fiscal Services Agreement is approved pursuant to Section 6.G.5 and the successor Fiscal Agent is ready, willing, and able to perform its duties under the Agreement. Upon providing or receiving notice of the intent to terminate, the Board shall exercise diligence in identifying and contracting with a new Fiscal Agent. Except as provided above, in the event the Fiscal Services Agreement terminates before a new Agreement is in place, the Board shall act as Fiscal Agent in the interim.

C. The Fiscal Agent shall manage all revenues, maintain all accounts, and receive and disburse all funds on behalf of the Authority, at the direction of the Board. The Fiscal Agent and the Authority may contract for additional services. In performing any procurement services, the Fiscal Agent shall abide by Section 3.4 of the Cost- Sharing Agreement, which requires that, to the extent authorized by law, the Authority provide an employment preference to qualified members of the San Ildefonso Pueblo, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo.

D. The Fiscal Agent shall be entitled to reasonable compensation for fulfilling the

duties required herein, as provided in the Fiscal Services Agreement.

E. The funds of the Authority shall be held by the Fiscal Agent in one or more separate accounts and shall not be co-mingled with funds of any of the Parties to this Agreement or third parties. All contributions of and other payments by the Parties shall be initially deposited directly into a general fund created by the Fiscal Agent for the Authority.

ARTICLE 11- ANNUAL BUDGET AND FINANCIAL PROVISIONS

A. Each Party shall contribute its share of the amount necessary to meet the Authority's operating expenses and reserve fund requirements. Pursuant to paragraph 2.5.7 of the Cost-Sharing Agreement and Section 612 of the Act, the basis for each Party's contribution shall be set forth in the Operating Agreement to be executed by the Parties.

B. The Authority's operations and expenses shall be in compliance with an annual budget for each fiscal year beginning July 1 and ending June 30. The fiscal year shall be cited by the calendar year in which the fiscal year ends; e.g., the fiscal year beginning on July 1, 2016, and ending on June 30, 2017, shall be Fiscal Year 2017. The annual budget shall include all expenses necessary to operate, manage, and maintain the Regional Water System and to maintain reserve funds at target levels.

C. No later than five months prior to the beginning of the next fiscal year, the Board shall consider and approve the annual budget for the next fiscal year, which shall be sufficient to cover all annual expenses and required reserves of the Authority. At least one month prior to the Board's consideration, the General Manager shall prepare, submit to the Board, and provide a copy to each Party a detailed proposed budget for the Board's

consideration, including a calculation of each Party's proportionate contribution in accordance with the Operating Agreement. The General Manager shall prepare the proposed budget after consulting with the Parties. The Parties may provide written comments on the General Manager's proposed budget to the Board, copies of which shall be provided to the General Manager and the other Parties. The Board shall thereafter approve and adopt a budget after considering the written and oral comments of the General Manager and the Parties, making such changes to the General Manager's proposed budget as the Board deems appropriate. In the event that the annual budget is not approved prior to commencement of the fiscal year, the prior year's budget shall constitute the budget for the fiscal year without further action of the Board until such time as the Board adopts a budget for the fiscal year. By the beginning of each fiscal year, each party shall (i) appropriate adequate funds to meet its financial obligations to the Authority as reflected in the Authority's budget for the fiscal year or (ii) give notice to the Authority and other Parties that it has failed to do so.

D. The Authority may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds.

E. No Party shall have any liability for the debts or other obligations of the Authority or another Party unless there is an express written agreement to incur such liability accompanied by a lawful appropriation and written waiver of sovereign immunity.

F. The Authority shall maintain the following reserve funds:

1. a Repair and Replacement Fund in an amount determined by the Board to be adequate, which shall be utilized to repair and replace obsolete, worn out, or unusable

equipment of the Authority;

2. an Emergency Fund in an amount determined by the Board to provide immediate resources for unforeseen infrastructure failures or other emergencies;

3. an Operational Stability Fund, which shall no later than the twentieth anniversary of the first approved annual budget (and thereafter) have on deposit an amount no less than one-year's operating costs or such greater amount as may be established by the Board, to provide funds in the event of a revenue shortfall or significant increase in expenses. However, the existence and use of the Operational Stability Fund shall not relieve a Party of its obligations to provide funding to the Authority or preclude the Authority or other Parties from pursuing available remedies against a Party that breaches its obligation to provide funding. If the Board authorizes use of the Operational Stability Fund such that the balance in the fund is less than the required amount, it shall establish a schedule for restoring the fund to the required amount. As used in this subparagraph, one-year's operating costs means the five year rolling average operating costs of the Authority calculated using costs from its annual audit; and

4. such other reserve funds as may be required under the Operating Agreement to assure that dependable and reliable service is maintained throughout the areas served by the Regional Water System.

G. The Authority or its Fiscal Agent shall, in accordance with generally accepted accounting principles and all laws applicable to public money and accounts, maintain adequate and correct accounts of its funds, properties and business transactions. Upon reasonable notice and in accordance with applicable law, the accounts shall be open to inspection at any

reasonable time by directors, alternate directors, and the Parties, their accountants, or their agents.

ARTICLE 12- REGIONAL WATER SYSTEM OPERATOR

A. The Authority and County shall endeavor to enter into a System Operator Agreement for the County to serve as System Operator and be responsible for the operation, maintenance, replacement, and repair of the Regional Water System. The first System Operator shall cooperate with the U.S. Bureau of Reclamation in training and certification of employees to achieve a smooth transition for operating the Regional Water System. The County as System Operator shall be entitled to compensation from the Authority to cover all of the County's direct and indirect costs of operating the Regional Water System, as provided in the System Operator Agreement and the Authority's approved budget.

B. The System Operator Agreement with the County (and any other System Operator Agreement) shall provide that it cannot be terminated by either the Authority or the System Operator on less than two (2) years' notice except for the material breach thereof; and provided further that, if the Authority terminates the System Operator Agreement with the County for convenience and does not affirmatively resolve to be the System Operator, the termination shall not go into effect until a new System Operator Agreement is approved pursuant to Section G(5) of Article 6 and the successor System Operator is ready, willing, and able to perform its duties under the Agreement. In the event the Authority provides or receives notice of intent to terminate the System Operator Agreement, the Authority shall exercise diligence in identifying and contracting with a new System Operator.

Except as provided above, in the event the System Operator Agreement terminates before a new Agreement is in place, the Authority shall be responsible for operating the Regional Water System.

C. System Operator Agreements shall provide employment preferences in accordance with Section 3.4 of the Cost-Sharing and System Integration Agreement, which requires that, to the extent authorized by law, employment preferences be given to qualified members of the San Ildefonso Pueblo community, with second priority provided to members of the other Pueblo Parties, for construction, operation and maintenance of facilities located within San Ildefonso Pueblo

D. After expiration or termination of the System Operator Agreement with the County, the Authority may affirmatively resolve to be its own System Operator, in whole or in part, or may enter into a System Operator Agreement with one of the Pueblo Parties or another entity, as determined by the Authority.

ARTICLE 13 – PUBLIC RECORDS

A. All documents of the Authority within the definition of “public records” set out in NMSA 1978, Section 14-3-2(G), as such may be amended or recompiled from time to time, shall be retained as public records in accordance with state law and shall be subject to inspection to the extent provided in the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 1, as such may be amended or recompiled from time to time. The services provided by the Fiscal Agent under the Fiscal Services Agreement and the System Operator under the System Operator Agreement shall include compliance with the

Inspection of Public Records Act on behalf of the Authority with respect to public records of the Authority within the Fiscal Agent's or System Operator's custody.

B. For each Board meeting, the meeting agenda, minutes, and meeting material shall be posted on the Authority's website in compliance with the New Mexico Open Meetings Act and for a minimum of two years after the date of the meeting. Until such time as the Authority has a website, the County agrees to create and maintain an Authority webpage on its website, on which it shall post the Authority's meeting materials as provided in the previous sentence.

ARTICLE 14 -- COOPERATION, ACCESS, EASEMENTS, COUNTY INTERIM USE

A. The Parties agree to cooperate to assure consistent, reliable and continuous service and operation throughout the areas served by the Regional Water System. To assure such service and operation, the Parties hereby grant the Authority (including its employees, contractors, and agents) the right to enter upon the lands of the Parties within rights-of-way established for the Regional Water System and through reasonable access routes designated by the Pueblo or County for use by the Authority to access such rights-of-way, including lands held in trust by the United States, as may reasonably be necessary or appropriate to operate the Regional Water System, including for purposes of maintaining, repairing, or replacing infrastructure and equipment, operating heavy machinery and maintenance vehicles, reading meters, and commencing or terminating service, provided that prior to entry onto a Party's lands, notice as is reasonable and practicable under the circumstances shall be given to the representative of the Party designated in writing by that Party to the Authority and prior to

entry onto that Pueblo's lands in compliance with that Pueblo's access protocols.

B. The Parties agree to cooperate to encourage and facilitate customer connections to the Regional Water System. The Parties shall grant such rights-of-way and easements (collectively, "easements") as may reasonably be necessary for customers to connect to the Regional Water System, both as constructed by the U.S. Bureau of Reclamation and as the System may be extended in the future by the Authority or, with respect to the County Distribution System, the County. In consideration of the Parties' mutual obligations under this Agreement, the Cost-Sharing Agreement, and the Operating Agreement, and the mutual benefits to be derived from expanding the Regional Water System to increase the customer base, the Parties shall grant such easements for so long as needed for the Regional Water System, at no cost and the Pueblos each agree to consent to the grant of such easements by the Secretary of the Interior in compliance with the Act of June 7, 1924 (43 Stat. 636), the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. §§ 323-328) and 25 C.F.R. Part 169, provided that each Pueblo retains the right to determine the exact location on its land, such location to be a reasonable one, and reasonable mitigation requirements for easements determined to be necessary for the benefit and use of and by the Authority.

C. The Parties shall cooperate in facilitating interim uses by the Parties of any unused capacity in the Regional Water System upon written request and approval of the Party or Parties wishing to provide or take water for interim use. The Authority shall approve such interim uses by the Parties contingent solely on the requirement that such use shall be authorized and carried out in accordance with a permit issued by the New Mexico State

Engineer. Pursuant to Sections 612(c)(2)(C) and (D) of the Act, the Parties agree that the Operating Agreement will require such approval by the Authority.

D. To the extent that additional authorization is required to provide the right of entry to the Authority, grant the easements, or approve of interim uses required under Sections A, B and C of this Article, respectively, the Parties shall cooperate in obtaining such authorizations and shall execute such additional agreements or instruments as may reasonably be necessary or appropriate.

ARTICLE 15 - LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. By entering into this Agreement, no Party waives, relinquishes or limits its sovereign immunity, except as expressly provided in Article 19 of this Agreement. Nothing in this Agreement shall be construed as a waiver, express or implied, of the sovereign immunity of the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, or the Pueblo of Tesuque except as expressly provided in Article 19.

B. By entering into this Agreement, none of the Parties shall be responsible for liability incurred as a result of the Authority's or another Party's acts or omissions.

C. Any liability incurred by the Authority is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978, as amended.

D. This Agreement does not modify, in any way, the Parties' liabilities or sovereign immunity as to third parties, which is governed by federal and state law, including the New Mexico Tort Claims Act. No provision in this Agreement modifies or waives any

provision of the New Mexico Tort Claims Act.

E. All agreements entered into by the Parties to effectuate the Settlement Agreement, Cost-Sharing Agreement, and this Agreement shall contain dispute resolution provisions and limited waivers of sovereign immunity substantially the same as those contained in Article 19 of this Agreement.

ARTICLE 16 – DIRECTOR AND OFFICER LIABILITY; INDEMNITY

A. The officers and directors of the Board shall be immune from any liability to third-parties for their actions as directors or officers and the actions or omissions of the Authority or any director, officer or employee thereof, to the fullest extent permitted by federal and state law, including the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as amended, recompiled, or replaced.

B. To the extent required by NMSA 1978, Section 41-4-4, the Authority shall provide a defense to its public employees, as defined in NMSA 1978, Section 41-4-3(F), and shall pay any award, settlement, or final judgment against its public employees.

C. With respect to claims and other matters for which a defense and payment of awards, settlements, and final judgments are not required by NMSA 1978, Section 41-4-4, the Authority may indemnify its officers and directors for personal liability and for reasonable expenses, costs and attorney's fees incurred in connection with the defense of any action, suit or proceeding, civil or criminal, to which any of them might be made a party by reason of being or having been a director or officer acting in good faith, to the fullest extent permitted by applicable law.

D. The indemnification provided for in Section C of this Article 16 is not self-

executing and does not independently provide officers and directors with the right to indemnification. Indemnification shall only be provided and be available pursuant to policies and procedures adopted by the Board, which shall include notice requirements as well as the right of the Authority (or its insurance carriers) to control the defense and resolution of claims brought against officers and directors.

ARTICLE 17 – INSURANCE

A. The Authority shall obtain and carry public liability insurance coverage consistent with its responsibilities as a public entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* Public liability insurance shall provide occurrence-based coverage of a combined single limit of no less than \$1,000,000 insuring against loss from public liability, including coverage for contractual, crime and automobile liability and other appropriate coverage.

B. The Authority may purchase additional insurance for the directors and officers of the Board and the Authority against any suit which may be brought against them in connection with their duties under this Agreement.

C. The Authority shall carry and maintain fire and extended insurance coverage on all Authority buildings, structures and improvements, and on upon all of the contents and other personal property.

D. The Authority shall also carry and maintain workers' compensation insurance (or create and administer a program of self-insurance approved by the Director of the Workers' Compensation Administration) in accordance with the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, if applicable.

E. The Authority shall also provide a health insurance plan and other benefits as necessary or appropriate for the General Manager and any other employees of the Authority.

F. The expense of obtaining and maintaining the required insurance, along with the expense of all employee benefits, shall be included in the annual budget of the Authority.

G. The insurance provided for under this Article shall be maintained in full force and effect throughout the duration of this Agreement. Except for workers' compensation insurance, insurance coverage required under this Article shall be obtained from a reliable insurance company or companies. A copy of any insurance policy shall be provided to any Party at the Party's request.

H. The insurance coverage required by this Article may be secured by the Fiscal Agent if authorized by the Fiscal Services Agreement.

ARTICLE 18 – NO THIRD-PARTY BENEFICIARY

This Agreement does not create, and the Parties to this Agreement do not intend to create, in the public, any member thereof, or any person or other entity, any rights whatsoever, such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

ARTICLE 19 – ARBITRATION AND OTHER METHODS OF ALTERNATIVE

DISPUTE RESOLUTION

A. Subject to Paragraph O of this Article 19, the Parties agree to submit any and all disputes and controversies among the Parties arising under this Agreement to binding arbitration by a panel of three arbitrators in accordance with the provisions below, including,

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but not limited to, disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement. The panel of arbitrators shall be comprised of licensed New Mexico attorneys with at least fifteen years of experience practicing in New Mexico. The attorneys shall have no past or current relationship to any Party and shall not have represented any client against any Party.

B. After compliance with subsection O, any Party or combination of Parties may commence arbitration by making a written demand and serving it on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. The demand shall summarize the matter in controversy, describe the remedy sought, and include the name of at least one proposed neutral arbitrator.

C. Within 30 days after receiving a demand for arbitration, the other Parties shall mail by certified mail, return receipt requested, a written answer to the demanding Party, either individually or jointly with other Parties, stating their position on the matter in controversy and naming at least one neutral arbitrator. Any Party that fails to provide a timely written answer shall have conclusively waived its right to participate in the arbitration but shall nevertheless be bound by the final decision of the arbitrators.

D. Within 45 days after the demand for arbitration, the Parties shall confer and attempt to agree on three neutral arbitrators; provided, however, that if the Parties agree only on two arbitrators, those two arbitrators shall select the third arbitrator in accordance with the requirements of Section A of this Article. If within 60 days after arbitration is demanded the Parties have not agreed on at least two neutral arbitrators, any Party may make application via

motion or otherwise request the United States District Court for the District of New Mexico for appointment of a panel of three neutral arbitrators in accordance with NMSA 1978, Section 44-7A-12, 9 U.S.C. Section 5, and this Agreement.

E. The arbitration-related costs and expenses of each Party, including attorney's fees and witness fees, costs, or expenses, shall be borne by that Party and all arbitrators' fees and other expenses shall be borne equally by all the Parties who have determined to participate in the arbitration pursuant to Section (B) of this Article. Neither the arbitrators nor the courts shall have the authority to award reasonable attorney's fees and other reasonable costs or expenses of arbitration or litigation. Nor shall the arbitrators or courts have the authority to award punitive damages or other exemplary relief and any monetary relief awarded against a Party other than the Authority shall be limited to any contribution owed by any Party for its required contribution under Article 11 of this Agreement.

F. The arbitration hearing shall be held at such time and place within the County as designated by the arbitrators on at least 20 days' written notice to the Parties.

G. The award rendered by a majority of the arbitrators appointed pursuant to this Agreement, including an award that quantifies and requires a Party to pay its proportionate contribution under Article 11 of this Agreement pursuant to an approved budget of the Board and lawful appropriations made by the Party, shall be final and binding on all Parties to the proceeding, and the Parties agree to be bound by such award. The Parties shall comply with such award within thirty (30) days of the date thereof or such other time as the majority of arbitrators may specify.

H. The Parties waive their sovereign immunity only as to suits brought in the

United States District Court for the District of New Mexico and only for the limited purposes of: (1) compelling arbitration pursuant to this Agreement; (2) having a panel of three neutral arbitrators appointed pursuant to Section D of this Article; and (3) obtaining judicial declaratory and/or injunctive relief to enforce, confirm, vacate, or modify an award of the arbitrators; provided, however, that if the United State District Court for the District of New Mexico determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason, the Parties waive their sovereign immunity so as to allow these same suits to be brought in the First Judicial District Court of New Mexico, Santa Fe County; provided, further, that any reference in this Article 19 to the United States District Court for the District of New Mexico shall be deemed to include the First Judicial District Court of New Mexico, Santa Fe County, in the event the federal court determines that it lacks subject matter jurisdiction or declines to exercise its jurisdiction for any reason. Unless a civil action involving the agreement to arbitrate is already pending, the initial motion to the court for one or more of the purposes specified in this Article shall be served on the other Parties by certified mail, return receipt requested, on the individuals and at the addresses set forth in or established pursuant to Article 23. Attached hereto as Exhibits B through F are Resolutions of the respective governing bodies of the Parties (other than the Authority) approving this Agreement, including the limited waiver of sovereign immunity provided herein.

I. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the Parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

J. Except as provided in Section H of this Article, the Parties expressly waive their right to file suit in federal, state, and tribal court to resolve any dispute or controversy that is subject to arbitration under this Agreement. The Parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any dispute or controversy arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

K. The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

L. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

M. Failure of a Party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by another Party, or the failure of any Party to comply with the arbitration award, shall amount to a material breach of this Agreement.

N. This Agreement shall be subject to the Federal Arbitration Act, 9 U.S.C. Sections 1-16 and the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Sections 44-7A-1 through 44-7A-22. In the event of a conflict between the two acts, the New Mexico Uniform Arbitration Act shall apply unless the conflict relates to a provision of the New Mexico Uniform Arbitration Act that may be waived or varied by the parties; provided, however, that no Party waives its sovereign immunity from suit in state court except as provided in

paragraph H of this Article.

O. Nothing in this Article shall preclude the Parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. As a condition precedent to proceeding to arbitration as set forth above, the parties agree to proceed as follows:

1. The Party or Parties asserting a claim arising under this Agreement shall first serve written notice on the other Parties;

2. The notice shall identify the specific Agreement provision alleged to have been violated or in dispute and shall specify in detail the asserting Party's contention and any factual basis for the claim; and

3. Representatives of the Parties shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party or Parties asserting a claim within ninety (90) days of the original notice, such Party(ies) may initiate arbitration as provided by this Article 11. The Parties may agree to use a mediator as part of these informal dispute resolution procedures.

P. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of any Party except as expressly provided in Section H of this Article.

ARTICLE 20 - AMENDMENTS

This Agreement may only be amended by a mutual written agreement of all the Parties. No amendment shall be effective until approved by the New Mexico Secretary of Finance and Administration.

ARTICLE 21 - SEVERABILITY

The provisions of this Agreement shall be interpreted and construed so as to be consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void, voidable, or otherwise unenforceable by a Court of competent jurisdiction, then the remainder of this Agreement shall continue in full force and effect and this Agreement shall thereafter be construed as if such unlawful, voided, or unenforceable provision(s) had never been a part hereof; provided, however, that this Agreement shall terminate if the Agreement, as severed, would violate the requirements of the Act, the Settlement Agreement, or the Cost-Sharing Agreement.

ARTICLE 22 – EFFECTIVE DATE; EFFECT OF AGREEMENT

This Agreement shall be in full force and effect upon execution of this Agreement by all of the Parties and approval by the New Mexico Secretary of Finance and Administration. This Agreement may be executed in counterparts, which shall be effective as if all signatures were affixed to one original document. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. In construing or interpreting any ambiguity in this Agreement, no presumption shall be made in favor of, or against, any Party or Parties.

ARTICLE 23 – NOTICES

A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

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To The County: Santa Fe County Utilities Director
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504
Phone: 505.992.9870
Fax: 505.992.3028

With A Copy To: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6200
Fax: 505.986.6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Phone: 505.986.6279
Fax: 505.986.6362

To Pueblo of Nambe : Pueblo Governor
15A NP 102 West
Santa Fe, New Mexico 87506
Phone: 505.455.2036
Fax: 505.455.2038

With A Copy To: McElroy, Meyer, Walker & Condon, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Phone: 303.442.2021
Fax: 303.444.3490

To Pueblo of Pojoaque: Pueblo Governor
78 Cities of Gold Road
Santa Fe, New Mexico 87506
Phone: 505.819.2276
Fax: 505.819.2299

With A Copy To: Chief General Counsel
Pueblo of Pojoaque
Legal Department
58 Cities of Gold Rd., Suite 5

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Santa Fe, New Mexico 87506
Phone: 505.819.2254
Fax:

**To Pueblo de San
Ildefonso:**

Office of Governor
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: (505) 455-2273
Fax: (505) 455-7351

With A Copy To:

Realty Department
02 Tunyo Po
Santa Fe, New Mexico 87506
Phone: 505.455.4138
Fax: 505.455.4163

Chestnut Law Offices, P.A.
121 Tijeras Ave. NE, Suite 2001
Albuquerque, New Mexico 87102
Phone: 505.842.5864
Fax: 505.843.9249

To Pueblo of Tesuque

Pueblo Governor
Route 42, Box 360T
Santa Fe, New Mexico 87506
Phone: 505.955.7732
Fax: 505.955.2331

With A Copy To:

Phone:

Fax:

To the Authority:

To the person(s) and at the address(es) or fax
number(s) established pursuant to subparagraph D of
this Article.

B. Notice shall be deemed to have been given based upon the method of delivery,
as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of

delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

C. A Party may change the persons to whom or addresses or fax numbers at which notice shall be given by giving all other Parties and the Authority notice of the change in accordance with this Article.

D. The Authority shall establish, and may change, the persons to whom and addresses or fax numbers at which notice shall be given to it by giving all Parties notice in accordance with this Article.

ARTICLE 24 - TERMINATION

A. The Parties may terminate this Agreement only upon satisfaction of all of the following conditions:

1. written approval by the governing body of each Party; and
2. approval by an Act of Congress or if one or more of the conditions precedent set forth in Section 623 of the Act have not been fulfilled by the applicable deadline set forth therein.

B. If this Agreement is terminated as provided for herein and in accordance with the Operating Agreement, the powers granted under this Agreement shall continue to the extent necessary to wind down the affairs of the Authority, make an effective disposition of property, provide a full accounting, and distribute surplus funds in proportion to the contributions made.

C. Upon termination of this Agreement pursuant to an Act of Congress, the

property of the Authority shall be transferred in accordance with the Act of Congress approving the termination.

ARTICLE 25 – ASSIGNMENT PROHIBITED

No Party shall assign this Agreement or any right or obligation under this Agreement, and any attempted assignment is null and void.

ARTICLE 26 – NON-APPROPRIATION CLAUSE

A. So as to comply with NMSA 1978, Section 6-6-11 (1968) and N.M. Const., art. IX, Section 10, the County's obligations arising under this Agreement in future fiscal years are contingent upon sufficient appropriations and authorizations being made by the Board of County Commissioners of the County. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. The County's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and binding on the other Parties. This subparagraph A shall not apply to money available to the County as a result of payment received from the United States pursuant to the Act; provided, however, that nothing herein obligates the County to appropriate or expend such money for the initial planning, design, and construction of the Regional Water System.

B. Each Pueblo's obligations arising under this Agreement in future fiscal years are contingent upon sufficient appropriations and authorizations being made by its Tribal Council. Each Pueblo is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure. Each Pueblo's decision as to whether sufficient appropriations and authorizations have been made shall be conclusive and

binding on the other Parties. This subparagraph B shall not apply to money available to meet a Pueblo's obligations in the Aamodt Settlement Pueblos' Fund or to money withdrawn from that fund by or otherwise made available to a Pueblo pursuant to Section 615 of the Act.

ARTICLE 27 – COMPLIANCE WITH APPLICABLE LAWS

The Authority shall exercise its powers and conduct its operations in accordance with all laws applicable to the Authority, the Fiscal Agent, and the System Operator.

Signatures below show approval of the terms of this Joint Powers Agreement by each government.

PUEBLO OF POJOAQUE

PUEBLO DE SAN ILDEFONSO

Joseph Talachy, Governor

James R. Mountain, Governor

PUEBLO OF NAMBE

PUEBLO OF TESUQUE

Phillip A. Perez, Governor

Fredrick Vigil, Governor

SANTA FE COUNTY

(name) _____
(title) _____

ARTICLE 14 APPROVED BY THE SECRETARY OF THE INTERIOR

(Signature) _____ Date _____

(Print Name)

**APPROVED BY THE NEW MEXICO
SECRETARY OF FINANCE AND ADMINISTRATION**

(Signature)

Date

(Print Name)

(Print Title)

Appendix

An Act

This Act may be cited as "The Claims Resettlement Act of 2010."

**TITLE VI—AAMODT LITIGATION
SETTLEMENT**

**Subtitle A—Pojoaque Basin Regional
Water System**

SEC. 612. OPERATING AGREEMENT.

(a) **IN GENERAL.**—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 611(b).

(b) **APPROVAL.**—The Secretary shall approve or disapprove the Operating Agreement within a reasonable period of time after the Pueblos and the County submit the Operating Agreement described in subsection (a) and upon making a determination that the Operating Agreement is consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) **CONTENTS.**—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) terms of interim use of County unused capacity, in accordance with section 614(d);

(E) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(F) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(G) the operation of wellfields located on Pueblo land;

(H) the transfer of any water rights necessary to provide the Pueblo water supply described in section 613(a);

(I) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos and to the County's distribution system shall be reduced on a pro rata basis, in proportion to each distribution system's most current annual use; and

(J) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 611(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

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(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

