ITEM # 08-0382

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement is entered by and between the Governing Body of the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the City"), the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as "the County"), the Extraterritorial Zoning Authority and the Extraterritorial Zoning Commission, extraterritorial planning and zoning bodies created through a Joint Powers Agreements by and between the City and County (entities created by the 1991 Joint Powers Agreement of the City and County and hereinafter referred to as "the EZA" and "the EZC"), and the owners of land within Area 10, as defined herein, whose signatures are included at the end of this Agreement (hereinafter collectively referred to as "Las Soleras"), all collectively referred to herein as "the parties."

WHEREAS, a dispute has arisen among the parties hereto over the proposed annexation of the proposed development known as "Las Soleras" and the dispute resulted in the filing of six lawsuits in the federal and State courts in New Mexico;

WHEREAS, the dispute concerning the annexation of Las Soleras led to differences of opinion between the City and the County over the issue of annexation in general;

WHEREAS, part of the mandate of the Regional Planning Authority, a joint City and County Board devoted to regional planning and established by the Fifth Amended

and Restated Joint Powers Agreement for the Regional Planning Authority (hereinafter referred to as "the RPA"), is to address the annexation issue, but the controversy over Las Soleras' application to the EZC and EZA arose before the RPA could complete its work;

WHEREAS, the dispute outlined above and the lawsuits have significantly burdened the parties, affected City/County relations, impaired the reasonable development of the City, and has burdened the County with an area that is largely urban;

WHEREAS, the parties desire to resolve all the disputes and lawsuits in a comprehensive settlement that: (i) permits annexation of Las Soleras (portions of area 10, identified on Attachment A hereto), (ii) permits annexation of Areas 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, the unannexed portion of Area 13, Areas 15, 16, 17 and 18, identified on Attachment A, in a way that does not unreasonably impact the City, the County, or the citizens residing in those areas, (iii) resolves annexation issue for a period of no less than twenty years and enables the City and County to effectively plan in their respective jurisdictions; (iv) addresses the need to establish sensible water and wastewater utility service areas for the City and County and remedies existing inconsistencies in the service areas in a reasonable way; and (v) focuses City/County interactions on positive intergovernmental projects rather than lawsuits and controversy; and

WHEREAS, the parties hereto therefore desire to enter into a binding agreement to settle the remaining lawsuits and all issues related thereto.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **STIPULATED DISMISSAL OF ALL PENDING LITIGATION.** Upon final execution of this Agreement by all of the parties hereto, the parties shall file a stipulation of dismissal of each of the following cases:

a. *Las Soleras Oeste Ltd. Co., Geronimo Partnership, the Crossing LLC, Crowne Santa Fe LLC, Randall Schmille, Tierra de la Amigos LLC, and Burttram Family Investments LLC v. City of Santa Fe*, First Judicial District Court Cause No. D-0101-CV-2006-02397; and

b. *City of Santa Fe v. Santa Fe Extraterritorial Zoning Authority, Santa Fe Extraterritorial Zoning Commission and Las Soleras Ltd., J. Harmon Burttram and Anne Janssen, Faye E. Gardner, and Building Services Co., as owners of the proposed Development Known as the Las Soleras Development*, First Judicial District Court Cause No. D-0101-CV-2006-01555.

2. ANNEXATION OF AREAS 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, THE UNANNEXED PORTION OF AREA 13, AREAS 15, 16, 17 AND 18.

a. The City shall annex Areas 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, the unannexed portion of Area 13, Areas 15, 16, 17 and 18, all as shown on Attachment A.[1]

b. The annexations referred to in the previous paragraph shall be accomplished within the five year period commencing on the effective date of this Agreement. Annexations shall be accomplished through any of the means described in NMSA 1978, §§ 3-7-1 through 3-7-18 (1965)(as amended), but the petition method set forth in NMSA 1978, § 3-7-17.1 (2003) shall be preferred. In the event the Municipal Boundary Commission method set forth in NMSA 1978, §§ 3-7-11 through 3-7-16 (1965)(as amended) is used, or the petition method is used but all owners fail to sign the petition thus requiring action of the Extraterritorial Land Use Authority as set forth in

[1] The remaining portion of Area 10 will be annexed, but is addressed specially in Section 3 of this Agreement.

NMSA 1978, § 3-7-17.1(C) (2003), then the County shall fully cooperate with the City in the prosecution of the applications.

c. Area 1 and Area 12 shall be annexed but the rural residential zoning prevalent in the area shall be respected by the City following annexation and urban densities shall not be established within Area 1 or Area 12 during the term of this Agreement. Appropriate zoning shall be developed by the City for these areas prior to annexation.

d. Residents of Area 1 shall be permitted to submit a petition or petitions with the Board of County Commissioners to include portions of Area 1 in the Agua Fria Traditional Historic Community prior to annexation.

e. Area 7 shall be annexed concurrently or following annexation of Areas 2, 3, 4, and 5.

f. The City may annex Areas 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, the unannexed portion of Area 13, 15, 16, 17 and 18,) immediately or, alternatively, may annex the areas sequentially over a period not to exceed five years. Specific target dates for filing of the appropriate petition with the Municipal Boundary Commission or the appropriate petition pursuant to the petition method shall be established by a separate written City-County Agreement. The City and the County immediately shall undertake a joint comprehensive survey of existing conditions within Areas 2, 4 and 5 to identify relevant public infrastructure in those areas that will be subject to the terms of this Agreement and to identify relevant public nuisances. The information gathered may be used to establish specific target dates for annexation and to plan annexation within those areas. Once agreed upon, the target dates may only be changed by subsequent written amendment.

g. Territory to be annexed pursuant to this Agreement shall be referred to herein as "Areas to be Annexed" and current city boundaries augmented by these Areas to be Annexed shall be referred to as within the "Presumptive City Limits." No areas outside the Presumptive City Limits shall be annexed for twenty years unless the City and the County specifically agree by separate written agreement. Area 14, the Rodeo Grounds and County Fair Grounds, shall remain unannexed.

h. The County approves the annexation of Areas 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, the unannexed portion of Area 13, Areas 15, 16, 17 and 18, and shall provide to the City such approvals in writing and in appropriate forums after due notice and opportunity to comment on annexations initiated by the petition method pursuant to NMSA 1978, § 3-7-17.1 (2003).

i. The Beatty annexation (a portion of area No. 10 described on Attachment C to this Agreement) shall be recorded immediately without objection by the County.

j. County roads lying within parcels to be annexed shall be annexed contemporaneously with the adjoining parcels, and any County road that serves as a boundary for annexed property shall be annexed contemporaneously to the right of way boundary opposite the parcel being annexed. Upon annexation of any road owned by the County as provided for in this paragraph, the City shall assume ownership and maintenance responsibilities, and the County thereafter shall have no responsibility for the road.

k. The County shall maintain existing county roads within the Areas to be Annexed to customary county maintenance standards until annexation by the City. This

Agreement shall not be construed to require the County to provide significant capital improvements to an existing road or construct a new road within the Areas to be Annexed in the absence of a separate written agreement by and between the City and County that provides a means for financing the capital improvements. No construction or other capital improvements to roads within the Presumptive City Limits shall be undertaken by the County after execution of this Agreement without first having obtained written approval from the City. Nothing in this Agreement shall absolve any person or entity from an obligation to complete roads as specified in any approved development plan the Areas to be Annexed.

l. The City shall not construct or maintain roads within the Areas to be Annexed except as provided in a separate written agreement of the City and the County.

m. The City shall provide water and wastewater service within the Presumptive City Limits and shall not provide water and wastewater service outside the Presumptive City Limits unless required by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission, unless otherwise agreed upon between the City and the County in a separate written agreement.

n. The water and wastewater utility service areas of the City and County shall coincide with the Presumptive City Limits; the City water and wastewater utility service area shall be within the Presumptive City Limits and the County utility service area shall be outside the Presumptive City Limits.

o. City water and wastewater customers outside the Presumptive City Limits will be transferred to the County when the County is able to provide service unless prohibited by a current contract with a customer, decrees of a court, or applicable rulings

of the Public Regulation Commission. Accordingly, upon consent or assignment, water and wastewater customers not in the City and outside of the Presumptive City Limits, such as those in the Aldea development, IAIA, and the Santa Fe Community College shall become County customers when the County is able to provide water and wastewater service. County water customers within the Presumptive City Limits shall be transferred to the City when the City is able to provide service unless prohibited by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission. Accordingly, upon consent or assignment, water customers within Area 7 shall become City customers when the City is able to provide service. The City and County Managers shall meet and confer and develop a plan to accomplish these transfers, and the plan shall be documented in a subsequent written amendment to this Agreement. The Plan shall include provisions for reimbursement of the City and County for the actual value of the infrastructure transferred as established by an appraisal prepared by an appraiser chosen by mutual agreement of the parties. If either party assumes a water delivery obligation for which the customer transferred water rights to the City or County, the City or County shall transfer those water rights, along with the customers, to the other party.

p. The County agrees to adopt an ordinance pursuant to NMSA 1978, § 7-2-14.3 (2003) to provide a partial property tax rebate for low-income taxpayers who have their principal place of residence in the County and, if deemed necessary by the Board of County Commissioners, to adopt a resolution to submit to the qualified electors of the County pursuant to NMSA 1978, §§ 7-2-14.4 (2001) and 7-2-14.5 (1994), the question whether to impose a property tax increase to fund the property tax rebate.

q. In addition to roads and water and wastewater service, discussed previously, the City shall provide municipal services within areas annexed pursuant to this Agreement, including but not limited to solid waste disposal, law enforcement and fire protection.

r. The County shall provide law enforcement and fire protection services to all areas outside of the Presumptive City Limits and to all Areas to be Annexed until annexation. In the area to be annexed that is most densely populated (between Airport Road and Agua Fria Road) and most in need of augmented law enforcement services, the County shall maintain its current level of law enforcement services until annexation and thereafter, by separate Joint Powers Agreement, for a period up to three years following annexation. The City shall immediately upon annexation match that level of law enforcement service provided by the County and over the three year period replace the County law enforcement services.

s. Nothing herein shall preclude interagency coordination of fire protection and law enforcement as set forth in other agreements or through informal means and the County shall continue to provide fire protection and law enforcement services at levels required by such agreements currently in force.

t. The City shall provide to the County, through electronic means if feasible, information concerning the boundaries of each annexation as soon as possible after the annexation is complete so that the City and County will each have the correct City limits on their respective books and records.

u. No further annexation except those specifically set forth in this Agreement will be permitted for twenty years from the effective date of this Agreement unless agreed to in writing specifically by the City and County.

v. Supplemental joint service agreements may be negotiated from time to time between the City and County whereby City services may be provided in advance of annexation, on terms agreeable to the parties.

w. The parties shall sign and record all documents necessary to accomplish the foregoing.

3. ANNEXATION, AREA 10.

a. Las Soleras (a portion of Area No. 10, Attachment A) shall be annexed via a landowner-initiated "Petition Method" application as set forth in NMSA 1978, §3-7-17 A (2) The application shall be submitted to the City of Santa Fe Governing Body immediately upon execution of this Agreement and shall consist of an (1) Annexation Petition, (2) General Plan Amendment and (3) Rezoning, all consistent with the map attached as Attachment B, which map includes the approvals granted by the Extraterritorial Zoning Authority in Case # Z/V 04-4592 (the "Presbyterian Project"). It is expressly understood and agreed that this Agreement does not constitute an approval of any portion of the Application or the map attached hereto as Attachment B.

b. Richards Avenue between Governor Miles and Interstate 25, together with its right of way, shall be annexed contemporaneously with Area 10 as described in paragraph 3(a). The County will consent in writing to the annexation, including the annexation of Richards Avenue. Upon annexation, the County shall provide a quitclaim deed to the City for Richards Avenue between Governor Miles and Interstate 25. The

City shall, upon annexation of Richards Avenue, assume ownership and maintenance and the County shall have no responsibility therefore.

c. The portion of Beckner Road owned by the County shall be annexed along with the annexation of Area 10 as described in paragraph 3(a). The County will consent in writing to the annexation of Beckner Road. Upon annexation, the County shall provide a quitclaim deed for the portion of Beckner Road that it owns. The City shall, upon annexation of Beckner Road, assume ownership and maintenance and the County shall have no responsibility therefore.

d. Any changes to the zoning of Area 10 after the Governing Body's approval of the Annexation Petition, General Plan Amendment, and Rezoning, as described in 3(a) above, shall require rezoning pursuant to City ordinances. Immediately following the Governing Body's approval of the Annexation Petition, General Plan Amendment and Rezoning described in 3(a) above, all additional approvals necessary for development of Area 10 including, but not limited to, preliminary and final development approval, shall be within the City of Santa Fe's jurisdiction.

e. The success of Area 10 is critical to the success of the annexation strategy set forth herein. Accordingly, the City shall in accordance with its applicable ordinances, regulations and rules, issue building permits and other necessary approvals when request by Las Soleras without unreasonable delay.

f. The parties shall sign and record all documents necessary to accomplish the foregoing, including documents, plans, plats and ordinances required.

g. As of the effective date of this Agreement, Las Soleras is within the water service area of the County. The parties acknowledge that Las Soleras has submitted

a Water Dedication and Acknowledgment form to the County in accordance with adopted County water policy in the amount of 36 acre-feet of valid pre-1907 consumptive use water rights (the "Water Rights") and is beginning the process of transferring the Water Rights to the County to provide for delivery of that amount of water to serve the proposed Presbyterian Project.

The Parties agree that after annexation to the City, the Water Rights shall be transferred by the County to the City and the entitlements to water service from the County will be accepted by the City after they have assumed ownership of the Water Rights. The City shall provide water service to the proposed Presbyterian Project or successor project in the amount of Water Rights transferred to it by the County and in accordance with its water transfer ordinance in effect at that time; provided however, that Las Soleras agrees that after the Water Rights are transferred the City, if the City requests that the transferred Water Rights be transferred to the Buckman well field, Las Soleras agrees to ensure that the point of diversion for use of the transferred Water Rights shall be the Buckman well field.

h. As of the effective date of this Agreement, Las Soleras is within the sewer service area of the County. The parties acknowledge and agree that upon application for annexation of Las Soleras in accordance with subsection a, above, the City shall issue a "can and will serve" letter to Las Soleras for sewer service in accordance with its rules and regulations.

4. THE EXTRATERRITORIAL ZONING AUTHORITY AND EXTRATERRITORIAL ZONING COMMISSION.

a. The City and County will execute a Joint Powers Agreement for the two mile extraterritorial zone and the five mile planning and platting jurisdiction to abolish the EZA and the EZC in their present form and to establish by ordinances an Extraterritorial Land Use Authority and Extraterritorial Land Use Commission pursuant to NMSA 1978 §3-21-3.2 (2003) exclusively for the following three purposes: (1) to delegate all authority possessed by the City over areas *outside* the Presumptive City limits to the County, including specifically the City's concurrent planning and platting and subdivision approval authority pursuant to NMSA 1978, § 3-20-5 (1965) and the City's concurrent zoning authority pursuant to NMSA 1978, § 3-21-2 (2003) which areas shall be zoned and platted by the County pursuant to its Land Development Code, including specifically the County's concurrent planning and platting authority pursuant to NMSA 1978, § 3-20-5 (1965) and the County's concurrent zoning authority pursuant to NMSA 1978, § 3-21-2 (2003); (2) to delegate planning, platting, subdivision approval and zoning jurisdiction over areas *inside* the Presumptive City Limits to the City, as set forth in this Agreement, which areas shall be zoned and platted based on the RPA Land Use Plan and other appropriate planning tools such as the Southwest Area Master Plan or subsequently-developed plans; upon annexation, property within the areas to be annexed shall receive, as preliminary zoning, the zoning in place prior to annexation; and (3) to address annexation petitions filed with the City pursuant to this Agreement and NMSA 1978, § 3-7-17.1 (2003).

5. RELEASE OF CLAIMS. In consideration of full performance of the terms recited herein, the parties hereby release and forever discharge each other, and their Elected Officials, officers, directors, employees, agents, adjusters, assigns, insurers,

underwriters and attorneys from any and all past, present, or future claims that can, may or should arise from any of the various lawsuits detailed above, or for any other injuries, losses or damages arising out of the lawsuits or disputes outlined above. In consideration of full performance of the terms recited herein, the parties hereby release and forever discharge each other, and their Elected Officials, members, officers, directors, employees, agents, adjusters, assigns, insurers, underwriters and attorneys, from any and all past, present or future claims for violations of ordinances, laws, statutes or property damage, economic loss, or any other claims, injuries, losses or damages which the parties have or claims to have arisen out of the lawsuits or disputes.

6. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties have participated substantially in the negotiation and drafting of this Agreement and each Party hereby disclaims any defense or assertion in any litigation that any ambiguity herein should be construed against the draftsman.

7. ENTIRE AGREEMENT. This Agreement, including the Attachments hereto, and the documents delivered pursuant hereto, and excepting the subsequent amendments and agreements specifically mentioned herein that are required to effectuate the terms of this Agreement, constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, discussions, negotiations, representations, and understandings of the parties pertaining to the subject matter contained herein. No changes of, modifications of, or additions to this Agreement shall be valid unless the same shall be in writing and signed by all parties hereto.

8. **SEVERABILITY.** If any provision of this Agreement shall be determined to be contrary to law and unenforceable by any court, the remaining provisions shall be severable and enforceable in accordance with their terms. Failure of any party to insist upon strict conformance to the provisions of this Agreement shall not constitute a waiver of any of the provisions hereof.

9. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which counterparts collectively shall constitute one instrument representing the Agreement between the parties hereto.

10. **ATTORNEYS FEES.** The parties agree that should this matter be settled under the terms herein, each party will bear its own costs and attorneys fees, except that the City shall reimburse the County for one-half of the attorneys' fees the County expended defending the EZA and EZC, and their members, of the matters referred to in paragraph 1 of this Agreement.

11. **REQUIRED APPROVALS.** The parties acknowledge that this Settlement Agreement must be adopted by the Governing Body of the City of Santa Fe and the Board of County Commissioners of Santa Fe County to be of legal force and effect.

12. **ADMISSIONS.** Nothing in this Settlement Agreement shall constitute or be construed as an admission on behalf of any party as to the validity of any claims, defenses or allegations asserted in the litigation.

13. **LEGAL COUNSEL.** The parties represent and warrant that each has been represented by separate legal counsel of its own choosing throughout the negotiations; that each party has carefully and thoroughly reviewed this Settlement Agreement with its

counsel; that its counsel has approved it as to form; and that each party understands the terms herein. Each of the parties acknowledges that in executing this Settlement Agreement, it relies solely on its own judgment, belief and knowledge and on such advice as it has received from its own counsel.

14. AMENDMENTS. This Settlement Agreement can only be amended or modified by a written agreement duly executed by all of the parties.

15. EFFECTIVE DATE. This Settlement Agreement shall become effective as of the date of the last signature below.

16. TERM. The term of this agreement shall be twenty years.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of last signature below.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: _____ 5/14/08
Jack Sullivan, Chair — Date

ATTEST:

_____ 5-15-08
Valerie Espinoza, County Clerk — Date

Approved as to form:

_____ 5-5-08
Stephen C. Ross, County Attorney — Date

THE GOVERNING BODY OF THE CITY OF SANTA FE

By: _____ 5/19/08
David Coss, Mayor — Date

ATTEST:

_____ 5/19/08
Yolanda Y. Vigil, City Clerk — Date

Approved as to form:

_____ 5/19/08
Frank D. Katz, City Attorney — Date

LAS SOLERAS DEL SUR, LLC
a New Mexico Limited Liability Company

By: _____
Gordon L. Skarsgard, Managing Operations Member BY JOSH SKARSGARD, ATTY. IN FACT

By: _____
John J. Mahoney, Managing Operations Member

By: _____
J. Harmon Burttram, Managing Oversight Member

GERONIMO EQUITIES, LLC
a New Mexico Limited Liability Company

By: _____
Fred Gardner, Managing Member

STATE OF NEW MEXICO)
) **ss.**
COUNTY OF Bernalillo)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 2nd day of May, 2008 by John J. Mahoney, Vice President of Beckner Road Equities, Inc., and Attested to by Joshua J. Skarsgard, Secretary of Beckner Road Equities, Inc.

OFFICIAL SEAL
Sandra D Levy
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 10-19-2011

Notary Public

My Commission Expires: 10-19-2011

STATE OF NEW MEXICO)
) ss.
COUNTY OF Bernalillo)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 2nd day of May, 2008 by Gordon L. Skarsgard, Managing Member and John J. Mahoney, Managing Member of Las Soleras Community Design, LLC, a New Mexico limited liability company.

OFFICIAL SEAL
Sandra D Levy
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

My Commission Expires: 10-19-2011

STATE OF NEW MEXICO)
) ss.
COUNTY OF Bernalillo)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 2nd day of May, 2008 by John J. Mahoney, Managing Operations member, and Gordon L. Skarsgard, Managing Operations Member, and Randall W. Eakin, Managing Oversight Member of Las Soleras Oeste, Ltd. Co., a New Mexico limited liability company.

OFFICIAL SEAL
Sandra D Levy
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

STATE OF NEW MEXICO)
) ss.
COUNTY OF Bernalillo)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on the 2nd day of May, 2008 by Gordon L. Skarsgard, Managing Operations Member, John J. Mahoney, Managing Operations Member of Las Soleras Del Sur, LLC, a New Mexico Limited Liability Company.

OFFICIAL SEAL
Sandra D Levy
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

My Commission Expires: 10-19-2011

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

ANNEXATION PHASING AGREEMENT

EXTRATERRITORIAL AND USE JOINT POWERS AGREEMENT

PROGRESS MATRIX

ACTION	PROGRESS	CITATION
Pending litigation dismissed	Action completed	1.a, 1.b
Annexation of areas designated on maps	Phase I complete	2.a
Preference for annexation through petition method	Action completed. City/County Extraterritorial JPA	2.b
Rural residential zoning preferred for Areas 1 and 12	Accomplished -- ELUA - Ordinance No. 2009-01	2.c
Finalization of Agua Fria Traditional Historic Community boundary	Accomplished	2.d
Annexation of Area 7 concurrently with Areas 2, 3, 4 and 5	Accomplished -- Annexation Phasing Agreement	2.e
Annexation Phasing -- three phases over "five years"	Annexation Phasing Agreement	2.f
Annexation Phasing Agreement -- Phase I filed no later than 12-31-08	Action completed	
Las Soleras Annexation filed immediately	Action completed	
Beatty annexation	Action completed	2.i

City water and wastewater customers outside Presumptive City Limits transferred to the County when the County is able to provide service	Not completed. Pending agreement.	2.o
Water and wastewater customers shall become County customers when the County is able to provide service	Not completed. Pending agreement.	2.o
Water and wastewater customers shall become City customers when the City is able to provide service	Not completed. Pending agreement.	2.o
City and County managers to confer and develop a plan to accomplish transfers, document in a separate written agreement	In process. City and County managers leading discussions. Agreement in draft form.	2.o
Low income property tax	Accomplished -- Ordinance No. 2009-02	2.p
City provides municipal services (solid waste disposal, law enforcement and fire protection) in areas that are annexed	Phase I - completed.	2.q
County provides law enforcement and fire service until annexation	Phase I -- completed	2.r
County provides law enforcement on Airport Road and Agua Fria Road until annexation and then at a level specified in a written agreement	Not completed - areas not annexed. Three year phase out	2.r

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2009-2

AN ORDINANCE CREATING THE LOW INCOME TAX REBATE; ESTABLISHING THE TAX YEARS TO WHICH THE REBATE APPLIES; PROVIDING FOR REPEAL FOLLOWING THE PUBLIC HEARING PROVIDED FOR IN NMSA 1978, SECTION 7-2-14.3 (2003)

BE IT ORDAINED BY THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:

Section One. Creating the Low Income Tax Rebate. The low income tax rebate provided by NMSA 1978, Section 7-2-14.3 (2003) shall be and hereby is adopted in Santa Fe County for the 2009.

Section Two. Tax Years to Which Rebate is Applicable. The Low Income Tax Rebate created in Section 1 of this Ordinance shall apply to the 2009 tax year and to subsequent tax years until repealed as set forth in Section Three of this Ordinance.

Section Three. Repeal. Repeal of the Low Income Tax Rebate may be accomplished by ordinance, following the biannual public hearing described in NMSA 1978, Section 7-2-14.3.

PASSED, APPROVED AND ENACTED this 14th day of April, 2009, by the Board of County Commissioners of Santa Fe County.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: Michael Anaya
Mike Anaya, Chair

ATTEST:

Valerie Espinoza
Valerie Espinoza, Santa Fe County Clerk

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

Approved As To Form:

Stephen C. Ross, County Attorney

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDINANCE
PAGES: 1

I Hereby Certify That This Instrument Was Filed for Record On The 16TH Day Of April, 2009 at 09:22:26 AM And Was Duly Recorded as Instrument # 1559323 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

ITEM # 08-1112

ANNEXATION PHASING AGREEMENT BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY

This Agreement is entered by and between the Governing Body of the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico (hereinafter referred to as "the City"), the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as "the County").

WHEREAS, the City and County entered into a Settlement Agreement and Mutual Release of Claims dated May 19, 2008 (the "Agreement");

WHEREAS, the Agreement provided for the annexation over the succeeding five years of 17 areas of land currently within the County the phasing of which would be set by further agreement;

WHEREAS, the Agreement provides for Area 10 to be annexed by landowner-initiated petition and such petition has been file with the City;

WHEREAS, the Agreement calls for the replacement of the Extraterritorial Zoning Commission (EZC) and Extraterritorial Zoning Authority (EZA) with the Extraterritorial Land Use Commission (ELUC) and the Extraterritorial Land Use Authority (ELUA);

WHEREAS, the City and the County, by Ordinance, have established the ELUC and ELUA and have by Joint Powers Agreement abolished the EZA and EZC and specified the authorities and powers of the ELUC and ELUA; and

WHEREAS, the parties hereto now desire to specify target dates for the filing of appropriate petitions for annexations anticipated in the Agreement.

NOW, THEREFORE, THE CITY AND THE COUNTY AGREE AS FOLLOWS:

1. **LAS SOLERAS ANNEXATION.** The City will continue to process the annexation petition filed by the Las Soleras owners for a portion of Area 10.

2. **PHASE ONE OF ANNEXATION.** The City will file a petition for annexation of Areas 3, 6, 8, 9, the remaining portion of 10, 11, 13, 15, 16, 17 and the I-25 right-of-way from NM 599 to Old Pecos Trail and that portion of NM 14 (Cerrillos Road) from I-25 to the current city limit by the end of 2008.

3. **PHASE TWO OF ANNEXATION.** The City will file a petition for annexation of Areas 2, 4, 5, 7 and the NM 599 right-of-way from I-25 to the city limits east of Camino La Tierra by the end of 2011.

4. **PHASE THREE OF ANNEXATION.** The City will file a petition for annexation of Areas 1, 12, 18 and the NM 475 (Hyde Park Road) right-of-way from the current city limits to the Santa Fe National Forest boundary by the end of 2012.

5. **AMENDMENT.** This Annexation Phasing Agreement can be amended or modified only by a written agreement duly executed by all of the parties.

6. **EFFECTIVE DATE.** This Annexation Phasing Agreement shall become effective as of the date of the last signature below.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of last signature below.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By: Mike Anaya — 2/10/09
~~Mike Anaya, Chairman~~ — Date

ATTEST:

Valerie Espinoza — 2/10/09
Valerie Espinoza, County Clerk — Date

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

Approved as to form:

Stephen C. Ross, County Attorney — 1-27-09 Date

THE GOVERNING BODY OF THE CITY OF SANTA FE

By: David Coss — 11/24/08 Date

David Coss, Mayor

CITY OF SANTA FE ORGANIZED JUNE 1, 1851 SEAL

ATTEST:

Yolanda Y. Vigil, City Clerk — 11-25-08 Date

Approved as to form: 11/12/08

Approved as to form:

Frank D. Katz, City Attorney — 11/13/08 Date

David N. Millican, Finance Director — 11/20/08 Date

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ANNEXATION AGREE (N/C)
PAGES: 3

I Hereby Certify That This Instrument Was Filed for Record On The 12TH Day Of February, 2009 at 09:45:42 AM And Was Duly Recorded as Instrument # 1552072 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy — County Clerk, Santa Fe, NM

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

DRAFT

AMENDMENT NO. 1 TO THE ANNEXATION AGREEMENT BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY

This Amendment No. 1 to the Annexation Phasing Agreement is entered by and between the Governing Body of the City of Santa Fe, New Mexico, a home-rule municipality organized under the Laws of the State of New Mexico (hereinafter referred to as "the City"), and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as "the County").

WHEREAS, the City and County entered into the Settlement Agreement and Mutual Release of Claims dated May 19, 2008 (the "Agreement");

WHEREAS, the Agreement provided for annexation over a five year period of seventeen areas of land, and the phasing of the annexation was to be established by subsequent agreement of the parties;

WHEREAS, the Parties entered into the Annexation Phasing Agreement in February of 2009 to establish the timing of annexation;

WHEREAS, since May 2008, the parties hereto have accomplished many items necessary for satisfaction of the Agreement, but several important items remain, including two additional phases of annexation, execution of an agreement implementing the water/sewer/solid waste items in the Agreement, a law enforcement agreement, and a formal or informal agreement concerning roads and fire protection within the areas to be annexed;

WHEREAS, the process of annexation has taken longer than anticipated, and additional time will be required to complete the items described; and

WHEREAS, the parties therefore desire to set forth herein new target dates for the completion of the various remaining tasks specified in the Agreement.

DRAFT

NOW, THEREFORE, THE PARTIES HERETO AGREE that the Annexation Phasing Agreement shall be and hereby is amended as set forth below:

1. Paragraph 3 of the Annexation Phasing Agreement shall be amended, as follows:

"**3. PHASE TWO OF ANNEXATION.** The City will file a petition or petitions for annexation of Areas, 2, 4, 5, 7 and the NM 599 right-of-way from I-25 to the city limits east of Camino La Tierra no later than _____."

2. Paragraph 4 of the Annexation Phasing Agreement shall be amended, as follows:

"**4. PHASE THREE OF ANNEXATION.** The City will file a petition or petitions for annexation of Areas, 1, 12, 18 and the NM 475 (Hyde Park Road) right-of-way from the current city limits to the Santa Fe National Forest boundary be filed no later than _____."

3. A new paragraph 7 of the Annexation Phasing Agreement is created, as follows:

"**7. WATER/SEWER/SOLID WASTE AGREEMENT.** The City and County Managers and staff will diligently work towards finalization and final execution of the "Agreement Required By the Settlement Agreement and Release of Claims," which is required by paragraph 2(o) of the Agreement, and concerns water, wastewater and solid waste service issues during and following annexation; the Agreement shall be completed no later than _____."

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4. A new paragraph 8 of the Annexation Phasing Agreement is created, as follows:

> "**8. LAW ENFORCEMENT/FIRE AGREEMENT.** The City and County will diligently work towards finalization and final execution of an agreement that will specify the manner in which the County and the County Sheriff will assist the City police during the three years following annexation of certain specified areas within Phase Two, which is required by paragraph 2(r) of the Agreement; this Agreement shall be completed no later than _____."

4. A new paragraph 9 of the Annexation Phasing Agreement is created, as follows:

> "**9. ROADS, PHASE TWO.** The parties acknowledge that the City and County Managers and appropriate staff are already working to implement paragraph 2(k) of the Agreement, with respect to roads within the areas to be annexed, and paragraphs 2(q), 2(r) and 2(s), which concern fire protection in the areas to be annexed and annexed areas. The parties do not anticipate a written agreement will be required to complete these tasks, and anticipate reaching full agreement on this issue no later than _____."

5. This Amendment No. 1 to the Annexation Phasing Agreement shall become effective as of the date of the last signature below.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of last signature below.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By:_____ _____
Liz Stefanics, Chair Date

ATTEST:

_____ _____
Valerie Espinoza, County Clerk Date

Approved as to form:

_____ _____
Stephen C. Ross, County Attorney Date

THE GOVERNING BODY OF THE CITY OF SANTA FE

By:_____ _____
David Coss, Mayor Date

ATTEST:

_____ _____
Yolanda Y. Vigil, City Clerk Date

Approved as to form:

_____ _____
Geno Zamora, City Attorney Date

_____ _____
Dr. Melville L. Morgan, Finance Director Date

ITEM # 08-0903

SANTA FE COUNTY AND CITY EXTRATERRITORIAL LAND USE JOINT POWERS AGREEMENT

This EXTRATERRITORIAL LAND USE JOINT POWERS AGREEMENT ("Agreement") between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a municipal corporation, is entered into on this 10th of September, 2008, for the purpose of clarifying matters of jurisdiction and approvals relating to planning, platting, subdivisions, zoning and annexation in the extraterritorial zones within the concurrent jurisdiction of both the County and the City.

RECITALS

WHEREAS

A. In accordance with the Joint Powers Agreement Act, §§11-1-1 through 11-1-7 NMSA 1978 the City and the County are public agencies and are authorized by law to enter into this agreement;

B. The City and County desire to clarify the jurisdiction each has over planning and platting, subdivisions, zoning, permitting and annexation with regard to the extraterritorial territory within two and five miles of city boundaries that are within the concurrent jurisdiction of the City and the County;

C. NMSA 1978 §3-21-3.2 authorizes cities and counties to enter into joint powers agreements and enact ordinances to work cooperatively on issues of planning, platting and subdivision, zoning, permitting and annexation in the territory within the concurrent jurisdiction of the City and the County;

D. The City and County have previously entered into a Joint City/County Extraterritorial Zoning and Subdivision Agreement establishing an Extraterritorial Zoning Authority and Extraterritorial Zoning Commission, which Agreement has been amended several times;

E. Disputes arose over planning and annexation matters within the extraterritorial zone that led to several lawsuits involving the City, the County and others; and

F. The City and County have resolved differences over annexation issues with a Settlement Agreement dated May 19, 2008, in which the City and County have agreed to a different approach to handling planning and plating, subdivision, zoning, permitting and annexation matters in the extraterritorial zone.

NOW, THEREFORE, THE CITY AND THE COUNTY HEREBY AGREE:

I. TERMINATION OF THE JOINT CITY/COUNTY EXTRATERRITORIAL ZONING AND SUBDIVISION AGREEMENT (1991)

The City and County hereby terminate the Joint City/County Extraterritorial Zoning and Subdivision Agreement (1991), as amended.

II. EXTRATERRITORIAL LAND USE AUTHORITY AND EXTRATERRITORIAL LAND USE COMMITTEE.

A. Establishment - By City and County Ordinances, the City and the County shall establish a Santa Fe Extraterritorial Land Use Authority (ELUA) and Santa Fe Extraterritorial Land Use Commission (ELUC) pursuant to NMSA 1978 § 3-21-3.2.

B. Extraterritorial Land Use Authority - The ELUA shall be made up of three members of the City Council or two members of the City Council and the Mayor, and four members of the Board of County Commissioners. The remaining member of the board of county commissioners shall be appointed as an alternate to the ELUA and the City shall appoint alternates from among the remaining city councilors. The alternates shall be notified prior to a meeting of the ELUA if an appointed member cannot attend. When replacing a member, an alternate shall have the same duties, privileges and powers as other appointed members.

C. Extraterritorial Land Use Commission - The ELUC shall be composed of five members of the county planning commission appointed by the Board of County Commissioners of Santa Fe County and five members of the Planning Commission of the City of Santa Fe appointed by the City Council. Alternates to the ELUC shall be appointed by the Board of County Commissioners from the remaining members of the Santa Fe County Planning Commission and by the City of Santa Fe from the remaining members of the Planning Commission, who shall be notified prior to a meeting of the ELUC if an appointed member cannot attend. When replacing a member, the alternate shall have the same duties, privileges and powers as other appointed members.

III. ANNEXATION - The ELUC shall review and recommend to the ELUA approval or disapproval of annexation petitions brought pursuant to NMSA 1978 § 3-7-17.1, and the ELUA shall approve or disapprove such petitions.

IV. EXTRATERRITORIAL JURISDICTION OVER ZONING - With regard to that area lying outside the municipal boundaries and within two miles of the municipal boundary over which the City and the County have concurrent zoning authority, the City and the County through this Joint Powers Agreement hereby provide for zoning as follows:

A. over those lands lying outside the Presumptive City Limits, as defined in that certain Settlement Agreement entered into between the City and County dated May 19, 2008, the City and the County, through the ELUC and the ELUA, shall adopt County zoning ordinances as the Extraterritorial Zoning Ordinance for that zone and shall expressly delegate to the County all decisions with regard to zoning in that area and by such delegation hereby ratify such decisions; and

B. over those lands within the Presumptive City Limits, the City and the County, through the ELUC and ELUA, shall adopt City zoning ordinances as the Extraterritorial Zoning Ordinance for that zone and shall expressly delegate to the City all decisions over zoning in that area and by such delegation hereby ratify such decisions.

V. PLATTING AND SUBDIVISION APPROVAL - With regard to that area lying outside municipal boundaries but within five miles of the municipal boundaries over which the City and the County have concurrent planning, platting and subdivision jurisdiction, the City and the County through this Joint Powers Agreement hereby provide for planning, platting and subdivision determinations as follows:

A. the City and County, through the ELUC and the ELUA, shall adopt County ordinances as the applicable platting and subdivision rules for lands outside the Presumptive City Limits and shall expressly delegate to the County platting and subdivision review and approval decisions for that area and by such delegation hereby ratify those decisions; and

B. the City and the County, through the ELUC and the ELUA, shall adopt City ordinances as the applicable platting and subdivision rules for lands within the Presumptive City Limits and shall expressly delegate to the City planning, platting and subdivision review and approval decisions over lands within that area and by such delegation hereby ratify those decisions.

VI. PERMITTING – With regard to lands within the Presumptive City Limits for which final development approvals have been granted by the City pursuant to the delegations described above, the permitting of construction shall be delegated by the County to the City under applicable building codes.

V. REGIONAL PLANNING AUTHORITY – The City and the County shall conduct regional planning through the Regional Planning Authority established in the Sixth Amended and Restated Regional Planning Authority Joint Powers Agreement dated _____, 2008. The ELUC shall provide such information and consultation to the Regional Planning Authority as the Regional Planning Authority may direct.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SANTA FE

DAVID COSS, MAYOR

ATTEST

YOLANDA Y. VIGIL, CITY CLERK

ccmtg 9/10/08

APPROVED AS TO FORM:

FRANK D. KATZ, CITY ATTORNEY

THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

_____
PAUL CAMPOS, CHAIR

ATTEST:

_____
VALERIE ESPINOZA, COUNTY CLERK

APPROVED AS TO FORM:

_____
STEPHEN C. ROSS, COUNTY ATTORNEY

THIS Agreement HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration

By: _____

Date: _____

DRAFT

AGREEMENT REGARDING WATER, WASTEWATER AND SOLID WASTE REQUIRED BY THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2011, by and between **the Board of County Commissioners of Santa Fe County**, a political subdivision of the State of New Mexico (hereinafter referred to as "the County") and the **City of Santa Fe**, a municipal corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as "the City").

WHEREAS, the City and the County entered into a Settlement Agreement and Mutual Release of Claims (hereinafter referred to as "the Settlement Agreement") dated May 19, 2008 to resolve ongoing lawsuits concerning the proposed annexation of Las Soleras and annexation generally;

WHEREAS, the Settlement Agreement established the presumptive city limits for a twenty-year period ("Presumptive City Limits") and the coincident service areas of the City and County utilities;

WHEREAS, the Settlement Agreement at paragraph 2(o) specifies that "City water and wastewater customers outside the Presumptive City Limits will be transferred to the County when the County is able to provide service unless prohibited by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission";

WHEREAS, the Settlement Agreement at paragraph 2(o) also provides that "County water customers within the Presumptive City Limits shall be transferred to the City when the City is able to provide service unless prohibited by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission";

WHEREAS, paragraph 2(o) also provides that the City and County managers shall meet and confer and develop a plan to accomplish these transfers;

WHEREAS, the plan specified in Paragraph 2(o) was to include "provisions for reimbursement of the City and County for the actual value of the infrastructure transferred as established by an appraisal prepared by an appraiser chosen by mutual agreement of the parties";

WHEREAS, paragraph 2(o) also provides that "[i]f either party assumes a water delivery obligation for which the customer transferred water rights to the City or County, the City or County shall transfer those water rights along with the customers, to the other party";

WHEREAS, the parties desire to enter into a written agreement that sets forth how the duties described in paragraph 2(o) of the Settlement Agreement will be accomplished and describes a process of water and wastewater transfers of customers and infrastructure between the City and the County based on the Presumptive City Limits;

WHEREAS, the Settlement Agreement at paragraph 2(q) provides that "the City shall provide municipal services within areas annexed pursuant to this Agreement, including but not limited to solid waste disposal . . .";

WHEREAS, paragraph 2(v) of the Settlement Agreement provides that "[s]upplemental joint service agreements may be negotiated from time to time between the City and County whereby City services may be provided in advance of annexation, on terms agreeable to the parties;"

WHEREAS, the Annexation Phasing Agreement Between the City of Santa Fe and Santa Fe County (hereinafter referred to as "the Phasing Agreement"), dated February 10, 2009, has been partially satisfied to the extent that Areas 3, 6, 8, 9 and portions of 10, 11, 13, 15, 16, 17 and the I-25 right-of-way from NM 599 to Old Pecos Trail and that portion of NM 14 from I-25 to the current city limits have been annexed;

WHEREAS, plans for staffing and equipment sufficient to provide solid waste services in the areas designated for annexation must be implemented well in advance in order to ensure a seamless transition; and

WHEREAS, the City desires to provide solid waste services within the Presumptive City limits in advance of the Settlement Agreement and the County is presently revising its solid waste ordinance to provide for curbside collection and is willing to facilitate such an arrangement for the benefit of the City; and

WHEREAS, and the parties desire to address the solid waste issue herein, and realign the respective water and sewer infrastructure of the parties to be consistent with the Settlement Agreement and otherwise to set forth herein the respective agreements on these and other points in general furtherance of the goals expressed in the Settlement Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

I. SOLID WASTE AND REFUSE SERVICE

A. The County shall enact an ordinance that establishes a mandatory system of solid waste collection within the Presumptive City Limits that includes curbside pickup of residential and commercial refuse, curbside pickup of recyclable materials. The ordinance shall prohibit refuse collection and collection of recyclable materials within the Presumptive City Limits (and other areas) by any hauler except from those designated specifically in the ordinance.

B. The ordinance referred to in the previous paragraph shall contain substantially similar conditions of service and provisions concerning penalties and enforcement as those found in the Santa Fe City Code.

C. Once the ordinance referred to in the previous paragraphs is enacted, the County shall delegate to the City responsibility for refuse collection within the Presumptive City Limits. The ordinance and the delegation shall be completed on or about August, 2012. The City shall be delegated responsibility to impose its usual and customary charges on solid waste customers within the Presumptive City Limits.

II. WATER AND SEWER SERVICE

A. Pursuant to the Settlement Agreement, water and wastewater services shall be provided by the entity in whose jurisdiction the services are provided. Water and wastewater services within the Presumptive City Limits shall be provided by the City. Water and wastewater services outside of the City and outside of the Presumptive City Limits shall be provided by the County.

B. Water and wastewater services that are not consistent with the previous paragraph shall be made consistent by transferring the system and customers to the other party as specified in this Agreement.

C. The City and the County shall provide detailed information on those portions of their respective systems that are to be transferred to the other party pursuant to this Agreement, including, if available, engineer/surveyor-sealed as-built drawings, GIS-mapped lines, valve and meter locations, meter numbers, location of manholes, water quality data, water compliance documents, and other pertinent information.

D. The City and County managers shall appoint members to a technical transition team comprised of water and wastewater staff of the City and County, who will inventory all of the water and wastewater resources subject to this Agreement, determine the technical issues to be confronted in connection with this Agreement, develop schedules for transfer of assets and responsibilities, and deal with technical issues as they arise. Any issues which cannot be resolved by the technical transition team shall be resolved by the city and county managers and, as appropriate, by the City Council and the Board of County Commissioners.

E. Any infrastructure that is malfunctioning or in disrepair, which has routinely failed water quality compliance testing, or that has suffered from deferred maintenance, shall be repaired and brought into compliance before that infrastructure is transferred to the other party.

F. The transferring party shall identify any current contracts, court decrees, or applicable rulings of the Public Regulation Commission that are applicable to water and wastewater service of a given customer. The parties shall indentify the proper process by which to transfer such customer, consistent with the contracts, court decrees or applicable

rulings of the Public Regulation Commission, and shall jointly complete the process. If it is not legally possible to transfer a customer, the parties shall address the issue by specific amendment to this agreement.

G. Annually, the County and the City will review billing information for the transferred area to verify meter accuracy and the extent to which unaccounted-for water passes each master meter.

H. Each party shall share data, information or reports that would be helpful, useful or necessary to achieve the goals and objectives of this Agreement upon request of the other party.

I. Any improvements made by a party to water or wastewater infrastructure originally provided by a real estate developer in connection with a real estate development, and that is not required for continuation of service, may be removed at the party's own expense prior to transfer of the infrastructure to the other party, but the removing party shall give the other party prior notice of the proposed removal through the technical transition team.

III. CUSTOMER INFORMATION, NOTICE

A. The City and the County shall exchange account information about water and wastewater customers being transferred between the parties. Account information shall include the name, address, telephone number, twelve months of account activity (e.g. notes, history, etc.), water meter size, bill item tables, sewer rate calculation, solid waste refuse and recycling rates and level of service, and any other information determined by either party to be relevant. The account information shall include any balances owed by customers and the basis for those balances. An unpaid balance shall not be transferred to the other party, but the parties may cooperate to ensure payment of the unpaid balance through techniques such as withdrawal of service to compel payment.

B. Account information shall be provided to the other party's utility director ninety (90) days prior to date of transfer of each area identified in this agreement to provide a seamless transition of billing and customer service to the customers.

C. Customers whose service will be transferred from one party to another shall receive a notice of the transfer in a utility bill stuffer for two (2) consecutive months prior to the transition. Utility bill stuffers shall provide links to City and County websites for additional information; the City and County websites shall provide detailed information about the transition, the transfer of customers, this Agreement, changes in the rules of service, and any changes in billing structure.

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IV. AS-BUILT DRAWINGS AND MAINTENANCE RECORDS

A. Each party shall provide to the other party as-built drawings and maintenance records of all infrastructure transferred as a result of this Agreement ninety (90) days prior to date of transfer of the infrastructure. If a transferring party has digital data regarding the infrastructure, that data shall also be provided. Data to be transferred shall include, but not be limited to, as-built drawings, valve maps detailing location of valves based on known features, GIS shape files and scanned as-built drawings and valve maps in .pdf format.

B. Each party shall provide the other party with maintenance records as well as video imaging, televised inspection tapes and DVDs of infrastructure transferred as a result of this Agreement. Maintenance records shall be provided ninety (90) days prior to date of transfer.

V. APPRAISAL OF AND PAYMENT FOR INFRASTRUCTURE

A. Any water and wastewater infrastructure installed at the expense of the City or County (i.e. not funded by developers/users or by state or federal grants or loans) and identified for transfer from one party to the other party as provided in Paragraph II, shall be appraised to determine the depreciated value of the infrastructure at the time of transfer.

B. The cost of the appraisal shall be borne equally by the Parties and the identity of the person appraising shall be mutually agreed upon.

C. Each party shall pay the appraised value of any infrastructure transferred to the other party pursuant to Article II and paragraph A of this Article V within a reasonable time. The parties reserve the right to negotiate further the payment issue, and the terms of payment, the details of which will be set forth in an amendment to this Agreement.

D. Any easements or rights-of-way supporting infrastructure shall be transferred to the other party along with the infrastructure; if an easement is needed along a City street or County road, the easement shall be granted by the other party, as appropriate, or a blanket approval may be granted. Should any survey work be needed to identify or locate any infrastructure, real property, infrastructure, necessary easements, access, or other matters, the cost of that survey shall be borne by the party receiving the real property, infrastructure, easement, or access.

E. Disputes concerning appraisal of a given item of infrastructure shall be first presented to the technical transition team. Any issues which cannot be resolved by the technical transition team shall be resolved by the city and county managers and, as appropriate, by the City Council and the Board of County Commissioners. Disputes may also be resolved through mediation.

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VI. WATER RIGHTS

A. If either party hereto assumes a water delivery obligation for which a customer transferred water rights to a party to support water service, the party shall transfer the water rights to the other party to support deliveries.

B. If either party assumes a water delivery obligation that the party has met with water rights owned by the party as opposed to water rights supplied by a customer or developer, no water rights shall be transferred to the other party and the party making deliveries subsequent to transfer shall be responsible for providing water rights to support the subsequent deliveries.

C. If water rights that should be transferred to the other party pursuant to paragraph A of this Article VI cannot be transferred, are impractical to transfer, or carry a point of diversion that if transferred to a point of diversion chosen by the other party would result in a loss of the value of the water right, suitable equivalent water rights may be selected and transferred in lieu of water rights that would be transferred pursuant to Paragraph A of this Article V.

D. The technical transition team shall address all technical issues concerning the transfer of water rights, including technical issues about the transfer, the amount to be transferred, the method of transfer, the timeline of transfer, any issues related to the Buckman Direct Diversion project, and any issues arising from paragraph C of this section. Any issues which cannot be resolved by the technical transition team shall be resolved by the city and county managers and, as appropriate, by the City Council and the Board of County Commissioners.

VII. SERVICE CONNECTIONS

A. Water Service Connections

1. Each party shall provide the other party with reasonable access to water from the Buckman Direct Diversion through the party's water service infrastructure, utilizing master meters to meter the flow for purposes of billing and accountability. Each party may charge the other party a reasonable fee for wheeling water across its water infrastructure, as established through a cost of service study.

2. The party desiring a water service connection shall pay all costs of installation of the required master meter, which shall become the property of the party desiring the service connection. The party desiring the service connection shall be responsible for maintenance and subsequent replacement of the master meter.

3. The party desiring a service connection shall be fully responsible for construction of any facilities necessary to take delivery of water at the delivery point, and such facilities shall be constructed in accordance with standards established by the other party.

4. Each party shall furnish water at a reasonably constant pressure at all designated delivery points. If a different pressure than that normally available at the point of delivery is required, the cost of providing such different pressure shall be borne by the party desiring the service connection. Emergency failures of pressure or supply due to main supply breaks, power failure, flood, or use of water to fight fire, earthquake or other catastrophe shall excuse either party from this provision for such reasonable period of time as may be necessary to restore service.

5. The party requesting a service connection shall define a water budget and provide a demand scenario for a ten year period for each service connection and master meter. The water budgets and demand scenarios will provide information to the party to permit efficient water system operations. In the event of an extended shortage of water or the supply of water available is otherwise diminished over an extended period of time, the supply of water through the service connection and master meter shall be reduced or diminished in the same ratio or proportion as the supply to the party's other customers is reduced or diminished.

6. Each party shall notify the other party in writing when it requests a service connection pursuant to this Article. The request shall provide all the information described in this Article. Any such request must be made a reasonable time in advance of the need for service. Any party taking water service through a service connection on the party's system shall provide no less than sixty (60) days advance written notice of any anticipated change in required monthly deliveries that amount to ten (10) percent or more of the highest monthly delivery levels.

7. The technical transition team shall address all technical issues concerning service connections and master meters. Any issues which cannot be resolved by the technical transition team shall be resolved by the city and county managers and, as appropriate, by the City Council and the Board of County Commissioners.

B. Wastewater Service Connections

1. Each party shall provide the other party with access to its wastewater collection and treatment system to ensure that customers are served through a wastewater treatment plant rather than being served by septic systems or small wastewater treatment facilities.

2. Each party shall pay a collection and treatment charge for use of the other party's wastewater collection and treatment system in accordance with the usual and customary rates established through a cost of service study.

3. Each party requesting access to the other party's wastewater collection and treatment system shall pay all costs of connecting to the wastewater collection system and shall make all connections in accordance with the standards established by the party.

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4. All wastewater service connections must comply with all relevant rules, regulations and practices of the party into who system a wastewater service connection is being established. The party establishing a wastewater service connection shall be responsible for all engineering and construction costs related to such connection.

C. Records. Each party shall maintain records of all water and/or wastewater collection system customers who receive service from the party as a result of this Agreement, and shall provide the other party with copies of such those records when requested, during reasonable business hours and with reasonable notice. The records shall at a minimum contain customer location, customer class, connection size, industrial pretreatment compliance records and water meter readings.

D. Metered Water Use. Individual water consumption of each customer discharging wastewater through the system of the other party to this Agreement shall be metered to facilitate a determination of the usage of the wastewater system and to facilitate billing and system management.

VIII. CONSISTENCY WITH SETTLEMENT AGREEMENT/INTERPRETATION

All questions concerning interpretation of this Agreement shall be consistent with the goals, objectives, and express language of the Settlement Agreement and Mutual Release of Claims, dated May 19, 2008.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement as of the date first written above.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By_____ _____
Liz Stefanics, Chair Date

ATTEST:

_____
Valerie Espinoza, Santa Fe County Clerk

DRAFT

APPROVED AS TO FORM:

_____ _____

Stephen C. Ross
Santa Fe County Attorney

Date

DRAFT

CITY OF SANTA FE:

_____ _____

David Coss, Mayor
City Manager

Date

APPROVED AS TO FORM:

_____ _____

Geno Zamora,
Santa Fe City Attorney

Date

APPROVED:

_____

Dr. Melvin Morgan
City of Santa Fe Finance Director