

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

To: Board of County Commissioners

From: Gregory S. Shaffer, County Attorney

Via: Katherine Miller, County Manager

Date: January 23, 2014

Re: Public Hearing on the Low-Income Taxpayer Property Tax Rebate Adopted by Ordinance No. 2009-2

Issue. Although not required by State law, Ordinance No. 2009-2 seemingly requires the Board of County Commissioners (Board) of Santa Fe County (County) to hold a public hearing in January of each odd-numbered year on whether the County should consider repealing the low-income taxpayer property tax rebate (Tax Rebate) adopted by Ordinance No. 2009-2.

Background. Information on the Tax Rebate and the public hearing is provided below in question and answer format.

What is the Tax Rebate? It is a refundable Tax Rebate that low-income taxpayers with their principal place of residence in the County may claim on their New Mexico income tax returns.

Who is eligible to claim the Tax Rebate? An individual who:

- (1) has his principal place of residence in the County;
- (2) is not a dependent of another individual;
- (3) files an income tax return;
- (4) incurred a property tax liability on his principal place of residence in the taxable year;
- (5) was not an inmate of a public institution for more than six months during the taxable year;
- (6) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and
- (7) has a modified gross income of less than \$24,000 in the tax year for which the Tax Rebate is claimed.

NMSA 1978, § 7-2-14.3(A)-(B).

What is the amount of the Tax Rebate? The Tax Rebate cannot exceed \$350 per return. NMSA 1978, § 7-2-14.3(E).

The actual amount is determined based upon the taxpayer's modified gross income as well as their property tax liability. The amount of the Tax Rebate ranges from 75% a taxpayer's property tax liability for those with a modified gross income of \$8,000 or less to 35% for those with a modified gross income over \$22,000 but not over \$24,000.

What is "property tax liability" for purposes of the Tax Rebate? Property taxes due to the County and municipalities for operational – as opposed to debt – purposes. NMSA 1978, § 7-2-14.3(D).

What is the income limit for eligibility for the Tax Rebate? A taxpayer’s modified gross income cannot exceed \$24,000. NMSA 1978, § 7-2-14.3(D)-(E).

Who pays for the Tax Rebate? The County. By December 31 of each year, the New Mexico Taxation and Revenue Department (TRD) certifies to the County “the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of [the County].” The County has to pay the amount certified to TRD within thirty (30) days. If it fails to do so, TRD “may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.” NMSA 1978, § 7-2-14.3(I).

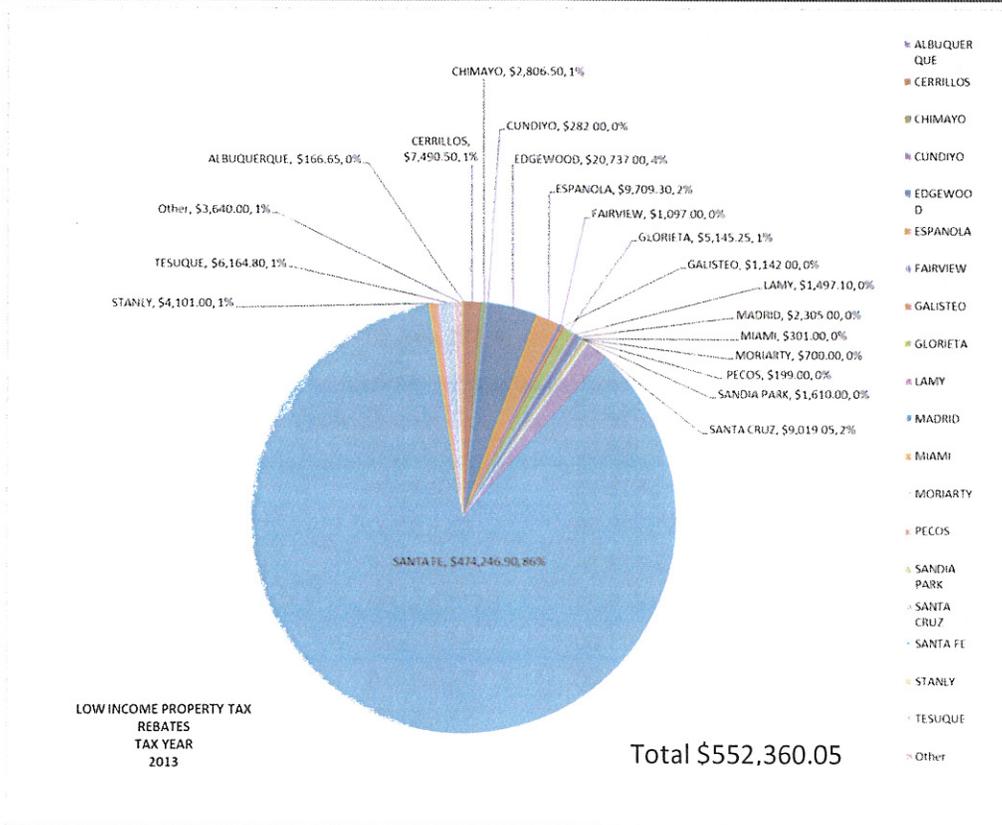
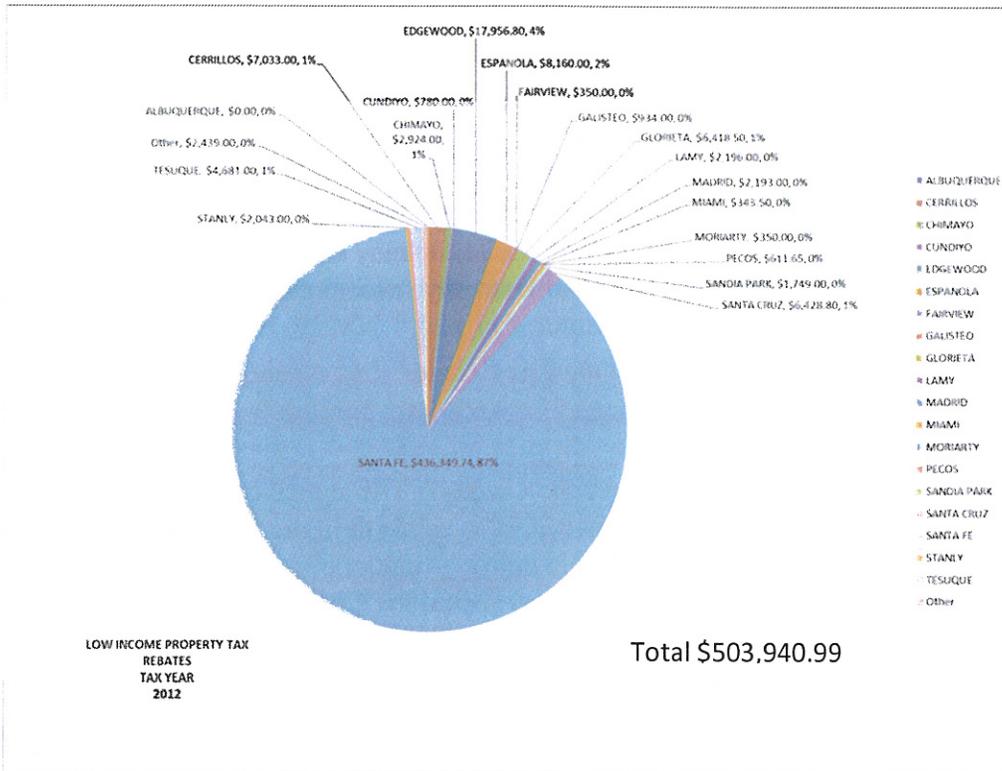
What other counties have adopted the Tax Rebate? Los Alamos County, according to TRD. [Source: <http://www.tax.newmexico.gov/Government-property-tax-rebates.aspx>, last visited on January 23, 2017.]

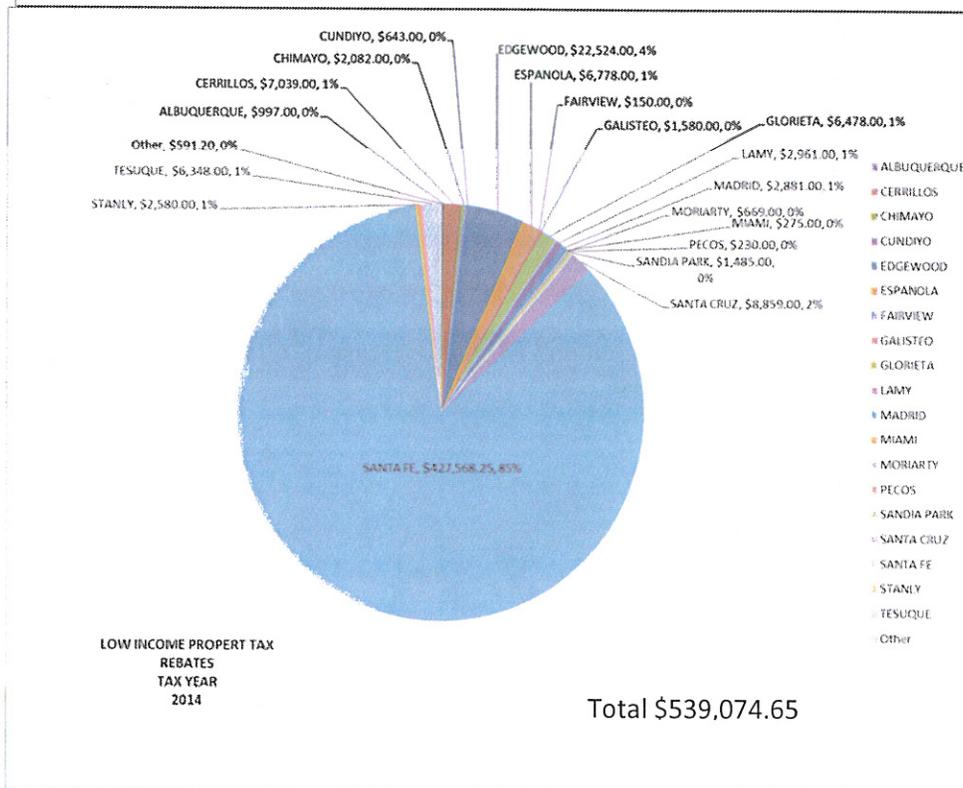
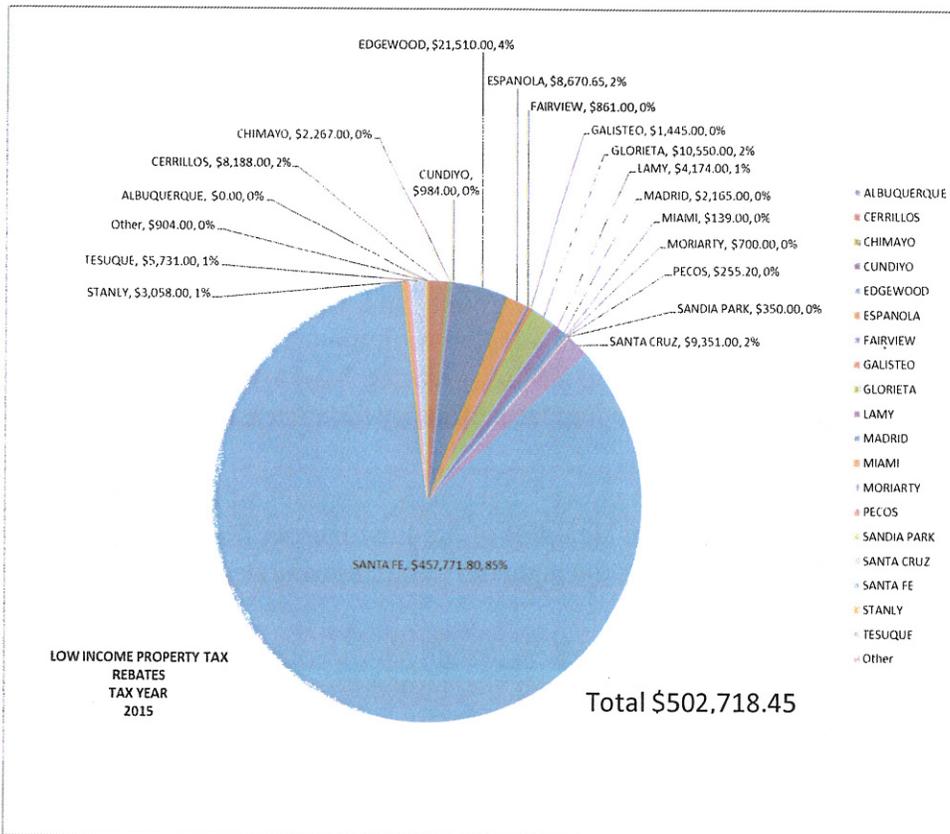
How much does the Tax Rebate cost the County? The annual cost to the County by taxpayer residence within Santa Fe County since 2012 is set forth in the following charts and table below. Please note that, in the charts and table below, “Santa Fe” means all addresses with a Santa Fe address. This is not limited to addresses within the City of Santa Fe. Rather, it includes addresses in the areas around the City, such as El Dorado and Rancho Viejo.

History of Low Income Property Tax Payments since 2012*

County	2012	2013	2014	2015
ALBUQUERQUE	\$0.00	\$166.65	\$997.00	\$0.00
CERRILLOS	\$7,033.00	\$7,490.50	\$7,039.00	\$8,188.00
CHIMAYO	\$2,924.00	\$2,806.50	\$2,082.00	\$2,267.00
CUNDIYO	\$780.00	\$282.00	\$643.00	\$984.00
EDGEWOOD	\$17,956.80	\$20,737.00	\$22,524.00	\$21,510.00
ESPANOLA	\$8,160.00	\$9,709.30	\$6,778.00	\$8,670.65
FAIRVIEW	\$350.00	\$1,097.00	\$150.00	\$861.00
GALISTEO	\$934.00	\$1,142.00	\$1,580.00	\$1,445.00
GLORIETA	\$6,418.50	\$5,145.25	\$6,478.00	\$10,550.00
LAMY	\$2,196.00	\$1,497.10	\$2,961.00	\$4,174.00
MADRID	\$2,193.00	\$2,305.00	\$2,881.00	\$2,165.00
MIAMI	\$343.50	\$301.00	\$275.00	\$139.00
MORIARTY	\$350.00	\$700.00	\$669.00	\$700.00
PECOS	\$611.65	\$199.00	\$230.00	\$255.20
SANDIA PARK	\$1,749.00	\$1,610.00	\$1,485.00	\$350.00
SANTA CRUZ	\$6,428.80	\$9,019.05	\$8,859.00	\$9,351.00
SANTA FE	\$436,349.74	\$474,246.90	\$427,568.25	\$457,771.80
STANLY	\$2,043.00	\$4,101.00	\$2,580.00	\$3,058.00
TESUQUE	\$4,681.00	\$6,164.80	\$6,348.00	\$5,731.00
Other	\$2,439.00	\$3,640.00	\$591.20	\$904.00
Total	\$503,940.99	\$552,360.05	\$502,718.45	\$539,074.65

*NMTRD uses the current remittance address of the tax payer





Can the County impose a property tax to pay for the Tax Rebate? Yes, if the voters approve of it at an election. NMSA 1978, §§ 7-2-14.4 and 7-2-14.5.

Why did the County adopt the Tax Rebate? Because it agreed to do so in an agreement with the City of Santa Fe regarding annexation. Section 2(p) of the Settlement Agreement and Mutual Release of Claims relative to annexation provides as follows:

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.

Why are we having a public hearing? Section 3, “Repeal”, of Ordinance No. 2009-2 seemingly requires it. It provides that “[r]epeal 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.”

Does State law require such a public hearing? No. A public hearing is required in “January of every odd-numbered year in which a county does **not** have in effect an ordinance” adopting the Tax Rebate. NMSA 1978, § 7-2-14.3(G).

Recommendation. Hold the public hearing and give staff direction to (i) maintain the Tax Rebate; (ii) conduct further analysis; (iii) bring forth an ordinance repealing the Tax Rebate; or (iv) bring forth an ordinance amending Ordinance No. 2009-2 in other respects.

At a minimum, staff recommends that Ordinance No. 2009-2 be amended to remove the requirement of a public hearing in January of odd-numbered years. This hearing is not required by State law, and some might argue that the hearing language limits the Board’s legislative discretion to consider a repeal at any time it determines that circumstances warrant.

Attachments:

Exhibit A – NMSA 1978, § 7-2-14.3

Exhibit B – Ordinance No. 2009-2

Exhibit C – Settlement Agreement and Mutual Release of Claims between the County and City of Santa Fe and Others

West's New Mexico Statutes Annotated

Chapter 7. Taxation

Article 2. Income Tax General Provisions (Refs & Annos)

N. M. S. A. 1978, § 7-2-14.3

§ 7-2-14.3. Tax rebate of part of property tax due from low-income taxpayer; local option; refund

Currentness

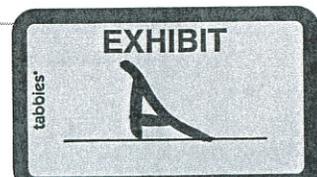
A. The tax rebate provided by this section may be claimed for the taxable year for which the return is filed by an individual who:

- (1) has his principal place of residence in a county that has adopted an ordinance pursuant to Subsection G of this section;
- (2) is not a dependent of another individual;
- (3) files a return; and
- (4) incurred a property tax liability on his principal place of residence in the taxable year.

B. The tax rebate provided by this section shall be allowed for any individual eligible to claim the refund pursuant to Subsection A of this section and who:

- (1) was not an inmate of a public institution for more than six months during the taxable year;
- (2) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and
- (3) is eligible for the rebate as a low-income property taxpayer in accordance with the provisions of Subsection D of this section.

C. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on the joint return.



D. As used in the table in this subsection, “property tax liability” means the amount of property tax resulting from the imposition of the county and municipal property tax operating impositions on the net taxable value of the taxpayer’s principal place of residence calculated for the year for which the rebate is claimed. The tax rebate provided in this section is as specified in the following table:

LOW-INCOME TAXPAYER’S PROPERTY TAX REBATE TABLE

Taxpayer’s Modified Gross Income Property Tax Rebate

Over	But Not Over	
\$ 0	\$ 8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability
12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

E. If a taxpayer’s modified gross income is zero, the taxpayer may claim a tax rebate in the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed three hundred fifty dollars (\$350) per return and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred seventy-five dollars (\$175). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds twenty-four thousand dollars (\$24,000).

F. The tax rebate provided for in this section may be deducted from the taxpayer’s New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer’s income tax liability, the excess shall be refunded to the taxpayer.

G. In January of every odd-numbered year in which a county does not have in effect an ordinance adopted pursuant to this

subsection, the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section benefiting low-income property taxpayers in the county should be made available through adoption of a county ordinance. Notice of the public hearing shall be published once at least two weeks prior to the hearing date in at least one newspaper of general circulation in the county and broadcast at some time within the week before the hearing on at least one radio station with substantial broadcasting coverage in the county. At the public hearing, the board shall take action on the question and if a majority of the members elected votes to adopt an ordinance, it shall be adopted no later than thirty days after the public hearing.

H. An ordinance adopted pursuant to Subsection G of this section shall specify the taxable years to which it is applicable. The board of county commissioners adopting an ordinance shall notify the department of the adoption of the ordinance and furnish a copy of the ordinance to the department no later than September 1 of the first taxable year to which the ordinance applies.

I. No later than December 31 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than December 31 of each year thereafter in which the tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.

J. As used in this section, "principal place of residence" means the dwelling owned and occupied by the taxpayer and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

Credits

L. 1994, Ch. 111, § 1; L. 1997, Ch. 196, § 1; L. 2003, Ch. 275, § 4.

NMSA 1978, § ~~7-2-14.3~~, NM ST § ~~7-2-14.3~~

Current through the end of the Second Regular and Special Sessions of the 52nd Legislature (2016)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

SFC CLERK RECORDED 04/16/2009

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: *Mike Anaya*
Mike Anaya, Chair

ATTEST
Valerie Espinoza
Valerie Espinoza, Santa Fe County Clerk



Approved As To Form:
Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC 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
Deputy *Valerie Espinoza* County Clerk, Santa Fe, NM



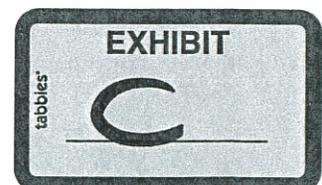
SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS

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: *Jack Sullivan* *5/14/08*
Jack Sullivan, Chair Date

ATTEST:

Valerie Espinoza *5-15-08*
Valerie Espinoza, County Clerk Date

Approved as to form:

Stephen C. Ross *5-5-08*
Stephen C. Ross, County Attorney Date



THE GOVERNING BODY OF THE CITY OF SANTA FE

By: David Coss
David Coss, Mayor

5/19/08
Date

ATTEST:

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

5/19/08
Date

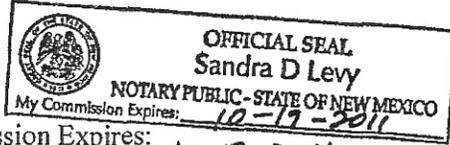
Approved as to form:

Frank D. Katz
Frank D. Katz, City Attorney

5/19/08
Date

STATE OF NEW MEXICO)
COUNTY OF Bernalillo) ss.

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.

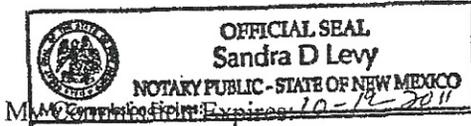


My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

STATE OF NEW MEXICO)
COUNTY OF Bernalillo) ss.

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.

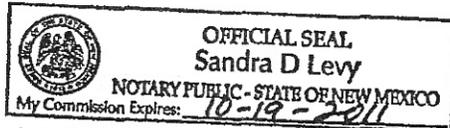


My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

STATE OF NEW MEXICO)
COUNTY OF Bernalillo) ss.

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.



My Commission Expires: 10-19-2011

Sandra D. Levy
Notary Public

POTENTIAL ANNEXATION AREAS
DATA SHEET

	Acres	Population	Housing Units
AREA 1 (West of City Limits, between Agua Fria St and NM 599)	1990.22	948	386
AREA 2 (SF River to NM 599)	504.29	1473	478
AREA 3 (North of Cerrillos Rd. South of Agua Fria Traditional Village)	145.24	369	137
AREA 4 (Southwest Area between Airport Rd and SF River)	993.66	6397	2176
AREA 5 (South of Airport Rd. and North of Tierra Contenta)	620.50	4678	1747
AREA 6 (Airport / WWTP)	445.92		
AREA 7 (South of Tierra Contenta)	1319.51	902	273
AREA 8 (West side of Cerrillos Rd. near Ocate Road)	49.29	339	120
AREA 9 (Premium Outlets)	37.05		
AREA 10 (Las Soleras- South of Nava Ade, West of Richard's Ave. and East of Cerrillos Rd.)	701.64		
AREA 11 (Immediately West of Nava Ade)	88.40	227	101
AREA 12 (Lands along South side of Rodeo Road)	123.77	158	62
AREA 13 (East side of Richards Avenue, North of I-25 & West of Pueblos del Sol)	200.87	206	71
AREA 14 (Portion of Rodeo Grounds)	18.61		
AREA 15 (East of Carlos Rey del Sur Subd. - North of I-25)	48.29	13	7
AREA 16 (Lands West of Old Pecos Trail and North of I-25)	138.17	131	55
AREA 17 (Property along west side of Old Santa Fe Trail to South (Quail Run))	57.51	28	16
AREA 18 (Lands between the eastern City Limits and the National Forest)	2761.87	238	138
AREA 19 (Santa Fe Center)	306.38		
NM 599 ROW (from City Limits to I-25)	550		
I-25 ROW (from NM 599 to Old Pecos Trail)	855		
TOTALS	11956.19	16,297	5,767

* Estimates based on Census 2000 Block Level data. Information excludes the Agua Fria traditional historic community.

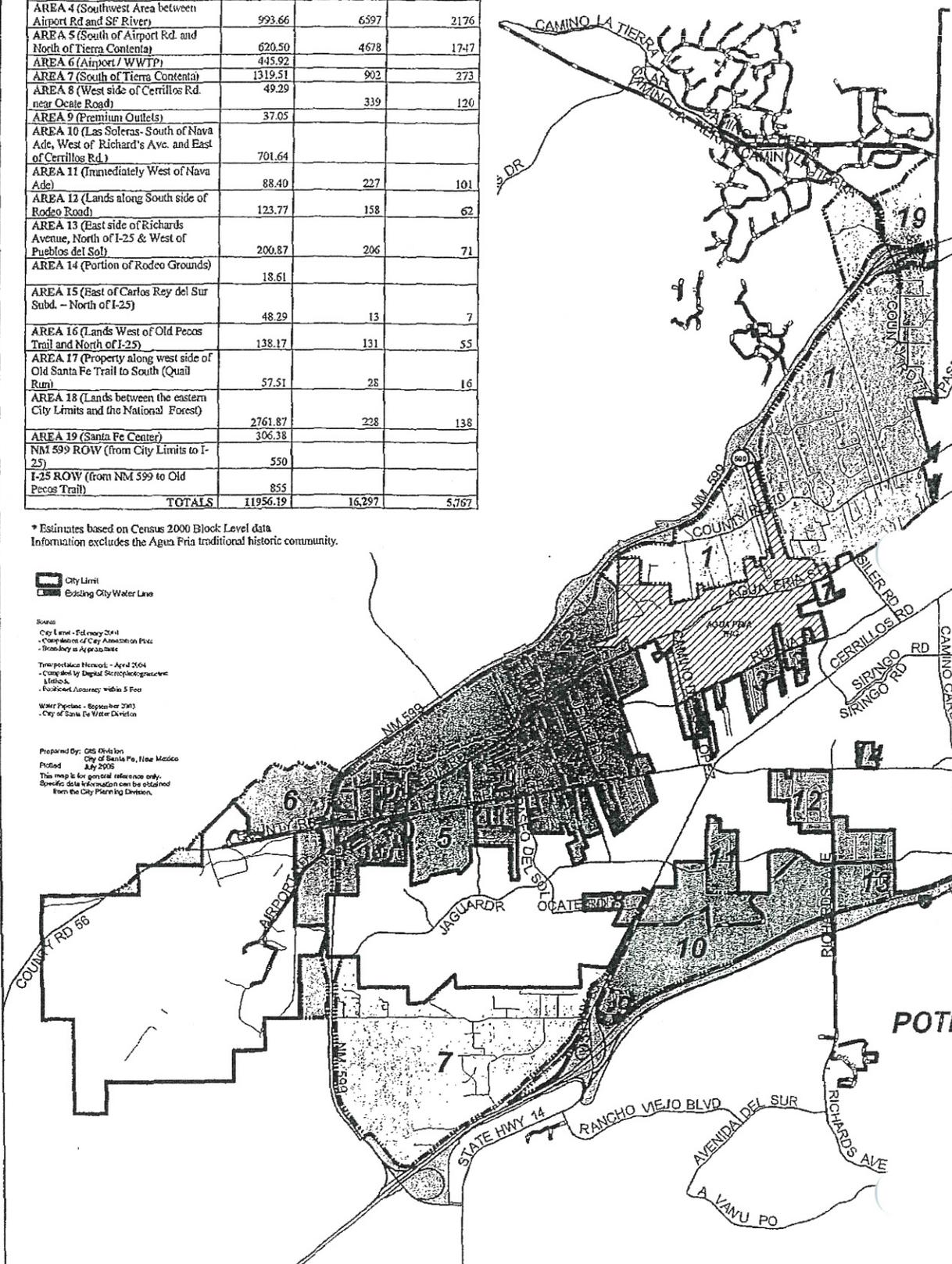
 City Limit
 Existing City Water Line

Notes
City Limit - February 2011
- Compiled by City Assessor on File
- Boundary is by prothonotary

Topographic Network - April 2004
- Compiled by Digital Spherotopographic
- Lithocast
- Horizontal Accuracy within 5 Feet

Water Pipeline - September 2003
- City of Santa Fe Water Division

Prepared By: GIS Division
City of Santa Fe, New Mexico
Printed
July 2009
This map is for general reference only.
Specific data information can be obtained
from the City Planning Division.



POTE

