STATE OF NEW MEXICO
SANTA FE COUNTY
ORDINANCE NO. 2020-5

An Ordinance
Authorizing the Execution and Delivery of a Lease-Purchase Agreement Concerning One (1) 900 Kw Cummins Generator 60Hz, One (1) Level 2 Sound Enclosure, and One (1) 2,000-Gallon Fuel Tank (the "Equipment") for the Santa Fe County Water Reclamation Facility, Evidencing a Special, Limited Obligation of the County Payable from the Net Revenue of the County Water and Wastewater Utility; Delegating Authority to the County Manager to Execute the Lease-Purchase Agreement and Associated Purchase Order(s) Within the Parameters Set Forth in this Authorizing Ordinance; Ratifying Actions Heretofore Taken; Repealing All Action Inconsistent with this Authorizing Ordinance; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the Lease-Purchase Agreement

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Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the County is a legally and regularly created, established, organized and existing county under the general laws of the State; and

WHEREAS, the Board of County Commissioners (the "Board") has determined and hereby determines that the design, construction, and installation of the Santa Fe County Water Reclamation Facility (the "Project") may be accomplished by entering into the Lease-Purchase Agreement; and

WHEREAS, the Lease-Purchase Agreement provides that the Lessor will complete the Project, the County will pay monthly rent payments in the amount of $8,793 for 36 months, and shall have the option of purchasing the Equipment that is essential to the operation of the Facility; and

WHEREAS, the Board has determined and hereby determines that it is in the best interest of the County and its residents that the financing of the Equipment be accomplished by executing and delivering the Lease-Purchase Agreement; and

WHEREAS, the County may lawfully pledge the Net Revenues of its Water and Wastewater Utility System to finance the purchase of the Equipment and the Project will result in water conservation benefits and other economies for the County and will also provide for the public health, peace and safety of the County and its residents; and

WHEREAS, the Net Revenues have not previously been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Lease-Purchase Agreement shall be a special, limited obligation of the County, payable solely from the Net Revenue and shall not constitute a general obligation of the County, or a debt or pledge of the full faith and credit of the County or the State; and

WHEREAS, the Lease-Purchase Agreement shall be executed and delivered pursuant to Sections 4-62-1 through 4-62-10, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Net Revenues; and

WHEREAS, the Board hereby determines that the Equipment to be financed with the Lease-Purchase Agreement is to be used for governmental purposes of the County and will not be used for purposes which would cause the Lease-Purchase Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Net Revenues to the Lessor (or its assigns) for the payment of amounts due under the Agreement, (ii) the financing of the Equipment pursuant to the Agreement, and (iii) the authorization, execution and delivery of the Lease-Purchase Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF SANTA FE COUNTY THAT:

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 4-62-1 through 4-62-10, NMSA 1978, as amended, and enactments of the Board relating to the Agreement, including this Ordinance.

"Agreement" or "Lease-Purchase Agreement" means the Equipment Lease Agreement by and between the County and the Lessor which provides for the financing of the Equipment and requires payments by or on behalf of the County to the Lessor, and any amendments or supplements thereto, and including the exhibits attached to the Agreement. The Agreement shall be substantially in the form attached hereto as Exhibit A, with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers.

"Authorized Officers" means the Chair of the Board, County Manager, and County Clerk of the County.

"Board" means the Board of Commissioners of Santa Fe County.

"Closing Date" means the date of execution and delivery of the Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"County" means Santa Fe County, New Mexico.

"Equipment" means one (1) 900 Kw Cummins generator 60Hz, one (1) Level 2 sound enclosure, and one (1) 2,000-gallon fuel tank to be installed as components of the Facility.

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"Facility" means the Santa Fe County Water Reclamation Facility to be located on land at the New Mexico State Penitentiary from the State of New Mexico.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the County as its fiscal year.

"Gross Revenues" means all income and revenues directly or indirectly derived by the County from the System, or any part of the System, and include, without limitation, all revenues received by the County from the availability or operation and use of the System and from the sale and use of water or wastewater services or facilities, or any other service, commodity or facility or any combination thereof furnished to the County and public and private customers of the System, including but not limited to connection or impact fees, property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System.

Gross Revenues do not include:

(a) any money received as (i) a water quality testing fee, (ii) grants or gifts from the United States of America, the State or other sources or (iii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;

(b) taxes and/or fees collected by the County and remitted to other governmental agencies;

(c) condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption; and

(d) the proceeds of System bonds, loans or other debt obligations secured and payable by Net Revenues.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

"Lessor" means Integrated Water Services, Inc., a for profit Colorado corporation registered to do business in the State.

"Net Revenues" means the Gross Revenues after deducting Operation and Maintenance Costs.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, in any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) legal and overhead expenses of the various County departments directly related and reasonably allocable to the administration of the System;

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(b) insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) the costs of audits of the books and accounts of the System;

(d) salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies used for or in connection with the current operation of the System; and

(e) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by the County as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Ordinance" means this Ordinance No. 2020-5.

"Project" means the design, construction and installation of the Facility.

"Rental Payment Fund" means the "Santa Fe County, New Mexico 2020 Equipment Lease Agreement Rental Payment Fund" created by Section 8 hereof.

"Rental Payment" means the payment of $8,793.58 per month for 36 months, plus additional amounts, if any, due from the County pursuant to the Agreement, including, but not limited to, applicable gross receipts tax, if any.

"Revenue Fund" means the "Santa Fe County, New Mexico 2020 Equipment Lease Agreement Revenue Fund" created by Section 8 hereof.

"State" means the State of New Mexico.

"System" means the water and wastewater utility system owned and operated by or on behalf of the County, consisting of all properties, real, personal, mixed or otherwise now existing or hereafter acquired by the County through acquisition, purchase, construction or otherwise, including all expansions, extensions, enlargements and improvements to the water and wastewater utility system and used in connection therewith or relating thereto, in any other related activity or enterprise of the County, designated by the Board as part of the water and wastewater utility system, whether situated within or outside the boundaries of the County.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board and officers of the County directed toward the Project and the execution and delivery of the Lease-Purchase Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Agreement. The Project and the method of financing the Equipment that is essential to the operation of the System and the Project through execution and delivery of the Lease-Purchase Agreement are hereby authorized and ordered. The Project is for the benefit of the County.

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Section 4. Findings. The County hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project will constitute an improvement of the System, is needed to meet the needs of the County and its residents, and the execution and delivery of the Lease-Purchase Agreement is necessary and advisable.

B. Moneys available and on hand for the purchase of the Equipment from all sources other than the Lease-Purchase Agreement are not sufficient to defray the cost of the Project.

C. The Net Revenues may lawfully be pledged to secure the payment of amounts due under the Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the purchase of the Equipment by the execution and delivery of the Agreement.

E. The Project and the execution and delivery of the Lease-Purchase Agreement pursuant to the Act to provide funds for the financing of the Equipment and the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the County and the Project will result in water conservation benefits and other economies for the County.

F. The net effective interest rate (whether imputed or express) on the Lease-Purchase Agreement will not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Authorization of Agreement.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a two-thirds majority of all of the members of the Board. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the County and completing the Project, it is hereby declared necessary that the County, pursuant to the Act, execute and deliver the Agreement, evidencing a special, limited obligation of the County to pay an amount not to exceed $350,000, inclusive of interest, whether imputed or express, and any applicable gross receipts or other governmental tax or fee, and the execution and delivery of the Lease-Purchase Agreement are hereby authorized. The County shall finance the purchase of the Equipment through the Rental Payments made pursuant to the Agreement.

B. Detail. The Lease-Purchase Agreement shall be substantially in the form provided to the Board in connection with this Ordinance. The total amount payable by the County pursuant to the Lease-Purchase Agreement shall not exceed $350,000, inclusive of interest, whether imputed or express, and any applicable gross receipts or other governmental tax or fee, and shall be payable in installments or rent and interest due on the dates set forth in the Agreement.

Section 6. Approval of Final Form Agreement; Execution and Delivery. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Lease-Purchase Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to affix the seal of the County on the Lease-Purchase Agreement and attest the same.

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The execution of the Lease-Purchase Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Lease-Purchase Agreement shall be secured by the pledge of the Net Revenues as set forth in the Agreement, and shall be payable solely from the Net Revenues. The Agreement, together with interest thereon and other obligations of the County thereunder, shall be special, limited obligations of the County, payable solely from the Net Revenues as provided in this Ordinance and the Lease-Purchase Agreement and shall not constitute a general obligation of the County or the State, and the Lessor may not look to any general or other fund of the County for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Agreement, or any other instruments, shall be construed as obligating the County (except with respect to the application of the Net Revenues), as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Agreement, or any other instrument impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The Lease-Purchase Agreement shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing herein shall prevent the County from applying other funds of the County legally available therefor to payments required by Agreement, in its sole and absolute discretion.

Section 8. Funds and Accounts; Completion of Project.

A. The County hereby creates the following funds and accounts, each in connection with the Lease-Purchase Agreement:

(i) the special fund known as the Rental Payment Fund to be held and maintained by the County; and

(ii) the Santa Fe County Water and Wastewater Utility Revenue Fund (the "Revenue Fund") to be held and maintained by the County.

B. The County will complete the Project with all due diligence.

Section 9. Deposit of Net Revenues; Flow of Funds.

A. Revenue Fund. So long as payments are due under the Agreement, the County shall credit all Net Revenues to the Revenue Fund. As a first charge on the Revenue Fund, amounts due under the Lease-Purchase Agreement shall be withdrawn from the Revenue Fund and shall be credited to the Rental Payment Fund on the dates and in the amounts set forth in the Agreement.

B. Credit. In making the deposits required to be made into the Rental Payment Fund, if there are any amounts then on deposit in the Rental Payment Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (A) above shall be reduced by the amount available in such fund for such purpose.

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C. Transfer of Money out of Rental Payment Fund. Each payment due pursuant to the Lease-Purchase Agreement shall be transferred from the Rental Payment Fund to the Lessor on the due date of such payment as provided in the Agreement.

D. Termination Upon Deposits to Maturity. No payment shall be made into the Rental Payment Fund or Revenue Fund if the moneys in the Rental Payment Fund totals a sum at least equal to the entire aggregate amount due on the Agreement, in which case moneys in said fund in an amount at least equal to such payment requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in said funds and any other moneys derived from the Net Revenues may be used in any lawful manner determined by the County.

E. Defraying Delinquencies in the Rental Payment Fund. If, on any payment date, the amount on deposit in the Rental Payment Fund is insufficient to make the payments due on the Agreement, then an amount shall be paid into the Rental Payment Fund from the first Net Revenues thereafter received that are not required to be deposited in the Rental Payment Fund as set forth in Paragraph C of this Section.

F. Payment from Other Sources. Notwithstanding any other provisions of this Ordinance, the County may, in its sole discretion, choose to apply other legally available funds to the payment of Rental Payments and other amounts due (if any) pursuant to the Agreement.

G. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, Net Revenues may be applied to any other lawful purpose, as the County may from time to time determine.

Section 10. Lien on Net Revenues. Pursuant to this Ordinance and the Lease-Purchase Agreement, the Net Revenues are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein for, the payment of the Rental Payments, interest, if any, and any other amounts due under the Lease-Purchase Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Lease-Purchase Agreement constitutes an irrevocable and first lien on the Net Revenues.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Lease-Purchase Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Lease-Purchase Agreement and the publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Lease-Purchase Agreement to Lessor, the provisions of this Ordinance may be supplemented or amended by ordinance of the Board with respect to any changes which are not inconsistent with the

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substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Board without receipt by the County of any additional consideration, but only with the prior written consent of the Lessor.

Section 13. Ordinance Irrepealable. After the Lease-Purchase Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Lease-Purchase Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the County kept for that purpose, authenticated by the signatures of the Chair of the Board and the County Clerk of the County, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the County, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

Santa Fe County, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2020-5 duly adopted and approved by the Board of Commissioners of Santa Fe County New Mexico, on July 14, 2020. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the County Clerk, 100 Catron St. Santa Fe, New Mexico.

SANTA FE COUNTY, NEW MEXICO

An Ordinance Authorizing the Execution and Delivery of a Lease-Purchase Agreement Concerning One (1) 900 Kw Cummins Generator 60Hz, One (1) Level 2 Sound Enclosure, and One (1) 2,000-Gallon Fuel Tank for the Santa Fe County Water Reclamation Facility, Evidencing a Special, Limited Obligation of the County Payable from the Net Revenue of the County Water and

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Wastewater Utility; Delegating Authority to the County Manager to Execute the Lease-Purchase Agreement and Associated Purchase Order(s) Within the Parameters Set Forth in this Authorizing Ordinance; Ratifying Actions Heretofore Taken; Repealing All Action Inconsistent with this Authorizing Ordinance; and Authorizing the Taking of Other Actions in Connection with the Execution and Delivery of the Lease-Purchase Agreement.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

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PASSED, APPROVED AND ADOPTED THIS 14th DAY OF July, 2020.

BOARD OF COUNTY COMMISSIONERS
SANTA FE COUNTY, NEW MEXICO

Henry P. Roybal, Chair

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

APPROVED AS TO FORM:

7/14/20
Gregory S. Shaffer, County Attorney

FINANCE DIVISION APPROVAL:

7/14/2020
Yvonne S. Herrera, Finance Division Director

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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDINANCE
PAGES: 23

I Hereby Certify That This Instrument Was Filed for Record On The 17TH Day Of July, 2020 at 02:23:30 PM And Was Duly Recorded as Instrument # 1922246 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Estrella Martinez
County Clerk, Santa Fe, NM

Equipment Lease Agreement
Between Integrated Water Services, Inc.
and Santa Fe County

WHEREAS, this Equipment Lease Agreement ("Lease Agreement") is effective as of _____, 2020, between Integrated Water Services, Inc., with its principal place of business in Steamboat Springs, CO (the "Lessor") and Santa Fe County a political subdivision of the state of New Mexico, Santa Fe County (the "Lessee"); and

WHEREAS, the Lessor and Lessor have entered into Agreement No. 2019-0016-CMO/BT (the Agreement), a design-build contract for the design and construction of the Santa Fe County Water Reclamation Facility (the "SFCWRF"); and

WHEREAS, as part of the scope of work under the Agreement, Integrated Water Services, Inc., "Lessor" under this Equipment Lease Agreement, recommended by letter dated May 21, 2020, that Santa Fe County, "Lessee" under this Lease Agreement, rent from Lessor one (1) 900 Kw Cummins Generator 60Hz and other associated equipment for the operation of the SFCWRF; and

WHEREAS, the rental of the Cummins generator and other equipment and services for the completion of the SFCWRF are the subject of Change Order No. 2 to the Agreement; and

WHERES, pursuant to the Agreement and Change Order No. 2 the Lessor and Lessee agree to the terms and conditions of this Lease Agreement for the Lessee's rental of the Cummins generator and associated equipment.

SECTION 1 - <u>LEASE EQUIPMENT; AGREEMENT</u>

Subject to the terms and conditions hereinafter set forth in this agreement and per IWS proposal dated May 21, 2020 (Updated pricing for electrical service connection to the SFCWRF and SCADA System Discovery and Planning) as attached, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor one (1) new 900 Kw Cummins Generator 60Hz, one (1) new Level 2 Sound Enclosure and one (1) new 2,000 gallon fuel tank, delivered, installed, and tested to the meet the revised electrical design criteria of the SFCWRF and subject to this Lease Agreement. The generator, compliance-fuel tank and Level 2 Sound Enclosure for the generator (collectively referred to as the "Leased Property or "Leased Equipment") shall be maintained by the Lessee to meet manufacturer's warranty and operating requirements per the manufacturer's operations and maintenance manual. The SFCWFR shall include, at a minimum, the following: 900 Kw Cummins generator, Level 2 Sound Enclosure, and a 2,000 gallon fuel tank. Fuel is not included for start-up and testing or for operation and is to be provided by the Lessee. All the Leased Equipment shall be new. Warranty provided will be the standard Cummins warranty included in the submittal package.

SECTION 2 - <u>DELIVERY, INSTALLATION, DEMOBILIZATION FEE, AND OTHER SERVICES</u>

The Leased Property shall be delivered by the Lessor to Lessee at a site designated by the

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Lessee. The Lessor shall cause the Leased Property to be unloaded, assembled, and installed on the Lessee's site that have all weather access. The Lessor shall be responsible for that portion of work relating to the installation, testing and start-up of the Leased Property. Lessor agrees to have the Leased Property delivered and installed in an estimated 12-14 weeks from the date Lessor receives the Lessee's purchase order and will be confirmed by manufacturer after firm order is placed. Lessor does not guarantee any approvals by third party engineers or state and local regulatory agencies which may prevent or delay the installation and start-up of the Leased Property. In the event third party engineering approval or state and local regulatory approval is not obtained, Lessor shall work diligently to obtain third party approval as required.

Without further demand therefore by Lessor, Lessee shall pay to Lessor the lump sum of $8,793.58 with this signed Lease Agreement for first month's lease payment in order for Lessor to place the order for the Leased Equipment A demobilization fee of $5,000.00 will be due and payable immediately upon Lessor receiving 60 day termination notice of this Lease Agreement and to remove the Leased Property from the SFCWRF. Lessor shall furnish a written invoice for the demobilization fee to Lessee.

SECTION 3 – TERM

Unless terminated by Lessor pursuant to the provisions of Section 14 (Events of Default), this Lease Agreement shall remain in effect for thirty-six (36) months commencing on the day the Leased Equipment is installed at the SFCWRF and is ready for start-up.

SECTION 4 - RENTAL PAYMENTS; LESSEE'S SPECIAL FUND

Lessee agrees to pay Lessor as rental for the use of the Leased Property $8,793.58 per month for each of the thirty-six (36) months comprising the balance of the (the "Lease Payments") with the initial month pro-rated based upon the date that the installation of the Leased Equipment is ready for operation. Monthly lease payments are exclusive of any applicable tax, sales, use or gross receipts. Taxes will be the responsibility of Lessee and Lessee will pay any tax billed monthly by the Lessor.

Lessee's purchase option: The Lessee may purchase the Leased Equipment at the end of the lease for a sum of $1.00 or for the amounts listed in the table below in 12 month options:

After month 12	$184,054.68
After month 24	$ 98,195.24
After month 36	$ 1.00

Each of the monthly Lease Payments are due and payable to Lessor on the first (1st) day of each month, in advance, and shall be made at the office of the Lessor at PO Box 774565, Steamboat Springs, CO 80477. The first month's lease is payable upon the execution of this Lease Agreement by the parties hereto. Invoices not paid within 10 days shall be subject to 1.5% per month interest charge and a $300.00 late payment fee.

All rent payments payable by the Lessee under this Lease Agreement shall be paid exclusively from the Net Revenues of the Santa Fe County Water and Wastewater Utility System, as set forth in Ordinance No. _____ authorizing the County (Lessee) to execute and

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deliver this Lease Agreement.

SECTION 5 - TITLE TO LEASED PROPERTY

The Leased Property shall at all times be and remain the sole and exclusive property of Lessor, and Lessee shall have no right of property therein, but only the right to use the Leased Property upon the terms and conditions herein contained. During the lease term, and any extensions thereof, Lessee shall have the sole and exclusive right to use the Leased Property and all additions and repairs thereto as approved by the Lessor. It is expressly agreed that the Leased Property shall be considered and remain personal property even though it may be attached or affixed to real estate. If the Leased Property is attached or affixed to real estate which is owned by any other person or entity other than Lessee or which is subject to a mortgage, Lessee shall obtain and deliver to Lessor a consent and waiver from the landlord or mortgagee, as the case may be, in a form acceptable to Lessor which shall permit Lessor to remove the Leased Property from said real estate at any time during the term of, or after the expiration or termination of this Lease Agreement. Lessor may display notice of its ownership of the Leased Property by affixing to each item of equipment an identifying stencil or plate or other indication of ownership and Lessee agrees that it will not remove, deface or obliterate any such notice.

SECTION 6 - LESSOR'S WARRANTIES

The Lessor covenants and agrees as follows:

a) The Lessor has, or will have by the date of installation of the Leased Equipment, clear and good title to the Leased Equipment, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due and the lien or liens securing only the purchase money mortgage of the equipment or financing secured by the Lease Agreement.

b) The Leased Property equals or exceeds the Design Criteria as specified in Section 1 and is in good and serviceable condition.

c) The Lessor shall undertake any reasonable action requested by Lessee to enforce any and all warranties or guarantees to which Lessor is entitled on the Leased Equipment, or assign such warranties or guarantees to Lessee.

d) The Lessor will transfer the manufacturer's warranty the Leased Property from date of start-up, to Lessee. Lessee shall operate and maintain the Leased Equipment to the manufacturers operating and maintenance manual and shall promptly make repairs or maintenance of the Leased Property as needed to comply with the manufacturer's warranty and operating and maintenance manual. Lessor shall warrant to the manufacturer's warranty only that the equipment shall be free from faults in materials and workmanship during the manufacturer's warranty period. Lessor shall promptly furnish repairs and/or replacement parts to the Lessee for any component of the Leased Property (i) shown to have been defective during the manufacturer's warranty period; or (ii) a component of the Leased Property shown to have been defective during the

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warranty period, through no fault of the Lessee.

SECTION 7 - REMOVAL, INSPECTION AND RETURN

The Leased Property shall not be removed from the place of its initial installation at the SFCWRF without the prior written consent of Lessor. Lessee shall at reasonable times and from time to time and with notice to the Lessee, allow Lessor, by or through any of its officers, agents or attorneys, to examine and inspect the Leased Property. Upon the termination of this Lease Agreement if not purchased by Lessee, Lessor shall, at its expense, remove the Leased Property from the site, and shall be given thirty (30) days from the time the Leased Property is no longer in service. The Lessee shall be responsible for delivering the Leased Equipment to the Lessor in a clean condition, normal wear and tear excepted.

SECTION 9 - OPERATION, MAINTENANCE AND REPAIR

Lessee shall comply with and conform to all state and federal laws relating to the operation of the Leased Property and shall use the Leased Equipment in accordance with the Operations and Maintenance manual provided for the Leased Equipment as a requirement for the system performance warranty. Except as otherwise provided in this Lease Agreement, Lessee shall maintain the Leased Property in good condition and running order at all times during the term of this Lease Agreement, but shall not be responsible for normal wear and tear or depreciation. In the event Lessee determines that the Leased Property is not in good repair and operating condition through no fault of Lessee or that the Leased Equipment is otherwise unsuited for the purpose for which it was designed and Lessee has so notified Lessor in writing of said condition, and if Lessor does not within ten (10) days from the date of such notice comply with the requirements thereof, Lessee (in addition to all other available remedies) may cause the Leased Property to be put in good and efficient working order and condition and Lessor shall reimburse Lessee for cost of same. If Lessor fails to promptly pay Lessee for Lessee's costs to make the above-described repairs, at the option of Lessee, all such costs may be deducted from future Lease Payments. Lessor shall have no responsibility for the maintenance of the Leased Property after it is delivered to and accepted by Lessee and before it is redelivered to Lessor as herein provided.

SECTION 10 - RISK OF LOSS AND INSURANCE

Upon final completion of the installation of the Leased Property, all risk of loss or damage of the Leased Property shall be borne by Lessee. Lessee shall have and maintain insurance at all times after final completion with respect to the Leased Property against risks of fire (including so-called extended coverage), theft, and such other risks and in such amounts as Lessor may reasonably require. Upon written request from Lessor, Lessee shall deliver to Lessor the policies or evidence of insurance satisfactory to Lessor.

SECTION 11 - DAMAGE, DESTRUCTION OR THEFT

Notwithstanding damage to the Leased Property, the Lease Payments shall continue to be paid by Lessee. Lessee shall have the responsibility for the repair of the damaged Leased Property, and Lessee shall repair or cause such Leased Property to be repaired promptly after the damage. In every such instance, Lessor will reimburse Lessee for the cost of repair to the extent of the insurance proceeds actually received by Lessor because of such damage. In the event the Leased

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Property is destroyed, stolen or damaged beyond repair, Lessee shall forthwith pay to Lessor the market value of the Leased Property immediately prior to such destruction, theft or damage less (a) the salvage value, if any, of the Leased Property and (b) the insurance proceeds actually received by Lessor because of such destruction, theft or damage.

SECTION 12 - ASSIGNMENT AND SUBLEASE BY LESSEE

Lessee may not assign this Lease Agreement or sublease the Leased Property without the prior written consent of Lessor, unless that assignment is to another governmental entity such as a municipal utility district in New Mexico, a political subdivision of the state of New Mexico, or a municipality in New Mexico, which consent shall not be unreasonably withheld.

SECTION 13 - ASSIGNMENT BY LESSOR: RIGHTS OF ASSIGNEE

The Lessor shall have the right to sell or assign this Lease Agreement including its right, title and interest to the Leased Equipment and the Lease Payments reserved herein, subject to the reasonable approval of Lessee. In the event of any such assignment by the Lessor, the assignee shall thereupon acquire all of the rights, obligations, and remedies possessed by or available to the Lessor. Upon receiving proper notice of any such assignment and if Lessee approves same, the Lessee shall thereafter make Lease Payments as therein directed.

SECTION 14 - EVENTS OF DEFAULT

The following events shall be deemed to be events of default by the Lessee under this Lease Agreement:

a) The Lessee shall fail to pay any Lease Payments due during the initial term of thirty-six (36) months and such failure shall continue for a period of sixty (60) days after Lessee's receipt of written notice from Lessor.

b) The Lessee fails to comply with any other term, provision, or covenant of this Lease Agreement and does not cure such failure within sixty (60) days after Lessee's receipt of written notice thereof from Lessor.

Upon the occurrence of any such events of default, the Lessor shall have the right to remove and retain the Leased Property should the Lessee fail to make payment of the outstanding balance within ten (10) business days of written notice of such default delivered to Lessee by certified mail.

In the event the Lessor receives any notice of default under its purchase money mortgage or another item which might become a lien on the Leased Property, Lessor shall promptly provide Lessee with a copy thereof. Additionally, Lessor agrees to furnish Lessee, on demand, satisfactory evidence of payment of each installment due on the purchase money mortgage and of any other items which might become a lien on the Leased Property. For the purpose of this Lease Agreement, satisfactory evidence of payment shall be deemed to be a copy of the check sent to the proper party. Lessor warrants to Lessee that it shall make all such payments timely and LESSOR AGREES TO INDEMNIFY AND DEFEND LESSEE AGAINST ANY AND ALL LIENS, CLAIMS, RIGHTS, AND/OR SUITS BROUGHT AGAINST LESSEE OR IN ANY WAY PERTAINING TO THE LEASED PROPERTY

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(INCLUDING WITHOUT LIMITATION, REASONABLE LEGAL FEES AND COURT COSTS). If Lessor fails to make such payments, together with any interest or penalty, required to be paid in connection herewith, the Lessee shall have the right to make such payments which may be deducted by the Lessee from any Lease Payments thereafter becoming due hereunder.

If there is a purchase money mortgage or other financial instrument secured by the Leased Property, Lessor agrees to obtain a mortgagee's subordination, pursuant to the terms of which the mortgagee, in the event of foreclosure, will honor the terms and conditions of this Agreement as successor to Lessor. As successor to Lessor, the mortgagee will have the same rights, obligations, and defenses against Lessee as Lessor held under this Agreement and Lessee will continue to have the same rights, obligations, and defenses against the mortgagee that it holds against Lessor. In connection therewith, mortgagee shall honor and give Lessee credit for all payments made to Lessor under this Agreement, including all Lease Payments.

SECTION 15 - PAYMENTS AND NOTICES

Except as otherwise provided herein, each provision of this Lease Agreement or of any applicable governmental laws, ordinances, regulations, and other requirements with reference to the sending, mailing, or delivery of any notice or the making of any payment by the Lessor to the Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to the Lessor shall be deemed to be complied with, when and if the following steps are taken:

a) All lease and other payments required to be made by the Lessee to the Lessor hereunder shall be payable to Lessor at the address herein below set forth, or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith. All payments required to be made by the Lessor to the Lessee hereunder shall be payable to Lessee at the address herein below set forth, or at such other address as Lessee may specify from time to time bywritten notice delivered in accordance herewith.

b) Any notice or document required or permitted to be delivered thereunder shall be deemed to be delivered upon actual receipt of the parties hereto at the respective addresses set out opposite their names below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith.

LESSEE
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504

LESSOR
Integrated Water Services, Inc.
PO Box 774565
Steamboat Springs, CO 80477

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SECTION 16- INTERPRETATION

Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

SECTION 17 - BINDING EFFECT

The terms, provisions, covenants and conditions contained in this Lease Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns except as otherwise expressly provided.

SECTION 18 - ENTIRE AGREEMENT AND AMENDMENTS

This instrument contains the entire agreement between the parties regarding the subject matter herein. This Lease Agreement may not be amended, altered or changed except by an instrument in writing signed by both parties hereto.

SECTION 19-TAXES

Any real or personal ad valorem property taxes imposed or levied by any taxing authority on the Leased Property shall be the responsibility of the Lessee. While this Agreement is in effect the Lessee shall be considered the beneficial owner of the Leased Property.

SECTION 20- GOVERNING LAW

This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Lessor and Lessee agree that the exclusive forum for any litigation between them arising out of or related to this Lease Agreement shall be state district courts of New Mexico, located in Santa Fe County.

EXECUTED this_____,2020.

Lessor - Integrated Water Services, Inc.

_____

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Lessee - Santa Fe County

_____
Chair, Board of County Commissioners

ATTESTATION:

_____
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:

_____ _____
Gregory S. Shaffer Date
Santa Fe County Attorney

Finance Division:

_____ _____
Yvonne S. Herrera Date
Finance Director

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Our energy working for you.™

Power Generation

Quotation

Cummins Sales and Service - Rocky Mountain
1921 Broadway Blvd. NE
Albuquerque NM 87102
Direct: (505)-401-6082
February 24, 2020

Project Name: CT022420-02 Santa Fe County, NM WWTF

Quotation: 329000000384041

Thank you for your inquiry. We are pleased to quote as follows:

Item	Description	USD Qty
	Diesel Genset: 60Hz-900/818kW	
Install-US-Stat	U.S. EPA, Stationary Emergency Application	1
900DQFAC	Genset-Diesel,60Hz,900kW	1
A331-2	Duty Rating-Standby Power	1
L090-2	Listing-UL 2200	1
L170-2	Emissions Certification, EPA, Tier 2, NSPS CI Stationary Emergency	1
F200-2	Enclosure-Steel,Weather Prot,Base Mtd,w/ExhSys	1
C252-2	Fuel Tank-Subbase,2000 Gallon,UL142 Compliant	1
R002-2	Voltage-277/480,3 Phase,Wye,4 Wire	1
B276-2	Alternator-60Hz,3 Phase,Wye,Limited Range125/105C	1
H704-2	Generator Set Control-PowerCommand 3.3, Paralleling	1
H536-2	Display Language-English	1
H678-2	Display-Control, LCD	1
KP74-2	Stop Switch-Emergency,Externally Mounted	1
KU67-2	Relays-Paralleling Circuit Breaker Control	1
H606-2	Meters-AC Output,Analog	1
H609-2	Control Mounting-Left Facing	1
KU93-2	CB or EB or TB-Left Only	1
KP87-2	CB-1600A,3P,600/690V,UL/IEC,ServEnt,100%UL,Left	1
KB73-2	CB or EB or TB-Bottom Entry, Left	1
KP99-2	Ckt Brkr Access, 24VDC Trip, Aux&Trip Contacts,LS	1
KR01-2	Circuit Breaker Lugs-Mechanical, Left Side	1
H723-2	Indication-Ground Fault, Terminal Box (or) Circuit Breaker Box - Left	1
P175-2	Enclosure Color-Green,Steel Enclosure	1
L116-2	**Compliance-Fuel Tank, State of NM**	**1**
L163-2	Listing, ULC-S601-07	1
H657-2	Distribution Panel-Prewired AC Features	1
K102-2	ServiceReceptacle-120V,20A,ExternalGFCI,NEMA 5-20R	1

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C215-2	Alarm-High Fuel Fill	1
C256-2	Fuel Tank Connection-Dual Stub Up	1
B786-2	Battery Charger-12 Amp, Regulated	1
E126-2	EngineCooling-Enhanced HighAmbient Air Temperature	1
H389-2	Shutdown-Low Coolant Level	1
E098-2	Sight Glass-Coolant Level	1
H557-2	Coolant Heater-208/240/480V, Below 40F Ambient Temp	1
D041-2	Engine Air Cleaner-Normal Duty	1
L026-2	Test Record-Certified	1
L028-2	Genset Warranty- Base	1
L050-2	Literature-English	1
CP01-2	Common Parts Listing	1
SPEC-J	Product Revision - J	1
0300-5929-02	Annunciator-Panel Mounted With Enclosure (RS485)	1
A043D534	Battery Temperature-Sensor 15240 mm	2
OPTIONAL	**ADD OPTION: Provide a Level 2 Sound Enclosure 74.6 dB(A) @ 7 meters / full load. ADD $17,000.00**	0
BH120	Heater, Battery with Thermostat kit 120V	2
SUMILGE	Mileage, Start Up	1
BATTLA	Starting Battery Kit, Lead Acid	2
LBTRO	Load Bank Testing, Resistive. Per project specifications	1
FTPTSL	Fuel Tank Pressurization Testing, As required by local Authority Having Jurisdiction	1
DELVR	Delivery to jobsite	1
SULABR	Startup and Testing	1

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Cummins Sales and Service - Rocky Mountain
1921 Broadway Blvd. NE
Albuquerque NM 87102 United States
Direct: (505)-401-6082

Standard Exclusions

Proposal Validity:
The proposal is valid for 45 days from the date of proposal unless specifically noted.

Taxes & Permits:
The proposal excludes any applicable sales taxes, permits, & licensing. Taxes unless otherwise stated are not included in our proposal.

Delivery:
Equipment is quoted F.O.B. jobsite unless otherwise stated in our proposal.
Equipment held for longer than 30 days may be subject to a monthly storage fee.

General Clarifications:
The proposal offered here in is limited to the plans & specification sections listed on our proposal. Cummins Sales and Service takes general exception to specified products, services, and attachments which are proprietary to any other manufacturer No other sections shall apply. Please note that the proposal excludes all installation (exhaust systems, fuel systems, cooling systems, vibration isolators, etc.), diesel fuel for testing/ top-off, nor crane/ millwright services for off-load of equipment unless otherwise noted in the proposal.

Closeout Documentation:
Unless stated otherwise, electronic submittals & O & M manuals will be provided. Printed copies are available upon request, additional charges may apply.

Invoicing & Cancellations:
Payment Terms are Net 30 days from date of invoice & are subject to the approval of our Credit Department at the time an order is placed. Cummins Sales and Service does not approve or acknowledge any other terms without express written confirmation.
In cases where retainage is required, a maximum of 10% retainage will be allowed. The balance of retainage is due after start-up/ commissioning services of equipment provided by Cummins Sales and Service is completed. Retainage balances not paid within 30 days after start-up/ commissioning is completed will be accessed a service charge rate equal to 1.5% per month on any outstanding balance. Generators, Transfer Switches, & Switchgear will be invoiced at the time of shipment. Orders are subject to the Cummins Power Generation (CPG/ Factory) cancellation policy. The exact dollar value of the cancellation charge will be determined after Cummins Sales and Service cancellation cost is determined. Equipment is custom fabricated to order. A Written notice of cancellation is required.

Warranty:
Cummins Sales and Service will administer the warranty of Cummins Inc. (Cummins) for new Cummins engines, and will administer the warranty of Onan Corporation (Onan) for new Onan generators. Cummins Sales and Service will also administer the warranty provided by the manufacturer for other new engines and equipment sold. Warranty certificates are provided by the equipment manufacturer or new

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engine sales locations, and additional copies are available from Cummins Sales and Service. The manufacturers warranty is the only warranty that applies to new engines and equipment.

Submittals:
An order for the equipment covered by this proposal will be accepted on a Hold For Releasebasis. Your order will not be released & scheduled for production until written approval to proceed is received in our office.

Testing & Commissioning:
If included in the proposal, all on-site start-up/ commissioning, testing & training assumes weekdays, during standard Cummins Sales and Service business hours. Additional charges may be added for work requested to be done on overtime, weekends, & holidays.
Third party electrical testing & certifications, seismic calculations, coordination studies, stamped engineering calculations, emissions testing, all other services & material not specifically listed in the preceding quotation.

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