

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

RESOLUTION NO. 2021-022

A RESOLUTION

PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; AUTHORIZING THE EXECUTION AND DELIVERY OF A COST SHARING AGREEMENT FOR THE LEASE-PURCHASE OF ENERGY EFFICIENCY EQUIPMENT AND IMPROVEMENTS TO REDUCE THE ENERGY USE OF THE BUCKMAN DIRECT DIVERSION PROJECT, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE COUNTY PAYABLE FROM UTILITY COST SAVINGS THAT ARE A DIRECT RESULT OF THE ENERGY EFFICIENCY EQUIPMENT AND IMPROVEMENTS; DELEGATING AUTHORITY TO THE COUNTY MANAGER TO EXECUTE THE COST SHARING AGREEMENT AND ASSOCIATED PURCHASE ORDER(S) WITHIN THE PARAMETERS SET FORTH IN THIS AUTHORIZING RESOLUTION; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS AUTHORIZING RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE COST SHARING AGREEMENT

WHEREAS, Santa Fe County (County), the City of Santa Fe (City), the Las Campanas Water and Sewer Cooperative (Cooperative), and the Club at Las Campanas (Club) are partners in the Buckman Direct Division Project (BDD Project); and

WHEREAS, the County and City jointly own BDD Project facilities; and

WHEREAS, the City entered into Professional Services Agreement No. 19-0641 ("PSA 19-0641") with Yearout Energy Services Company, LLC, a New Mexico limited liability Company (the "Contractor"), effective as of August 2, 2019, for the purpose of obtaining an investment grade audit of energy and water usage for various buildings and facilities, including those of the BDD Project; and

WHEREAS, the Contractor provided the City with an Investment Grade Audit Report, dated August 21, 2020 (the "IGA"), which, among other things, recommended the following energy conservation measures at the following BDD Project facilities:

1. LED lighting facility improvement measures at BDD Main, BDD Booster Station 1A, BDD Booster Station 2A, and BDD Lift Station (the "LED FIMs"); and
2. Solar PV renewable energy facility improvement measures for the BDD Lift Station (277.20 kW) and BDD Booster Station #1A (739.20 kW) (the "Solar FIMs" and, collectively, with the LED FIMs the "BDD Energy Conservation Measures" or "Project"); and

SFC CLERK RECORDED 02/24/2021

**WHEREAS**, pursuant to Section 6-23-5(B)(2) NMSA 1978, the Energy, Minerals and Natural Resources Department of the State (“EMNRD”) certified to the City by letter dated September 12, 2020, that the Contractor meets the experience requirements established by EMNRD and is a qualified provider of energy efficiency measures, and that the energy savings measures proposed in the IGA appear to have been accurately estimated and are reasonable; and

**WHEREAS**, the City is considering entering into (1) an Energy Performance Contract (“EPC”) with the Contractor to implement the BDD Energy Conservation Measures and other energy and water conservation measures at City facilities and (2) a lease-purchase agreement with a bank or other financial institution serving as a lender to finance the EPC (the “Lease-Purchase Agreement”); and

**WHEREAS**, on February 24, 2021, the City will consider the adoption of Ordinance No. 2021-3, pursuant to which, among other things, the City would pledge toward lease payments under the Lease-Purchase Agreement the amounts saved by the City in the purchase of electricity or water that are a direct result of energy and conservation measures; and

**WHEREAS**, the BDD Energy Conservation Measures will result in utility cost savings, defined as amounts saved by the BDD Project in the purchase of energy that are a direct result of the BDD Energy Conservation Measures (the “BDD Utility Cost Savings”); and

**WHEREAS**, the cost of purchasing energy for the BDD Project is apportioned among the City, the County, Club, and Cooperative pursuant to the Facility and Operations and Procedures Agreement for the BDD Project (“FOPA”); and

**WHEREAS**, the City, County, Club, and Cooperative are negotiating a Cost Sharing Agreement for the Lease-Purchase of Energy Efficiency Equipment and Improvements to Reduce the Energy Use of the Buckman Direct Diversion Project (“Cost Sharing Agreement”), pursuant to which, among other things, the County, Club, and Cooperative would pledge their share of BDD Utility Cost Savings to the City for lease payments under the Lease-Purchase Agreement; and

**WHEREAS**, the Board of County Commissioners (“Board” or “BCC”) of the County desires to authorize the execution and delivery of the Cost-Sharing Agreement and the pledging of the County’s share of the BDD Utility Cost Savings to the City.

**NOW, THEREFORE**, be it resolved by the Board:

Section 1. Additional Definitions. In addition to terms defined elsewhere in this Resolution, the following terms shall, for all purposes herein, have the following meanings, 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 6-23-1 through 6-23-10 NMSA 1978, as amended, and enactments of the Board related to the Lease-Purchase Agreement, including this Resolution.

“Authorized Officer” means the County Manager.

“BDD Utility Cost Savings Fund” means the fund created by Section 9 hereof, into which shall be deposited the Pledged Revenues.

“Pledged Revenues” means the County’s share of the BDD Utility Cost Savings determined in accordance with the Cost Sharing Agreement.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Board and officers of the County directed toward the Project and the execution and delivery of the Cost Sharing 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 Project through the Cost Sharing Agreement are hereby authorized and ordered. The Project is for the benefit of the County.

Section 4. Findings. The Board 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 BDD Project, is needed to meet the needs of the County and its residents, and the execution and delivery of the Cost Sharing Agreement is necessary and advisable.

B. As it relates to the Project, the EPC and Lease-Purchase Agreement are necessary.

C. Moneys available and on hand for the Project from all sources other than the Lease-Purchase Agreement are not sufficient to defray the County’s share of the cost of the Project.

D. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Cost Sharing Agreement.

E. It is economically feasible to defray, in whole or in part, the County’s share of the costs of the Project through the execution and delivery of the Cost Sharing Agreement.

F. The Project and the execution and delivery of the Cost Sharing Agreement to provide funds for the financing of 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 BDD Utility Cost Savings and other benefits for the County.

Section 5. Authorization of Agreement.

A. Authorization. This Resolution has been adopted by the affirmative vote of a 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 Cost Sharing Agreement, evidencing a special, limited obligation of the County, and the execution and delivery of the Cost Sharing Agreement are hereby authorized. The County shall finance its share of the Project through the payments made pursuant to the Cost Sharing Agreement.

B. Detail. The Cost Sharing Agreement shall be substantially in the form provided to the Board in connection with this Resolution or at a future meeting of the Board prior to the execution and delivery of the Cost Sharing Agreement. The total amount payable by the County pursuant to the Cost Sharing Agreement shall not exceed its share of BDD Utility Cost Savings. In the event the Club or Cooperative is not a party to the Cost Sharing Agreement, the Authorized Official is authorized to negotiate revisions to the Cost Sharing Agreement BDD that allocates the costs and benefits of the BDD Energy Conservation Measures among the remaining members in an equitable way.

Section 6. Approval of Final Form of Cost Sharing Agreement; Execution and Delivery. The Authorized Officer is hereby authorized to execute, acknowledge and deliver the Cost Sharing Agreement with such changes, insertions and omissions as are consistent with this Resolution and as may be approved by the Authorized Officer, and the County Clerk is hereby authorized to affix the seal of the County on the Cost Sharing Agreement and attest the same. The execution of the Cost Sharing Agreement by the Authorized Officer shall be conclusive evidence of such approval.

Section 7. Relation to Ordinance No. 2020-5. The Pledged Revenues are an Operation and Maintenance Expense within the meaning of Section 1 of Ordinance No. 2020-5, since they represent energy expenses of the System that would have been incurred but for the Project.

Section 8. Special Limited Obligation. The Cost Sharing Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Cost Sharing Agreement, and shall be payable solely from the Pledged Revenues. The Cost Sharing Agreement, together with interest thereon and other obligations of the County thereunder, shall be special, limited obligations of the County, payable solely from the Pledged Revenues as provided in this Resolution and the Cost Sharing Agreement and shall not constitute a general obligation of the County or the State, and the City may not look to any general or other fund of the County for payment of the obligations thereunder. Nothing contained in this Resolution or in the Cost Sharing Agreement, or any other instruments, shall be construed as obligating the County (except with respect to the application of the Pledged 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 Resolution, the Cost Sharing 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 Cost Sharing 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 the Cost Sharing Agreement, in its sole and absolute discretion.

Section 9. Fund Created; Deposit of Pledged Revenues.

A. BDD Utility Cost Savings Fund. The County hereby creates the BDD Utility Cost Savings Fund. So long as payments are due under the Cost Sharing Agreement, the County shall credit all Pledged Revenues to the BDD Utility Cost Savings Fund.

B. Transfer of Money Out of BDD Utility Cost Savings Fund. Each payment due pursuant to the Cost-Sharing Agreement shall be transferred from the BDD Utility Cost Savings Fund to the City on the due date of such payment as provided in the Cost Sharing Agreement.

C. Termination Upon Deposits to Maturity. No payment shall be made into BDD Utility Cost Savings Fund if the moneys in the BDD Utility Cost Savings Fund totals a sum at least equal to the entire aggregate amount potentially due under the Cost Sharing 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 fund may be used in any lawful manner determined by the County.

D. Payment from Other Sources. Notwithstanding any other provisions of this Resolution, the County may, in its sole discretion, choose to apply other legally available funds to the payment of amounts due pursuant to the Cost Sharing Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to this Resolution and the Cost Sharing Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein for, the payment of amounts due under the Cost Sharing Agreement. The Cost Sharing Agreement constitutes an irrevocable and first lien on the Pledged Revenues.

Section 11. Authorized Officer. The Authorized Officer is hereby 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 Resolution, the Cost Sharing Agreement, and all other transactions contemplated hereby and thereby. The Authorized Officer is hereby authorized to do all acts and things required by this Resolution and the Cost Sharing Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Cost Sharing Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Cost Sharing Agreement and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment or Repeal of Resolution. Prior to the date of the initial delivery of the executed Cost Sharing Agreement to the other Parties thereto, the provisions of this Resolution may be supplemented, amended, or repealed by resolution of the Board. After the initial delivery of the executed Cost Sharing Agreement to the other Parties thereto, this

Resolution may be amended without receipt by the County of any additional consideration, but only with the prior written consent of the other Parties to the Cost Sharing Agreement.

Section 13. Resolution Irrepealable. After the Cost Sharing Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all payments due the City under the Cost Sharing Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution 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 Resolution.

Section 15. Repealer Clause. All bylaws, orders, and resolutions, 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, or resolution, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, 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 Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the County, and such Resolution 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 Resolution shall be published in substantially the following form:

(Form of Summary of Resolution for Publication)

Santa Fe County, New Mexico  
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. \_\_\_\_\_, duly adopted and approved by the Board of Commissioners of Santa Fe County New Mexico, on February 23, 2020. A complete copy of the Resolution 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

A RESOLUTION PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; AUTHORIZING THE EXECUTION AND DELIVERY OF A COST SHARING AGREEMENT FOR THE LEASE-PURCHASE OF ENERGY EFFICIENCY EQUIPMENT AND IMPROVEMENTS TO REDUCE THE ENERGY USE OF

THE BUCKMAN DIRECT DIVERSION PROJECT, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE COUNTY PAYABLE FROM UTILITY COST SAVINGS THAT ARE A DIRECT RESULT OF THE ENERGY EFFICIENCY EQUIPMENT AND IMPROVEMENTS; DELEGATING AUTHORITY TO THE COUNTY MANAGER TO EXECUTE THE COST SHARING AGREEMENT AND ASSOCIATED PURCHASE ORDER(S) WITHIN THE PARAMETERS SET FORTH IN THIS AUTHORIZING RESOLUTION; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS AUTHORIZING RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE COST SHARING AGREEMENT

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

(End of Form of Summary for Publication)

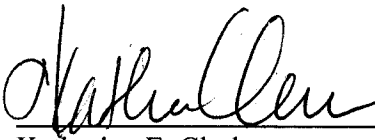
PASSED, APPROVED AND ADOPTED THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2021



BOARD OF COUNTY COMMISSIONERS  
SANTA FE COUNTY, NEW MEXICO

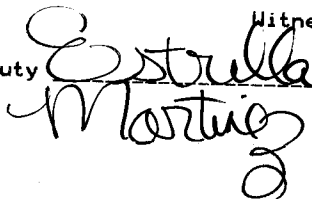
  
Henry P. Roybal, Chair

ATTESTATION:


  
Katharine E. Clark  
Santa Fe County Clerk

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss BCC RESOLUTIONS  
PAGES: 7


I Hereby Certify That This Instrument Was Filed for Record On The 24TH Day Of February, 2021 at 02:23:04 PM And Was Duly Recorded as Instrument # 1944559 Of The Records Of Santa Fe County

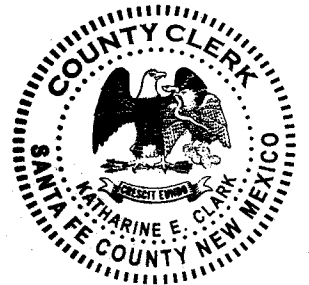
Witness My Hand And Seal Of Office  
Deputy  Katharine E. Clark  
County Clerk, Santa Fe, NM

APPROVED AS TO FORM:

  
Gregory S. Shaffer, County Attorney

FINANCE DIVISION APPROVAL:

  
Yvonne S. Herrera, Finance Division Director



SFC CLERK RECORDED 02/24/2021