

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS
AND SANTA FE COUNTY
REGARDING A WATER LINE TO SERVE THE
CENTER FOR NEW MEXICO ARCHAEOLOGY AND CAMPUS**

This Memorandum of Agreement is entered into on this 30th day of MAY, ⁵⁸ 2012, by and between Santa Fe County (hereinafter referred to as the "County"), a New Mexico political subdivision and the State of New Mexico Department of Cultural Affairs (hereinafter referred to as "DCA"), a governmental department of the State of New Mexico.

RECITALS

WHEREAS, the Santa Fe County Public Division is responsible for water utility planning throughout Santa Fe County, providing master plan infrastructure planning, design, review, approval and acceptance of infrastructure in accordance with the County's design requirements and land use requirements;

WHEREAS, DCA entered into a Lease-Transfer agreement with the United States Bureau of Land Management (hereinafter referred to as the "BLM") for Lot 23, Sec. 35, T17N, R8E (hereinafter referred to as "Lot 23") for the purpose of creating a Museum of New Mexico collections and services campus adjacent to Caja Del Rio Road in Santa Fe County;

WHEREAS, DCA has completed construction of the Center for New Mexico Archaeology as the first facility of the campus and the facility is presently without water utilities;

WHEREAS, DCA desires to have a sustainable and safe public water utility connection for purposes of providing drinking water, fire protection and irrigation at its Center for New Mexico Archaeology and all future facilities at the campus;

WHEREAS, the water supply utility that is nearest to the Center for New Mexico Archaeology facility is that belonging to the Buckman Direct Diversion Project ("BDD"), a project owned by the County, City of Santa Fe, and limited partner Las Companas;

WHEREAS, on August 4, 2011 the Board of the BDD approved DCA's connection to the BDD water transmission line to service DCA's Center for New Mexico Archaeology facility and surrounding areas;

WHEREAS, DCA is willing to design and construct a 12" water line and necessary water connection infrastructure in order to receive water service from the County through the BDD;

WHEREAS, the parties wish to enter in this agreement to ensure that DCA will design and construct a 12" water line and related infrastructure to specifications that will benefit the long term needs of DCA and Santa Fe County;

WHEREAS, DCA will convey ownership of the water line and infrastructure to the County and the County will assume all responsibility for water service and maintenance of the water line and infrastructure as provided in this agreement;

WHEREAS, the County is willing to refund DCA for certain costs associated with the construction of the 12" water line as more specifically provided herein;

WHEREAS, the parties also wish to enter into this agreement to provide for the agreement of the parties with respect to DCA's construction and conveyance of the water line and infrastructure to the County, and to provide for the refund to be provided to DCA-State of New Mexico upon completion of the construction project and the County's ownership and operation of the water line.

NOW THEREFORE, it is mutually agreed between the parties as follows:

1. SCOPE OF AGREEMENT

A. Duties of the Parties during Planning and Construction

1. DCA will procure and pay for the engineering design, installation and construction of a master meter, pressure reducing valve ("PRV") vaults, and a minimum of 700' of 12" water line with appropriate appurtenances that will run through Lot 23 which will connect water from the BDD to DCA's Center for New Mexico Archaeology.
2. Prior to the initiation of construction, DCA will obtain the review and approval of the engineering design and construction plans by the Santa Fe County Utilities Division and Santa Fe County Land Use Office.
3. DCA agrees to include in the construction contract a provision that allows the contractor's warranties on the water line and infrastructure to be assigned to the County.
4. DCA will prepare an easement plat for the water line and related infrastructure, including internal campus 6" and 8" water lines.
5. DCA agrees to include in the construction engineering and construction contract a provision permitting the assignment of any indemnification obligations on the part of the engineer and contractor with respect to any claims for liability and damages against the engineer and contractor.

6. DCA will maintain accurate records of all costs associated with the design, construction and installation of the master meter, PRV vaults, and the 12" water line with appropriate appurtenances, and provide to the County itemized accountings periodically throughout the design and construction.
7. The County will designate a Utilities Project Manager to act as a liaison with DCA in the project planning and design review process, construction drawing approval and final project acceptance. The Utilities Project Manager will be available to attend meetings with DCA and other agencies as necessary for implementation of the project.
8. DCA will provide the County with final as-built drawings of the water transmission infrastructure stamped by a New Mexico licensed engineer, and a certification by such engineer that the project was completed in accordance with approved construction documents.

B. Duties of the Parties Upon Completion of Project

1. Upon completion of the installation and construction of the water line and infrastructure, DCA will transfer ownership of the master meter, pressure reducing valve ("PRV") vaults, the 12" water line and all appurtenances thereto, to the County. As consideration for such improvements and infrastructure the County will compensate DCA in the form of a refund as described in Section 2.
2. Simultaneous with the transfer of ownership of the master meter, PRV vaults, and water line to the County, DCA will provide the County with a utility easement plat for submittal to the BLM for formal easement designation prior to the patenting of Lot 23 to the State of New Mexico. Should the easement designation not be completed prior to the patenting of Lot 23 to the State, DCA will submit the easement plat to the Santa Fe County Clerk for recording with the Santa Fe County Clerk.
3. Prior to the County's acceptance of the water line and infrastructure, DCA shall complete an assignment to the County of DCA's right to indemnification for liability on the part of the engineer for the engineer's design, and on the part of the contractor for construction. DCA shall also assign to the County any and all warranties covering the water line improvements and infrastructure granted to DCA by the contractor in the construction contract.
4. Upon acceptance of the water line and associated infrastructure the County will assume all operation and maintenance of the water line and infrastructure. The County will provide water utility service to the Center for New Mexico Archaeology at the County's normal charges to other water utility customers in the same rate category as DCA.

2. **REFUND TO STATE OF NEW MEXICO; NOT TO EXCEED AMOUNT**

Upon the State's completion of the construction project and upon the County's assumption of ownership of the water line and infrastructure, the County shall refund to DCA a combination of payment and credit to compensate the State for a portion of the construction costs and preparation of an easement plat. The value of the County's share shall be no more than twenty-seven percent (27%) of the State's construction cost and cost of the easement plat for the water line.

In order to substantiate the actual costs of the water line and easement plat, the State shall provide the County with an itemized accounting, verifiable with invoices and statements, of the actual costs incurred by the State.

The County's refund to DCA shall consist of an amount of not more than fifty thousand dollars (\$50,000) payable by check to the State of New Mexico and credit of no more than ten thousand two hundred and twenty dollars (\$10,220) for meter connection fees. The credit for meter connection fees will be issued monthly and shown as a credit against the charge for DCA's monthly water use. DCA will be charged for its water use at the prevailing rate of other customers in the same class as DCA. The total value of the County's refund and credit shall not exceed 27% of the State's cost of construction and preparation of an easement plat.

3. **TERM**

This agreement, shall upon due execution by the parties, become effective as of the date first written above (the Effective Date) and shall terminate upon the County's payment to the State of New Mexico of the total refund value, or two (2) years after the Effective Date of this agreement whichever occurs first, unless earlier terminated pursuant to Paragraph 4 or 10 of this agreement. In no event shall this agreement exceed a term of two (2) years.

4. **TERMINATION**

This agreement may be terminated by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

5. **PERSONNEL**

DCA represents that it has, or will secure at its own expense, all personnel required to perform all of the services required of it under this agreement. Except as the assignee of

DCA's right to indemnification and assignee of the contractor's warranties as provided in Paragraphs 1.A.5. and 1.B.3. herein, the engineer procured by DCA or any of the engineer's agents or subcontractors, the contractor procured by DCA or any of the contractor's agents or subcontractors, shall not be employees of or have any contractual relationship with the County.

6. **NO THIRD PARTY BENEFICIARIES**

This agreement was not intended to and does not create any rights in any persons or party not a party to this agreement.

7. **LIABILITY**

Subject to any rights to obligations of indemnification and warranties DCA assigns to the County upon the County's acceptance of the water line and infrastructure, neither party shall be responsible for liability incurred as a result of the other party's acts or omission in connection with this agreement. Any liability incurred in connection with this agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, § 41-4-1 et seq., as amended.

8. **AMENDMENT**

This agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

9. **APPLICABLE LAW; VENUE**

This agreement shall be construed in accordance with the laws of the State of New Mexico. DCA and the County agree that the exclusive forum for any litigation between them arising out of or related to this agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe, NM.

10. **APPROPRIATIONS**

This agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years this agreement shall terminate upon written notice by the County to DCA. Such termination shall be without penalty to the County, and the County shall have no duty to refund DCA for expenditures made in

the performance of this agreement. The County is expressly not committed to expenditure of any funds until such time as funds are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorization have been made for the fulfillment of this agreement shall be final and not subject to challenge by DCA.

11. INTEGRATION CLAUSE

This agreement incorporates all the covenants and understanding between the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this agreement. No prior covenants or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

12. FACSIMILE OR SCANNED ORIGINAL SIGNATURES

The parties hereto agree that a facsimile or scanned original signature has the same force and effect as an original hard copy for all purposes.

13. INVALID TERM OR CONDITION

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall continue to be valid and enforceable.

14. NOTICES

Any notice required by this agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three days after deposited, postage fully prepaid, registered or certified, in any official receptacle of the U.S. Postal Service.

For DCA: Eric Blinman
 DCA – Archaeology Division Director
 407 Galisteo Street
 Bataan Memorial Building
 Santa Fe, NM 87501
 (505) 827-6343

For the County: Patricio Guerrerortiz

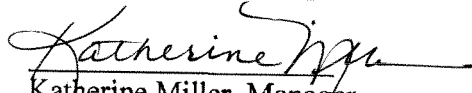
Division Director
Santa Fe County Public Utilities Division
PO Box 276
Santa Fe, New Mexico 87504

15. **SURVIVAL**

The provisions of the following paragraphs shall survive termination of this agreement:
APPLICABLE LAW; VENUE, LIABILITY, and SURVIVAL.


IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date written above.

SANTA FE COUNTY


Katherine Miller, Manager
Santa Fe County

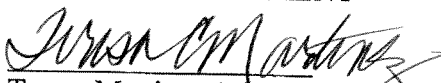
Date: 5.15.12

Approved as to form:


Stephen C. Ross
Santa Fe County Attorney

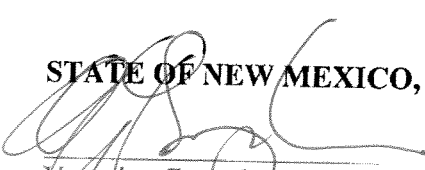
Date: February 27, 2012

FINANCE DEPARTMENT



Teresa Martinez, Director

Date: 4/10/2012

STATE OF NEW MEXICO, DEPARTMENT OF CULTURAL AFFAIRS


Veronica Gonzales
Secretary of Cultural Affairs

Date: 5/30/12


Eric Blinman, Archaeology
Division Director – DCA

Date: 5/25/12

Mark Shoesmith
Mark Shoesmith, DCA
General Counsel

Date: 5-29-12