Water Resources Agreement between the City of Santa Fe and Santa Fe County

This Water Resources Agreement ("Agreement") is entered into by and between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico, this day of January, 2005.

Recitals

WHEREAS, the City and County entered into the Agreement to Deliver Water (the "1994 City/County Agreement", and commonly referred to as the City/County Wheeling Agreement) on August 10, 1994, which agreement allows the County to take delivery of and pay for up to 500 acre feet of water per year (afy) at enumerated points of delivery and which incorporates by reference the City and County Negotiating Committee Report and Recommendations for Extension of Water Service and Water Delivery dated December 15, 1993; and

WHEREAS, the 1994 City/County Agreement expires July 3, 2005; and

WHEREAS, the City and County desire to supersede the 1994 City-County Agreement with a new agreement; and

WHEREAS, the City and County are parties to a San Juan-Chama Project (SJCP) Contract in the amount of 5,605 afy with the United States of America, Department of the Interior, Bureau of Reclamation, for the furnishing of a municipal water supply for the County and City dated November 23, 1976; and

WHEREAS, the City and County recognize that the use of SJCP water will be directly available to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the future; and

WHEREAS, the City and County have filed a joint application with the Office of the State Engineer to divert the SJCP Contract water using the proposed BDD Project; and

WHEREAS, the SJCP Contract grants to the County and City an exclusive right to allocate, consumptively use and dispose of 5,605 afy and there exists a dispute between the County and City concerning the allocation of water between the parties; and

WHEREAS, the County and City desire to resolve the allocation of the SJCP Contract water; and

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and
WHEREAS, the County and City will cooperate on the purchase of future water rights for use in the BDD Project.

NOW, therefore, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the adequacy of which are acknowledged by the parties, the County and City agree as follows:

Definitions. Capitalized words or phrases used in this Agreement, as defined below, shall have the following meanings:

afy means acre feet per year.

Agreement means this “Water Resources Agreement between the City of Santa Fe and Santa Fe County”.

BDD Board means the governing board of directors of the BDD Project as established by the BDD Joint Powers Agreement.

BDD Joint Powers Agreement means the "Joint Powers Agreement between the City of Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project" which is executed contemporaneously with this Agreement.

BDD Project means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande at Buckman, as described in the draft Environmental Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and County.

BOR means the federal United States Bureau of Reclamation.

Independent Water System means the respective water works of the City and the County, as such works exist now and as such works may change or expand in the future.

ISC means the New Mexico Interstate Stream Commission.

OSE means the New Mexico Office of the State Engineer.

San Juan/Chama Project (SJCP) Contract means the consumptive use right of 5,605 acre-feet per year acquired by the City and the County under contract with the U.S. Bureau of Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or replaced.
Agreement

1. Term. The term of this Agreement shall be perpetual and shall commence as of the effective date of approval by the respective governing bodies of the City and the County.

2. Quantity. Wholesale Water Delivery to the County Independent Water System. From the effective date of this Agreement until deliveries of water from the BDD Project begin, the City Independent Water System shall provide up to 875 afy to the 3 points of delivery currently serving the County Independent Water System. After deliveries of water from the BDD Project begin, the City Independent Water System shall provide up to 500 afy in perpetuity to the 3 points of delivery of the County Independent Water System. Wholesale Water Delivery shall be subject to Shortage Sharing, Section 9, of this Agreement.

3. Quantity. Delivery to City customers outside the City limits using the City Independent Water System. The Wholesale Water Delivery provided to the County Independent Water System shall not include the quantity necessary to supply City customers outside the City limits using City Independent Water System infrastructure.

4. Quantity. Re-delivery to City customers using County Independent Water System. The Wholesale Water Delivery provided to the County Independent Water System shall not include the quantity necessary to supply City customers on the County Independent Water System. The City shall supply the County Independent Water System sufficient water supply to serve the City’s customers on the County Independent Water System. The City and County shall jointly prepare a report of ‘Re-delivery to City customers using County Independent Water System infrastructure’ within 6 months of the effective date of this Agreement and present it to respective governing bodies of the City and County.

5. Quantity. Allocation of the City and County jointly owned San Juan Chama Project (SJCP) Contract. The City and County shall cooperate on the amendment, renewal, conversion or replacement of the jointly owned San Juan Chama Project (SJCP) Contract. The City and the County agree that the jointly owned SJCP Contract for 5,605 afy shall be allocated as follows; the County’s allocation of the SJCP Contract shall be 375 afy and the City’s allocation of the SJCP Contract shall be 5,230 afy. The City and County shall cooperate and provide notification to the other party of any agreements affecting the jointly owned SJCP Contract which require the signature of the other party. The City and the County agree that this allocation is a complete and full resolution of the SJCP Contract allocation issue. Beginning on January 1, 2005, the County will be responsible for its 2005 SJCP Contract allocation and all future year allocations, including payments to the BOR, storage, permitting and use. The SJCP Contract allocation is separate from the Wholesale Water Delivery, Section 2, of this Agreement.

6. Cooperative Water Right Transfers of County Water Rights into the City’s Buckman Groundwater System for Offset Purposes. The County may transfer, for offsetting purposes only, up to 1325 afy (1700 afy County BDD Project capacity – 375
afy County SJCP Contract water) into the City's Buckman well permit, RG-20516;
provided, that the City is a co-applicant on all such transfers and that the County takes responsibility for such transfers, including all costs associated with protested applications. The City shall be advised of all settlement discussions and proposed conditions of approval regarding such applications and shall cooperate with the County on all such transfers provided that such transfers do not adversely affect the City's water rights. The County acknowledges that it shall not obtain water deliveries from the City's Buckman well permit, RG-20516, as a result of such transfers, unless the parties otherwise agree in writing. The County may, at a time in the future, transfer the rights that have been moved to the City's Buckman well permit, RG-20516, to the BDD Project. This paragraph replaces and supersedes the "Water Right Transfer Agreement between the City of Santa Fe and Santa Fe County", dated June 30, 2004.

7. Drought Protection for the County Independent Water System. Under drought / catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions, OSE/ISC restrictions), the City shall provide the County Independent Water System an amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity from the BDD Project. After the deliveries of water from the BDD Project begin and when the County's diversion of surface water from the BDD Project drops below 850 afy (50% of 1,700 afy), the City Independent Water System shall provide the County Independent Water System the necessary water to maintain deliveries of no less than 850 afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section 9, of this Agreement. The City and County shall be separately responsible for the acquisition and maintenance of their own water right portfolios and any applicable limits placed on water rights contained in their own water right portfolios. The Drought Protection provision is separate from the Wholesale Water Delivery, Section 2, of this Agreement and the SJCP Allocation, Section 5, of this Agreement.

8. Conjunctive Use and Sustainability. The City and County agree to implement conjunctive use management by relying on surface water when it is available and using groundwater only as necessary. The City and County shall prioritize the allocation of water from the BDD Project for affordable housing using the Regional Planning Authority (RPA) Plan and the Affordable Housing Task Force report. The City and the County will develop a 'Comprehensive Joint Conjunctive Use and Sustainability Water Resource Strategy' that places the use of surface water as a higher priority than the use of groundwater and which manages the regional aquifer on a sustainable basis. The Strategy shall include a shortage sharing agreement that will help guide management decisions made by the BDD Board and the Regional Planning Authority. The Strategy shall incorporate the principle that the County and the City will consult prior to the drilling of new wells in the area around the City and County Independent Water Systems, as they exist at the time of signing of this Agreement, so as to encourage cooperation, avoid conflict and avoid the impairment of City or County water rights.
The County reserves the right to drill in-Basin groundwater wells and commence the permitting of additional groundwater wells. The County shall consult with the City on the location of any proposed groundwater wells.

9. **Shortage Sharing for Wholesale Water Delivery.** The County agrees to a pro rata reduction in the daily Wholesale Water Delivery in the event of a shortage of water supply to the City Independent Water System. The pro rata reduction in the daily delivery to the County Independent Water System shall be computed from actual use and shall be based on the reduction to other City customers from the City Independent Water System under the City's Water Emergency Management Plan Ordinance, currently in effect or as may be amended in the future. The pro rata reduction in the daily Wholesale Water Delivery shall be implemented at the points of delivery currently serving the County Independent Water System.

10. **Treated Wastewater Effluent Return Flow.** The City shall gain all interest, right or title to return flow received at the City's wastewater treatment plant. The County shall gain no interest, right or title to any return flow received at the City's wastewater treatment plant. The County shall gain the interest, right or title to water delivered to the County Independent Water System which is not received at the City's wastewater treatment plant.

11. **Points of Delivery.** The Wholesale Water Delivery shall be delivered to the County Independent Water System at any one (1) or all three (3) points of delivery currently serving the County Independent Water System. Additional points of delivery may be requested by the County with the consent of the City, which consent shall not be unreasonably withheld.

12. **Rates.** The County shall pay to the City a Monthly Meter charge ($435.21 / 10 inch meter / month) and a Wholesale Water Delivery rate ($3.50 / 1000 gallons) as determined by the 2004 Cost of Service Study prepared for the City Independent Water System.

13. **Adjustment of Rates.** The City may adjust the Monthly Meter charge and Wholesale Water Delivery rate over the term of this Agreement. The City shall provide the County at least one hundred eighty (180) days written notice of its intent to adjust the Monthly Meter charge or the Wholesale Water Delivery rate. The City and County acknowledge that the appropriate methodology for computing the Monthly Meter charge and Wholesale Water Delivery rate shall be based on an embedded cost of service study. The Directors of the City and County Independent Water Systems shall resolve any dispute regarding the adjustment of rates in a manner as set forth in Dispute Resolution, Section 16, of this Agreement.

14. **Metering.** The City shall maintain the meters and related equipment for measuring the quantity of water delivered to the County Independent Water System at the points of delivery. The City shall read the meters and report the readings in monthly billings to the County. Meter reading reports shall include the meter readings for re-delivery to those City customers connected to the County Independent Water System pursuant to Quantity.
Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at
the request of either the City or the County, not more than once during each twelve (12)
month period, and the City and the County shall share the expense of calibration equally.
The Directors of the City and County Independent Water Systems shall resolve any
inconsistency in billing, metering or calibration in a manner as set forth in Dispute
Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60
days shall initiate the notice provision and related procedures described in Dispute
Resolution, Section 16, of this Agreement.

15. Conditions of Delivery. The City Independent Water System shall furnish water to
the County Independent Water System at a reasonably consistent supply and pressure at
the points of delivery. The City Independent Water System shall at all times operate and
maintain the system in a manner and shall take such action as may be necessary to furnish
the County Independent Water System with the quality and quantity of water required by
this Agreement. Emergency failures of pressure or water supply shall excuse the City
Independent Water System from this provision for such reasonable time as may be
necessary to restore service. The City Independent Water System shall furnish water to
the County Independent Water System of such quality as is required for a residential and
a commercial customer under applicable water quality regulations. The County shall
bear those costs where unusual and/or special conditions exist (such as elevation,
terrain, or other conditions) and which result in increased costs to the City Independent
Water System.

16. Dispute Resolution. The City and County agree to use any and all methods of
dispute resolution, up to and including binding arbitration, to resolve any conflicts arising
under this Agreement, the expenses of which shall be shared equally by the City and
County. Disputes shall be first discussed by representatives of each party having the
authority, if necessary, to bind the party that they represent. Such representatives shall
use their best efforts to amicably and promptly resolve the dispute. If the parties are
unable to resolve the dispute through informal mechanisms or mediation within 30 days
of the occurrence of the event or circumstances giving rise to the dispute, either party
may give notice to the other party that the dispute is to be submitted to binding
arbitration. Any dispute requiring notice shall be reported to the next meeting of the
respective City and County governing bodies. Such notice shall contain the name of a
proposed arbitrator, and in the event the other party does not agree with the proposed
arbitrator, the model guidelines of the American Arbitration Association shall be used to
select an arbitrator and govern the conduct of the arbitration, rendering of an award and
enforcement of the award consistent with New Mexico state law. Within 60 days of
notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall
prepare an award. The arbitrator’s award shall be binding on the parties.

17. Entire Agreement. This Agreement contains the Entire Agreement between the
City and County with regard to the matters set forth herein.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of
the parties and their respective representatives, successors, and assigns.
19. Counsel. The City and County acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

20. Other Documents. The parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

21. Law. The laws of the State of New Mexico shall govern this Agreement.

22. Notices. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To the City: Director of the Sangre de Cristo Water Division
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-4200
Fax: 955-4352

With a copy to: City Manager
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6509
Fax: 955-6683

City Attorney
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-6511
Fax: 955-6748

To the County: Santa Fe County Utilities Director
Santa Fe County
205 Montezuma
Santa Fe, N.M. 87505
Phone: 986-6210
Fax: 992-8421

With a copy to: County Manager
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

Approved as to form
Santa Fe County Attorney

Approved as to form
City of Santa Fe Attorney

Approved as to form
City of Santa Fe Clerk