

## Buckman Direct Diversion Project

*A joint regional project of the City of Santa Fe and Santa Fe County to build a reliable and sustainable water supply.*

# Memo

**Date:** March 19, 2014

**To:** Buckman Direct Diversion Board

**From:** Shannon Jones, Interim BDD Facility Manager *af*

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### **ITEM AND ISSUE:**

Request Formal Adoption of the Buckman Direct Diversion Major Repair and Replacement Fund Policy.

### **BACKGROUND AND SUMMARY:**

The BDD Project Intergovernmental Agreements require the creation of a Major Repair and Replacement Fund (RRF). The intent of this fund is to have funding available for repair and replacement of facilities and equipment when reaching the end of their useful life cycle. While the funds would be replenished annually, the fund allows level annual budgeting for the City of Santa Fe and Santa Fe County.

As of June 30, 2014 the Major Repair and Replacement Fund has, or will have, been funded to;

	FY 2011/2012	FY 2012/2013	FY 2013/2014
City of Santa Fe	\$ 121,600	\$ 291,840	\$ 170,240
Santa Fe County	\$ 40,330	\$ 99,113	\$ 60,525
Las Campanas	\$ 9,655	\$ 20,851	\$ 9,454

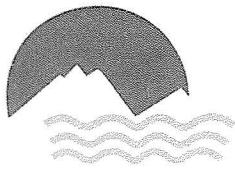
In order to access these funds, BDD Staff, City of Santa Fe Staff, and Santa Fe County Staff have work together to develop the Buckman Direct Diversion Repair and Replacement Fund Policy. This policy addresses the following;

- Purpose of the policy
- Defines "Major Repair and Replacement"
- Criteria to access funds
- Purchasing Authority of the Project Manager
- Procedure for accessing the funds
- Target Balance for the fund

### **ACTION REQUESTED:**

Staff recommends Formal Adoption of the Buckman Direct Diversion Major Repair and Replacement Fund Policy.





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### **Buckman Direct Diversion Major Repair and Replacement Fund Policy**

In accordance with the Buckman Direct Diversion's (BDD) Project intergovernmental agreements and in order to secure resources assuring the BDD's ability to cover the repair and replacement cost of capital assets already in existence within the Buckman Direct Diversion. The Major Repair and Replacement Fund allows level annual funding and ensures funding is available to repair and/or replace capital equipment when the capital equipment has reached the end of its effective useful life. Capital equipment is any equipment costing more than five thousand dollars (\$5,000) with a life expectancy of more than three (3) years. Replacement prioritization for the equipment is generally related to a specific time or duration of service identified as the equipment's Life Cycle. Typical examples of capital equipment include: SCADA system hardware, vehicles and heavy equipment, variable speed drives, raw and finished water pumps, solids handling process equipment and other equipment identified in the Buckman Direct Diversion Capital Asset Management Plan.

Actual expenditures from the Major Repair and Replacement Fund will be shared in accordance with the cost sharing principles contained in the Fiscal Operations and Procedures Agreement (FOPA).

The purpose of this policy is to clarify what constitutes a major repair or replacement, how to obtain access to the funds, and how the Repair and Replacement Funds will be monitored and reported.

#### Definition of a Major Repair:

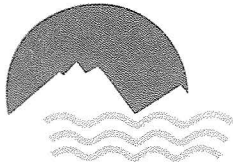
A major repair is defined as a repair, or proposed repair,

- (1) which is infrequent in nature and,
- (2) to equipment that's failure will significantly affect performance and/or operation of the Buckman Direct Diversion or,
- (3) where the complexity of the repair may significantly affect performance and/or operation of the Buckman Direct Diversion or,
- (4) that cannot be performed by BDD staff or under point repair contracts.

#### Disbursement of funds:

The Repair/Replacement Fund (RRF) shall be designated as a restricted reserve fund. The purpose of the RRF is to provide available cash flow to ensure major repairs and replacement of





## Buckman Direct Diversion Project

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equipment which life cycle has expired can immediately be addressed without having to first secure funding from the BDD partners. It is intended that the RRF be sufficient to cover any major repair or replacement of an asset resulting in services, supplies, or parts exceeding twenty thousand dollars (\$20,000). To access the necessary funds for major repair or replacement situation the following steps shall be followed:

1. The BDD Facility and Equipment Maintenance Superintendent will identify and evaluate all major repairs and replacements.
2. The BDD Facility and Equipment Maintenance Superintendent and BDD Facilities Manager will develop an initial plan of action.
3. After initial plan of action is developed, the BDD Facility Manager shall notify the BDDB partners.
4. The BDD Facility Manager will access the RRF in accordance with the BDD Project Manager's procurement policy.
5. Upon resolution of the major repair or replacement, the BDD Facilities Manager and BDD Financial Manager shall provide a written report to the BDD Board in the next regularly scheduled board meeting.

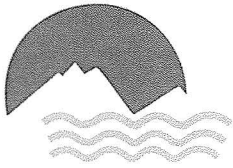
### Target balance of the Major Repair and Replacement Fund:

The approved target balance for the Major Repair and Replacement Fund is \$411,804.00 in annual contributions and will be fully funded by the end of each fiscal year.

All funds will be monitored by the BDD Financial Manager and The Major Repair and Replacement fund may earn interest income on cash balances as stated in the adopted BDD Working Capital and Billing Policy.







## Buckman Direct Diversion Project

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# Memo

**Date:** March 24, 2014

**To:** Buckman Direct Diversion Board

**From:** Shannon Jones, Interim BDD Facility Manager *H*  
Adam Leigland, Santa Fe County Public Works Director *ALL*

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### **ITEM AND ISSUE:**

Project Manager Selection Process

### **BACKGROUND AND SUMMARY:**

This memo was presented to the Buckman Direct Diversion Board on February 6, 2014.

The *Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project* (JPA), dated January 2005, establishes the general governance and management of the BDD during construction and operations and creates the role of the BDD Project Manager. The *Project Management and Fiscal Services Agreement* (PMFS), dated December 2007 and expiring on December 1, 2015, addresses the delegation of authority and the general responsibilities of the BDD Project Manager. Paragraph 13 of the JPA states that upon termination of the current PMFS agreement in December 2015, the BDD Board shall have the authority to enter into a new PMFS Contract with "any of the following: (1) Sangre De Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity."

To prepare for this selection, at the July 11, 2013 meeting, the BDD Board directed BDD staff to create a Project Manager Selection Process Committee, with the task of developing a recommendation for an open and objective process by which the BDD Board can make a thoughtful and reasoned selection of the next BDD Project Manager. Note that the Committee was not charged with actually implementing the selection process.

The Committee, as approved by the BDD Board at its August 8, 2013, meeting, comprises the following members:

- BDD Facility Manager (chair)
- BDD Financial Manager



- City of Santa Fe Public Utilities Director
- City of Santa Fe Water Resources Manager
- City of Santa Fe Finance Director
- County of Santa Fe Public Works Director
- County of Santa Fe Finance Director
- County of Santa Fe Budget Manager

The Committee met for the first time on August 12, 2013, and every month thereafter.

## **DISCUSSION**

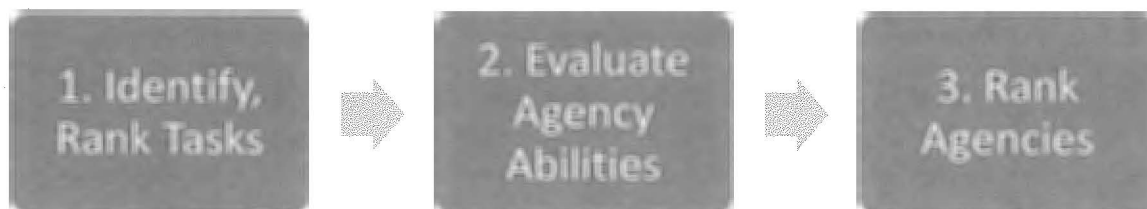
The Committee has drafted a 3-step process. The process is briefly described below. The attachment, entitled “Process for Selecting the BDD Project Manager,” contains a much more detailed and robust description.

Step 1: Identify and prioritize the tasks that the Project Manager performs per the JPA and the PMFS.

Step 2: Identify the ability of each of the possible successor Project Manager agencies to perform each of the tasks found in Step 1.

Step 3: Combine the results of Step 1 and Step 2 to produce a ranked list of successor agencies.

These steps are graphically displayed below and described in greater detail further on.



**Step 1.** The Committee reviewed the JPA and PMFS and pulled from them all duties that the PM is required to perform. This resulted in a task list of 51 specific items. To ease evaluation, the Committee grouped these tasks into six categories: Utility Support Structure, Financial Support, Human Resources, Risk Management, Information Technology, and Administration Services. The first step in the selection process is to rank the relative importance of these task categories. The task and task category lists are contained in the attachment.

**Step 2.** Each of the three possible successor agencies will be able to perform the tasks identified in Step 1 with varying degrees of ability. The second step in the selection process is to determine these abilities. The Committee recognized that the “Regional Entity” as listed in the JPA as a possible Project Manager was too vague and ill-defined to meaningfully evaluate. The Committee felt that the development of two regional entities as strawmen for evaluation purposes would overcome this. The Committee examined existing regional entities in the area as well as across the state, including the BDD as it is today and the Santa Fe Solid Waste

Management Authority (SWMA). Based on this, the Committee crafted two notional regional entities, listed below:

- A. Level 1 Modified Status Quo;
- B. Level 2 SWMA model;

Evaluation forms and fuller descriptions of the notional regional entities are contained in the attachment.

**Step 3:** Once Steps 1 and 2 are completed, the results can be combined to produce a ranking of the four agencies that are possible successor project managers (Sangre de Cristo Water Division, County Water Utility, and notional Regional Entities A and B). Note that the ease of actually implementing a transition to a new project manager (if one would be required) is not included as an evaluation factor. Evaluation forms are contained in the attachment.

A list of Committee recommendations are attached

#### **FINANCIAL IMPLICATIONS**

There are no financial implications associated with approving the selection process. However, the Committee feels that financial resources may be required to properly execute the process. Further, if a successor agency is ultimately chosen to be Project Manager that will require a transition, the transition itself will likely require financial resources.

#### **ACTION REQUESTED**

Approve the selection process and Committee recommendations, and direct BDD staff on next steps

#### **ATTACHMENTS**

- A. Agreement Summary
- B. Current Buckman Direct Diversion Organization Chart
- C. Regionalization Organization Chart
- D. Process For Selecting The BDD Project Manager
- E. Project Manager Selection Process Committee Recommendations.



# BUCKMAN DIRECT DIVERSION AGREEMENT SUMMARY

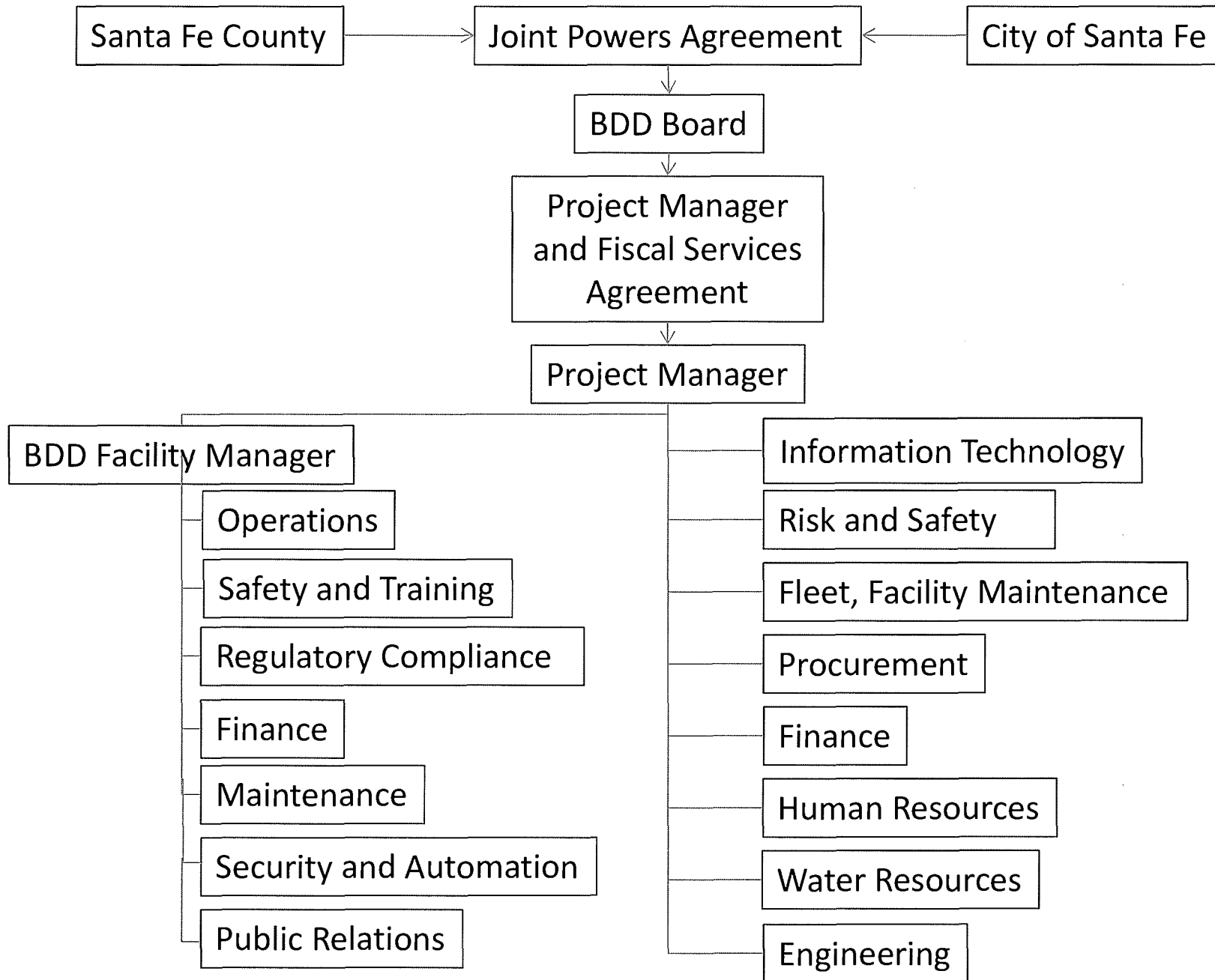
The City and the County entered into a **Joint Powers Agreement** (hereinafter referred to as JPA) on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015.

In preparation for creating the Project, the City and the County entered into the **Water Resources Agreement** (hereinafter referred to as WRA) on January 11, 2005, which provides that 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.

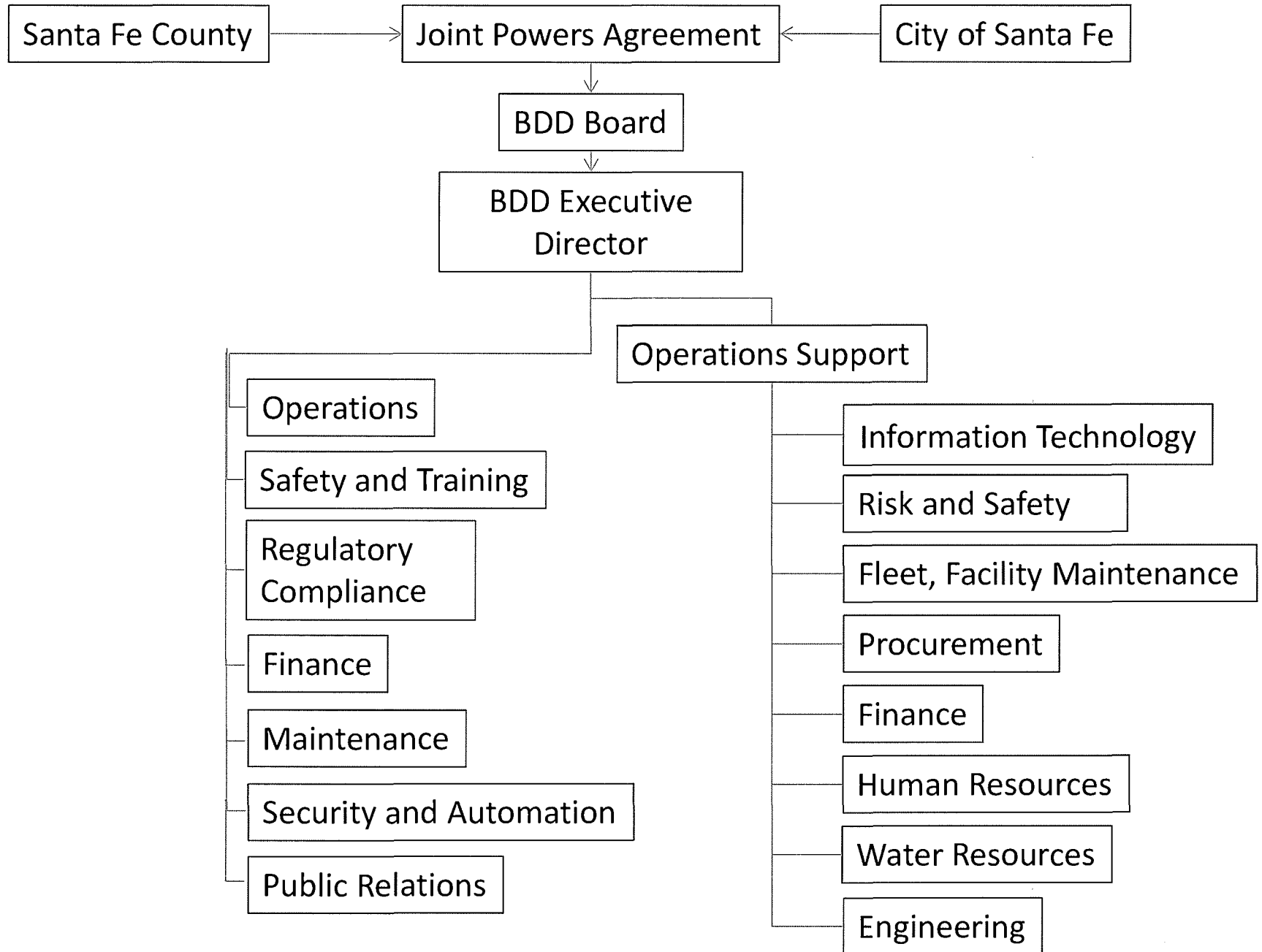
The City, the County, and Las Campanas entered into **the Facilities Operations and Procedures Agreement** (hereinafter referred to as FOPA) on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project.

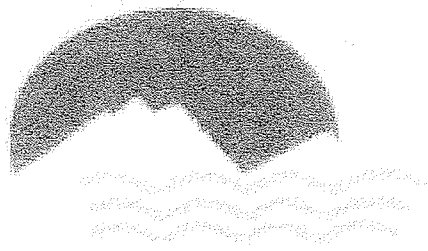
**Project Management and Fiscal Service Agreement** (hereinafter referred to as PMFSA) was entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager"). The City and the County, through the BDD Board, designed, constructed, operated and maintained the Buckman Direct Diversion Project. The purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms

## CURRENT BUCKMAN DIRECT DIVERSION ORGANIZATIONAL STRUCTURE



## REGIONALIZATION ORGANIZATION CHART





**Buckman Direct Diversion Project**

**"PROCESS FOR SELECTING THE BDD  
PROJECT MANAGER"**

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2. 2005 WRA .....	Attachment B (14 Pages)
3. 2006 FOPA .....	Attachment C (18 Pages)
4. 2007 PMFSA .....	Attachment D (8 Pages)
5. Recommendations .....	Attachment E (1 Page)

## Executive Summary

The Buckman Direct Division's Process for Selecting a Project Manager is a guide for the Buckman Direct Diversion Board to systemically evaluate potential entities seeking to fill the role of BDD Project Manager. This document defines roles and responsibilities of the PM and identifies necessary organizational structures needed to fulfill these roles and responsibilities. This document has developed a measurement matrix allowing the individual entities to be weighed and score establishing a rating system to further assist the BDDDB in their decision. This document has established a Process Timeline including the identification of critical path items and benchmarking. The Buckman Direct Diversion will face many challenges during transition to a new PM, so in addition this document has created an Outline Transition Plan to be utilized once a PM has been selected including identification critical transfer items between the existing PM and newly selected PM.

## Background

The City and the County entered into a **Joint Powers Agreement** (hereinafter referred to as JPA) on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015 (**see attachment A below**). In preparation for creating the Project, the City and the County entered into the **Water Resources Agreement** (hereinafter referred to as WRA) on January 11, 2005 (**see attachment B below**), which provides that 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. The City, the County, and Las Campanas entered into the **Facilities Operations and Procedures Agreement** (hereinafter referred to as FOPA) on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project (**see attachment C below**). **Project Management and Fiscal Service Agreement** (hereinafter referred to as PMFSA) was entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager"). The City and the County, through the BDD Board, designed, constructed, operated and maintained the Buckman Direct Diversion Project (**see attachment D below**). The purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms.

## ARTICLE 1. DEFINITIONS.

Capitalized words or phrases used in the foregoing recitals of this Document shall have the meanings assigned therein. In addition, the words and phrases defined in this Article 1 shall have the meanings assigned in this section.

A. "The Agreement," "this Agreement," or "PMFSA" as used herein refers to this Project Management and Fiscal Services Agreement.

B. "Annual Operating Budget" means the annual budget for all activities of the Project, including Operation Maintenance Repair & Replacement (OMR&R).

C. "Annual Operating Plan and Delivery Schedule" means the annual operating plan and water delivery schedule prepared by the Project Manager with input from the City, the County and Las Campanas, described in Section 27 of the FOPA and herein.

D. "The Authority" means the controlling entity that

- (1) Shall set policy and regulate, supervise and administer the water utility of City of Santa Fe and Santa Fe County, including the determination and imposition of rates for services;
- (2) is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules; and
- (3) is authorized to use city or county procurement and fiscal process, or contract with City or County, to administer its public and corporate duties.

E. "The City" means the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico, and a signatory of the Project Agreements.

F. "The County" means Santa Fe County, New Mexico and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico, and a signatory of the Project Agreements.

G. "Fiscal Year" means a year beginning on July 1 and ending on June 30.

H. "The FOPA" means the Facility Operations and Procedures Agreements for the Buckman Direct Diversion Project between the City of Santa Fe, Santa Fe County and Las Campanas LP.

I. "The JPA" means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, effective March 7, 2005.

J. "Las Campanas" means the Las Campanas Limited Partnership, a Delaware Limited Partnership, and a signatory of the FOPA.

K. "OMR&R" means operation, maintenance, replacement and repair.

L. "The Project" means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande as described in the final Environmental Impact Statement for the Buckman Direct Diversion Project, and includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and the County.

M. The phrase "the Project Agreements" means the WRA, JPA, the FOPA and the PFMSA.

N. "Project Expenses" means those expenditures of the Project approved by the BDD Board and included in a budget approved by the BDD Board, the City and the County, and reimbursement expenses retroactive to the execution date of the JPA.

O. "Project Manager" means the entity recognized by the BDDB, responsible for the OMR&R duties for the project and receiving compensation for services.

P. "The Regional Entity" means an "authority" that is a public body politic and corporation, separate and apart from the City of Santa Fe and Santa Fe County.

Q. "WRA" shall mean the Water Resources Agreement by and between the City of Santa Fe and Santa Fe County and dated on or about January 11, 2005.



# POTENTIAL ENTITIES

## **Background - Project Management and Fiscal Services.**

The City and the County delegate to the BDD Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the design and construction of the BDD Project; (3) the operation and management the BDD Project after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for the Owners' Consultant Contract, and all other fiscal services related to the design, procurement, construction, operation and maintenance of the BDD Project, including managing all revenues, maintaining all accounts, procuring necessary property, goods and services, and receiving and disbursing all funds. The Project Manager will report directly to the BDD Board, and the BDD Board shall have authority to supervise the performance of the Project Manager. The PMFS Contract shall contain the fee schedule for the fiscal agent services to be provided under the PMFS Contract. It shall at a minimum, specify that funds of the BDD Project shall be held in one or more separate accounts and shall not be commingled with the Funds of any of the parties to this Agreement, and shall specify that the Project Manager may invest its funds only in accordance with any applicable laws of the State of New Mexico governing the investment of public funds. The PMFS Contract shall specify the types and threshold amounts of expenditures that require approval of the BDD Board in advance. The City and County agreed that the Sangre de Cristo Water Division would be the initial project Manager and the BDD Board entered into the PMFS with the City. Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board shall have authority to enter into a new PMFS Contract with any one of the following:

- (1) the Sangre de Cristo Water Division
- (2) the Santa Fe County Water Utility or
- (3) a Regional Entity.

After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the functions performed under the PMFS Contract may continue to be combined in a single new PMFS Contract or may be separated into two or more replacement PMFS Contracts.

# LEVELS OF REGIONAL ENTITY

## Level One Regionalization - Modified Status Quo

- Change name of Project Manager to Support Entity
- BDDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDDB to have authority to set policy
- Extent FOPA agreement
- Restructure Organization Chart so Facility Manager reports directly to the BDDDB

## Level Two Regionalization – SWMA Model

- Change name of Project Manager to Support Entity
- BDDDB made up of City Councilors and County Commissioners and one citizen at large
- BDDDB to have authority to set policy
- Facility Manager reports directly to the BDDDB
- Facility Manager would have operational control of assets within service area (figure 1)
- BDD would provide bulk water deliveries to City, County, and Las Campanas
- All staff would be BDDDB employees

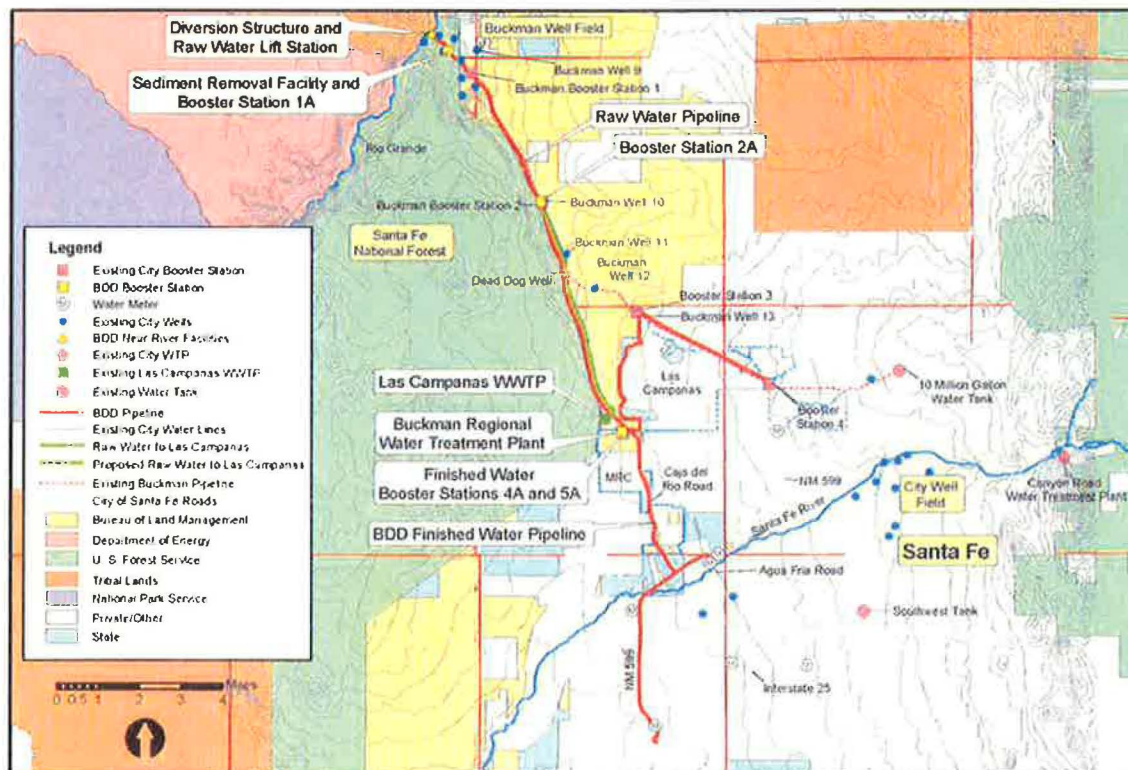


Figure 1: Buckman Direct Diversion Project and Associated Infrastructure

## **PROCEDURE FOR NAVIGATING THIS DOCUMENT**

The following sections of this document are provided to assist in the selection of the Buckman Direct Diversion Project Manager.

### **Step One: Development of a Selection Advisory Group**

The Buckman Direct Diversion Board (BDDDB) will appoint individuals to seat upon the selection advisory group.

### **Step Two: Evaluation of Roles and Responsibilities of Project Manager.**

Once a selection advisory group is developed, group members will review the listing of Roles and Responsibilities. These roles and responsibilities will be evaluated on the "Roles and Responsibilities Evaluation Form. Each advisory group member will complete this form indicating concurrences with the assigned roles and responsibilities and assigning a priority value to the service to be provided. This form will be utilized in the development of a Scope of Service in the development of a new PMFSA. The selection advisory group will present a finalized listing of Roles and Responsibilities to the BDDDB for approval.

### **Step Three: Evaluation of Potential Entities for Project Manager.**

Once Roles and Responsibilities have been finalized and approved by the BDDDB, the advisory group will evaluate all potential entities based upon their ability to provide the services needed fulfil the Roles and Responsibilities. Each Entity Evaluation Criteria Form will be completed by the advisory group to determine a consistent "Weighted Value" for each of the "Evaluation Components". Once a "Weighted Value" has been assigned, the "Weighted Value" will be multiplied by 10 to determine the "Max Score". Then each advisory group member will independently evaluate the potential entity by scoring the potential entity's ability to perform the "Evaluation Component" on a scale of 1 to 10 with 1 being low and 10 being high. Upon completion the "Weighted Value" will be multiplied by the assessed score and value placed into the "Total Score".

### **Step Four: Development of Evaluation Matrix**

Upon completion of the evaluation of potential entities, the selection advisory group will present a compiled evaluation matrix to the BDDDB for review and possible action.

## PM Roles and Responsibilities

- ☐ Item numbers 1 -17 are Responsibilities taken for 2007 PMFSA Article 4.
- ☐ Item numbers 18 – 37 are responsibilities taken for 2007 PMFSA Article 6.
- ☐ Item numbers 37 – 52 are Responsibilities taken from 2007 PMSFA Article 7.

<b>Responsibility of Project Manger</b>	
1.	Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support staff for BDD Board meetings, contract with independent legal counsel selected by the BDD Board, contract with specialized legal counsel as needed to support design, construction, operation and maintenance of the Project, and, as directed by the BDD Board, implement the Project during design and construction and, following completion of construction, manage, operate, and maintain the Project;
2.	Seek and apply for funding (except for funding to be provided by the City and the County pursuant to the Project Agreements) in the form of grants, loans or loan guarantees, or other funding sources as may be deemed appropriate by the BDD Board, for the Project as directed by the BDD Board and manage any such grants, loans or loan guarantees;
3.	Administer all funds loaned, granted or contributed by the City, the County or Las Campanas in connection with the Project, and respond to related audits as may be necessary;
4.	Prepare and submit to the BDD Board, the City, the County and Las Campanas no later than December 15 of each Fiscal Year, an Annual Operating Budget, which shall include annual and 5 year projected OMR&R costs, including a 5 year schedule with the Project Manager's proposed facilities and equipment major maintenance and replacement costs, proposed allocation of costs among the City, the County and Las Campanas as provided in the FOPA, a facilities and equipment major repair and replacement fund, and an emergency reserve fund;
5.	Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;
6.	Develop a document retention and protection policy for adoption by the BDD Board;
7.	Act as fiscal agent for the Project
8.	Once an Annual Operating Budget is approved by the BDD Board, implement the budget, adhere strictly to the budget, and make recommendations for necessary budget adjustments throughout the Fiscal Year, and contract for an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, <i>et seq.</i> , and 2.2.2. NMAC, <i>et seq.</i> , as amended, and report the results of the audit to the BDD Board.
9.	Prepare and submit to the BDD Board for approval all documentation to be used for procurement in the Project including, but not limited to, documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications and contracts in amounts greater than \$50,000.
10.	Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board.

11. Consult with staff of the City, the County, and Las Campanas regarding the planning and design and OMR&R of the Project.
12. In consultation with the BDD Board, apply for, manage and maintain, including the preparation and submittal of all required compliance reports, all necessary permits for the operation of the Project, including, without limitation, those permits, easements, and rights-of-way held in the name of the BDD Board, and those permits required to be obtained by the BDD Board pursuant to Section 6 of the FOPA.
13. Maintain communication with the BDD Board, the City, the County and Las Campanas, primarily via monthly BDD Board meetings, and keep these entities informed of important matters as may be necessary in the interim between monthly BDD Board meetings.
14. As directed by the BDD Board, act as liaison for the BDD Board and represent the BDD Board in Project matters involving tribal governments, state and federal government agencies, and non-governmental agencies.
15. As directed by the BDD Board, and with the consent and approval of the City and the County, and in consultation with Las Campanas, coordinate the Project with regional water supply planning efforts.
16. Perform other duties as assigned by the BDD Board consistent with funding and the Project Agreements.
17. Make commercially reasonable efforts to enforce the terms of all agreements that the BDD Board approves. In the event that the Project Manager's administrative efforts to enforce a specific contract's terms are not successful, the Project Manager shall so inform the BDD Board and shall make specific recommendations for the BDD Board's consideration regarding the BDD Board's contract enforcement steps or procedures, including litigation.
18. Operate the Project within its design limitations to deliver treated water in sufficient pressure and volume to meet the actual demand of the City and the County, subject to the capacity allocations set forth in the FOPA §7, and of a quality that meets or exceeds all applicable State and federal regulations and standards.
19. Provide the treated water referred to the previous paragraph at a point or points of delivery at the BDD Project specified by the City or the County, provided, however, that the Project Manager is not obligated to deliver to points of delivery not constructed during the initial construction of the Project unless the City or the County first construct a new point of delivery at the BDD Project and provide the Project Manager and the BDD Board with thirty (30) days advance written notice of the need for water at the newly constructed point of delivery.
20. Deliver raw water to Las Campanas, at pump station 2A subject to the capacity allocation set forth in the FOPA §7, and manage the common facilities at pump station 2A.
21. Maintain water measurement devices that are part of the Project to account for the actual volume, rate, and time-of-day of all water deliveries to the City, the County and Las Campanas.
22. Use data provided from the metering facilities and monitors referred to in the preceding paragraph to analyze whether deliveries comply with Annual Operating Plan and the Project Agreements, and report to the BDD Board monthly.
23. Prepare the Annual Operating Plan and Delivery Schedule described in Section 27 of the FOPA, submit the report to the BDD Board, and make appropriate recommendations.
24. As soon as practicable after the end of each Fiscal Year, the Project Manager shall calculate the actual costs experienced by the Project in the previous Fiscal Year and the amounts paid by the City, the County and Las Campanas for the Project and make appropriate recommendations to the BDD Board for adjustments needed in the current Fiscal Year's budget.
25. Invoice the City, the County and Las Campanas for Project costs according to the cost sharing principles specified in the FOPA no less frequently than quarterly, and collect all sums so invoiced.



26. Schedule and coordinate reservoir release and Project diversion of San Juan-Chama Project water in accordance with the procedures of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers and the conditions of City and County diversion permit No. 4842 issued by the State Engineer and future permits for diversion at the BDD of San Juan-Chama Project water and as directed by the designated representatives of the City, the County, and Las Campanas, each of whom has the responsibility to make water available at the reservoir from which it will be released.
27. Track raw water diversions by the Project for the City, the County, and Las Campanas, and provide to the BDD Board, with copies to the City, the County, and Las Campanas, a monthly accounting of actual raw and potable deliveries, daily water orders, and other statistical information as the BDD Board may require.
28. Monitor the relationship between the quantity of water actually delivered by the Project to the City, the County and Las Campanas and the permitted capacity of the Project's production facilities and make periodic reports of this analysis to the BDD Board, the City, the County and Las Campanas.
29. Reduce deliveries as provided in the FOPA §9 in the event of a reduced total capacity of the BDD Project caused by facility failure.
30. Provide all necessary staff, materials and supplies necessary to operate and maintain the Project consistent with BDD Board funding.
31. Recruit, hire and train staff for the Project according to the BDD Board's approved staffing plan as it may be amended from time to time and arrange for state drinking water certification for such staff in advance of operation of the Project, so that certified staff is available to operate the Project when the Project becomes operational, and set forth in each proposed budget the costs of the staff apportioned according to the respective benefit to the City and the Project.
32. Perform OMR&R duties for the Project at all relevant times in accordance with water utility practices.
33. Report to the BDD Board quarterly and as otherwise required by the BDD Board regarding the OMR&R of the Project and all other relevant matters related to the Project.
34. In consultation with the City, the County and Las Campanas and pursuant to FOPA §27, prepare and present to the BDD Board for approval a comprehensive operations manual for the Project, and updates as needed, which shall include details of all aspects of Project operation including, but not limited to, process control, maintenance, scheduled maintenance outages, rehabilitation and replacement, contingency plans for unscheduled outages, and residuals management; distribute the comprehensive operations manual to the BDD Board, the City, the County and Las Campanas. The Project Manager may delegate, as appropriate, the preparation of the comprehensive operations manual to the Owner's Consultant, the Design-Build Contractor, or another.
35. Provide for appropriate security at all Project facilities.
36. Identify and report to the County the need for Buckman Road maintenance and reimburse the County for the apportioned cost according to the respective benefit to the County and the Project.
37. The Project Manager shall maintain records of all transactions related to the Project, including third party transactions, in accordance with generally accepted accounting principles ("GAAP"), and standards established by the government accounting standards bureau ("GASB").
38. Establish a uniform system of accounts

39. Maintain segregated books and records consistent with GAAP to account for all separate funding sources, including, without limitation, funds provided by the City, the County, or Las Campanas in support of construction or subsequent OMR&R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.
40. Maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies
41. Provide access at any time to the City, the County and Las Campanas , or each of them, and to the State Auditor, and members of the public, within 90 days following the end of each fiscal year and at any other time as may be reasonably requested, full and complete books and records relating to the Project;
42. Provide to the City, the County and Las Campanas, or each of them, any additional financial information or documentation relating to the Project as may from time to time be reasonably requested;
43. Within 90 days after the end of each fiscal year, provide copies of financial statements to the City, the County and Las Campanas, showing the assets, liabilities, revenues, expenses, equity balances and budget comparisons for the Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report but may recommend that its auditors produce the financial statements, dependent on staff available and the complexity of the reporting requirements
44. Account for the separate financial contributions from, and reimbursements to, the City, the County and Las Campanas, including crediting the County for the contribution of revenues from the County Capital Outlay Gross Receipts Tax imposed by the Board of County Commissioners in Santa Fe County Ordinance No. 2002-5, subject to the terms of that Ordinance;
45. Procure, contract, and pay for as budgeted an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, <i>et seq.</i> , and 2.2.2. NMAC, <i>et seq.</i> , as amended, and report the results of the audit to the BDD Board.
46. Receive and record deposits in connection with the Project in compliance with applicable state and federal statutes, all applicable requirements of grant and loan funding and requirements otherwise imposed by or on the sources of funding;
47. Make and account for all approved disbursements for the Project, ensuring that disbursements are valid and comply with all applicable State investment statutes, and policies and procedures adopted by the BDD Board;
48. In consultation with the BDD Board, invest excess funds not required for current operations or capital expenditures in accordance with applicable statutes, City and County policies and applicable requirements of grant or loan funding, assuring that investment earnings are credited to Project funds;
49. Carry over any unencumbered monies that are present at the end of a Fiscal Year, and budget those funds to the succeeding Fiscal Year, to be utilized for purposes consistent with the Project Agreements in the succeeding Fiscal Year
50. Obtain all necessary approvals for expenditure of funds, I including, without limitation, approvals by the BDD Board and the New Mexico Department of Finance and Administration.
51. Determine and record capital assets inventory for appropriate general ledger amounts, run and record depreciation, and submit year-end capital asset inventory for the annual physical inventory.

## ROLES AND RESPONSIBILITIES EVALUATION FORM

### PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

Role and Responsibilities required of Project Manager to provide through the necessary support structures for the Buckman Direct Diversion to operate, maintain, repair, and replace assets enabling the BDD to provide an adequate supply of safe drinking water to all points of delivery.

Evaluation Component	Concur this service should be provided	Do Not concur that this service should be provided	Priority of service. 1-10 (1=low, 10=high)
<b>Utility Support Structure</b> (for example, items # 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 34, and 36 listed above).			
<b>Financial Support</b> (for example, items #3, 7, 8, 10, 16, 24, 24, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 listed above).			
<b>Human Resources</b> (for example, items # 30 and 31 listed above).			
<b>Risk Management</b> (for example, item # 35 listed above).			
<b>Information Technology</b> (for example, item # 5 listed above).			
<b>Administration Services</b> (for example, items #1, 2, 4, 6, 9, and 13 listed above).			

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



# ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: City of Santa Fe

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
<b>Utility Support Structure</b> (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
<b>Financial Support</b> (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
<b>Human Resources</b> (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
<b>Risk Management</b> (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
<b>Information Technology</b> (for example, E-mail Service, Networking, Software Compatibility, Telephone Service, )				
<b>Administration Services</b> (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
<b>Total Score</b>	<b>100</b>			<b>1000</b>

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: Santa Fe County

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
<b>Utility Support Structure</b> (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
<b>Financial Support</b> (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
<b>Human Resources</b> (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
<b>Risk Management</b> (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
<b>Information Technology</b> (for example, E-mail Service, Networking, Software Compatibility, Telephone Service, )				
<b>Administration Services</b> (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
<b>Total Score</b>	<b>100</b>			<b>1000</b>

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**ENTITY**

**ENTITY  
EVALUATION CRITERIA FORM**

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: Regional Entity Level 1

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
<b>Utility Support Structure</b> (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
<b>Financial Support</b> (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
<b>Human Resources</b> (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
<b>Risk Management</b> (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
<b>Information Technology</b> (for example, E-mail Service, Networking, Software Compatibility, Telephone Service, )				
<b>Administration Services</b> (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
<b>Total Score</b>	<b>100</b>			<b>1000</b>

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# ENTITY EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

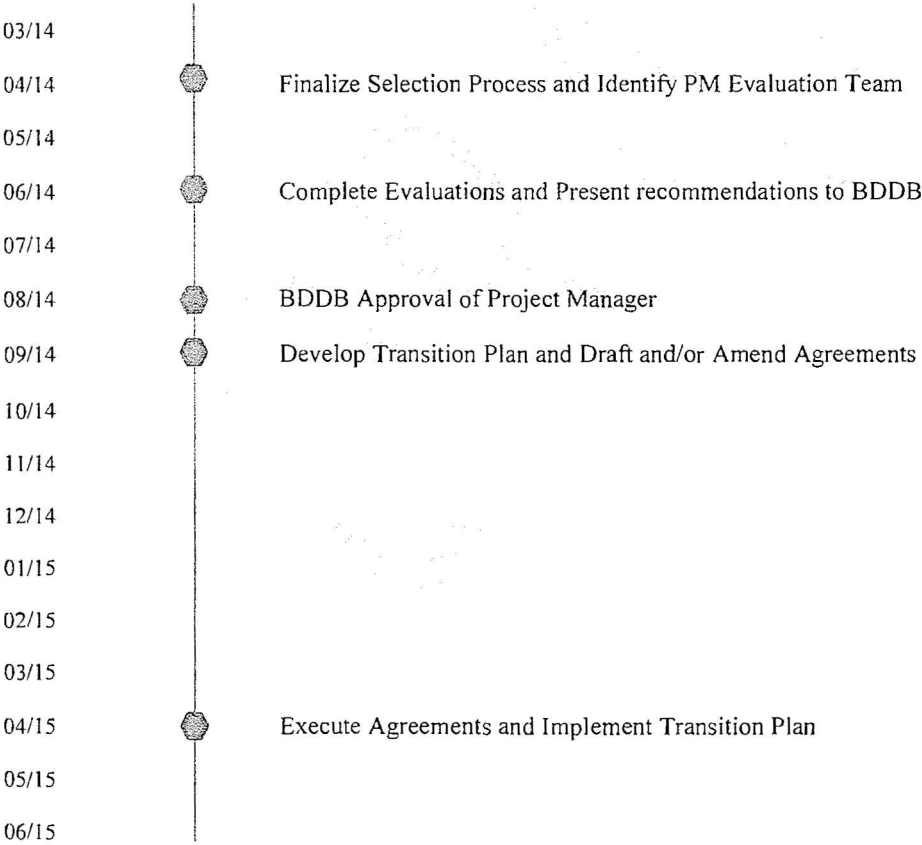
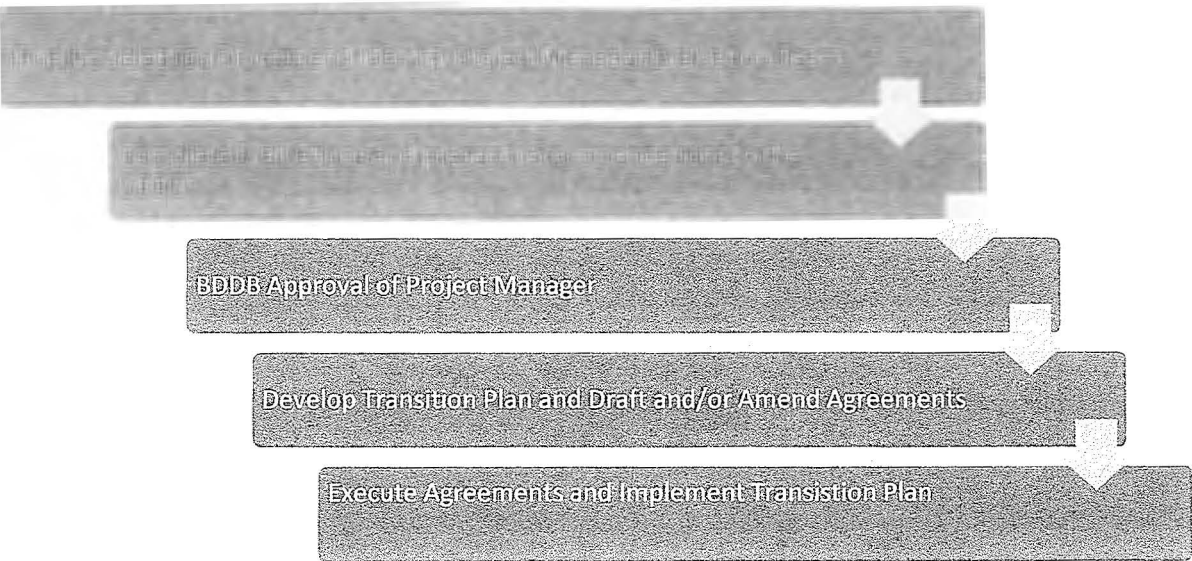
NAME OF ENTITY: Regional Entity Level 2

Evaluation Component	Weighted Value	(1=low, 10=high)	Total Score	Max Score
<b>Utility Support Structure</b> (for example, Engineering, Water Resource, Infrastructure Maintenance and Repair, Regulatory Compliance).				
<b>Financial Support</b> (for example, Accounts Payable, Purchasing, Payroll, Fixed Asset Tracking, Audits).				
<b>Human Resources</b> (for example, Job Recruitment, Benefit Management, Union Negotiation, Hiring and Firing).				
<b>Risk Management</b> (for example, Workmans Comp, Drug Testing, Accident Reporting,)				
<b>Information Technology</b> (for example, E-mail Service, Networking, Software Compatibility, Telephone Service, )				
<b>Administration Services</b> (for example, Contract Administration, Meeting Coordination, Document Management, Fleet Maintenance, Building Maintenance)				
<b>Total Score</b>	<b>100</b>			<b>1000</b>

SELECTION COMMITTEE

EVALUATOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# Project Manager Selection Process Timeline



# Transition Plan

## FINANCIAL

- Install and Train on Accounting Software
- Create Payroll
- Create and Train on Accounts Payable
- Implement Cost Accounting System
- Transfer of Credit Accounts with Vendors
- Transfer of Account Balances
- Execute Priority 1 Annual Contracts
  - Board Attorney
  - Security
  - Laboratory
  - Point Repair
  - Calligrapher
  - SCADA Contractor
  - Chemical Supplier
  - Membrane Service
  - Solids Disposal
  - Insurance Provider
  - Solar
  - Instrumentation Service
- Execute Open Purchase Orders
  - Plumbing
  - Electrical
  - Sample Transport
  - Oil and Fuel
  - HVAC
  - Electronics
  - Lab Supplies
  - Waste Disposal

## UTILITY SUPPORT

- Engineering
  - Line location
    - Raw Water Transmission
    - Fiber Optic
    - Electrical
    - Finished Water Transmission
  - Plan and Specification Review
  - Field Inspections
- Leak Repair
- Regulatory Compliance
  - Signatory Authorization
  - Permitting
- Water Resource
  - Water Rights Accounting
  - Strategic Planning
  - Water Demand Projections

#### **HUMAN RESOURCES**

- Transfer Employee Benefit Packages
- Create Job Classifications
- Transfer Employee Development Program
- Transfer Grant Administration
- Post Vacant Positions
- Conduct Employee Orientation

#### **RISK MANAGEMENT**

- Transfer Workers Compensation
- Transfer Insurance Coverage
- Conduct Required Safety Trainings
- Transfer DOT Drug Testing Requirements

#### **INFORMATION TECHNOLOGY**

- Transfer Telephone System Service
- Transfer Email Service
- Transfer Licensing and update/support
- Transfer Radio Communications

#### **ADMINISTRATION SERVICES**

- Transfer Fleet Maintenance
  - Service and Repairs
  - Fueling Location
- Transfer BDDDB Meeting Coordination
- Transfer Contract Administration

# Attachment A

## 2004 Joint Powers Agreement



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## Recitals

**BDD Board** means the governing board of directors of the BDD Project as established by the this Agreement.

1 **BDD Project** means the planned Buckman Direct Diversion Project which will divert surface  
2 water from the Rio Grande at Buckman, as described in the draft Environmental Impact  
3 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity  
4 of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works  
5 used to deliver water to the respective Independent Water Systems of the City and County.  
6  
7 **BOR** means the United States Bureau of Reclamation.  
8  
9 **Design Build Contract** means a contract entered into between the BDD Board and the Design  
10 Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.  
11  
12 **Design Build Contractor** means the contractor hired pursuant to the Design Build Contract to  
13 design and build the BDD Project.  
14  
15 **Facility Operations and Procedures Agreement (FOPA)** means the agreement between the City,  
16 the County and Las Campanas governing the operations and procedures of the BDD Project.  
17  
18 **Independent Water System** means the respective water works of the City and the County, as  
19 such works exist now and as such works may change or expand in the future.  
20  
21 **ISC** means the New Mexico Interstate Stream Commission.  
22  
23 **Owners' Consultant** means a consultant specializing in providing professional services to the  
24 Project Owners to manage and oversee the design build process on a public water project on  
25 behalf of the Project Owners, including, but not limited to, providing all professional services for  
26 the Project Owners that are necessary to fully develop, procure, design, construct and initially  
27 operate the BDD Project.  
28  
29 **Owners' Consultant Contract** means the contract between the City and the County as Project  
30 Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.  
31  
32 **OSE** means the New Mexico Office of the State Engineer.  
33  
34 **Project Management and Fiscal Services (PMFS) Contract** means a contract between the  
35 BDD Board and the Project Manager for the provision of the management and fiscal services as  
36 described in Section 12 of this Agreement.  
37  
38 **Project Manager** means the designated entity that provides the management and fiscal services  
39 as required by the PMFS Contract  
40  
41 **Project Owners** means the City and County.  
42  
43 **Regional Entity** means an entity which includes both the City and County that seeks to

1 cooperatively manage water supply and delivery from the BDD Project on a regional basis.

2  
3 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605 acre-feet  
4 per year acquired by the City and the County under contract with the U.S. Bureau of  
5 Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or  
6 replaced.

7  
8 **Sangre de Cristo Water Division** means the operating water utility division of the City's  
9 Independent Water System.

10  
11 **Water Resources Agreement** means the "Water Resources Agreement between the City of  
12 Santa Fe and the County of Santa Fe", executed contemporaneously with this Agreement.

### 13 14 **Agreement**

15  
16 **1. Purpose.** The purpose of this Agreement includes the formation of the BDD Board to oversee  
17 the BDD Project and the establishment of the terms and conditions governing the ownership,  
18 planning, procurement, financing, permitting, design, construction, operations, allocation of  
19 capacity and management of the BDD Project.

20  
21 **2. Ownership.** The City and the County shall each own fifty percent (50%) of the BDD Project,  
22 subject to Section 15 of this Agreement.

23  
24 **3. Establishment of the BDD Board.** The City and the County hereby establish the BDD Board  
25 and delegate to it all powers, necessary or implied, to oversee the planning, procurement,  
26 financing, permitting, design, construction, operations and management of the BDD Project. The  
27 BDD Board's responsibilities for operations and management include the duty and authority to  
28 maintain, repair, replace and obtain approvals for the BDD Project.

29  
30 **4. Responsibilities and Duties of the BDD Board.** It shall be the duty of the BDD Board to  
31 divert, treat, transmit and deliver Rio Grande surface water by means of the BDD Project to the  
32 City and the County Independent Water Systems in accordance with their respective diversion  
33 allocations and delivery demands. Such powers and duties are subject to the limits and  
34 conditions provided in this Agreement.

35  
36 The BDD Board shall manage the Owners' Consultant Contract and supervise the performance  
37 of the Owners' Consultant, as provided in Section 10 of this Agreement.

38  
39 The BDD Board shall enter into the Design Build Contract and supervise performance of the  
40 Design Build Contractor, as provided in Section 11 of this Agreement.

41  
42 The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract  
43 and supervise the performance of the Project Manager, as provided in Section 12 of this

1 Agreement.

2  
3 The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with  
4 Las Campanas, as provided in Section 15 of this Agreement.

5  
6 **5. Appointment of BDD Board Members and Chairperson.** The BDD Board shall be  
7 managed by a board of directors organized and comprised as follows:

8  
9 Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's  
10 Mayor with the approval of the Governing Body. The members shall serve for such a period as  
11 may be determined from time to time by the Mayor with the approval of the Governing Body.  
12 The Mayor may appoint, with the approval of the Governing Body, a third member of the  
13 Governing Body to serve as an alternate in the event one of the two regular members is unable to  
14 attend a BDD Board meeting.

15  
16 Two members of the Board of Santa Fe County Commissioners shall be appointed and approved  
17 by the Board of Santa Fe County Commissioners. The members shall serve for such period as  
18 may be determined from time to time by the Board of Santa Fe County Commissioners. The  
19 Board of Santa Fe County Commissioners may appoint a third member of the Board of Santa Fe  
20 County Commissioners to serve as an alternate in the event one of the two regular members is  
21 unable to attend a BDD Board meeting.

22  
23 One citizen member at large shall be appointed by a majority vote of the four other members for  
24 a two-year term and who may be re-appointed without limit. Prior to the end of any term, the  
25 citizen member may only be removed by unanimous action of the four other members. In the  
26 event that the citizen member's term expires but a citizen member has not been appointed for the  
27 following term, the citizen member shall continue to serve as a member of the BDD Board for an  
28 additional sixty (60) days. After the expiration of the citizen member's term and if the BDD  
29 Board has not appointed a citizen member within the sixty-day period, the Chief Judge of the  
30 First Judicial District Court shall appoint that member.

31  
32 Upon the expiration of a term of office or on account of death, illness, resignation, or three  
33 consecutive absences from duly called meetings, the entity that appointed the director shall  
34 thereupon appoint a director to the new term or to complete the term vacated. The BDD Board  
35 shall be duly constituted and established upon appointment of the citizen member and election of  
36 the chairperson and chairperson pro-tempore. The BDD Board shall annually elect a chairperson  
37 and a chairperson pro-tempore for the purposes of holding meetings, doing business and  
38 executing documents as required and consistent with the terms of this Agreement.

39  
40 Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-  
41 Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this  
42 Agreement.

43

1 **6. Meetings of the BDD Board.** The BDD Board shall have at least one regularly scheduled  
2 meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A  
3 quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board  
4 members is present. A simple majority of BDD Board members who are present at a duly called  
5 meeting of the BDD Board at which a quorum is present shall act for the BDD Board with  
6 respect to all matters brought before the BDD Board at that meeting.

7  
8 **7. BDD Board Annual Budget.** Each year the BDD Board shall prepare and recommend an  
9 annual budget, which shall be finalized for recommendation after a public hearing and shall not  
10 be formally adopted or implemented unless and until it is approved by each of the governing  
11 bodies of the City and the County. If, for any reason, the BDD Board fails to have an approved  
12 annual budget for a fiscal year as of the first day of that year, the annual budget for the prior  
13 fiscal year shall be effective for the subsequent fiscal year until such time as an annual budget is  
14 adopted and approved for the subsequent fiscal year.

15  
16 **8. BDD Project Financing.** The BDD Board may apply for grants, loans, financial guarantees,  
17 and other financial assistance from private or public sources. The BDD Board shall not obligate  
18 itself by loan or encumber the BDD Project or any other real property or assets held or owned by  
19 it, unless and until each of the governing bodies of the City and the County approves such loan or  
20 encumbrance.

21  
22 **9. Limits of BDD Board Authority.** The BDD Board's authority and duties do not encompass  
23 the distribution of water to customers, the assessment or collection of water charges, the  
24 regulation of water use by customers or the ownership, acquisition or permitting of use of water  
25 rights or contract water rights. Those functions, and any others not delegated by this Agreement,  
26 are reserved to the City and County in the supervision and operation of their respective  
27 Independent Water Systems.

28  
29 **10. Owners' Consultant.** The City and the County agree to execute the Owners' Consultant  
30 Contract as expeditiously as possible. Once the BDD Board is established, the City and the  
31 County shall assign to the BDD Board the authority to approve any necessary changes in the  
32 Owners' Consultant Contract. The Owners' Consultant shall thereafter report to the BDD Board.  
33 The day-to-day oversight of the Owners' Consultant will be performed by the Project Manager,  
34 Section 12, of this Agreement.

35  
36 **11. Design Build Contractor.** The City and the County delegate to the BDD Board the authority  
37 to enter into the Design Build Contract. The BDD Board shall have the authority to approve any  
38 necessary changes in the Design Build Contract. The Design Build Contractor shall report to the  
39 BDD Board. The day-to-day oversight of the Design Build Contractor shall be performed by the  
40 Project Manager, Section 12 of this Agreement.

41  
42 **12. Project Management and Fiscal Services.** The City and the County delegate to the BDD  
43 Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible

1 for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the  
2 design and construction of the BDD Project; (3) the operation and management the BDD Project  
3 after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the  
4 provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for  
5 the Owners' Consultant Contract, Design Build Contract, and all other fiscal services related to  
6 the design, procurement, construction, operation and maintenance of the BDD Project, including  
7 managing all revenues, maintaining all accounts, procuring necessary property, goods and services,  
8 and receiving and disbursing all funds. The Project Manager will report directly to the BDD  
9 Board, and the BDD Board shall have authority to supervise the performance of the Project  
10 Manager.

11  
12 The PMFS Contract shall contain a fee schedule for the fiscal agent services to be provided under  
13 the PMFS Contract. It shall, at a minimum, specify that funds of the BDD Project shall be held in  
14 one or more separate accounts and shall not be commingled with the funds of any of the parties to  
15 this Agreement, and shall specify that the Project Manager may invest its funds only in accordance  
16 with any applicable laws of the State of New Mexico governing the investment of public funds.  
17 The PFMS Contract shall specify the types and threshold amounts of expenditures that require  
18 approval of the BDD Board in advance.

19  
20 **13. Designation of Project Manager.** The City and County agree that the Sangre de Cristo  
21 Water Division will be the initial Project Manager and that the BDD Board shall enter into the  
22 PMFS with the City.

23  
24 Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de  
25 Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board  
26 shall have authority to enter into a new PMFS Contract with any one of the following: (1) Sangre  
27 de Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.

28  
29 After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term  
30 of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the  
31 functions performed under the PMFS Contract may continue to be combined in a single new  
32 PMFS Contract or may be separated into two or more replacement PMFS Contracts.

33  
34 **14. BDD Project Capacity Allocation.** In accordance with the Environmental Impact Statement  
35 for the BDD Project the 8,730 afy of diversion capacity of the BDD Project shall be allocated as  
36 follows: 5,230 afy to the City, 1,700 afy to the County, and 1,800 afy to Las Campanas. Each  
37 entity's diversions shall be based upon its own water right or contract right and each entity is  
38 responsible for acquisition and maintenance of its own water rights.

39  
40 **15. Inclusion of Las Campanas.** The 1,800 afy allocation of BDD Project capacity reserved for  
41 Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures  
42 Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as  
43 part of the Facility Operations and Procedures Agreement.

1  
2 **16. Cost Sharing for Design and Construction Costs for the BDD Project.** The City and  
3 County agree to contribute \$30 million each to design and construct the BDD Project. The City  
4 and the County shall disburse funds in accordance with the annual budget duly approved by  
5 them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the  
6 BDD Board, and contributions to support the budget shall be incorporated in each of the parties'  
7 annual budgets.  
8

9 The City and the County agree to seek additional State and Federal assistance to help pay for the  
10 costs of the Project. As part of the Facility Operations and Procedures Agreement, the City and  
11 County intend that Las Campanas will pay for its proportionate share of that part of the system  
12 allocated to its use (the diversion structure, sediment pond and related infrastructure). After  
13 applying the City's and County's combined \$60 million contribution, all state and federal  
14 financial assistance, the contribution of Las Campanas and any other funding, the City and  
15 County agree to contribute equally to pay the balance of design and construction costs.  
16

17 An accounting of the City and County contributions already made towards Project costs that shall  
18 be credited towards the City and County's respective contribution requirements shall be made a  
19 part of the PMFS Contract.  
20

21 **17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable  
22 and necessary costs and expenses attributable to the operation and maintenance of the BDD  
23 Project shall be included by the BDD Board in its annual budget and shall be apportioned among  
24 the parties and Las Campanas. The BDD Board shall determine periodically which costs are  
25 fixed and which are variable or proportionate.  
26

27 The costs of operating, maintaining and repairing the BDD Project that can be attributable to  
28 each party's variable or proportionate share of water deliveries (such as electrical costs) shall be  
29 shared according to each party's proportionate share of water deliveries.  
30

31 The costs of operating, maintaining and repairing the Project that are fixed or capital costs and  
32 that are attributable to the facility as a whole shall be shared equally by the City and County after  
33 applying any contribution by others, including Las Campanas.  
34

35 **18. Term.** The date on which this Agreement shall be effective shall be the date on which this  
36 Agreement is approved. This Agreement shall become effective upon approval of the  
37 Department of Finance and Administration, State of New Mexico. This Agreement shall be in  
38 effect from the effective date through the date of termination, as provided in Section 19 of this  
39 Agreement.  
40

41 **19. Termination.** The parties may terminate this Agreement only by the formal action of the  
42 Governing Body of the City of Santa Fe and the Board of County Commissioners.  
43

1 If upon termination of this Agreement, a successor public entity is authorized to carry on the  
2 activities of the BDD Board and assume its rights, obligations and responsibilities, then such  
3 rights, obligations and responsibilities shall be transferred to the successor public entity in  
4 accordance with law. If upon termination of this Agreement and a successor public entity is not  
5 authorized to carry on the activities of the BDD Board, then any property, rights and assets of the  
6 BDD Board (other than the BDD Project) shall be divided among the parties according to the  
7 respective contributions (ownership interests) of the parties.  
8

9 **20. Strict Accountability, Records, Audits, Reports.** As provided in NMSA 1978 Section 11-  
10 1-4 (as amended), the BDD Board and the parties hereto shall be strictly accountable for all  
11 receipts and disbursements, and shall maintain adequate, complete and correct records and  
12 statements pertaining to receipts, disbursements, and other financial matters pertaining to the  
13 Project. Each year, the Project Manager shall cause an annual audit of the BDD Project to be  
14 performed by an independent certified public accountant; the audit shall be provided to each of  
15 the City and the County and shall be made available to the public. The records and statements  
16 prepared by the BDD Board pursuant to this paragraph shall be open to inspection at any  
17 reasonable time by the parties hereto, their accountants and agents. Within ninety (90) days after  
18 the end of each fiscal year, the BDD Board shall prepare and present to the parties a comprehensive  
19 annual report of the BDD Board's activities and finances during the preceding year. The BDD  
20 Board shall prepare and present such reports as may be required by law, regulation or contract to  
21 any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such  
22 reports and accounting as the parties hereto may from time to time request.  
23

24 **21. Amendment.** This Agreement may not be modified, amended, supplemented or rescinded  
25 except by a written agreement executed by each of the City and the County in the manner in  
26 which this Agreement was executed by the City and the County.  
27

28 **22. Severability.** The provisions of this Agreement shall be interpreted and construed so as to be  
29 consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void,  
30 voidable or otherwise unenforceable the remainder of this Agreement shall continue in full force  
31 and effect and only so much of this Agreement as is necessary shall be separated herefrom and  
32 made unenforceable.  
33

34 **23. Insurance.** The BDD Board shall obtain and carry public liability insurance coverage  
35 (including directors and officers coverage) consistent with its responsibilities as a public entity  
36 under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* and with combined  
37 single limits of no less than \$1,000,000. The BDD Board shall carry and maintain fire and  
38 extended insurance coverage on all of the BDD Project buildings, structures and improvements,  
39 and upon all of the contents and other personal property. The Public Liability insurance policy  
40 shall provide occurrence-based coverage against losses arising out of all operations conducted  
41 on the premises, contractual liability coverage, crime, automobile, directors' and officers'  
42 coverage, and other appropriate coverages. The BDD Board shall also carry and maintain  
43 workers' compensation insurance (or create and administer a program of self insurance approved



1 by the Director of the Workers' Compensation Administration) that complies with the  
2 requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et  
3 seq., if applicable. The expense of obtaining and maintaining the required insurance shall be  
4 included in the annual budget of the BDD Board. The insurance provided for under this Section  
5 shall be maintained in full force and effect throughout the duration of this Agreement. A copy of  
6 any insurance policy shall be provided to any party at the party's request.

7  
8 **24. Liability.** No party hereto shall be responsible for liability incurred as a result of one of the  
9 other party's acts or omissions in connection with this Agreement. Any liability incurred in  
10 connection with this Agreement shall be subject to the privileges and immunities of the New  
11 Mexico Tort Claims Act (as amended).

12  
13 **25. Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create  
14 in the public, any member thereof, or any person, any rights whatsoever such as, but not limited  
15 to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to  
16 maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

17  
18 **26. Dispute Resolution.** The City and County agree to use any and all methods of dispute  
19 resolution, up to and including binding arbitration, to resolve any conflicts arising under this  
20 Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall  
21 be first discussed by representatives of each party having the authority, if necessary, to bind the  
22 party that they represent. Such representatives shall use their best efforts to amicably and  
23 promptly resolve the dispute. If the parties are unable to resolve the dispute through informal  
24 mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving  
25 rise to the dispute, either party may give notice to the other party that the dispute is to be  
26 submitted to binding arbitration. Any dispute requiring notice shall be shall be reported to the  
27 next meeting of the respective City and County governing bodies. Such notice shall contain the  
28 name of a proposed arbitrator, and in the event the other party does not agree with the proposed  
29 arbitrator, the model guidelines of the American Arbitration Association shall be used to select  
30 an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of  
31 the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be  
32 appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's  
33 award shall be binding on the parties.

34  
35 **27. Entire Agreement.** This Agreement contains the Entire Agreement between the City and  
36 County with regard to the matters set forth herein.

37  
38 **28. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the  
39 parties and their respective representatives, successors, and assigns.

40  
41 **29. Counsel.** The City and County acknowledge that they have freely entered into this  
42 Agreement with the advice of their respective legal counsel.  
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**30. 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.

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

**32. 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  
Phone: 986-6200  
Fax: 986-6362

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County Attorney  
Santa Fe County  
P.O. Box 276  
Santa Fe, N.M. 87504  
Phone: 986-6279  
Fax: 986-6362

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

1-11-05  
Date

[Signature]  
Approved as to form  
Santa Fe County Attorney

1-11-05  
Date

[Signature]  
Santa Fe County Clerk

1/11/05  
Date

[Signature]  
Mayor  
City of Santa Fe Council

1-15-05  
Date

[Signature]  
Approved as to form  
City of Santa Fe Attorney

1/14/05  
Date

[Signature]  
City of Santa Fe Clerk

1-18-05  
Date

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico  
Department of Finance Administration

By: [Signature]  
Date: 3/7/05



DFA Office of the Secretary  
Bataan Memorial Bldg., Suite 180  
Santa Fe, New Mexico 87501  
(505) 827-4985

DEPARTMENT of FINANCE and ADMINISTRATION (DFA)  
JOINT POWERS AGREEMENT (JPA) BRIEF

JPA 1 - 10/96

Agencies must complete and transmit this form along with all backup documentation to the DFA.

PRIMARY PARTY: Santa Fe County

SECONDARY PARTY: The City of Santa Fe

OTHER PARTY: \_\_\_\_\_

CONTACT NAME: Stephen C. Ross

PHONE: 986-6279

CONTACT ADDRESS: \_\_\_\_\_

DOCUMENTS ENCLOSED:

AMOUNT:

<input checked="" type="checkbox"/>	JPA	Federal Funds	\$ <u>0</u>
<input type="checkbox"/>	JPA Amendment	General Funds	\$ <u>0</u>
<input type="checkbox"/>	Purchase Document	Other State Funds	\$ <u>0</u>
<input type="checkbox"/>	Written Justification	Local Gov. Funds	\$ <u>60,000*</u>
<input type="checkbox"/>	Other _____	Total	\$ <u>60,000*</u>

\*or 50/50 share on construction costs(after federal, state, and other assistance.

PURPOSE: To establish the Buckman Direct Diversion Board, and to plan, finance, design, construct, operate and manage the Buckman Direct Diversion Project

TERM: From: date of DFA approval To: date of termination (presumptively perpetual)

FOR AN AMENDMENT, LIST THE ORIGINAL JPA EXPIRATION DATE: N/A

Statutory Requirements - Agencies must check each blank certifying to DFA that JPA

yes jointly exercises a power common to the parties (*Transferring funds from one agency to another does not constitute the joint exercise of power.*);  
clearly specifies its purpose;  
yes establishes the manner in which the joint power will be exercised;  
yes provides for strict accountability of all receipts and disbursements;  
yes addresses disposition, division, distribution and ownership of any property acquired as the result of the joint exercise of power; and  
yes specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements - Agencies must enter Y (Yes), N (No), or N/A (Not Applicable) to each of the following:

yes Does the JPA or amendment have original signatures executed by authorized officers, employees or other representatives empowered to bind their respective entities?  
yes Are all exhibits referred to in the JPA attached?  
N/A Does the JPA provide for the expenditure or transfer of public funds by a state agency? (*All public money must be budgeted.*)  
no Does the JPA provide for the transfer of local, state or federal funds to a state agency? If the answer is yes, cite or attach the legislative authority permitting the receiving state agency to increase its budget from such a transfer.  
no If the JPA or amendment start date is prior to the date submitted to DFA or, if the original JPA has expired, is a justification letter requesting retroactive approval attached? (*Letter must be signed by one of the parties.*)  
yes Has the JPA or amendment been reviewed by legal counsel? If yes, state who \_\_\_\_\_

[Signature]  
AGENCY HEAD SIGNATURE

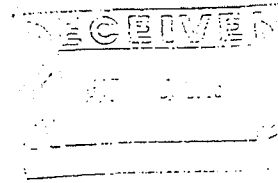
County Attorney  
TITLE



Secretary Jimenez  
Department of Finance and Administration  
Bataan Memorial Building  
Santa Fe, NM 87503



Re: City of Santa Fe - Santa Fe County  
Joint Powers Agreement for the Buckman Direct Diversion



Dear Mr. Jimenez,

Judy Amer of your office suggested I write and explain the references to Las Campanas in above-referenced Agreement.

The proposed Joint Powers Agreement implements a project of the City of Santa Fe and Santa Fe County to jointly construct, operate and maintain the Buckman Direct Diversion. The \$120 million project will divert water from the Rio Grande River through a diversion structure and settling facility, through pipelines to the Caja del Rio to a water treatment plant, and then to City and County residents. The water to be diverted is either native water or San Juan-Chama Project water under lease to the City of Santa Fe, Santa Fe County, and Las Campanas pursuant to State Engineer approval.

The Buckman Direct Diversion project is incredibly important to our community, and its importance is underscored by the recent drought that has plagued the area. Local groundwater resources are over committed and may not be able to meet needs on a sustainable basis. The agreement that was reached by the City and County brings Rio Grande water to our residents, and it is hoped that this will relieve the burden on local resources in times of drought. The project has obvious implications for the public health, safety and welfare. The Agreement before you represents the culmination of a 17 year effort to find a means to address our community's water needs in a holistic, sensible manner.

The project will be a government project, and will have a private partner. That private partner, Las Campanas LLC, is not a signatory to the JPA. Las Campanas is a limited liability corporation and developer of the Las Campanas subdivision on the City's west side. Las Campanas will make an investment in the facilities to be constructed and will receive water deliveries pursuant to a Facility Operations and Procedures Agreement that is being developed. The parties have already developed principles to guide the drafting of the agreement, and the agreement is expected to be completed soon. Las Campanas will construct, at its own expense, a pipeline to transport raw water to its facilities, and will be responsible for any necessary treatment.

The JPA fundamentally establishes the BDD Board to oversee the construction and implementation of the Buckman Direct Diversion in accordance with § 11-1-1 NMSA, the Joint Powers Act. It is essential to the local governmental entities that a JPA-created Board oversee the crucial work of constructing this water resource facility. The federal government, on whose property the proposed diversion structure will be placed, will only issue a single permit for river diversions. That means that if the City and County did not partner to some extent with Las Campanas, the entire project could be put in jeopardy if multiple applications for diversion structures were filed. That partnership will be represented in the Facility Operations and Procedures Agreement. In conclusion, the JPA is an essential step in providing a governance structure for the local government entities and the operating agreement to follow will detail the expenditures and water deliveries to the private partner.

I hope this is helpful in your review of the Agreement. If you have any questions, please call Stephen Ross, County Attorney, at 986-6279 or Kyle Harwood, Assistant City Attorney at 955-6502.

Sincerely,

Michael D. Anaya  
Chairman  
The Board of County Commissioners of Santa Fe County

Larry A. Delgado  
Mayor  
City of Santa Fe

**Attachment B**

**2005 Water Resource Agreement**

**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 17<sup>th</sup> 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

1   **WHEREAS**, the County and City will cooperate on the purchase of future water rights  
2   for use in the BDD Project.  
3  
4   **NOW**, therefore, upon the mutual consideration described by this Agreement, including  
5   the covenants and promises contained herein, the adequacy of which are acknowledged  
6   by the parties, the County and City agree as follows:  
7  
8   **Definitions.** Capitalized words or phrases used in this Agreement, as defined below,  
9   shall have the following meanings:  
10  
11   **afy** means acre feet per year.  
12  
13   **Agreement** means this "Water Resources Agreement between the City of Santa Fe  
14   and Santa Fe County".  
15  
16   **BDD Board** means the governing board of directors of the BDD Project as established by  
17   the BDD Joint Powers Agreement.  
18  
19   **BDD Joint Powers Agreement** means the "Joint Powers Agreement between the City of  
20   Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project" which  
21   is executed contemporaneously with this Agreement.  
22  
23   **BDD Project** means the planned Buckman Direct Diversion Project which will divert  
24   surface water from the Rio Grande at Buckman, as described in the draft Environmental  
25   Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a  
26   diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment,  
27   transmission and related works used to deliver water to the respective Independent Water  
28   Systems of the City and County.  
29  
30   **BOR** means the federal United States Bureau of Reclamation.  
31  
32   **Independent Water System** means the respective water works of the City and the  
33   County, as such works exist now and as such works may change or expand in the future.  
34  
35   **ISC** means the New Mexico Interstate Stream Commission.  
36  
37   **OSE** means the New Mexico Office of the State Engineer.  
38  
39   **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605  
40   acre-feet per year acquired by the City and the County under contract with the U.S.  
41   Bureau of Reclamation, dated November 23, 1976, and as it may be amended, renewed,  
42   converted or replaced.  
43  
44



**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

1 afy County SJCP Contract water) into the City's Buckman well permit, RG-20516;  
2 provided, that the City is a co-applicant on all such transfers and that the County takes  
3 responsibility for such transfers, including all costs associated with protested  
4 applications. The City shall be advised of all settlement discussions and proposed  
5 conditions of approval regarding such applications and shall cooperate with the County  
6 on all such transfers provided that such transfers do not adversely affect the City's water  
7 rights. The County acknowledges that it shall not obtain water deliveries from the City's  
8 Buckman well permit, RG-20516, as a result of such transfers, unless the parties  
9 otherwise agree in writing. The County may, at a time in the future, transfer the rights  
10 that have been moved to the City's Buckman well permit, RG-20516, to the BDD Project.  
11 This paragraph replaces and supersedes the "Water Right Transfer Agreement between  
12 the City of Santa Fe and Santa Fe County", dated June 30, 2004.  
13

14 **7. Drought Protection for the County Independent Water System.** Under drought /  
15 catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions,  
16 OSE/ISC restrictions), the City shall provide the County Independent Water System an  
17 amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity  
18 from the BDD Project. After the deliveries of water from the BDD Project begin and  
19 when the County's diversion of surface water from the BDD Project drops below 850 afy  
20 (50% of 1,700 afy), the City Independent Water System shall provide the County  
21 Independent Water System the necessary water to maintain deliveries of no less than 850  
22 afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section  
23 9, of this Agreement. The City and County shall be separately responsible for the  
24 acquisition and maintenance of their own water right portfolios and any applicable limits  
25 placed on water rights contained in their own water right portfolios. The Drought  
26 Protection provision is separate from the Wholesale Water Delivery, Section 2, of this  
27 Agreement and the SJCP Allocation, Section 5, of this Agreement.  
28

29 **8. Conjunctive Use and Sustainability.** The City and County agree to implement  
30 conjunctive use management by relying on surface water when it is available and using  
31 groundwater only as necessary. The City and County shall prioritize the allocation of  
32 water from the BDD Project for affordable housing using the Regional Planning  
33 Authority (RPA) Plan and the Affordable Housing Task Force report.  
34

35 The City and the County will develop a 'Comprehensive Joint Conjunctive Use and  
36 Sustainability Water Resource Strategy' that places the use of surface water as a higher  
37 priority than the use of groundwater and which manages the regional aquifer on a  
38 sustainable basis. The Strategy shall include a shortage sharing agreement that will help  
39 guide management decisions made by the BDD Board and the Regional Planning  
40 Authority. The Strategy shall incorporate the principle that the County and the City will  
41 consult prior to the drilling of new wells in the area around the City and County  
42 Independent Water Systems, as they exist at the time of signing of this Agreement, so as  
43 to encourage cooperation, avoid conflict and avoid the impairment of City or County  
44 water rights.  
45

1 The County reserves the right to drill in-Basin groundwater wells and commence the  
2 permitting of additional groundwater wells. The County shall consult with the City on  
3 the location of any proposed groundwater wells.  
4

5 **9. Shortage Sharing for Wholesale Water Delivery.** The County agrees to a pro rata  
6 reduction in the daily Wholesale Water Delivery in the event of a shortage of water  
7 supply to the City Independent Water System. The pro rata reduction in the daily  
8 delivery to the County Independent Water System shall be computed from actual use and  
9 shall be based on the reduction to other City customers from the City Independent Water  
10 System under the City's Water Emergency Management Plan Ordinance, currently in  
11 effect or as may be amended in the future. The pro rata reduction in the daily Wholesale  
12 Water Delivery shall be implemented at the points of delivery currently serving the  
13 County Independent Water System.  
14

15 **10. Treated Wastewater Effluent Return Flow.** The City shall gain all interest, right  
16 or title to return flow received at the City's wastewater treatment plant. The County shall  
17 gain no interest, right or title to any return flow received at the City's wastewater  
18 treatment plant. The County shall gain the interest, right or title to water delivered to the  
19 County Independent Water System which is not received at the City's wastewater  
20 treatment plant.  
21

22 **11. Points of Delivery.** The Wholesale Water Delivery shall be delivered to the County  
23 Independent Water System at any one (1) or all three (3) points of delivery currently  
24 serving the County Independent Water System. Additional points of delivery may be  
25 requested by the County with the consent of the City, which consent shall not be  
26 unreasonably withheld.  
27

28 **12. Rates.** The County shall pay to the City a Monthly Meter charge (\$435.21 / 10 inch  
29 meter / month) and a Wholesale Water Delivery rate (\$3.50 / 1000 gallons) as determined  
30 by the 2004 Cost of Service Study prepared for the City Independent Water System.  
31

32 **13. Adjustment of Rates.** The City may adjust the Monthly Meter charge and  
33 Wholesale Water Delivery rate over the term of this Agreement. The City shall provide  
34 the County at least one hundred eighty (180) days written notice of its intent to adjust the  
35 Monthly Meter charge or the Wholesale Water Delivery rate. The City and County  
36 acknowledge that the appropriate methodology for computing the Monthly Meter charge  
37 and Wholesale Water Delivery rate shall be based on an embedded cost of service study.  
38 The Directors of the City and County Independent Water Systems shall resolve any  
39 dispute regarding the adjustment of rates in a manner as set forth in Dispute Resolution,  
40 Section 16, of this Agreement.  
41

42 **14. Metering.** The City shall maintain the meters and related equipment for measuring  
43 the quantity of water delivered to the County Independent Water System at the points of  
44 delivery. The City shall read the meters and report the readings in monthly billings to the  
45 County. Meter reading reports shall include the meter readings for re-delivery to those  
46 City customers connected to the County Independent Water System pursuant to Quantity.

1 Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at  
2 the request of either the City or the County, not more than once during each twelve (12)  
3 month period, and the City and the County shall share the expense of calibration equally.  
4 The Directors of the City and County Independent Water Systems shall resolve any  
5 inconsistency in billing, metering or calibration in a manner as set forth in Dispute  
6 Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60  
7 days shall initiate the notice provision and related procedures described in Dispute  
8 Resolution, Section 16, of this Agreement.  
9

10 **15. Conditions of Delivery.** The City Independent Water System shall furnish water to  
11 the County Independent Water System at a reasonably consistent supply and pressure at  
12 the points of delivery. The City Independent Water System shall at all times operate and  
13 maintain the system in a manner and shall take such action as may be necessary to furnish  
14 the County Independent Water System with the quality and quantity of water required by  
15 this Agreement. Emergency failures of pressure or water supply shall excuse the City  
16 Independent Water System from this provision for such reasonable time as may be  
17 necessary to restore service. The City Independent Water System shall furnish water to  
18 the County Independent Water System of such quality as is required for a residential and  
19 a commercial customer under applicable water quality regulations. The County shall  
20 bear those costs where unusual and / or special conditions exist (such as elevation,  
21 terrain, or other conditions) and which result in increased costs to the City Independent  
22 Water System.  
23

24 **16. Dispute Resolution.** The City and County agree to use any and all methods of  
25 dispute resolution, up to and including binding arbitration, to resolve any conflicts arising  
26 under this Agreement, the expenses of which shall be shared equally by the City and  
27 County. Disputes shall be first discussed by representatives of each party having the  
28 authority, if necessary, to bind the party that they represent. Such representatives shall  
29 use their best efforts to amicably and promptly resolve the dispute. If the parties are  
30 unable to resolve the dispute through informal mechanisms or mediation within 30 days  
31 of the occurrence of the event or circumstances giving rise to the dispute, either party  
32 may give notice to the other party that the dispute is to be submitted to binding  
33 arbitration. Any dispute requiring notice shall be reported to the next meeting of the  
34 respective City and County governing bodies. Such notice shall contain the name of a  
35 proposed arbitrator, and in the event the other party does not agree with the proposed  
36 arbitrator, the model guidelines of the American Arbitration Association shall be used to  
37 select an arbitrator and govern the conduct of the arbitration, rendering of an award and  
38 enforcement of the award consistent with New Mexico state law. Within 60 days of  
39 notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall  
40 prepare an award. The arbitrator's award shall be binding on the parties.  
41


42 **17. Entire Agreement.** This Agreement contains the Entire Agreement between the  
43 City and County with regard to the matters set forth herein.  
44

45 **18. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of  
46 the parties and their respective representatives, successors, and assigns.


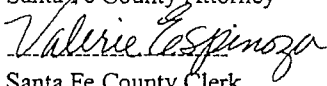
1  
2 **19. Counsel.** The City and County acknowledge that they have freely entered into this  
3 Agreement with the advice of their respective legal counsel.  
4  
5 **20. Other Documents.** The parties agree to execute such further and other agreements  
6 as reasonably may be required from time to time to carry out the provisions of this  
7 Agreement.  
8  
9 **21. Law.** The laws of the State of New Mexico shall govern this Agreement.  
10  
11 **22. Notices.** Any notice, demand, request, or information authorized or related to this  
12 Agreement shall be deemed to have been given if mailed (return receipt requested), hand  
13 delivered or faxed as follows:  
14  
15 **To the City:** Director of the Sangre de Cristo Water Division  
16 City of Santa Fe  
17 PO Box 909  
18 Santa Fe, NM 87501  
19 Phone: 955-4200  
20 Fax: 955-4352  
21  
22 **With a copy to:** City Manager  
23 City of Santa Fe  
24 PO Box 909  
25 Santa Fe, NM 87501  
26 Phone: 955-6509  
27 Fax: 955-6683  
28  
29 City Attorney  
30 City of Santa Fe  
31 PO Box 909  
32 Santa Fe, NM 87501  
33 Phone: 955-6511  
34 Fax: 955-6748  
35  
36 **To the County:** Santa Fe County Utilities Director  
37 Santa Fe County  
38 205 Montezuma  
39 Santa Fe, N.M. 87505  
40 Phone: 986-6210  
41 Fax: 992-8421  
42  
43 **With a copy to:** County Manager  
44 Santa Fe County  
45 P.O. Box 276  
46 Santa Fe, N.M. 87504

1 Phone: 986-6200  
2 Fax: 986-6362  
3  
4 County Attorney  
5 Santa Fe County  
6 P.O. Box 276  
7 Santa Fe, N.M. 87504  
8 Phone: 986-6279  
9 Fax: 986-6362  
10  
11

12 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of  
13 Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its  
14 duly authorized representatives as of the date specified below.

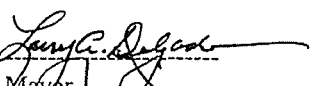
15   
16 \_\_\_\_\_  
17 Chairman,  
18 Board of Santa Fe County Commissioners

1-12-05  
\_\_\_\_\_  
Date

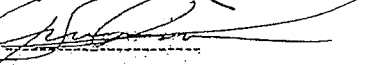
19   
20 \_\_\_\_\_  
21 Approved as to form  
22 Santa Fe County Attorney  
23   
24 Valerie Espinoza  
25 Santa Fe County Clerk

1-11-05  
\_\_\_\_\_  
Date

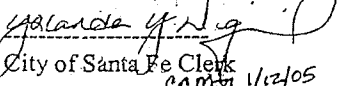


26  
27  
28  
29  
30   
31 \_\_\_\_\_  
32 Mayor  
33 City of Santa Fe Council

1-25-05  
\_\_\_\_\_  
Date

34   
35 \_\_\_\_\_  
36 Approved as to form  
37 City of Santa Fe Attorney

1/14/05  
\_\_\_\_\_  
Date

38   
39 Yolanda Y. Nig  
40 City of Santa Fe Clerk  
41 1/12/05  
42

1-18-05  
\_\_\_\_\_  
Date

## Attachment C

### 2006 Facility Operations and Procedures Agreement



**Facility Operations and Procedures Agreement for the  
Buckman Direct Diversion Project between the City of Santa Fe,  
Santa Fe County and Las Campanas LP**

This Facility Operations and Procedures Agreement (hereinafter referred to as "the FOPA") is entered into by and between the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, the City of Santa Fe (City), a municipal corporation of the State of New Mexico, and Las Campanas Limited Partnership, a Delaware Limited Partnership (hereinafter referred to as "Las Campanas"), effective as of the date of the last signature below.

**Recitals**

**WHEREAS**, the City, the County and Las Campanas are partners in the Buckman Direct Diversion project (hereinafter referred to as "the BDD Project" or "BDD") and desire to execute a Facility Operations and Procedures Agreement (hereinafter referred to as "the FOPA", "the Agreement" or "this Agreement") to facilitate the construction of the BDD Project;

**WHEREAS**, the City and County executed a Water Resources Agreement (hereinafter referred to as "WRA") on January 11, 2005 to address utility-to-utility issues between the City and County water utilities, and a Joint Powers Agreement (hereinafter referred to as "the JPA") on March 7, 2005 to establish the Buckman Direct Diversion Board (hereinafter referred to as "BDD Board");

**WHEREAS**, the JPA contemplates execution of the FOPA in order to address facility operations;

**WHEREAS**, on February 2, 2006 the BDD Board voted unanimously to recommend the Principles of Agreement for the FOPA and directed staff to prepare this Agreement; and

**WHEREAS**, the BDD Board considered this Agreement on September 7, 2006 and recommended that the City, the County and Las Campanas LP execute this Agreement expeditiously.

**NOW, THEREFORE**, upon the mutual consideration described by this Agreement, including the covenants and promises contained herein, the adequacy of which is acknowledged by the parties, the County, the City and Las Campanas agree as follows:



1 **Definitions.** Capitalized words or phrases used in this Agreement, if defined below, shall  
2 have the following meanings:

3  
4 1. **AFY or afy** means acre feet per year.

5  
6 2. **Agreement** means this Facility Operations and Procedures Agreement, also referred to  
7 as "FOPA" or "the FOPA."

8  
9 3. **BDD Board** means the Buckman Direct Diversion Board, created as set forth in the  
10 JPA.

11  
12 4. **BDD Partners** means the City, the County, and Las Campanas.

13  
14 5. **BDD Project** means the Buckman Direct Diversion Project, a project to divert surface  
15 water from the Rio Grande at Buckman as described in the draft Environmental Impact  
16 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion  
17 capacity of 8,730 afy. The BDD Project includes diversion, treatment, transmission and  
18 related works.

19  
20 6. **BDD Project EIS** means the environmental impact statement prepared by the US  
21 Forest Service and the Bureau of Land Management for the BDD Project.

22  
23 7. **City/County Separate Facilities** means those portions of the BDD Project including  
24 pumping equipment in booster station 2A, the raw water pipeline extending from pump  
25 station 2A to the City/County Water Treatment Plant, and the finished water pipelines to  
26 the points of interconnection, as shown on Exhibit A of this Agreement.

27  
28 8. **City-Las Campanas Settlement Agreement** means that certain agreement executed  
29 on September 30, 2003 in order to compromise and settle all issues associated with Case  
30 No. D-0101-CV-01878, First Judicial District, State of New Mexico.

31  
32 9. **Construction Costs** means all of the costs to implement the BDD Project paid to the  
33 Owners' Consultant, the DB Contractor, and professional and legal services contractors  
34 contracted by the Project Manager for services directly related to delivery of the BDD  
35 Project as recommended by the BDD Board. Construction Costs do not include BDD  
36 EIS Costs, Project Management Costs as defined in the PMFSA, and Permitting Costs.

37  
38 10. **DB Contractor** means the design-build contractor procured by the BDD Board.

39  
40 11. **JPA** means that certain Joint Powers Agreement entered into on March 7, 2005 by  
41 and between the City of Santa Fe and Santa Fe County.

42  
43 12. **Las Campanas Separate Facilities** means those portions of the BDD Project,  
44 including pumping equipment in booster station 2A and the raw water pipeline extending  
45 from booster station 2A to Las Campanas that provide water only to Las Campanas, as  
46 shown on Exhibit A of this Agreement.

- 1  
2 **13. MGD** means million gallons per day.  
3  
4 **14. Owners' Consultant** means the consulting engineer contracted by the BDD Board to  
5 create the delivery of the BDD Project.  
6  
7 **15. Permitting Costs** means the costs to acquire permits necessary for construction and  
8 operation of the BDD Project.  
9  
10 **16. PMFSA** means the Project Management and Fiscal Services Agreement.  
11  
12 **17. Project Manager** means the Project Manager of the BDD Project as specified in *JPA*  
13 *Section 13. Designation of Project Manager*.  
14  
15 **18. Project Management Costs** means the costs of the Project Manager to implement  
16 and operate the BDD Project as defined in the PMFSA.  
17  
18 **19. Shared Facilities** means that portion of the BDD Project that provides raw water to  
19 all BDD Partners, as shown on Exhibit A of this Agreement, including all portions of  
20 booster station 2A except for the pumping equipment in booster station 2A that is part of  
21 the Las Campanas Separate Facilities or the City/County Separate Facilities.  
22  
23 **20. WRA** means that certain Water Resources Agreement between the City of Santa Fe  
24 and Santa Fe County with an effective date of January 11, 2005.  
25  
26  
27

## 28 Agreement

- 29  
30 **1. Description of the BDD Project.** The BDD Project is a mix of shared and separate  
31 facilities. See Exhibit A to this Agreement for a schematic/map of the BDD Project  
32 showing Shared Facilities, Las Campanas Separate Facilities and City/County Separate  
33 Facilities.  
34  
35 **2. Ownership of the Project.** The City and County each own an undivided equal  
36 interest in the Shared Facilities. The City and County each own an undivided equal  
37 interest in the City/County Separate Facilities. Las Campanas owns the Las Campanas  
38 Separate Facilities.  
39  
40 **3. Use of the Shared Facilities.** Use of the Shared Facilities shall be apportioned to each  
41 BDD Partner based on the peak day capacity allocated in *FOPA Section 7. BDD Project*  
42 *Facility Capacity Allocation*.  
43  
44 **4. Relationship of the Parties.** Except as provided in this Agreement, the City and  
45 County shall be allocated the rights and responsibilities of a general partner in a  
46 business/corporate model under New Mexico law. Las Campanas shall have the rights

1 and responsibilities of a limited partner in a business/corporate model under New Mexico  
2 law.

3  
4 **5. Management of the Shared Facilities and the City/County Separate Facilities.**

5 Management of the Shared Facilities and the City/County Separate Facilities shall be  
6 accomplished through the BDD Board, consistent with the provisions of this Agreement,  
7 the JPA, the WRA, and the PMFSA.

8  
9 **6. Permits.** The BDD Board shall be the permittee of the permits, rights of ways, and  
10 authorizations pursuant to the Record of Decision on the BDD Project EIS. Other  
11 permitting requirements will be identified by the Owners' Consultant and will be  
12 acquired, managed and maintained by the Project Manager except for the water rights  
13 permits described in *FOPA Section 11. Water Rights Transfers*. The BDD Partners agree  
14 to cooperate and coordinate to the greatest extent possible on the acquisition,  
15 management and maintenance of all BDD Project permits.

16  
17 **7. BDD Project Facility Capacity Allocation.** The peak day diversion capacities are:

18  
19 City: 62.09% (11.3 mgd allocation of 18.2 mgd total capacity)  
20 County: 20.33% (3.7 mgd allocation of 18.2 mgd total capacity)  
21 Las Campanas 17.58% (3.2 mgd allocation of 18.2 mgd total capacity)

22  
23 A BDD Partner may use another BDD Partner's unused peak day diversion capacity.  
24 Consent for one BDD Partner to utilize another BDD Partner's unused peak day  
25 diversion capacity shall not be unreasonably withheld and the cost to use that capacity  
26 shall be calculated as set forth in a separate agreement.

27  
28 **8. Water Rights and Divertable Water Supply.** Each BDD Partner shall divert only  
29 that amount of water in the system for which water rights are in good standing with the  
30 New Mexico State Engineer, subject to the limitations on diversions at low flow set as  
31 forth in the BDD Project EIS or other applicable permits. The BDD Partners each  
32 recognize an individual responsibility to maintain their own water rights portfolio and to  
33 manage any water rights shortage within that portfolio. No BDD Partner shall make any  
34 claim or attempt to use another BDD Partner's water rights without the express written  
35 consent of that BDD Partner.

36  
37 **9. Sharing of Shortages. Facility Failure.** In the event of reduced total capacity of the  
38 BDD Project caused by facility failure, the BDD Partners shall receive deliveries on a  
39 reduced basis that are computed from a pro-rata percentage of peak day (mgd) diversion  
40 capacity as described by *FOPA Section 7. BDD Project Facility Capacity Allocation*.  
41 Facility failure does not include the occurrence of low flow on the Rio Grande, any  
42 restrictions on diversions pursuant to the BDD Project EIS, or limitations on the use of  
43 specific water rights. Facility failure does include damage caused by floods, upstream  
44 spills of pollutants or toxic materials, failure or damage to the BDD Project, and  
45 scheduled or unscheduled shut downs required for maintenance, repair, or replacement.

1 **10. BDD Project Operations. Actual Water Deliveries.** Each BDD Partner shall use its  
2 best efforts to conform the actual water demand it places on the BDD Project to its  
3 demand schedules prepared in conformance with *FOPA Section 26. BDD Project*  
4 *Requested Delivery Schedule*. No BDD Partner shall exert an actual demand on the BDD  
5 Project at a rate that exceeds the capacity allocation set forth in *FOPA Section 7. BDD*  
6 *Project Facility Capacity Allocation* adjusted for the sharing of shortages as set forth in  
7 *FOPA Section 8. Water Rights and Divertable Water Supply* and *FOPA Section 9.*  
8 *Sharing of Shortages. Facility Failure*. The Project Manager shall operate the facility to  
9 meet the BDD Partners' actual demand, subject to the capacity allocation set forth in  
10 *FOPA Section 7. BDD Project Facility Capacity Allocation* adjusted for the sharing of  
11 shortages as set forth in *FOPA Section 8. Water Rights and Divertable Water Supply* and  
12 *FOPA Section 9. Sharing of Shortages. Facility Failure*. The BDD Project shall  
13 include water measurement devices to account for the actual volume, rate, and time-of-  
14 day of all water deliveries to each BDD Partner. The BDD Project, in conjunction with  
15 operations procedures, shall include controls to limit each BDD Partner's water demand  
16 to its peak day and annual volume allocations.

17  
18 **11. Water Rights Transfers.** The BDD Partners shall cooperate to transfer the water  
19 rights described in the BDD Project EIS and shall take actions that are consistent with the  
20 BDD Project EIS. The BDD Partners shall coordinate in development of strategies for  
21 compliance with the Conditions of Approval contained in New Mexico State Engineer  
22 diversion permits.

23  
24 In accordance with the WRA, the County shall identify a schedule for the transfer of such  
25 water rights and the City shall cooperate in the transfers.

26  
27 In accordance with the City-Las Campanas Settlement Agreement, Las Campanas shall  
28 identify a schedule for the transfer of such water rights and the City shall cooperate in the  
29 transfers.

30  
31 **12. Cost Sharing. Use of Funding from County Ordinance No. 2002-05.** The  
32 PMFSA shall reflect that the County may use the proceeds from County Ordinance No.  
33 2002-05, subject to the terms of that Ordinance.

34  
35 **13. Cost Sharing. BDD Project EIS Costs.** Costs related to the preparation of the BDD  
36 Project EIS are addressed in the MOU per FS No. 02-MU-11031000-013 dated January  
37 16, 2002 and are based on the percentage of annual diversion amounts listed in the BDD  
38 Project EIS.

39  
40 **14. Cost Sharing. Construction Costs of Shared Facilities.** Las Campanas shall pay a  
41 proportionate share of the Construction Costs of the Shared Facilities as measured by  
42 peak day (mgd) capacity in the BDD Project EIS (17.58%). The City and County shall  
43 share in the costs of the BDD Project as set forth in the *JPA Section 16. Cost Sharing for*  
44 *Design and Construction for the BDD Project*.

1 **15. Cost Sharing. Construction Costs of the Las Campanas Separate Facilities.** Las  
2 Campanas shall pay all of the costs of design and construction of the Las Campanas  
3 Separate Facilities, including those costs of the Owner's Consulting Engineer and the  
4 BDD Project design-build contractor to implement that portion of the Las Campanas  
5 Separate Facilities located within booster station 2A and the Las Campanas pipeline  
6 extending from booster station 2A to the location near Dead Dog Well where the Las  
7 Campanas Separate Facilities physically diverge from the City/County Separate  
8 Facilities.  
9

10 **16. Cost Sharing. Construction Costs of the City/County Separate Facilities.** The  
11 City and County shall share in the Construction Costs of the BDD Project as set forth in  
12 *JPA Section 16. Cost Sharing for Design and Construction for the BDD Project.*  
13

14 **17. Cost Sharing. Permitting Costs of the Shared Facilities.** The City, the County,  
15 and Las Campanas shall pay the Permitting Costs for the Shared Facilities in the same  
16 proportions described in *FOPA Section 14. Cost Sharing. Construction Costs of Shared*  
17 *Facilities.*  
18

19 **18. Cost Sharing. Permitting Costs of the Las Campanas Separate Facilities.** Las  
20 Campanas shall pay the full amount of the Permitting Costs of the Las Campanas  
21 Separate Facilities.  
22

23 **19. Cost Sharing. Permitting Costs of the City/County Separate Facilities.** The City  
24 and County shall share in the Permitting Costs of the City/County Separate Facilities  
25 pursuant to *JPA Section 16. Cost Sharing for Design and Construction for the BDD*  
26 *Project.*  
27

28 **20. Cost Sharing. Fixed OMR&R Costs for the Shared Facilities.** Fixed OMR&R  
29 Costs of the Shared Facilities shall be apportioned between the County, the City and Las  
30 Campanas using the capacity allocation shown in *FOPA Section 7. BDD Project Facility*  
31 *Capacity Allocation.*  
32

33 **21. Cost Sharing. Variable OMR&R Costs of the Shared Facilities.** Variable  
34 OMR&R costs of the Shared Facilities shall be apportioned between the County, the City  
35 and Las Campanas based on the actual delivery of water to each BDD Partner in  
36 accordance with *FOPA Section 27. Annual Operating Plan.*  
37

38 **22. Cost Sharing. Fixed and Variable OMR&R Costs of the Las Campanas Separate**  
39 **Facilities.** Las Campanas shall pay the full amount of the Fixed and Variable OMR&R  
40 costs of the Las Campanas Separate Facilities.  
41

42 **23. Cost Sharing. Fixed and Variable OMR&R Costs of the City/County Separate**  
43 **Facilities.** Fixed OMR&R costs of the City/County Separate Facilities shall be  
44 apportioned between the County and the City using the capacity allocation of the  
45 City/County Separate Facilities [County 24.6%, 3.7 mgd of 15 mgd, City 75.3%, 11.3  
46 mgd of 15 mgd]. Variable OMR&R costs of the City/County Separate Facilities shall be

1 apportioned between the County and City based on the actual delivery of water to each  
2 BDD Partner in accordance with *FOPA Section 27. Annual Operating Plan*. Each year  
3 following commencement of operations of the BDD Project and in connection with its  
4 approval of the budget pursuant to *JPA Section 17. Cost Sharing for Operation and*  
5 *Maintenance Costs for the BDD Project*, the BDD Board shall review the proposed  
6 allocation of costs between the fixed and variable categories and either approve, reject or  
7 modify same. At the same time, the BDD Board shall review the allocation methodology  
8 of fixed and variable costs as between the City and the County set forth in this section to  
9 determine whether the allocation is reasonable and appropriate, and shall explore  
10 alternative methodologies.

11  
12 **24. Emergency Reserve Fund.** The Project Manager, in consultation with the BDD  
13 Partners, shall submit to the BDD Board an analysis of the funds required for an  
14 emergency reserve and suggested procedures for creation and management of the  
15 emergency reserve fund.

16  
17 **25. The BDD Partners and the BDD Board.** The appointment of City Councilors and  
18 County Commissioners by their governing bodies provides representation of the City and  
19 the County on the BDD Board, as described in the JPA. The selection of a citizen  
20 member by the BDD Board provides representation of the public at large on the BDD  
21 Board.

22  
23 Las Campanas has an interest in the decisions of the BDD Board that impact the delivery  
24 of water from the Shared Facilities to the Las Campanas Separate Facilities. Las  
25 Campanas shall be able to request a BDD Board agenda item through coordination with  
26 the Project Manager. Las Campanas is entitled to notice of BDD Board decisions that  
27 relate to Las Campanas deliveries of water from the Shared Facilities to the Las  
28 Campanas Separate Facilities. Las Campanas is entitled to the opportunity to prepare  
29 materials and present those materials to the BDD Board.

30  
31 With respect to the BDD Board role in governance and oversight of operations, the  
32 Shared Facilities shall not be operated to adversely impact the Las Campanas annual  
33 and/or peak day capacity during normal operations.

34  
35 The BDD Board and Las Campanas shall coordinate to develop the annual BDD  
36 operational plan, notice procedures for planned shutdowns, annual OMR&R accounting  
37 practices, emergency and facility failure plans, water right and water resource  
38 management processes and procedures in accordance with applicable regulations, and the  
39 environmental compliance management in accordance with applicable regulations.

40  
41 **26. BDD Project Requested Delivery Schedule.** The BDD Partners acknowledge that  
42 management of minimum and low flows in the shared diversion and conveyance system  
43 is important because of sediment and OMR&R concerns and because each BDD Partner  
44 has different needs in the Shared Facilities. The Project Manager shall require that the  
45 design of the BDD Project shall be capable of accommodating each of the BDD Partners'  
46 expected minimum deliveries.

1  
2 **27. Annual Operating Plan.** The BDD Partners shall submit to the Project Manager the  
3 daily, weekly and monthly requested deliveries for each upcoming year no later than  
4 October 1 of each year. The Project Manager, in consultation with the BDD Partners.  
5 shall schedule the anticipated demand for the upcoming year for each BDD Partner in a  
6 Draft Delivery Schedule, which will be finalized among the BDD Partners by December  
7 1 of that year. The Project Manager, with input from and in consultation with the BDD  
8 Partners, shall prepare a manual for project operations, which will be distributed among  
9 the BDD Partners.

10  
11 **28. Early Start.** Any BDD Partner may begin an early start of facility construction in  
12 accordance with all applicable permits, agreements and construction requirements.

13  
14 **29. Data & Information Sharing.** Each BDD Partner shall designate an engineering  
15 and a legal representative to coordinate, facilitate, and implement information sharing,  
16 including the SCADA telemetry.

17  
18 **30. Operations, Maintenance and Security.** Operations, maintenance and security  
19 responsibilities shall be performed by the City of Santa Fe as Project Manager until  
20 December 1, 2015, as set forth in the JPA, except that Buckman Road shall be maintained  
21 by the County as required for access to the BDD Project facilities. All expected and  
22 planned operations and maintenance shall be presented to the BDD Board for approval  
23 and budget purposes.

24  
25 **31. Dispute Resolution.** The Project Manager shall be responsible for resolving  
26 disputes arising in this agreement. If the Project Manager cannot satisfactorily resolve a  
27 dispute, then any BDD Partner may petition the BDD Board for a resolution. In the event  
28 these steps do not resolve the dispute, then the BDD Partners agree to use any and all  
29 methods of dispute resolution, up to and including binding arbitration, to resolve any  
30 conflicts arising under this Agreement, the expenses of which shall be shared equally by  
31 the BDD Partners. Disputes shall be first discussed by representatives of each party  
32 having the authority, if necessary, to bind the party that they represent. Such  
33 representatives shall use their best efforts to amicably and promptly resolve the dispute.  
34 If the parties are unable to resolve the dispute through informal mechanisms or mediation  
35 within 30 days of the occurrence of the event or circumstances giving rise to the dispute,  
36 either party may give notice to the other party that the dispute is to be submitted to  
37 binding arbitration. Any dispute requiring notice shall be reported to the next  
38 meeting of the respective City and County governing bodies. Such notice shall contain  
39 the name of a proposed arbitrator, and in the event the other party does not agree with the  
40 proposed arbitrator, the model guidelines of the American Arbitration Association shall  
41 be used to select an arbitrator and govern the conduct of the arbitration, rendering of an  
42 award and enforcement of the award consistent with New Mexico state law. Within 60  
43 days of notice an arbitrator shall be appointed and within 120 days of notice the arbitrator  
44 shall prepare an award. The arbitrator's award shall be binding on the parties.  
45

- 1 **32. Entire Agreement.** This Agreement contains the Entire Agreement between the  
2 BDD Partners with regard to the matters set forth herein.  
3
- 4 **33. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of  
5 the parties and their respective representatives, successors, and assigns.  
6
- 7 **34. Counsel.** The BDD Partners acknowledge that they have freely entered into this  
8 Agreement with the advice of their respective legal counsel.  
9
- 10 **35. Other Documents.** The BDD Partners agree to execute such further and other  
11 agreements as reasonably may be required from time to time to carry out the provisions  
12 of this Agreement.  
13
- 14 **36. Law.** The laws of the State of New Mexico shall govern this Agreement.  
15
- 16 **37. Execution in Counterparts.** This Agreement may be executed in counterparts with  
17 separate signature pages in the format shown below.  
18
- 19 **38. Notices.** Any notice, demand, request, or information authorized or related to this  
20 Agreement shall be deemed to have been given if mailed (return receipt requested), hand  
21 delivered or faxed as follows:  
22
- 23
- 24 **To the City:** Director of the Sangre de Cristo Water Division  
25 City of Santa Fe  
26 PO Box 909  
27 Santa Fe, NM 87501  
28 Phone: 955-4200  
29 Fax: 955-4352  
30
- 31 **With a copy to:** City Manager  
32 City of Santa Fe  
33 PO Box 909  
34 Santa Fe, NM 87501  
35 Phone: 955-6509  
36 Fax: 955-6683  
37
- 38 City Attorney  
39 City of Santa Fe  
40 PO Box 909  
41 Santa Fe, NM 87501  
42 Phone: 955-6511  
43 Fax: 955-6748  
44
- 45 **To the County:** Santa Fe County Utilities Director  
46 Santa Fe County



1 205 Montezuma  
2 Santa Fe, N.M. 87505  
3 Phone: 986-6210  
4 Fax: 992-8421  
5

6 **With a copy to:** County Manager  
7 Santa Fe County  
8 P.O. Box 276  
9 Santa Fe, N.M. 87504  
10 Phone: 986-6200  
11 Fax: 986-6362  
12

13 County Attorney  
14 Santa Fe County  
15 P.O. Box 276  
16 Santa Fe, N.M. 87504  
17 Phone: 986-6279  
18 Fax: 986-6362  
19

20 **To Las Campanas:** Las Campanas Engineering  
21 218 Camino La Tierra  
22 Santa Fe, NM 87506  
23 Phone: 986-8090  
24 Fax: 986-6076  
25

26 **With a copy to:** Counsel for Las Campanas  
27 Law and Resource Planning Associates  
28 201 Third Street NW, Suite 1750  
29 Albuquerque, NM 87102  
30 Phone: 346-0998  
31 Fax: 346-0997  
32

33  
34 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, the County of  
35 Santa Fe, New Mexico, and Las Campanas LP has caused this Agreement to be executed  
36 and delivered by its duly authorized representatives as of the date specified below.

1 THE BOARD OF COUNTY COMMISSIONERS  
2 OF SANTA FE COUNTY  
3  
4

5 By: \_\_\_\_\_

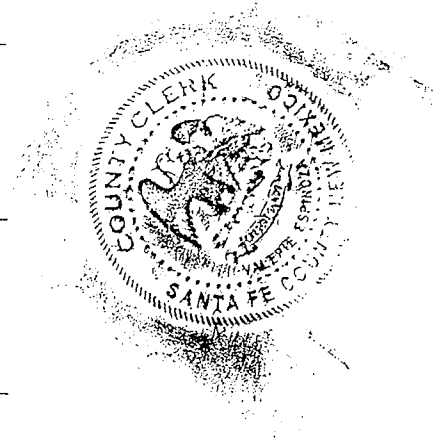
6 Harry B. Montoya, Chair  
7

8 ATTEST:  
9

10 \_\_\_\_\_  
11 Valerie Espinoza, County Clerk  
12  
13

14 Approved as to form:  
15

16 \_\_\_\_\_  
17 Stephen C. Ross, County Attorney  
18  
19  
20



1 Approved by the City of Santa Fe

2

3

4

5

6 Dave Cos  
Mayor, City of Santa Fe Council / Date

7

8

9 Approved as to form

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Reviewed

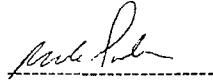
Galanda G. Wiggins  
City of Santa Fe Clerk / Date

ccmtg 9/27/06

Kathryn Raveling  
City of Santa Fe Finance / Date

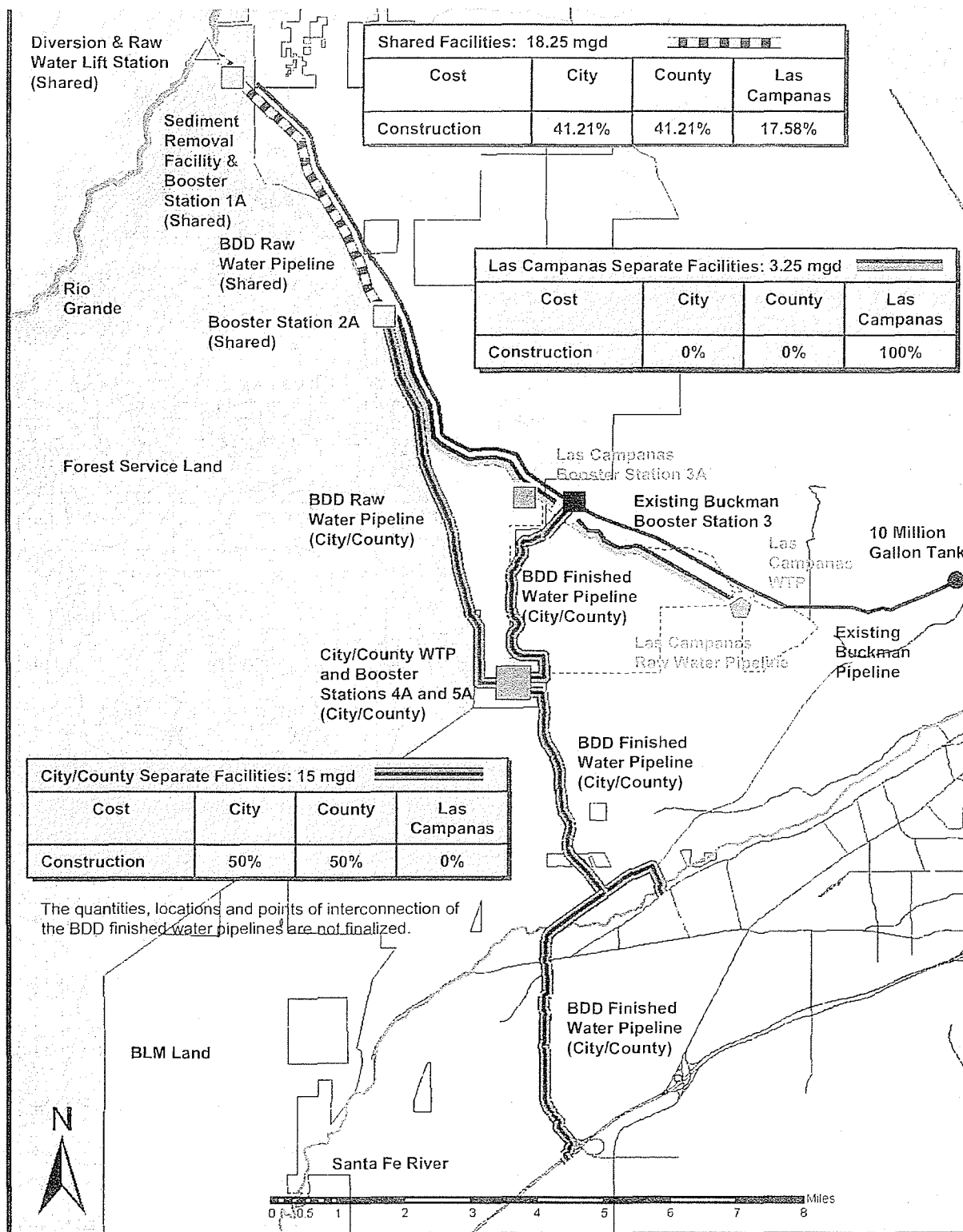
10/16/06

1 Las Campanas Limited Partnership  
2 By: Las Campanas Corporation, Its General Partner  
3  
4  
5  
6  
7  
8  
9  
10  
11

  
-----

10-16-06

Date



City of Santa Fe  
Santa Fe County  
Las Campanas LP

Facility Operations and Procedures  
Agreement Exhibit A  
Buckman Direct Diversion Project

2006

## **Attachment D**

# **2007 Project Management and Fiscal Service Agreement**

**PROJECT MANAGEMENT AND  
FISCAL SERVICES AGREEMENT  
BUCKMAN DIRECT DIVERSION PROJECT**

**THIS PROJECT MANAGEMENT AND FISCAL SERVICES AGREEMENT** (hereinafter referred to as "the Agreement" or "PMFSA") is entered into by and between the Buckman Direct Diversion Project Board ("the BDD Board"), an entity organized and existing under that certain Joint Powers Agreement by and between the City of Santa Fe ("City") and the Santa Fe County ("County"), dated March 7, 2005, and the Sangre de Cristo Water Division of the City of Santa Fe ("Project Manager").

**WHEREAS**, the City and the County, through the BDD Board, are designing, constructing, operating and maintaining the Buckman Direct Diversion Project;

**WHEREAS**, in preparation for creating the Project, the City and the County entered into the Water Resources Agreement on January 11, 2005;

**WHEREAS**, the City and the County entered into a Joint Powers Agreement on March 7, 2005, governing the Buckman Direct Diversion Project, creating the BDD Board, delegating to the BDD Board in §12 the authority to enter into the PMFSA, and designating in §13 the Sangre de Cristo Water Division of the City as the Project Manager and Fiscal Agent of the Project until December 1, 2015;

**WHEREAS**, the City, the County, and Las Campanas entered into the Facilities Operations and Procedures Agreement on October 16, 2006, which provides for respective ownership interests of the City and the County in the shared facilities comprising the Project, and cost sharing obligations of the City, County and Las Campanas in connection with the Project;

**WHEREAS**, the purpose of this Agreement is to more specifically describe the duties and responsibilities of the BDD Board, the duties and responsibilities of the Project Manager, how the Project will be operated and maintained by the Project Manager on behalf of the BDD Board, how contributions by the City, the County and Las Campanas will be paid and credited against the obligations set out in the Project Agreements, the duties and responsibilities of the Project Manager as fiscal agent for the Project, and other necessary terms; and

**WHEREAS**, the BDD Board and the Project Manager desire to enter into the agreement to address the items noted in the foregoing paragraph.

**NOW, THEREFORE**, for the covenants, promises and consideration described herein, the BDD Board and the Project Manager agree as follows:

## AGREEMENT

### ARTICLE 1. DEFINITIONS.

Capitalized words or phrases used in the foregoing recitals of this Agreement shall have the meanings assigned therein. In addition, the words and phrases defined in this Article 1 shall have the meanings assigned in this section.

A. "The Agreement," "this Agreement," or "PMFSA" as used herein refers to this Project Management and Fiscal Services Agreement.

B. "Annual Operating Budget" means the annual budget for all activities of the Project, including OMR&R, but excluding the budget for the design and construction.

C. "Annual Operating Plan and Delivery Schedule" means the annual operating plan and water delivery schedule prepared by the Project Manager with input from the City, the County and Las Campanas, described in Section 27 of the FOPA and herein.

D. "The "City" means the City of Santa Fe, New Mexico, a municipal corporation organized and existing under the Laws of the State of New Mexico, and a signatory of the Project Agreements.

E. "The County" means Santa Fe County, New Mexico and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico, and a signatory of the Project Agreements.

F. "Design-Build Contract" means the contract to be entered into by and between the BDD Board and a design-build contractor to design and construct the Project.

G. The "Design-Build Contractor" refers to the contractor selected to design and construct the Project.

H. The "Design and Construction Budget" means the comprehensive, multiyear budget for the design and construction of the Project.

I. "Fiscal Year" means a year beginning on July 1 and ending on June 30.

J. "The FOPA" means the Facility Operations and Procedures Agreements for the Buckman Direct Diversion Project Between the City of Santa Fe, Santa Fe County and Las Campanas LP.



K. "The JPA" means the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe governing the Buckman Direct Diversion Project, effective March 7, 2005.

L. "Las Campanas" means the Las Campanas Limited Partnership, a Delaware Limited Partnership, and a signatory of the FOPA.

M. "OMR&R" means operation, maintenance, replacement and repair.

N. "Owners' Consultant" means Camp, Dresser & McKee, Inc. (hereinafter referred to as "CDM"), under contract with the BDD Board as consulting engineer to the BDD Board, or any successor entity.

O. "The Owners' Consultant Contract" means the contract between the BDD Board and CDM, the Owners' consultant, as amended.

P. "The Project" means the planned Buckman Direct Diversion Project which will divert surface water from the Rio Grande as described in the final Environmental Impact Statement for the Buckman Direct Diversion Project, and includes diversion, treatment, transmission and related works used to deliver water to the respective Independent Water Systems of the City and the County.

Q. The phrase "the Project Agreements" means the WRA, JPA, the FOPA and the PFMSA.

R. "Project Expenses" means those expenditures of the Project approved by the BDD Board and included in a budget approved by the BDD Board, the City and the County, and reimbursement expenses retroactive to the execution date of the JPA.

S. "Project Manager" means the Sangre de Cristo Water Division of the City of Santa Fe.

T. "WRA" shall mean the Water Resources Agreement by and between the City of Santa Fe and Santa Fe County and dated on or about January 11, 2005.

## **ARTICLE 2. TERM, EFFECTIVE DATE.**

This Agreement shall become effective as of the date the Agreement is approved and executed by the BDD Board and the Project Manager. This Agreement shall remain in full force and effect until December 1, 2015, unless terminated earlier as provided in Article 9.E. of this Agreement.

## **ARTICLE 3. RESPONSIBILITIES OF THE BDD BOARD.**

The BDD Board shall be responsible to do all of the following:

A. Exercise all the responsibilities of the BDD Board as set forth in the Project Agreements;

B. Supervise the performance of the Project Manager pursuant to §§ 4 & 12 of the JPA;

C. Review and approve all contracts for the procurement of the Project including documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications, contracts and expenditures in amounts greater than \$20,000;

The BDD Board shall review, and if approved, execute the Owners' Consultant and the Design-Build Contracts, pursuant to §§ 10 and 11 of the JPA.

Contracts and expenditures in amounts less than \$20,000 may be reviewed, and if acceptable, may be approved administratively by the Project Manager. In an emergency, the Project Manager may approve contracts and expenditures up to \$30,000.

D. Establish by resolution of the BDD Board a document retention and protection policy.

E. Establish by resolution of the BDD Board the Annual Operating Budget;

F. Provide an adequate opportunity for the City, the County, and consistent with the FOPA, Las Campanas, and the public, to comment and make appropriate presentations on any proposed budget;

G. Consider and, if appropriate, adopt, by resolution of the BDD Board, amendments to a previously approved budget that the BDD Board deems advisable;

H. Create an Emergency Reserve Fund and establish procedures for its management pursuant to §24 of the FOPA;

I. Collect, through the Project Manager, contributions of the City, the County and Las Campanas toward design, construction, operation and maintenance of the Project, and related expenditures, and credit those contributions towards the obligations of the City, the County and Las Campanas as set forth in the Project Agreements;

J. Consistent with the Bateman Act, appropriately condition approval of each budget or amendment thereto on appropriation by the City and/or the County in an appropriate budget or budget amendment ;

K. Approve all financing and funding sources for the Project (except for funding to be provided by the City and the County pursuant to the Project Agreements)

and, as appropriate, enter into contracts in connection with such financing or funding sources;

L. Monitor the performance of the Owners' Consultant pursuant to the Owners' Consultant Contract and monitor the performance of the Design-Build Contractor pursuant to the Design-Build Contract; and

M. Take all steps that are necessary and proper for the design, construction, operation and maintenance of the Project.

#### **ARTICLE 4. DELEGATION OF AUTHORITY TO AND GENERAL RESPONSIBILITIES OF THE PROJECT MANAGER.**

The BDD Board delegates to the Project Manager the authority and responsibility to do the following:

A. Carry out the directives and policies of the BDD Board, make recommendations to the BDD Board related to the Project, provide support staff for BDD Board meetings, contract with independent legal counsel selected by the BDD Board, contract with specialized legal counsel as needed to support design, construction, operation and maintenance of the Project, and, as directed by the BDD Board, implement the Project during design and construction and, following completion of construction, manage, operate, and maintain the Project;

B. Seek and apply for funding (except for funding to be provided by the City and the County pursuant to the Project Agreements) in the form of grants, loans or loan guarantees, or other funding sources as may be deemed appropriate by the BDD Board, for the Project as directed by the BDD Board and manage any such grants, loans or loan guarantees;

C. Administer all funds loaned, granted or contributed by the City, the County or Las Campanas in connection with the Project, and respond to related audits as may be necessary;

D. Prepare and submit to the BDD Board, the City, the County and Las Campanas no later than December 15 of each Fiscal Year, an Annual Operating Budget, which shall include annual and 5 year projected OMR&R costs, including a 5 year schedule with the Project Manager's proposed facilities and equipment major maintenance and replacement costs, proposed allocation of costs among the City, the County and Las Campanas as provided in the FOPA, a facilities and equipment major repair and replacement fund, and an emergency reserve fund;

E. Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;

F. Develop a document retention and protection policy for adoption by the BDD Board;

G. Act as fiscal agent for the Project as provided in Article 7, herein;

H. Once an Annual Operating Budget is approved by the BDD Board, implement the budget, adhere strictly to the budget, and make recommendations for necessary budget adjustments throughout the Fiscal Year, and contract for an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board;

I. Prepare and submit to the BDD Board for approval all documentation to be used for procurement in the Project including, but not limited to, documents related to design, engineering, construction, operation and maintenance of the Project, including, without limitation, requests for proposals, requests for qualifications and contracts in amounts greater than \$20,000;

J. Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board;

K. Consult with staff of the City, the County, and Las Campanas regarding the planning and design and OMR&R of the Project;

L. In consultation with the BDD Board, apply for, manage and maintain, including the preparation and submittal of all required compliance reports, all necessary permits for the operation of the Project, including, without limitation, those permits, easements, and rights-of-way held in the name of the BDD Board, and those permits required to be obtained by the BDD Board pursuant to Section 6 of the FOPA;

M. Maintain communication with the BDD Board, the City, the County and Las Campanas, primarily via monthly BDD Board meetings, and keep these entities informed of important matters as may be necessary in the interim between monthly BDD Board meetings;

N. As directed by the BDD Board, act as liaison for the BDD Board and represent the BDD Board in Project matters involving tribal governments, state and federal government agencies, and non-governmental organizations;

O. As directed by the BDD Board, and with the consent and approval of the City and the County, and in consultation with Las Campanas, coordinate the Project with regional water supply planning efforts; and

P. Perform other duties as assigned by the BDD Board consistent with funding and the Project Agreements.

Q. Make commercially reasonable efforts to enforce the terms of all agreements that the BDD Board approves. In the event that the Project Manager's administrative efforts to enforce a specific contract's terms are not successful, the Project Manager shall so inform the BDD Board and shall make specific recommendations for the BDD Board's consideration regarding the BDD Board's contract enforcement steps or procedures, including litigation.

#### **ARTICLE 5. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING DESIGN AND CONSTRUCTION.**

During design and construction of the Project (through project acceptance by the BDD Board), the Project Manager shall do the following:

A. Supervise the Owners' Consultant pursuant to the Owners' Consultant Contract as directed by the BDD Board;

B. On a monthly basis, provide a schedule of construction payments to the BDD Board, track Project costs, track progress of the Project, monitor design and construction costs to determine whether such costs are within the sum specified by the BDD Board in the Design and Construction Budget, and manage the Design-Build Contractor within the limits of contractual obligations such that construction of the Project is timely and reasonably delivered pursuant to the project testing and acceptance dates agreed to in the Design-Build Contract;

C. Negotiate and manage procurement of the Design-Build Contract in accordance with the City's Purchasing Manual and present same to the BDD Board for approval;

D. Oversee the Design-Build Contractor in connection with all design and construction activities, and recommend to the BDD Board legal action to enforce compliance with the contract, if necessary;

E. Administer requests for payment by the Design-Build Contractor pursuant to construction draw schedules and timely present requests for Change Orders to the BDD Board and process same;

F. Monitor testing of the completed Project in accordance with procedures outlined in the Design Build Contract and upon successful results accept the completed Project.

#### **ARTICLE 6. SPECIFIC RESPONSIBILITIES OF THE PROJECT MANAGER DURING PROJECT OPERATIONS.**

During the operation, maintenance, repair and replacement phase of the Project, the Project Manager shall do the following:

A. Operate the Project within its design limitations to deliver treated water in sufficient pressure and volume to meet the actual demand of the City and the County, subject to the capacity allocations set forth in the FOPA §7, and of a quality that meets or exceeds all applicable State and federal regulations and standards;

B. Provide the treated water referred to the previous paragraph at a point or points of delivery at the BDD Project specified by the City or the County, provided, however, that the Project Manager is not obligated to deliver to points of delivery not constructed during the initial construction of the Project unless the City or the County first construct a new point of delivery at the BDD Project and provide the Project Manager and the BDD Board with thirty (30) days advance written notice of the need for water at the newly constructed point of delivery;

C. Deliver raw water to Las Campanas, at pump station 2A subject to the capacity allocation set forth in the FOPA §7, and manage the common facilities at pump station 2A;

D. Maintain water measurement devices that are part of the Project to account for the actual volume, rate, and time-of-day of all water deliveries to the City, the County and Las Campanas;

E. Use data provided from the metering facilities and monitors referred to in the preceding paragraph to analyze whether deliveries comply with Annual Operating Plan and the Project Agreements, and report to the BDD Board monthly;

F. Seek annually from the City, the County and Las Campanas, information required for the Annual Operating Plan as required by Section 27 of the FOPA;

G. From the data submitted pursuant to the previous paragraph, prepare the Annual Operating Plan and Delivery Schedule described in Section 27 of the FOPA, submit the report to the BDD Board, and make appropriate recommendations;

I. As soon as practicable after the end of each Fiscal Year, the Project Manager shall calculate the actual costs experienced by the Project in the previous Fiscal Year and the amounts paid by the City, the County and Las Campanas for the Project and make appropriate recommendations to the BDD Board for adjustments needed in the current Fiscal Year's budget;

J. Invoice the City, the County and Las Campanas for Project costs according to the cost sharing principles specified in the FOPA no less frequently than quarterly, and collect all sums so invoiced;

K. Schedule and coordinate reservoir release and Project diversion of San Juan-Chama Project water in accordance with the procedures of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers and the conditions of City and County

diversion permit No. 4842 issued by the State Engineer and future permits for diversion at the BDD of San Juan-Chama Project water and as directed by the designated representatives of the City, the County, and Las Campanas, each of whom has the responsibility to make water available at the reservoir from which it will be released;

L. Track raw water diversions by the Project for the City, the County, and Las Campanas, and provide to the BDD Board, with copies to the City, the County, and Las Campanas, a monthly accounting of actual raw and potable deliveries, daily water orders, and other statistical information as the BDD Board may require;

M. Monitor the relationship between the quantity of water actually delivered by the Project to the City, the County and Las Campanas and the permitted capacity of the Project's production facilities and make periodic reports of this analysis to the BDD Board, the City, the County and Las Campanas;

N. Reduce deliveries as provided in the FOPA §9 in the event of a reduced total capacity of the BDD Project caused by facility failure;

O. Provide all necessary staff, materials and supplies necessary to operate and maintain the Project consistent with BDD Board funding;

P. Recruit, hire and train staff for the Project according to the BDD Board's approved staffing plan as it may be amended from time to time and arrange for state drinking water certification for such staff in advance of operation of the Project, so that certified staff is available to operate the Project when the Project becomes operational, and set forth in each proposed budget the costs of the staff apportioned according to the respective benefit to the City and the Project

Q. Perform OMR&R duties for the Project at all relevant times in accordance with prudent water utility practices;

R. Report to the BDD Board quarterly and as otherwise required by the BDD Board regarding the OMR&R of the Project and all other relevant matters related to the Project;

T. In consultation with the City, the County and Las Campanas and pursuant to FOPA §27, prepare and present to the BDD Board for approval a comprehensive operations manual for the Project, and updates as needed, which shall include details of all aspects of Project operation including, but not limited to, process control, maintenance, scheduled maintenance outages, rehabilitation and replacement, contingency plans for unscheduled outages, and residuals management; distribute the comprehensive operations manual to the BDD Board, the City, the County and Las Campanas. The Project Manager may delegate, as appropriate, the preparation of the comprehensive operations manual to the Owner's Consultant, the Design-Build Contractor, or another;

U. Provide for appropriate security at all Project facilities;

V. Identify and report to the County the need for Buckman Road maintenance and reimburse the County for the apportioned cost according to the respective benefit to the County and the Project; and

W. Identify and report warranty problems to the Design-Build Contractor or the appropriate subcontractor or equipment supplier and, as necessary, recommend to the BDD Board legal action to enforce such warranties.

#### **ARTICLE 7. FISCAL AGENT RESPONSIBILITIES.**

The Project Manager shall act as fiscal agent for Project during the term of this Agreement, and as such shall have the following responsibilities:

A. Books and Accounts. The Project Manager shall maintain records of all transactions related to the Project, including third party transactions, in accordance with generally accepted accounting principles ("GAAP"), and standards established by the government accounting standards bureau ("GASB"), and shall:

- (1) establish a uniform system of accounts;
- (2) maintain segregated books and records consistent with GAAP to account for all separate funding sources, including, without limitation, funds provided by the City, the County, or Las Campanas in support of construction or subsequent OMR&R of the Project and funds secured by the BDD Board pursuant to grants or loans from funding agencies.
- (3) maintain supporting documentation and information required by funding agencies and prepare all necessary reports to such agencies;
- (4) provide access at any time to the City, the County and Las Campanas, or each of them, and to the State Auditor, and members of the public, within 90 days following the end of each fiscal year and at any other time as may be reasonably requested, full and complete books and records relating to the Project;
- (5) provide to the City, the County and Las Campanas, or each of them, any additional financial information or documentation relating to the Project as may from time to time be reasonably requested;
- (6) within 90 days after the end of each fiscal year, provide copies of financial statements to the City, the County and Las Campanas, showing the assets, liabilities, revenues, expenses, equity balances and budget comparisons for the Project fund on an annual basis for the prior fiscal year in accordance with GAAP and GASB, complete the Management's Discussion and Analysis (MDA) for the annual financial report, and provide upon request, a monthly general ledger report but may



recommend that its auditors produce the financial statements, dependent on staff available and the complexity of the reporting requirements;

(7) account for the separate financial contributions from, and reimbursements to, the City, the County and Las Campanas, including crediting the County for the contribution of revenues from the County Capital Outlay Gross Receipts Tax imposed by the Board of County Commissioners in Santa Fe County Ordinance No. 2002-5, subject to the terms of that Ordinance;

(8) procure, contract, and pay for as budgeted an annual independent audit, consistent with GAAP and GASB and with the New Mexico Audit Act, NMSA 1978, Sections 12-6-1-, *et seq.*, and 2.2.2. NMAC, *et seq.*, as amended, and report the results of the audit to the BDD Board.

B. Financial Operations. The Project Manager, acting as fiscal agent, shall:

(1) receive and record deposits in connection with the Project in compliance with applicable state and federal statutes, all applicable requirements of grant and loan funding and requirements otherwise imposed by or on the sources of funding;

(2) make and account for all approved disbursements for the Project, ensuring that disbursements are valid and comply with all applicable State investment statutes, and policies and procedures adopted by the BDD Board;

(3) in consultation with the BDD Board, invest excess funds not required for current operations or capital expenditures in accordance with applicable statutes, City and County policies and applicable requirements of grant or loan funding, assuring that investment earnings are credited to Project funds;

(4) carry over any unencumbered monies that are present at the end of a Fiscal Year, and budget those funds to the succeeding Fiscal Year, to be utilized for purposes consistent with the Project Agreements in the succeeding Fiscal Year; and

(5) obtain all necessary approvals for expenditure of funds, including, without limitation, approvals by the BDD Board and the New Mexico Department of Finance and Administration.; and

(6) determine and record capital assets inventory for appropriate general ledger amounts, run and record depreciation, and submit year-end capital asset inventory for the annual physical inventory.

#### **ARTICLE 8. COMPENSATION.**

The Project Manager, the City and the County shall be compensated for services rendered, or credited for services rendered prior to the date of this Agreement or of any Project Agreement, as follows:

A. Following execution of this Agreement, the Project Manager shall be compensated for its services as fiscal agent to the Project in an amount equal to one percent (1%) of the total annual operating budget of the Project in any given fiscal year, which the Project Manager may deduct from revenues dedicated to the Project.

B. Following execution of this Agreement, the Project Manager shall confer with the City, Las Campanas and the County to assign expenditures made previously by the City, Las Campanas or the County to the Project, including the dedication of real or personal property to the Project, by including the same in a single proposed supplemental budget document and presenting same to the BDD Board as proposed expenditures of the Project. The expenditures approved by the BDD Board in the proposed supplemental budget document shall become Project Expenses and, the City, Las Campanas or the County may be reimbursed for such approved expenditures or may credit such prior expenditures against current or future obligations under the Project Agreements. Notwithstanding the foregoing, no cash payment or credit shall be made if it is determined by the City or the County's bond counsel, after review of the proposed supplemental budget document, that such payment may adversely affect the federal tax exemption of interest on the obligations issued by the City or the County to finance the Project.

C. Following execution of this Agreement, all expenses proposed to be incurred by the Project Manager in connection with project management of the Project shall be set forth in the Annual Operating Budget and the Design and Construction Budget.

D. The Project Manager shall not incur nor be paid for any additional or extraordinary OMR&R expenses in connection with performing the services described in this Agreement except as specified in the Annual Operating Budget, amendments thereto, or from the Emergency Reserve Fund.

#### **ARTICLE 9. TRANSFER OF FUNDS TO MEET OBLIGATIONS UNDER THE PROJECT AGREEMENTS.**

An obligation of a party in the Project Agreements may be met at any time by transferring funds to "the City of Santa Fe as Project Manager for the Buckman Direct Diversion Project." Any such transfer shall be credited immediately against the account of the contributing party, and the City, as Project Manager, shall be a trustee for any such funds received on account of the Project.

#### **ARTICLE 10. MISCELLANEOUS.**

**A. Default.** For purposes of this Agreement, the Project Manager shall be deemed to be in default only in the event of a breach of its obligations hereunder.

**B. Right to cure.** In the event of default, the Project Manager shall have sixty (60) days from receipt of written notification from the BDD Board to cure the default. If the Project Manager is unable to cure the default with the sixty day period, the Project Manager will notify the BDD Board, the City and the County at the earlier of (1) the time the Project Manager becomes aware of the inability to cure the default; or (2) expiration of the sixty day period.

**C. Remedies on Default.** In addition to the remedies specified in this Article, if an event of default remains uncured within the sixty day cure period, the BDD Board may elect to treat this Agreement as being in full force and effect and the BDD Board, the City and the County shall have the right to specific performance. If the BDD Board determines that the Project Manager cannot continue in its role as manager of the Project, the BDD Board may declare this Agreement terminated and appoint a successor as Project Manager for the remainder of the term of this Agreement. In the event of termination, the duties and obligations of the parties shall remain in full force and effect.

**D. Termination.** If this Agreement expires or a default remains uncured as provided in Article 9(B) of this Agreement, the BDD Board has authority to enter into a new Agreement as provide in §13 of the JPA with the Sangre de Cristo Water Division of the City of Santa Fe, the County of Santa Fe Water Utility, or a Regional Entity. In the event of termination, applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination. Each party shall remain obligated for its share of payments due pursuant to any obligations to a third party incurred as contemplated by this Agreement or the Project Agreements.

**E. Dispute Resolution.** If a dispute, other than a default which the Project Manager is unable to cure during the sixty day cure period, arises which the BDD Board and the Project Manager cannot satisfactorily resolve, then the BDD Board and the Project Manager agree to those forms of dispute resolution authorized by NMSA 1978, Section 12-8A-1, *et seq.* (2000), except binding arbitration, to resolve conflicts arising under this Agreement, the expenses of which shall be shared equally by the BDD Board, the Project Manager, and, as applicable, the City, the County and Las Campanas. 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.

**F. Notices in writing.** Notices required by this Agreement shall be addressed to the parties at the addresses noted on Attachment A hereto, as each party may update them from time to time by written notice to the other parties. Such notice shall either be hand delivered or mailed, first class mail, postage prepaid, to the representatives of the other parties. If mailed, the notice or communication shall be simultaneously sent

by facsimile or other electronic means. Any such notice or communication shall be deemed to have been received by the close of the business day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close of business in which case it shall be deemed received at the close of the next business day).

**G. Representative for Notices.** Each party shall maintain a designated representative to receive notices as set out in Attachment A. Any party may, by written notice to the other parties, change the representative or the address to which such notices and communications are to be sent.

**H. Authority of Representatives.** The parties' representatives designated above shall have authority to act for their respective principals in all technical matters related to the performance of this Agreement and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have authority to amend or modify any provision of this Agreement.

**I. Insurance.** The Project Manager shall obtain and continuously maintain insurance policies without interruption, during the term of this Agreement, for the operations and activities on or at the Project, from a licensed insurance company or companies deemed acceptable to the BDD Board, and the City, the County and Las Campanas, which policies shall name the BDD Board, the City, the County and Las Campanas as additional insured, in conformance with the specifications for insurance coverage set forth in Attachment B and the Annual Operating Budget.

**J. Term and modification of insurance.** All insurance required under this Agreement shall cover occurrences during the term and for a period of two years after the term. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the execution date and such insurance shall be maintained by the Project Manager for a minimum of five years after the term. The BDD Board shall have the right during the term to request the Project Manager to modify the insurance minimum limits specified in Attachment B in order to maintain reasonable coverage amounts. The Project Manager shall make all commercially reasonable efforts to comply with any such request. If any insurance required to be maintained by the Project Manager hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, the Project Manager shall provide written notice to the BDD Board, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for water utilities of similar type, geographic location, and capacity. Upon receipt of such notice, the Project Manager shall use commercially reasonable efforts to obtain other insurance which would provide comparable protection against the risk to be insured and the BDD Board shall not unreasonably withhold its consent to modify or waive such requirement.

**K. Third Party Beneficiaries.** This Agreement was not intended to and does not create any rights in any persons not a party hereto, specifically including Las Campanas except as otherwise set forth in the Project Agreements and, specifically, the FOPA.

**L. Modifications.** This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto.

**M. Severability.** If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

**N. Subcontractors.** The Project Manager shall not subcontract or delegate any portion of the services to be performed in excess of \$20,000 under this Agreement without the advance written approval of the BDD Board. Any attempted subcontracting or delegating without the BDD Board's advance written approval shall be null and void and without any legal effect.

**O. Choice of Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The parties hereby submit to the exclusive jurisdiction of the courts of the State of New Mexico, and venue is hereby stipulated in the First Judicial District Court, State of New Mexico.

**P. Sovereign immunity.** No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by parties or their "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.* (1976), as amended.

**Q. Survival of obligations.** Cancellation, expiration, or earlier termination of this Agreement shall not relieve the parties of obligations that by their nature should survive such cancellation, expiration, or earlier termination.

**R. Binding effect.** This Agreement, as it may be amended from time to time, shall be binding on and inure to the benefit of the parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

**S. 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.

**T. Execution in Counterparts.** This Agreement may be executed in counterparts with separate signature pages in the format shown below.

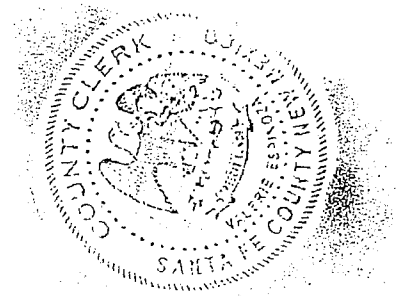
IN WITNESS WHEREOF, the BDD Board and the Sangre de Cristo Water Division of the City of Santa Fe, New Mexico have caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

THE BUCKMAN DIRECT DIVERSION BOARD

By: [Signature]  
Chair

Date: 11-8-07

Attest: Valerie Espinoza  
Valerie Espinoza, County Clerk *Vicky Tyrell*



THE SANGRE DE CRISTO WATER DIVISION OF THE CITY OF SANTA FE

By: [Signature]

By: David Coss  
David Coss, Mayor

[Signature]  
Approved as to form  
City Attorney  
[Signature]  
City of Santa Fe Clerk  
12/3/07

11-1-07  
Date

12-3-07  
Date

## **ATTACHMENT A**

Parties designated to receive notices under this Agreement:

### **For the Sangre de Cristo Water Division of the City of Santa Fe**

Rick Carpenter  
Sangre de Cristo Water Company  
801 West San Mateo Street  
Santa Fe, NM 87505

With copies to:

City Manager  
City of Santa Fe  
P.O. Box 909  
Santa Fe, NM 87504-0909

City Attorney  
City of Santa Fe  
P.O. Box 909  
Santa Fe, NM 87504-0909

### **For the Buckman Direct Diversion Board:**

Chair, Buckman Direct Diversion Board  
c/o Stephanie Trujillo, Secretary  
801 West San Mateo Street  
Santa Fe, NM 87505

With copies to:

Santa Fe County  
attn: County Manager  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

County Attorney  
Santa Fe County  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

**ATTACHMENT B**

**Specifications for Insurance Coverage**



# ATTACHMENT E

## Project Manager Selection Process Committee Recommendations

1. References to "Project Manager" or "PM" should be changed to "Operational Support Entity" or "Support Agency" in order to clarify and separate roles and responsibilities of Project Manager and Facility Manager.
2. Transition from one Project Manager to another should occur at the end of the fiscal year.
3. BDDDB should develop an independent Personnel Policy Manual to establish consistency regarding working conditions, employee benefits, and policies affecting employment regardless of selected Project Manager.
4. Assign selection committee to identify structural discrepancies (pot holes) within the existing agreement. This is to avoid running into some of the same issues we have experienced in the past.