Memo

Date: March 19, 2014

To: Buckman Direct Diversion Board

From: Shannon Jones, Interim BDD Facility Manager

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:

<table>
<thead>
<tr>
<th></th>
<th>FY 2011/2012</th>
<th>FY 2012/2013</th>
<th>FY 2013/2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Santa Fe</td>
<td>$121,600</td>
<td>$291,840</td>
<td>$170,240</td>
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<tr>
<td>Santa Fe County</td>
<td>$40,330</td>
<td>$99,113</td>
<td>$60,525</td>
</tr>
<tr>
<td>Las Campanas</td>
<td>$9,655</td>
<td>$20,851</td>
<td>$9,454</td>
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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.
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
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.
Memo

Date: March 24, 2014

To: Buckman Direct Diversion Board

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

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 PFMS 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

www.bddproject.org
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 aly 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.
REGIONALIZATION ORGANIZATION CHART

Santa Fe County → Joint Powers Agreement → City of Santa Fe

BDD Board

BDD Executive Director

Operations Support

Operations
Safety and Training
Regulatory Compliance
Finance
Maintenance
Security and Automation
Public Relations

Information Technology
Risk and Safety
Fleet, Facility Maintenance
Procurement
Finance
Human Resources
Water Resources
Engineering
Buckman Direct Diversion Project

"PROCESS FOR SELECTING THE BDD PROJECT MANAGER"
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Potential Entities ................................................................................ PMS4
Roles and Responsibilities .................................................................... PMS5
Evaluation Form ................................................................................ PMS9
Process Timeline ................................................................................ PMS10
Transition Plan ................................................................................... PMS11

Attachments:
1. 2004 JPA .............................................................................. Attachment A (13 Pages)
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 BDDB 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 PFMS 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 BDDB 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 (BDDB) 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 BDDB for approval.

Step Three: Evaluation of Potential Entities for Project Manager.

Once Roles and Responsibilities have been finalized and approved by the BDDB, the advisory group will evaluate all potential entities based upon their ability to provide the services needed fulfill 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 BDDB 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.

<table>
<thead>
<tr>
<th>Responsibility of Project Manager</th>
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<tr>
<td>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;</td>
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<td>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;</td>
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<td>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;</td>
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<td>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&amp;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;</td>
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<td>5. Develop and implement prior to initial operation a cost accounting system to apportion the total fixed and variable cost of OMR&amp;R to the City, the County and Las Campanas in accordance with the cost sharing provisions of the FOPA;</td>
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<td>6. Develop a document retention and protection policy for adoption by the BDD Board;</td>
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<td>7. Act as fiscal agent for the Project</td>
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<td>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-, et seq., and 2.2.2, NMAC, et seq., as amended, and report the results of the audit to the BDD Board.</td>
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<td>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.</td>
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<tr>
<td>10. Develop all procurement documents in accordance with the City's Purchasing Manual and present same to the BDD Board.</td>
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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- et seq., and 2.2.2. NMAC, et seq., 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, 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.

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Concur this service should be provided</th>
<th>Do Not concur that this service should be provided</th>
<th>Priority of service, 1-10 (1=low, 10=high)</th>
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<tbody>
<tr>
<td>Utility Support Structure (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).</td>
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<tr>
<td>Financial Support (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).</td>
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<tr>
<td>Human Resources (for example, items # 30 and 31 listed above).</td>
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<td>Risk Management (for example, item # 35 listed above).</td>
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<tr>
<td>Information Technology (for example, item # 5 listed above).</td>
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<tr>
<td>Administration Services (for example, items #1, 2, 4, 6, 9, and 13 listed above).</td>
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SELECTION COMMITTEE
EVALUATOR SIGNATURE: ___________________ DATE: ________________
ENTITY
EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: City of Santa Fe

<table>
<thead>
<tr>
<th>Evaluation Component</th>
<th>Weighted Value</th>
<th>Total Score</th>
<th>Max Score</th>
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<tbody>
<tr>
<td>Utility Support Structure</td>
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<tr>
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<tr>
<td>Financial Support</td>
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<tr>
<td>Risk Management</td>
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<tr>
<td>(for example, Workmans Comp, Drug Testing, Accident Reporting.)</td>
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<tr>
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<tr>
<td>Total Score</td>
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SELECTION COMMITTEE
EVALUATOR SIGNATURE: ___________________________ DATE: _____________________
ENTITY
EVALUATION CRITERIA FORM

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: Santa Fe County

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<tr>
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SELECTION COMMITTEE
EVALUATOR SIGNATURE: _________________________ DATE: _______________
**ENTITY**

**EVALUATION CRITERIA FORM**

**PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION**

**NAME OF ENTITY:** Regional Entity Level 1

<table>
<thead>
<tr>
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</table>

**SELECTION COMMITTEE**

**EVALUATOR SIGNATURE:** ___________________ **DATE:** ___________________
**ENTITY**

**EVALUATION CRITERIA FORM**

PROJECT MANAGER FOR THE BUCKMAN DIRECT DIVERSION

NAME OF ENTITY: **Regional Entity Level 2**

<table>
<thead>
<tr>
<th>Evaluation Component</th>
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<th>Total Score</th>
<th>Max Score</th>
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<tbody>
<tr>
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</table>

SELECTION COMMITTEE
EVALUATOR SIGNATURE: ______________________ DATE: _______________
Project Manager Selection Process Timeline

03/14
04/14 Finalize Selection Process and Identify PM Evaluation Team
05/14
06/14 Complete Evaluations and Present recommendations to BDDB
07/14
08/14 BDDB Approval of Project Manager
09/14 Develop Transition Plan and Draft and/or Amend Agreements
10/14
11/14
12/14
01/15
02/15
03/15
04/15 Execute Agreements and Implement Transition Plan
05/15
06/15
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 BOOB Meeting Coordination
- Transfer Contract Administration
Attachment A
2004 Joint Powers Agreement
Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project

This Joint Powers Agreement ("Agreement") is entered into pursuant to the Joint Powers Agreement Act, NMSA 1978, Section 11-1-1 through 11-1-7 by and between the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico and the County of Santa Fe ("County"), a political subdivision of the State of New Mexico, as of the effective date defined below.

Recitals

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and

WHEREAS, the 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, in a joint meeting of the City of Santa Fe Council and County of Santa Fe Board of Count Commissioners held on October 7, 2004, the respective governing bodies approved the Regional Water Resource and Buckman Direct Diversion Principles of Agreement; and

WHEREAS, this Joint Powers Agreement is intended to begin implementation of those provisions of the October 7, 2004 Agreement concerning the Buckman Direct Diversion Project; and,

WHEREAS, it is in the best interest of the citizens of the City and the County that the City and the County jointly undertake to plan, fund, construct, operate, manage and own the Buckman Direct Diversion Project.

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 and City agree as follows:

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

afy means acre feet per year.

Agreement means this "Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project".

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

BOR means the United States Bureau of Reclamation.

Design Build Contract means a contract entered into between the BDD Board and the Design Build Contractor to design and build the BDD Project pursuant to the City’s Purchasing Manual.

Design Build Contractor means the contractor hired pursuant to the Design Build Contract to design and build the BDD Project.

Facility Operations and Procedures Agreement (FOPA) means the agreement between the City, the County and Las Campanas governing the operations and procedures of the BDD Project.

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

ISC means the New Mexico Interstate Stream Commission.

Owners’ Consultant means a consultant specializing in providing professional services to the Project Owners to manage and oversee the design build process on a public water project on behalf of the Project Owners, including, but not limited to, providing all professional services for the Project Owners that are necessary to fully develop, procure, design, construct and initially operate the BDD Project.

Owners’ Consultant Contract means the contract between the City and the County as Project Owners and the Owners’ Consultant which will be subsequently assigned to the BDD Board.

OSE means the New Mexico Office of the State Engineer.

Project Management and Fiscal Services (PMFS) Contract means a contract between the BDD Board and the Project Manager for the provision of the management and fiscal services as described in Section 12 of this Agreement.

Project Manager means the designated entity that provides the management and fiscal services as required by the PMFS Contract.

Project Owners means the City and County.

Regional Entity means an entity which includes both the City and County that seeks to...
cooperatively manage water supply and delivery from the BDD Project on a regional basis.

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

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

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

**Agreement**

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

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

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

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

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

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

The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract and supervise the performance of the Project Manager, as provided in Section 12 of this Agreement.
The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with Las Campanas, as provided in Section 15 of this Agreement.

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

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

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

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

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

Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this Agreement.
6. Meetings of the BDD Board. The BDD Board shall have at least one regularly scheduled meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board members is present. A simple majority of BDD Board members who are present at a duly called meeting of the BDD Board at which a quorum is present shall act for the BDD Board with respect to all matters brought before the BDD Board at that meeting.

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

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

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

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

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

12. 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, Design Build 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 PFMS Contract shall contain a fee schedule for the fiscal agent services to be provided under
the PFMS 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 PFMS Contract shall specify the types and threshold amounts of expenditures that require
approval of the BDD Board in advance.

13. Designation of Project Manager. The City and County agree that the Sangre de Cristo
Water Division will be the initial Project Manager and that the BDD Board shall enter into the
PFMS 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) 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.

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

15. Inclusion of Las Campanas. The 1,800 a/fy allocation of BDD Project capacity reserved for
Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures
Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as
part of the Facility Operations and Procedures Agreement.
16. Cost Sharing for Design and Construction Costs for the BDD Project. The City and County agree to contribute $30 million each to design and construct the BDD Project. The City and the County shall disburse funds in accordance with the annual budget duly approved by them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the BDD Board, and contributions to support the budget shall be incorporated in each of the parties' annual budgets.

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

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

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

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

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

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

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

Attachment A 2004 JPA
If upon termination of this Agreement, a successor public entity is authorized to carry on the activities of the BDD Board and assume its rights, obligations and responsibilities, then such rights, obligations and responsibilities shall be transferred to the successor public entity in accordance with law. If upon termination of this Agreement and a successor public entity is not authorized to carry on the activities of the BDD Board, then any property, rights and assets of the BDD Board (other than the BDD Project) shall be divided among the parties according to the respective contributions (ownership interests) of the parties.

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

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

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

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

Attachment A 2004 JPA
by the Director of the Workers' Compensation Administration) that complies with the
requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et
seq., if applicable. The expense of obtaining and maintaining the required insurance shall be
included in the annual budget of the BDD Board. The insurance provided for under this Section
shall be maintained in full force and effect throughout the duration of this Agreement. A copy of
any insurance policy shall be provided to any party at the party's request.

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

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

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

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

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

29. Counsel. The City and County acknowledge that they have freely entered into this
Agreement with the advice of their respective legal counsel.
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
IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

Approved as to form
Santa Fe County Attorney

Santa Fe County Clerk

Mayor
City of Santa Fe

Approved as to form
City of Santa Fe Attorney

City of Santa Fe Clerk

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration

Attachment A 2004 JPA
DEPARTMENT of FINANCE and ADMINISTRATION (DFA)

JOINT POWERS AGREEMENT (JPA) BRIEF

PRIMARY PARTY: Santa Fe County
SECONDARY PARTY: The City of Santa Fe
OTHER PARTY: 

CONTACT NAME: Stephen C. Ross
PHONE: 986-6270

CONTACT ADDRESS: 

DOCUMENTS ENCLOSED:

<table>
<thead>
<tr>
<th>Document Type</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>Written Justification</td>
<td>$ 60,000*</td>
</tr>
<tr>
<td>Other</td>
<td>$ 60,000*</td>
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*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);
- Yes 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 a result of the joint exercise of power;
- Yes specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements - Agencies must vote 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?
- Yes Does the JPA provide for the expenditure or transfer of public funds by a state agency? (All public money must be budgeted).
- Yes 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.
- Yes 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

AGENCY HEAD SIGNATURE

TITLE

Attachment A 2004 JPA
That partnership will be the single permit for river diversions. It is an essential step in providing governmental entities that Campanas, City, Ross, County government to follow will detail the water from the Rio Grande raw water to its facilities, and constructed and is expected to be completed soon. Las Campanas will make an investment in del Rio to a water treatment plant, and constructed. The parties have agreed 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 overcommitted 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 § 11-4-1 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 partners.

I hope this is helpful in your review of the Agreement. If you have any questions, please call Stephen Ross, County Attorney, at 986-6239 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 A 2004 JPA
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

[Signature]

day of [Signature], 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 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

Attachment B 2005 WRA
WHEREAS, the County and City will cooperate on the purchase of future water rights for use in the BDD Project.

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

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

afy means acre feet per year.

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

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

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

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

BOR means the federal United States Bureau of Reclamation.

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

ISC means the New Mexico Interstate Stream Commission.

OSE means the New Mexico Office of the State Engineer.

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

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

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

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

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

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

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

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

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

The City and the County will develop a 'Comprehensive Joint Conjunctive Use and
Sustainability Water Resource Strategy' that places the use of surface water as a higher
priority than the use of groundwater and which manages the regional aquifer on a
sustainable basis. The Strategy shall include a shortage sharing agreement that will help
guide management decisions made by the BDD Board and the Regional Planning
Authority. The Strategy shall incorporate the principle that the County and the City will
consult prior to the drilling of new wells in the area around the City and County
Independent Water Systems, as they exist at the time of signing of this Agreement, so as
to encourage cooperation, avoid conflict and avoid the impairment of City or County
water rights.
The County reserves the right to drill in-Basin groundwater wells and commence the permitting of additional groundwater wells. The County shall consult with the City on the location of any proposed groundwater wells.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairman,
Board of Santa Fe County Commissioners

Approved as to form
Santa Fe County Attorney

Santa Fe County Clerk

Mayor
City of Santa Fe Council

Approved as to form
City of Santa Fe Attorney

City of Santa Fe Clerk

Date 1-12-05
Date 1-11-05
Date 1-18-05
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:
Definitions. Capitalized words or phrases used in this Agreement, if defined below, shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

12. **Las Campanas Separate Facilities** means those portions of the BDD Project, including pumping equipment in booster station 2A and the raw water pipeline extending from booster station 2A to Las Campanas that provide water only to Las Campanas, as shown on Exhibit A of this Agreement.
13. MGD means million gallons per day.

14. Owners’ Consultant means the consulting engineer contracted by the BDD Board to create the delivery of the BDD Project.

15. Permitting Costs means the costs to acquire permits necessary for construction and operation of the BDD Project.

16. PMFSA means the Project Management and Fiscal Services Agreement.

17. Project Manager means the Project Manager of the BDD Project as specified in JPA Section 13. Designation of Project Manager.

18. Project Management Costs means the costs of the Project Manager to implement and operate the BDD Project as defined in the PMFSA.

19. Shared Facilities means that portion of the BDD Project that provides raw water to all BDD Partners, as shown on Exhibit A of this Agreement, including all portions of booster station 2A except for the pumping equipment in booster station 2A that is part of the Las Campanas Separate Facilities or the City/County Separate Facilities.

20. WRA means that certain Water Resources Agreement between the City of Santa Fe and Santa Fe County with an effective date of January 11, 2005.

Agreement

1. Description of the BDD Project. The BDD Project is a mix of shared and separate facilities. See Exhibit A to this Agreement for a schematic/map of the BDD Project showing Shared Facilities, Las Campanas Separate Facilities and City/County Separate Facilities.

2. Ownership of the Project. The City and County each own an undivided equal interest in the Shared Facilities. The City and County each own an undivided equal interest in the City/County Separate Facilities. Las Campanas owns the Las Campanas Separate Facilities.

3. Use of the Shared Facilities. Use of the Shared Facilities shall be apportioned to each BDD Partner based on the peak day capacity allocated in FOPA Section 7. BDD Project Facility Capacity Allocation.

4. Relationship of the Parties. Except as provided in this Agreement, the City and County shall be allocated the rights and responsibilities of a general partner in a business/corporate model under New Mexico law. Las Campanas shall have the rights
and responsibilities of a limited partner in a business/corporate model under New Mexico law.

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

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

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

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

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

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

9. Sharing of Shortages. Facility Failure. In the event of reduced total capacity of the BDD Project caused by facility failure, the BDD Partners shall receive deliveries on a reduced basis that are computed from a pro-rata percentage of peak day (mgd) diversion capacity as described by FOPA Section 7. BDD Project Facility Capacity Allocation. Facility failure does not include the occurrence of low flow on the Rio Grande, any restrictions on diversions pursuant to the BDD Project EIS, or limitations on the use of specific water rights. Facility failure does include damage caused by floods, upstream spills of pollutants or toxic materials, failure or damage to the BDD Project, and scheduled or unscheduled shut downs required for maintenance, repair, or replacement.
10. BDD Project Operations. Actual Water Deliveries. Each BDD Partner shall use its best efforts to conform the actual water demand it places on the BDD Project to its demand schedules prepared in conformance with FOPA Section 7. BDD Project Requested Delivery Schedule. No BDD Partner shall exert an actual demand on the BDD Project at a rate that exceeds the capacity allocation set forth in FOPA Section 7. BDD Project Facility Capacity Allocation adjusted for the sharing of shortages as set forth in FOPA Section 8. Water Rights and Divertable Water Supply and FOPA Section 9. Sharing of Shortages. Facility Failure. The Project Manager shall operate the facility to meet the BDD Partners’ actual demand, subject to the capacity allocation set forth in FOPA Section 7. BDD Project Facility Capacity Allocation adjusted for the sharing of shortages as set forth in FOPA Section 8. Water Rights and Divertable Water Supply and FOPA Section 9. Sharing of Shortages. Facility Failure. The BDD Project shall include water measurement devices to account for the actual volume, rate, and time-of-day of all water deliveries to each BDD Partner. The BDD Project, in conjunction with operations procedures, shall include controls to limit each BDD Partner’s water demand to its peak day and annual volume allocations.

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

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

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

12. Cost Sharing. Use of Funding from County Ordinance No. 2002-05. The PMPSA shall reflect that the County may use the proceeds from County Ordinance No. 2002-05, subject to the terms of that Ordinance.

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

14. Cost Sharing. Construction Costs of Shared Facilities. Las Campanas shall pay a proportionate share of the Construction Costs of the Shared Facilities as measured by peak day (mgd) capacity in the BDD Project EIS (17.58%). The City and County shall share in the costs of the BDD Project as set forth in the JPA Section 16. Cost Sharing for Design and Construction for the BDD Project.
15. Cost Sharing. Construction Costs of the Las Campanas Separate Facilities. Las Campanas shall pay all of the costs of design and construction of the Las Campanas Separate Facilities, including those costs of the Owner's Consulting Engineer and the BDD Project design-build contractor to implement that portion of the Las Campanas Separate Facilities located within booster station 2A and the Las Campanas pipeline extending from booster station 2A to the location near Dead Dog Well where the Las Campanas Separate Facilities physically diverge from the City/County Separate Facilities.


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

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

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

23. Cost Sharing. Fixed and Variable OMR&R Costs of the City/County Separate Facilities. Fixed OMR&R costs of the City/County Separate Facilities shall be apportioned between the County and the City using the capacity allocation of the City/County Separate Facilities [County 24.6%, 3.7 mgd of 15 mgd, City 75.3%, 11.3 mgd of 15 mgd]. Variable OMR&R costs of the City/County Separate Facilities shall be
apportioned between the County and City based on the actual delivery of water to each
BDD Partner in accordance with FOPA Section 27. Annual Operating Plan. Each year
following commencement of operations of the BDD Project and in connection with its
approval of the budget pursuant to JPA Section 17. Cost Sharing for Operation and
Maintenance Costs for the BDD Project, the BDD Board shall review the proposed
allocation of costs between the fixed and variable categories and either approve, reject or
modify same. At the same time, the BDD Board shall review the allocation methodology
of fixed and variable costs as between the City and the County set forth in this section to
determine whether the allocation is reasonable and appropriate, and shall explore
alternative methodologies.

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

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

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

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

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

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

BDD FOPA
BDD B approved version September 7, 2006
page 7 of 13
27. **Annual Operating Plan.** The BDD Partners shall submit to the Project Manager the
daily, weekly and monthly requested deliveries for each upcoming year no later than
October 1 of each year. The Project Manager, in consultation with the BDD Partners,
shall schedule the anticipated demand for the upcoming year for each BDD Partner in a
Draft Delivery Schedule, which will be finalized among the BDD Partners by December
1 of that year. The Project Manager, with input from and in consultation with the BDD
Partners, shall prepare a manual for project operations, which will be distributed among
the BDD Partners.

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

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

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

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

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

34. **Counsel.** The BDD Partners acknowledge that they have freely entered into this Agreement with the advice of their respective legal counsel.

35. **Other Documents.** The BDD Partners 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.

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

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

38. **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
IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, the County of Santa Fe, New Mexico, and Las Campanas LP has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.
THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By:

H. o Chair

ATTEST:

Valerie Espinoza, County Clerk

Approved as to form:

Stephen C. Rost, County Attorney
Approved by the City of Santa Fe

Mayor, City of Santa Fe Council / Date

Approved as to form

City of Santa Fe Attorney / Date

Reviewed

City of Santa Fe Clerk / Date

City of Santa Fe Finance / Date
Las Campanas Limited Partnership
By: Las Campanas Corporation, Its General Partner

Date

10-16-06

Date
The quantities, locations and points of interconnection of the BDD finished water pipelines are not finalized.
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:
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 12-6-1-1, 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 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:

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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, County Clerk

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

By: [Signature]

By: [Signature]
David Coss, Mayor

Approved:
City Attorney

Date: 11-1-07

City of Santa Fe Clerk

Date: 12-3-07

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Attachment D 2007 PMFSA
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

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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. BDDB 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.