

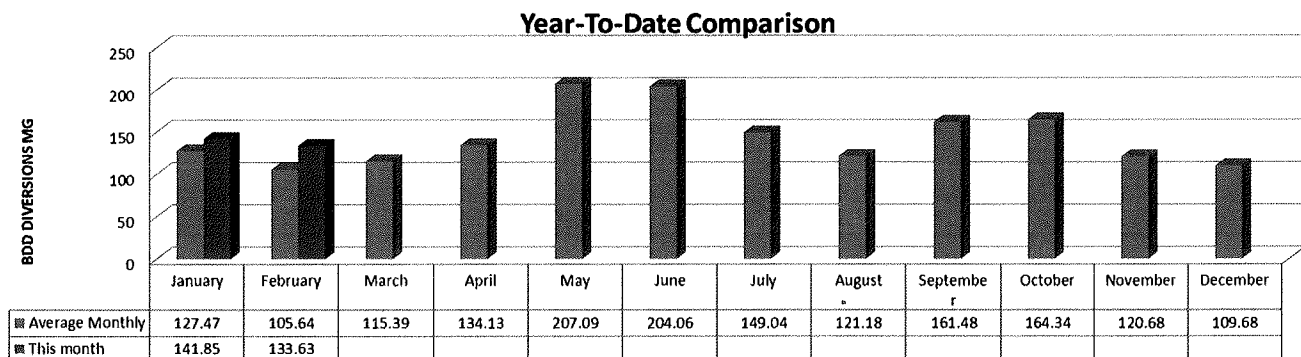


Buckman Direct Diversion

Date: March 5, 2020
To: Buckman Direct Diversion Board
From: Randy Sugrue, BDD Operations Superintendent
Subject: Update on BDD Operations for the Month of February 2020

ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDDB) on BDD operations during the month of February 2020. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
 - a. Raw water diversions: 4.61 MGD.
 - b. Drinking water deliveries through Booster Station 4A/5A: 4.39 MGD.
 - c. Raw water delivery to Las Campanas at BS2A: 0.0 MGD.
 - d. Onsite treated and non-treated water storage: 0.22 MGD Average.
2. The BDD is providing approximately 76% percent of the water supply to the City and County for the month.
3. Drought Summary.
4. The BDD year-to-date diversions are depicted below:

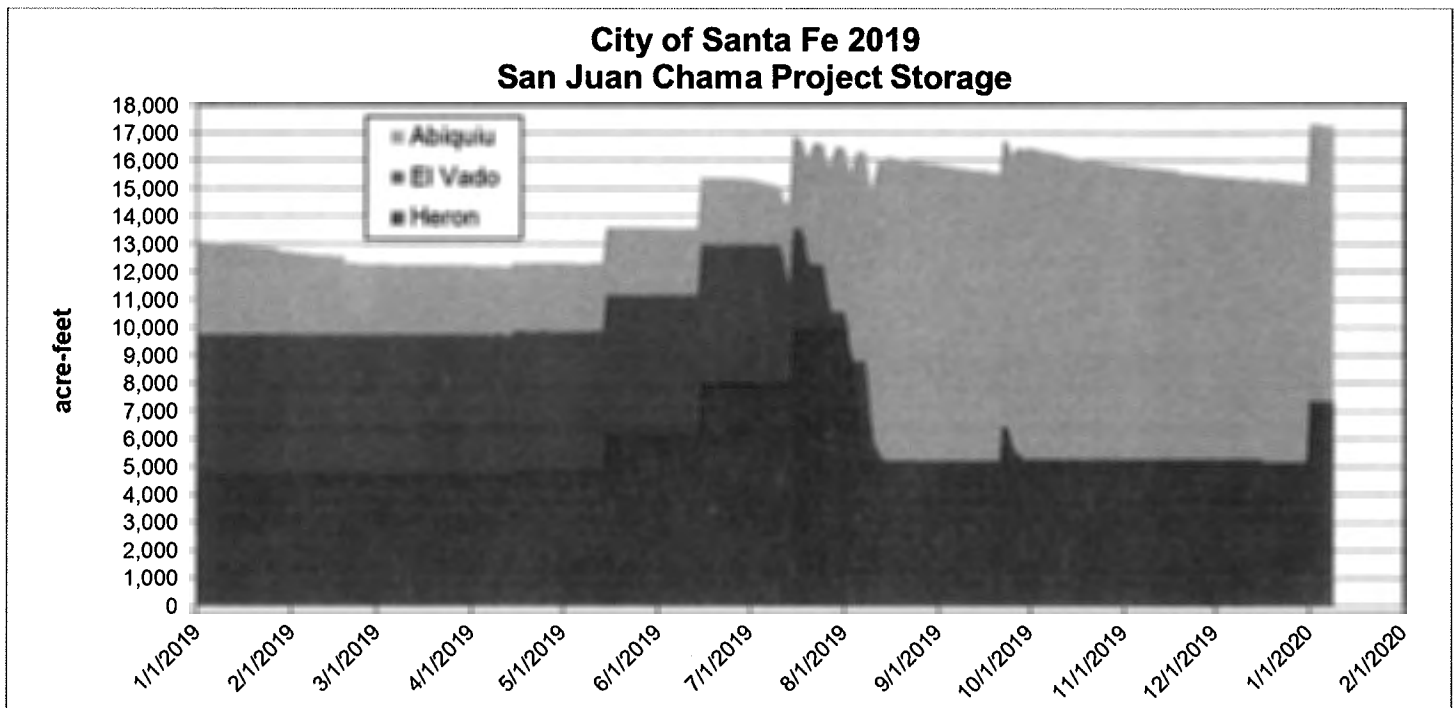


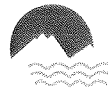


Drought/Monsoon, and Storage

NOAA recently updated their ENSO report (February 18th). ENSO-neutral conditions are present. Equatorial sea surface temperatures (SSTs) are near-to-above average across the Pacific Ocean. The tropical atmospheric circulation is generally consistent with ENSO-neutral. ENSO-neutral is favored through the Northern Hemisphere spring 2020 (~60% chance), continuing through summer 2020 (~50% chance).

Combined storage in Nichols and McClure Reservoirs is 374 acre-feet, or 29.29% of capacity. Rio Grande Compact Article VII storage restrictions are not in effect currently.





Buckman Direct Diversion

Buckman Direct Diversion Monthly SJC and Native Diversions

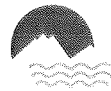
Feb-20

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	438.797	134.433	0.000	304.364	298.249	6.115	2.759
FEB	409.538	231.478	0.000	178.060	178.060	0.000	0.984
MAR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	848.335	365.911	0.000	482.424	476.309	6.115	3.743

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	43.789	0.000	98.103	96.304	1.975	141.892
FEB	75.400	0.000	33.680	33.680	0.000	109.080
MAR	0.000	0.000	0.000	0.000	0.000	0.000
APR	0.000	0.000	0.000	0.000	0.000	0.000
MAY	0.000	0.000	0.000	0.000	0.000	0.000
JUN	0.000	0.000	0.000	0.000	0.000	0.000
JUL	0.000	0.000	0.000	0.000	0.000	0.000
AUG	0.000	0.000	0.000	0.000	0.000	0.000
SEP	0.000	0.000	0.000	0.000	0.000	0.000
OCT	0.000	0.000	0.000	0.000	0.000	0.000
NOV	0.000	0.000	0.000	0.000	0.000	0.000
DEC	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	119.189	0.000	131.783	129.984	1.975	230.972



Buckman Direct Diversion

Dec-19		In Acre-Feet					
Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	327.677	56.671	0.000	271.007	271.007	0.000	2.483
FEB	278.357	71.266	0.000	207.090	207.090	0.000	1.908
MAR	134.335	88.610	0.000	45.725	45.725	0.000	3.498
APR	126.924	114.750	0.000	12.175	12.175	0.000	0.110
MAY	550.285	550.285	0.000	0.000	0.000	0.000	0.000
JUN	546.222	546.222	0.000	0.000	0.000	0.000	0.000
JUL	649.014	23.285	0.000	625.729	519.383	106.345	2.907
AUG	422.340	17.075	0.000	405.265	318.606	86.659	1.912
SEP	518.606	169.956	0.000	348.650	261.901	86.749	1.564
OCT	531.254	15.373	0.000	515.881	477.452	38.429	4.676
NOV	325.023	42.180	0.000	282.843	280.865	1.978	2.936
DEC	334.880	48.808	0.000	286.071	286.071	0.000	2.893
TOTAL	4,744.916	1,744.482	0.000	3,000.434	2,680.275	320.160	24.886

In Million Gallons

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	18.460	0.000	87.342	87.342	0.000	105.802
FEB	23.214	0.000	66.739	66.739	0.000	89.953
MAR	28.863	0.000	13.735	13.735	0.000	42.598
APR	37.378	0.000	3.924	3.924	0.000	41.302
MAY	179.246	0.000	0.000	0.000	0.000	179.246
JUN	177.923	0.000	0.000	0.000	0.000	177.923
JUL	7.585	0.000	201.598	167.635	34.262	209.183
AUG	5.562	0.000	130.586	102.846	27.974	136.148
SEP	55.360	0.000	112.401	84.384	28.017	167.762
OCT	5.008	0.000	166.279	154.168	12.409	171.287
NOV	13.739	0.000	91.045	90.407	0.638	104.785
DEC	15.899	0.000	92.109	92.109	0.000	108.008
TOTAL	568.235	0.000	965.760	863.292	103.299	1,533.995



Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-18

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	383.578	77.954	0.000	305.624	305.624	0.000	2.708
FEB	343.467	75.227	0.000	268.240	268.240	0.000	2.415
MAR	363.780	267.512	0.000	96.268	96.268	0.000	4.036
APR	662.407	569.253	0.000	93.154	93.154	0.000	3.898
MAY	941.240	209.538	0.000	731.702	615.366	116.336	8.171
JUN	912.903	30.894	0.000	882.009	740.070	141.939	8.707
JUL	905.897	0.000	0.000	905.897	816.188	89.709	4.255
AUG	678.383	1.466	0.000	676.917	676.917	0.000	6.087
SEP	694.411	0.000	0.000	694.411	694.411	0.000	6.404
OCT	608.789	0.000	0.000	608.789	599.228	9.560	5.805
NOV	404.616	82.390	0.000	322.226	316.641	5.585	3.196
DEC	369.186	2.966	0.000	366.220	366.220	0.000	3.392
TOTAL	7,268.656	1,317.200	0.000	5,951.456	5,588.327	363.129	59.073

In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversions
JAN	77.954	0.000	302.916	302.916	0.000	380.870
FEB	75.227	0.000	265.825	265.825	0.000	341.052
MAR	267.512	0.000	92.231	92.231	0.000	359.744
APR	569.253	0.000	89.256	89.256	0.000	658.509
MAY	209.538	0.000	723.531	608.494	115.037	933.069
JUN	30.894	0.000	873.302	732.764	140.538	904.196
JUL	0.000	0.000	900.737	811.539	89.198	900.737
AUG	1.466	0.000	670.830	670.830	0.000	672.295
SEP	0.000	0.000	688.007	688.007	0.000	688.007
OCT	0.000	0.000	602.984	593.515	9.469	602.984
NOV	82.390	0.000	319.030	313.500	5.530	401.420
DEC	2.966	0.000	362.829	362.829	0.000	365.794
TOTAL	1,317.200	0.000	5,891.477	5,531.706	359.772	7,208.677



Buckman Direct Diversion

Dec-17

In Acre-Feet

Month	Total SJC + Native Rights	SP-4842 RG Native COUNTY	SD-03418 RG Native LAS CAMPANAS	SJC Call Total	SP-2847-E SJC Call CITY	SP-2847-N-A SJC Call LAS CAMPANAS	All Partners Conveyance Losses
JAN	395.248	84.736	0.000	310.512	310.512	0.000	2.717
FEB	383.179	26.107	3.426	353.646	353.646	0.000	3.087
MAR	547.849	17.804	11.643	518.402	518.402	0.000	4.564
APR	592.385	381.170	0.000	211.216	211.216	0.000	1.821
MAY	488.240	478.925	0.000	9.315	9.315	0.000	0.072
JUN	616.871	12.970	0.000	603.900	477.780	126.121	5.517
JUL	626.113	23.719	0.000	602.394	484.406	117.988	5.429
AUG	557.303	17.073	0.000	540.230	540.230	0.000	4.871
SEP	637.339	230.584	0.000	406.755	395.200	11.555	3.873
OCT	444.333	127.611	0.000	316.723	316.723	0.000	2.938
NOV	356.536	107.143	0.000	249.394	203.128	46.266	1.658
DEC	360.218	73.071	0.000	287.147	287.147	0.000	2.321
TOTAL	6,005.614	1,580.910	15.069	4,409.635	4,107.705	301.930	38.868


In Acre-Feet

Month	Native COUNTY	Native Las Campanas	SJC TOTAL	SJC CITY	SJC Las Campanas	All Partners Diversion
JAN	84.736	0.000	307.795	307.795	0.000	392.531
FEB	26.107	3.426	350.559	350.559	0.000	380.091
MAR	17.804	11.643	513.838	513.838	0.000	543.285
APR	381.170	0.000	209.395	209.395	0.000	590.565
MAY	478.925	0.000	9.243	9.243	0.000	488.168
JUN	12.970	0.000	598.383	473.415	124.969	611.354
JUL	23.719	0.000	596.965	480.040	116.925	620.684
AUG	17.073	0.000	535.359	535.359	0.000	552.431
SEP	230.584	0.000	402.883	391.437	11.445	633.466
OCT	127.611	0.000	313.785	313.785	0.000	441.396
NOV	107.143	0.000	247.736	201.777	45.958	354.878
DEC	73.071	0.000	284.826	284.826	0.000	357.898
TOTAL	1,580.910	15.069	4,370.767	4,071.470	299.297	5,966.747

City of Santa Fe New Mexico
Public Works Dept. - Facilities Division
MEMO

DATE: January 27, 2020

TO: Public Works, CIP and Land Use Committee / Finance Committee / Governing Body

VIA: 
Regina Wheeler, Department Director, Public Works

FROM: Caryn Grosse, Facilities Project Administrator
Michael Rodriguez, Division Director, Facilities

ISSUE: Contract Amendment No. 1 with Yearout Energy Services Company to Add Scope for Solar Engineering, Design and Interconnection, Land Acquisition and FAA Coordination, and Allowance for PNM Supplemental Review to the Professional Services Contract for Investment-Grade Energy Audit of City Facilities

MUNIS CONTRACT #: 3200884

BACKGROUND SUMMARY:

The City placed a solar project as its number one priority on the ICIP list to the state legislature in the 2019 session and was appropriated \$925K to install behind the meter solar arrays at a number of City facilities.

Because the solar and lighting retrofits generate significant savings on energy bills, the legislative appropriation can be coupled with additional financing to solarize and retrofit more facilities. The legislative appropriation outlines this project as:

19-D3209, \$925,000.00, Appropriation Reversion Date: 30-JUN-2023
Laws of 2019, Chapter 277, Section 34, Para. 408, Nine Hundred Twenty-Five Thousand Dollars (\$925,000.00), to plan and design a public-private partnership for solar energy systems development and installation at city facilities. Specifically the funds will be used to hire an energy services company to evaluate city facilities to have solar installed where it is the most feasible. The goal is to solarize as many facilities as possible. Additional capital in the form of bonds or private investment will be necessary.

Under the Statewide Price Agreement (SPA), pre-qualified Energy Service Companies (ESCOs) can provide Energy Performance Contracting (EPC) services for New Mexico governmental agencies, including state agencies, K-12 public school districts, higher education governmental entities, county and municipal governments, and other political subdivisions. Energy Performance Contracting enables agencies, such as the City of Santa Fe, to employ energy efficiency and solar experts to assess opportunities for savings with energy efficiency retrofits and renewable energy, access financing and accomplish energy projects. Project costs are typically offset by the energy cost savings. Participating ESCOs commit to the EPC Statute and EMNRD's program guidelines for the energy projects.

Performing an Investment-Grade Energy Audit (IGA) is the first step to undertake in an energy project. Yearout Energy Services Company, LLC was selected from a list of seven pre-qualified Energy Savings Companies (ESCOs) on the Statewide Price Agreement. Yearout is the only ESCO contractor headquartered and fully staffed in New Mexico, is one of three ESCOs listed as a PNM Authorized

Contractor for retrofit rebates and has experience with solar and lighting retrofits for governmental entities.

The IGA contract was approved on consent by the Governing Body in July 2019, and in August the City and Yearout Energy Services Company kicked-off the project to evaluate 22 City facilities and 17 pumping and booster stations for solar, lighting and water conservation measures. The IGA included the assessment of information on 149 utility meters, 12,564 existing lighting fixtures, 759 existing domestic water fixtures, 67 existing low voltage transformers and existing building envelope conditions of 931,800 ft² of gross facility area. As a result of the evaluation of our utility bills, Yearout Energy was able to identify and rectify billing errors and rate changes that resulted in more than \$3,000 per year in cost saving to the City.

As a results of assessing all of the meters, buildings and systems listed above, Yearout has provided the scope, conceptual design, costs and payback for solar, LED retrofit, lighting, transformer retrofits, water conservation and building envelope improvements that meet the City's criterial for feasibility. Meetings were held with key City stakeholders and their knowledge of the sites and energy use patterns has been incorporated into the design of the energy and water savings measures called Facility Improvement Measures (FIMs).

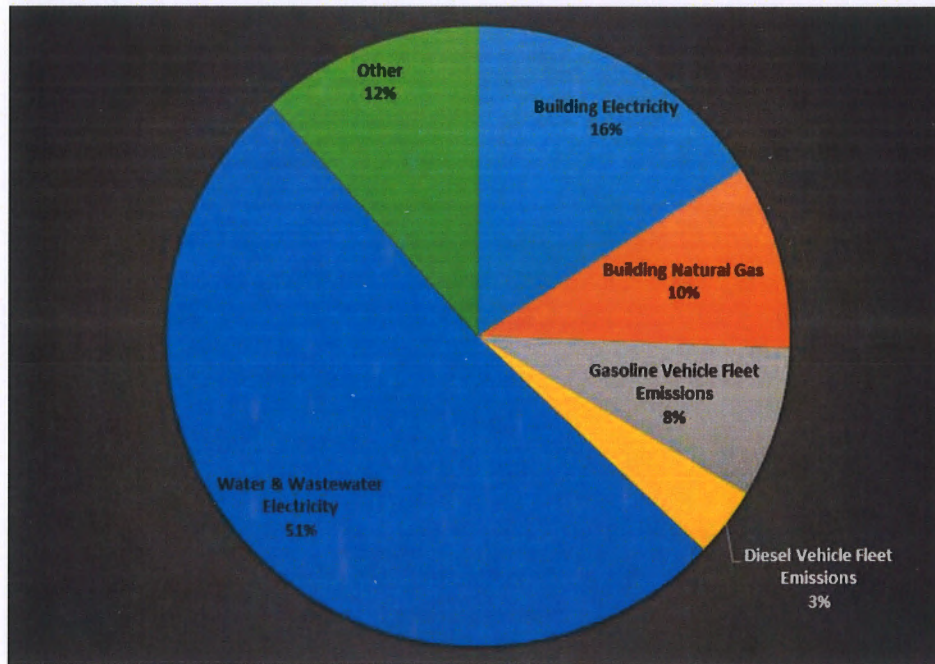
A summary of the FIMs is provided below, and a matrix showing which measures will be applied at each site is included in the packet.

Summary of Facility Improvement Measures (FIMs):

1.0 LED Lighting	Upgrade ~9,000 Fixtures to LED Technology
2.0 Renewable Energy	Install 3.130MW of Solar PV
3.0 Water Conservation	Upgrade ~760 Domestic Water Fixtures
4.0 Building Envelope	Remediate ~200 ft2 of Existing Air Leakage
5.0 HE Transformer	Upgrade 14 Low Voltage Transformers
6.0 Utility Management	Recovered ~\$3,300 in Year Billing Errors
7.0 GCCC Solar PV Repairs	Recover Loss of 50% of Production of Existing Solar

The list of solar arrays that are financially and physically feasible and recommended is attached. Solar arrays are feasible and recommended for 15 City facilities, 8 Water facilities and 3 BDD facilities for a total 3.130 megawatts of solar. The recommended solar arrays deliver on City resolutions directing the solarization of the airport and the implementation of the Sustainable Santa Fe Plan and fulfill the language of the legislative appropriation. Implementation of this project is a key step toward achieving Governing Body's goal of achieving carbon neutrality by 2040. Current preliminary inventory of greenhouse gas emissions is shown in the graph below.

The reduction in carbon emissions resulting from all of these measures has been calculated as the equivalent of not driving over 4,000,000 miles per year with an average size vehicle or of planting 850 acres of trees each year. The amount of renewable energy which will be generated would be enough to power 690 homes each year for the 20 year warranted life of the improvements.



The next step in the process would normally be to enter into the Guaranteed Utility Savings Contract, secure funding and construct the FIMs. However, there is an opportunity for the City of Santa Fe to reduce risk by first undertaking a solar interconnection and land acquisition due diligence phase, the execution of which will result in a more refined and construable project definition. More details about the reasons for and activities to be undertaken in this phase are listed below.

1. Several of the proposed solar arrays at booster and pumping stations are to be installed on land not owned by the City. The City has successfully established agreements in the past to develop and construct structures, including solar arrays, for Buckman Well Field and Buckman Direct Diversion (BDD) with United States Forest Service and Bureau of Land Management who are the owners of the land of interest for these solar arrays. Yearout will begin work to establish agreements with these entities for these arrays. This will reduce the risk of including sites in the Guaranteed Utility Savings Contract for which the City could be unable to obtain the necessary agreements for development on these lands.
2. All solar arrays must be reviewed and approved by PNM through the interconnection application process. There is risk, particularly on larger arrays, that PNM may identify grid issues with these interconnections and request changes to solar design which may include additional grid protection hardware or other design modifications. The contractor will design the arrays, submit the interconnection applications to PNM and coordinate with PNM on any design modifications they require in order to achieve interconnection approval.
3. There is an opportunity to connect an additional 357 kilowatt (kW) array at the BDD Plant. The interconnection of an additional array, however, could affect PNM's payment of approximately \$300,000 per year (for 11.5 more years) of Renewable Energy Certificates (RECs) on the existing 1 megawatt solar array. Yearout will work with PNM to determine if an additional array can be interconnected without affecting the current REC payments.
4. Approval must be obtained by the FAA for the solar equipment proposed at the Santa Fe Regional Airport. Yearout will submit the system design and panel glare information to FAA and coordinate any design adjustments to achieve their approval for those arrays prior.

This scope and cost of the work completed in this due diligence phase will be removed from the final Guaranteed Utility Savings Contract cost and scope. Completing these tasks will further validate feasibility of the proposed solar projects prior to gaining Governing Body approval and financing for these projects.

The New Mexico Energy Minerals and Natural Resources Department (EMNRD) is involved in this project and every ESCO project executed under the State Price Agreement and Guaranteed Utility Savings Contract project guidelines developed and overseen by EMNRD. EMNRD supports execution of this due diligence phase.

Finance and Public Works Department are evaluating options for financing the full implementation of these measures. Since the projected savings will be certified by EMNRD and guaranteed by Yearout, these savings can be used to secure private financing. NMFA also funds energy savings projects. Staff will evaluate the options for funding and make a recommendation for the most beneficial mechanism to Governing Body prior to entering into the Guaranteed Energy Savings Contract for full implementation of the FIMs.

BUDGET:

The original contract amount was \$104,650, excluding NMGR of \$8,830 (rounded up from \$8,829.84), for a total not to exceed \$113,480. The contract amendment will increase the amount of compensations by \$183,981.91 (\$169,666.31 plus NMGR of \$14,315.60) to a total of \$297,461.75. As described in the compensation section of the amendment, the payment obligations are limited to the items in Change Order 1, as the IGA costs will be incorporated into the Guaranteed Utility Savings Contract.

Funds in the amount of \$925,000 are available in Project FA183200S Solarization of City Facilities, Org 3209980, Object 572960.

SCHEDULE:

Yearout anticipates that these efforts will take 6 to 8 months to complete.

REQUESTED ACTION:

Approval of Amendment No. 1 to Professional Services Contract with Yearout Energy Services Company to add scope for Solar Engineering, Design and Interconnection, Land Acquisition and FAA Coordination, and Allowance for PNM Supplemental Review to Investment-Grade Energy Audit of City Facilities.

ATTACHMENTS:

- FIM Matrix
- Pre-final Solar PV Summary
- Amendment No. 1 to Professional Services Agreement Item # 19-0641
- City of Santa Fe Contract # 19-0641 – Yearout Energy Services Company, LLC
- Business License
- Certificate of Liability Insurance
- SPA 90-000-18-00017AH – Qualified Providers of Energy Performance Contracting Services, Yearout Energy Services Company
- Summary of Contract
- Other Procurement Checklist

xc: Frances Dunaway, Purchasing Division
Project File

FIM Matrix
City of Santa Fe
January 28, 2020



Site	1.00 LED Lighting	2.00 Renewable Energy	3.00 Water Conservation	4.00 Building Envelope	5.00 HE Transformers	6.00 Utility Management	7.00 GCCC Solar PV Repairs	8.00 Roof Replacement
Bicentennial / Alto Park Complex	•	•	•	•	•			
BDD Main	•	Possible		•				
Canyon Road Water Treatment Plant		•		•	•			•
Fire Station #2		•						
Fire Station #8	•	•	•	•				
Fort Marcy Recreation Complex	•		•	•				
Genoveva Chavez Community Center	•		•	•		•	•	
La Familia Medical Center	•		•	•				
Municipal Recreation Complex	•	•		•	•	•		
Police Dept - Admin	•	•	•	•				
Public Library - Main	•		•	•				
Public Library - Southside	•	•	•	•	•			
Salvador Perez Swimming Pool	•		•	•				
Sandoval Parking Garage Lot B			•					
Santa Fe Convention Center	•		•	•				
Santa Fe Regional Airport	•	•		•				
Santa Fe Water Dept Office	•		•	•				
Siler Complex	•		•	•				
Siringo Complex	•		•	•				
Southside Transit Center		•						
Transit Administration	•		•	•	•			
WWTP Composting	•							
10M Gallon Tank		•						
Camino La Canada	•	•						
Cristo Rey Church	•							
Dempsey Booster Station	•							
10M Gallon Tank Booster Station #1								
Well Los Montoyas	•	•						
St Michaels & SF Railroad								
Calle De Agua Tank								
BDD Booster Station #2A	•							
BDD Lift Station	•	•						
BDD Booster Station #1A	•	•						
Buckman Well #10	•	•						
Buckman Booster Station #1	•	•						
Buckman Booster Station #4		•						
Buckman Well #1	•							
Buckman Booster Station #3 & Well #13		•						
Total Qty	28	19	15	18	5	2	1	1

																		Scenarios		
Facility	Account Service	Account No	Meter No	Rate	Year 1 On-Peak Production	Year 1 Off-Peak Production	Year 1 Total Production	PV System Size kW (DC)	Mounting	Fence Incl.	CDSP Land	BLM Land	USFS Land	Additional Comments	Price	Year 1 Savings	Simple Payback Years	w/o BOD WTP	w/ BOD WTP	
CDSP Buildings																				
St-Cantanal Park	Early Prevention	041257901-0453671-2	83271	2A	10,148	0	10,148	6.32	Carport	---	---	---	---	Combined Carport	\$24,143	\$1,259	19.3	X	X	
St-Cantanal Park	Pool	042811500-0466425-0	536149	2A	81,817	0	81,817	50.96	Carport	---	---	---	---	Combined Carport	\$194,830	\$10,117	19.9	X	X	
St-Cantanal Park	Head Start Addition	043564500-0472091-8	760012	2A	26,638	0	26,638	16.39	Carport	---	---	---	---	Combined Carport	\$68,427	\$3,294	19.3	X	X	
Fire Station #2	---	115942793-0463227-1	594570	2A	43,185	0	43,185	28.05	Roof	---	---	---	---	New Facility - Est. Based on 60% of P3 est	\$64,788	\$5,340	13.9	X	X	
Fire Station #8	---	115942856-1269793-6	662544	2A	44,076	0	44,076	25.38	Ground	Yes	---	---	---	---	\$86,171	\$5,450	15.8	X	X	
Municipal Recreation Complex	MHC Maintenance Building	043466800-0471844-4	688796	2A	53,328	0	53,328	36.34	Roof with Trenching	---	---	---	---	Includes Allowance for Potential Roof Repairs	\$97,387	\$6,619	14.7	X	X	
Municipal Recreation Complex	Pump Stat, Hill Pond Soccer Irrigation	043554000-0472017-2	847576	2A	70,290	0	70,290	40.29	Ground	Yes	---	---	---	Rate Successfully Changed to 2A	\$115,837	\$6,892	13.3	X	X	
Police Admin	All	115942800-0480085-3	847609	3D	144,073	57,631	201,704	133.72	Carport	---	---	---	---	Includes (1) Dual-Handle Level 2 Charger	\$418,974	\$9,083	41.5	X	X	
Public Library - Southside	All	115727805-1262753-9	847588	3D	121,317	48,329	169,646	110.60	Carport	---	---	---	---	Includes (1) Dual-Handle Level 2 Charger	\$348,576	\$8,408	41.4	X	X	
SF Regional Airport	Fire Station #10	115929113-134336	423853	2A	22,052	0	22,052	12.64	Ground	---	---	---	---	Combined Ground-Mount	\$44,154	\$2,727	16.2	X	X	
SF Regional Airport	Airport Maintenance Shop South	041308800-0489100-7	17209	2A	12,404	0	12,404	7.11	Ground	---	---	---	---	Combined Ground-Mount	\$24,836	\$1,534	16.2	X	X	
SF Regional Airport	Airport Runway Lights X Terminal	043013300-045968-3	446691	2A	42,728	0	42,728	24.49	Ground	---	---	---	---	Combined Ground-Mount	\$85,547	\$5,383	16.2	X	X	
SF Regional Airport	Airport Main Terminal Bldg	115564438-1228964-4	847574	3D	49,319	15,728	65,048	80.36	Carport	---	---	---	---	Cost Based on 80.6 kW, Production Based on 42.7 kW	\$258,252	\$8,418	79.9	X	X	
Southside Transit	All	115727805-0420091-0	446431	2A	28,216	0	28,216	18.96	Roof	---	---	---	---	Currently in Renovation. Assumed 30% Reduction	\$54,303	\$3,613	15.0	X	X	
Subtotal	---	---	---	---	750,768	125,888	876,656	591	---	---	---	---	---	---	\$1,888,292	\$75,733	25.1	14	14	
Water Utility Res																				
Canyon Road Water Treatment Plant	---	040489200-0447254-0	413488	11B	78,337	30,615	107,152	74.66	Roof	---	X	---	---	---	\$182,678	\$12,495	15.5	X	X	
10M Gallon Tank	---	115942933-0445032-6	0619725	11B	72,850	29,139	100,989	58.46	Ground	Yes	X	---	---	---	\$162,334	\$11,833	13.7	X	X	
Carmho La Canada	---	115907013-0447225-5	0752370	11B	51,391	20,477	71,868	41.08	Ground	Already Fenced	X	---	---	---	\$108,992	\$8,931	13.0	X	X	
Well Los Montanos	---	115942947-1170495-1	0438752	11B	70,881	28,353	99,234	56.88	Ground	Yes	X	---	---	---	\$181,764	\$11,535	14.0	X	X	
Buckman Booster D & Well 10	---	115942934-1233330-3	0537627	11B	93,539	37,053	128,554	74.26	Ground	Yes	---	X	---	---	\$211,383	\$15,059	14.0	X	X	
Buckman Booster Station #1	---	115942932-1234139-9	0407084	11B	73,833	29,534	103,367	59.25	Ground	Yes	---	X	---	---	\$174,599	\$12,015	14.5	X	X	
Buckman Booster Station #4	---	115942938-1234140-3	0479413	11B	487,112	194,845	681,957	396.58	Ground	Yes	---	X	---	Need County Land across street	\$1,012,360	\$79,270	12.6	X	X	
Buckman Booster Station #3 & Well #13	---	115942936-1233031-2	0752383	11B	300,025	202,010	707,036	405.77	Ground	Yes	---	X	---	---	\$1,292,434	\$82,185	12.6	X	X	
Subtotal	---	---	---	---	1,429,869	571,948	2,001,856	1,166	---	---	---	---	---	---	\$1,206,435	\$132,709	13.1	8	8	
BOD																				
BOD Main	---	115915794-1348251-1	743968 / 740515	11B	444,974	177,990	622,965	357.08	Ground	Yes	---	---	X	Requires More Investigation	\$911,967	\$72,413	12.6	---	X	
BOD Lift Station	---	115915794-1347814-1	0418853	11B	345,543	138,216	483,761	277.29	Ground	Yes	---	---	X	---	\$745,578	\$68,253	13.3	X	X	
BOD Booster Station #1A	---	115915794-1540615-0	0458753	11B	930,466	366,186	1,388,652	736.65	Ground	Yes	---	---	X	---	\$1,863,837	\$149,791	12.4	X	X	
Subtotal	---	---	---	---	1,710,984	684,394	2,395,378	1,373	---	---	---	---	---	---	\$3,521,402	\$278,436	12.6	2	3	
																MW DC	2.773	3.130		
																MWh	4,051	5,274		
																Cost	\$7,5684	\$8,4884		
																Savings	\$514,463	\$586,876		
																SPB	14.7 Years	14.4 Years		
																\$/Watt	\$2.73	\$2.71		

**CITY OF SANTA FE
AMENDMENT No. 1 TO
PROFESSIONAL SERVICES AGREEMENT
ITEM# 19-0641**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE PROFESSIONAL SERVICES AGREEMENT, dated July 31, 2019 (the "Agreement"), between the City of Santa Fe (the "City") and YEAROUT ENERGY SERVICES COMPANY, LLC., (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to perform an Investment-Grade Energy Audit (IGA) of various City facilities as listed in Exhibit "B".

B. Pursuant to Article 13 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SCOPE OF SERVICES

Article 1 of the Agreement is amended to add deliverables related to Solar Interconnection, Land Acquisition and FAA Coordination, so that Article 1 reads as follows, and as described in Exhibit "C":

VI. To mitigate risk for all stakeholders and streamline project implementation when the Contractor and City enter into the Guaranteed Utility Savings Contract, the Contractor will commence the following tasks:

<u>Deliverable item:</u>	<u>Price</u>
Item 1: Solar Engineering, Design and Interconnection	\$83,099.31
Item 2: Land Acquisition and FAA Coordination	\$76,567.00
Item 3: Allowance for PNM Supplemental Review (if required)	\$10,000.00
Total amount	\$169,666.31+NMGR

2. COMPENSATION.

Article 2, paragraphs A and B of the Agreement are amended to increase the amount of compensation by a total of **\$183,981.91 including NMGR**T so that Article 2, paragraphs A and B read in its entirety as follows:

A. Except as provided for in subparagraphs 2D and 2E below, the City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of 274,316.31. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$23,145.44 shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$297,461.75.**

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed **two-hundred ninety-seven thousand four hundred sixty-one dollars and seventy-five cents (\$297,461.75)**. This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. This amount is based on a maximum of 598,000 gross square feet at seventeen-and-one-half-cents US dollars (\$0.175) per square foot of audited facility floor area, as per Exhibit B, Cost and Pricing. City shall only pay for facility floor area actually audited. Areas not audited Contractor will not be charged to City.

Article 2, paragraphs D and E of the Agreement are amended to read in its entirety as follows:

D. The City shall have no payment obligations except those identified by Change Order 1 provided that Contractor and City execute a Guaranteed Utility Savings Contract within 120 days [allows sufficient time for contract negotiation, attorney review, and City processing days], after issuance of the Notice of Acceptance (Exhibit A) of the final Investment-Grade Energy Audit and Project Proposal, and the original fee of \$113,480 (\$104,650.00 plus NMGR T \$8,830.00) shall be incorporated into Contractor's project costs in the Guaranteed Utility Savings Contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.

E. City's payment obligations under this contract are limited to the items in Change Order 1 in the event that Contractor's final Investment-Grade Energy Audit and Project Proposal does not contain a package of energy and water conservation measures which, if implemented and as meeting terms of Scope of Work, will provide the City with utility

cost savings sufficient to fund City's payments of all costs and fees associated with the Guaranteed Utility Savings Contract, including: 1) the fee associated with the Investment-Grade Energy Audit; 2) all monthly payments on a lease purchase agreement to finance the measures; and 3) any annual fees for monitoring and maintenance incurred by the Contractor. Should the Contractor determine at any time during the Investment-Grade Energy Audit that savings cannot be attained to meet these terms, the Investment-Grade Energy Audit will be terminated by written notice by Contractor to City. In this event, this Agreement shall be terminated and City shall have no obligation to pay the original fee of \$113,480 (\$104,650.00 plus NMGRT \$8,830.00).

3. TERM:

Article 3 of the Agreement is hereby deleted in its entirety and substitute the following Article 3 in its place:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **December 31, 2020**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement as of the dates set forth below.

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:

MDM 1/30/20


SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

MARY MCCOY, FINANCE DIRECTOR *mm*

Munis Contract: 3200884, Project Code: FA183200S, Org: 3209980, Object:572960

CONTRACTOR:


COLBY GEER, PRESIDENT
Yearout Energy Services Company, LLC

DATE: 1/30/2020
CRS# 03260362-00-2
Registration # 19.00158314

EXHIBIT C

CHANGE ORDER TO IGA CONTRACT

Project:	City of Santa Fe, NM
Contract Number:	19-0641
Change Order Number:	1
Date:	01/27/2020
Description:	Solar Interconnection, Land Acquisition and FAA Coordination

Original Investment Grade Audit (IGA) Contract Amount	\$113,480.00
Change Order Scope Items	
Change Order Item 1: Solar Engineering, Design and Interconnection	\$83,099.31
Change Order Item 2: Land Acquisition and FAA Coordination	\$76,567.00
Change Order Item 3: Allowance for PNM Supplemental Review (if Required)	\$10,000.00
Change Order Total Amount	\$169,666.31 + NMGR
Adjusted IGA Contract Amount	\$283,146.31 + NMGR

In an effort to mitigate risk for all project stakeholders and streamline project implementation, it is proposed that the City of Santa Fe initiate the Change Order Scope Items noted above prior to fully executing the Guaranteed Utility Savings Contract (GUSC). By executing this change order, the City of Santa Fe authorizes Yearout Energy to commence with the noted change order scope items above and invoice for this change order totaling \$169,666.31 + NMGR as the work is performed. Yearout Energy shall not invoice for the original IGA Contract Amount of \$113,480 as the cost for this service will be included in the turn-key project amount as stated in the original IGA Contract.

Yearout Energy will not invoice for the allowance scope item unless PNM requires supplemental review on any proposed solar PV systems. Yearout Energy currently anticipates (2) proposed systems are expected to need this requirement, and therefore proposes an allowance of \$5,000 per system (\$10,000 Total) based on recent project experience.

Approved By: _____

This Change Order is valid for 60 Days

Date: _____



Proposal for Photovoltaic Solar Design Fees
for
City of Santa Fe



YEAROUT
E N E R G Y



January 27, 2020

Yearout Energy
8501 Washington St. NE.
Albuquerque, NM 87113

Dear Mr. Montano,

Positive Energy Solar, Inc. is pleased to present this proposal for the design fees associated with the City of Santa Fe photovoltaic solar systems.

Positive Energy offers the benefit of our collective and significant experience in the successful design, development, construction, and operation of solar PV projects within the State of New Mexico.

Our value proposition lies in our ability to provide a competitive price coupled with solid design, development and operational credentials.

We look forward to partnering with you on these important solar PV projects.

Sincerely,

Thomas Gray
Business Development Consultant
505-424-1112 office
505-795-0065 cell
Thomas.Gray@PositiveEnergySolar.com



Scope of Work

Positive Energy Solar provides pricing to design and submit utility applications for the follow sites, without Bonding:

COSF PV Solar Location		Acct. #	Meter #	Price
Bi-Centennial Park	Head Start Original	041257901-0453671-2	63271	\$236.89
Bi-Centennial Park	Pool	042811500-0466425-0	526169	\$1,910.10
Bi-Centennial Park	Head Start Addition	043564500-0472091-8	760012	\$621.83
Fire Station #2	-----	115942762-0462227-1	594570	\$830.74
Fire Station #8	-----	115942916-1269792-6	662544	\$844.81
Municipal Recreation Complex	MRC Maintenance Building	043468801-0471344-4	688796	\$954.77
Municipal Recreation Complex	Pump Stat. Hill Pond Soccer irrigation	043554000-0472017-2	947578	\$1,135.66
Police Admin	All	115942800-0448065-3	947609	\$4,058.57

Public Library - Southside	All	115727805-1262782-9	947588	\$3,427.22
SF Regional Airport	Fire Station #10	115929112-1345286	423855	\$432.88
SF Regional Airport	Airport Maintenance Shop South	041908800-0459100-7	17209	\$243.49
SF Regional Airport	Airport Runway Lights X Terminal	042013301-0459988-3	446691	\$838.70
SF Regional Airport	Airport Main Terminal Bldg	115564459-1229994-4	947574	\$2,542.67
Southside Transit	All	115727805-0420091-0	446431	\$532.38
Canyon Road Water Treatment Plant	-----	040489203-0447256-0	413488	\$1,889.00
10M Gallon Tank	-----	115942933-0445032-8	0619725	\$1,590.53
Camino La Canada	-----	115907013-0447225-5	0752370	\$1,062.67
Well Los Montoyas	-----	115942947-1170495-1	0438752	\$1,585.92

Buckman Booster D & Well 10	-----	115942924-1233530-3	0537827	\$2,072.40
Buckman Booster Station #1	-----	115942932-1234139-9	0407084	\$1,711.75
Buckman Booster Station #4	-----	115942938-1234140-3	0473413	\$9,930.98
Buckman Booster Station #3 & Well #13	-----	115942926-1233031-2	0752383	\$10,121.80
BDD Main	-----	115915784-1346251-1	743968 / 740515	\$8,940.85
BDD Lift Station	-----	115915784-1347614-1	0418853	\$7,309.59
BDD Booster Station #1A	-----	115915784-1347615-0	0438753	\$18,273.11
Total	-----	-----	-----	\$83,099.31

Design fees are calculated at 1% of the total PV solar project cost. Any changes in the Scope of Work will change the design fees accordingly.

Clarifications and Exclusions

Our Proposal is based on the following:

1. The design of each PV solar system for the purposes of Utility applications. This shall include the One-line diagrams and Site Maps.
2. Proposal include application fees to be paid to the utility.
3. The order of the projects will be determined by mutual agreement.
4. Site visits may be required to fulfill this work. Site visits will be organized by Yearout.
5. This proposal is valid for 10 days from date of issue.

We exclude the list of items below from this bid. Most can be added upon request.

1. Surveying
2. Land acquisition
3. Penetrations and sealing of roofing, under buildings and roof membranes
4. Cathodic protection, snow melt and heat trace
5. Temporary facilities such as water, sanitary and first aid facilities
6. Independent testing laboratory services including soils and compaction/density testing
7. Asbestos testing, abatement, and all work associated with hazardous materials



January 27, 2020

#8228836

Alex Montano CEM REP LEED AP
Vice President, Project Development
Yearout Energy
8501 Washington Street NE, Albuquerque, NM 87113
505.883.0915 office; 505.999.9025 cell
alex.montano@yearoutenergy.com

RE: Proposal for SMA planning services to support development of net metered solar system(s) at City of Santa Fe utility sites and the Santa Fe Regional Airport.

Dear Mr. Montano:

On behalf of Miller Engineers, Inc. d/b/a Souder, Miller & Associates (SMA), I've prepared this letter proposal and accompanying Professional Service Agreement (PSA) based on our coordination regarding Yearout Energy's need for permitting and landowner authorizations for planned solar photovoltaic (PV) systems at City's utility sites in the Buckman area and at the Santa Fe Regional Airport:

U.S. Forest Service (USFS) land

- BDD Booster 1A (approximately 2 acres outside facility fenced area for solar PV system)
- BDD Lift Station (approximately 1 acres outside facility fenced area)

Bureau of Land Management (BLM) land

- Buckman Booster Station #3 and Well #13 (approximately 1.75 acres outside facility fenced area)
- Buckman Booster Station D & Well #10 (approximately 0.2 acres outside facility fenced area)
- Buckman Booster Station #1 (approximately 0.25 acres outside facility fenced area)
- BDD Treatment Plant (approximately 1.5 acres outside fenced area)

NM Gas Company land

- Buckman Booster Station #4 (two arrays within facility booster station fenced area)

Santa Fe County land

- Buckman Booster Station #4 (approximately 0.75 acres outside facility fenced area)

City of Santa Fe

- Buckman Well #1 (solar PV system entirely within facility fenced area, on City property)

- Santa Fe Regional Airport Main Terminal carport (approximately 0.2 acres)
- Santa Fe Regional Airport combination (3) ground-mounted system (approximately 0.2 acres)

As detailed in Exhibit A Scope of Work of the Professional Services Agreement, SMA proposes to perform the following professional services assist Yearout Energy with securing landowner authorizations to construct the planned solar PV systems at City facilities:

Based on conversations with USFS staff, the projects on USFS land should be allowed to move forward under a staff decision level Categorical Exclusion under the National Environmental Policy Act (NEPA). SMA assumes the following will not be required for the USFS applications: 1) biological and archeological field surveys and/or reports; 2) professional boundary surveys; 3) revised land use plan; and 4) completed Categorical Exclusion form. USFS staff indicated that processing the USFS Special Use Permit amendments should take between three to six months, barring any significant public opposition. USFS staff indicated that visual impact of the proposed solar PV systems and additional fencing would most likely require full public scoping to solicit input from surrounding community.

For the two City facilities located on USFS land, SMA will perform the following professional services:

- 1) Coordinate with agency staff to schedule pre-application meeting;
- 2) Conduct a pre-application meeting to confirm application requirements;
- 3) Prepare application material (SF-299 Application for Transportation and Utility Systems and Facilities on Federal Lands);
- 4) Prepare illustrations representing the visual impact of proposed solar PV systems from the White Rock Overlook and/or surrounding residential areas;
- 5) Prepare a site plan map illustrating the proposed solar PV system and associated infrastructure;
- 6) Facilitate public scoping to illicit input from surrounding community, as required.

Based on conversations with BLM staff, to comply with NPEA an Environmental Assessment (EA) will likely be required for each project on BLM land. To develop the EAs, biological and biological field surveys and documentation will need to be completed and provided to the BLM. In addition, consultation with surrounding tribes and other stakeholders will be required. Agency staff indicated that processing the BLM Right-of-Way authorizations should take between six and 12 months, barring any significant public opposition.

For the three City facilities located on BLM land, SMA will perform the following professional services:

- 1) Coordinate with agency staff to schedule pre-application meeting;
- 2) Conduct a pre-application meeting to confirm application requirements;
- 3) Prepare application material (SF-299 Application for Transportation and Utility Systems and Facilities on Federal Lands);

- 4) Prepare illustrations representing the visual impact of proposed solar PV systems from the White Rock Overlook and/or surrounding residential areas;
- 5) Prepare a site plan map illustrating the proposed solar PV system and associated infrastructure;
- 6) Conduct archeological and biological field surveys and document findings;
- 7) Prepare an Environmental Assessment (EA) for each site;
- 8) Conduct consultation and public scoping for EA proposed action, as required;

To prepare the application for submittals to the agencies for five project sites on USFS and BLM land, SMA will coordinate with Yearout Energy and the City to prepare descriptions of solar PV system design criteria, construction approach, O&M, system decommissioning and site rehabilitation, waste generation, construction traffic plan, fire prevention, and spill control contingency. The application packages also must include a statement pertaining to the applicant's technical and financial capability, a description of reasonable alternatives, and a description of any hazardous material.

For the City facility located on NM Gas Company land (Buckman Booster Station #4), SMA will coordinate with company staff to determine information requirements to process the amendment to the City's existing Easement Agreement, prepare site plan maps, and prepare other information as required.

For the City facility located on City land (Buckman Well #1), the proposed solar PV system is located entirely within the fenced area. Therefore, SMA assumes that not permitting services are not required.

Based on conversations with FAA staff, all coordination regarding the planned projects at the Santa Fe Regional Airport would go through the Louisiana/New Mexico Airports District Office (ADO) located in Ft. Worth TX. As part of the FAA permitting for planned solar projects, SMA will work in close coordination with airport staff. SMA assumes that Yearout Energy or Positive Energy Solar will perform a glare analysis for this project. A Notice of Proposed Construction or Alteration Off Airport for the planned project would be submitted to the agency via the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) online portal. General project information would be needed to complete the Notice, including: materials used, construction approach and equipment used, location (coordinates), dimensions, operation and maintenance activities, any radio frequency bands used, etc. The submitted Notice would be routed by the ADO to the FAA's various reviewers, and within six weeks the agency would issue a letter with comments.

For the planned solar array at Booster Station #4 located on Santa Fe County land, SMA will coordinate with County staff to determine the utility easement requirements and prepare necessary submittals to facilitate County approval. SMA assumes this project can be approved under a utility easement that does not require any environmental review. The estimated cost for Santa Fe County permitting may increase, based on forthcoming direction from the County regarding their permitting process.

The Scope of Work does not include construction support services. **Upon request, SMA can provide a proposal for construction phase support services, including surveying, site civil engineering, structural engineering, and project management services.** For all project sites, SMA assumes that Yearout Energy will secure necessary approvals and permits from Santa Fe County, New Mexico Construction Industries Division, and PNM.

SMA proposes to accomplish the Scope of Work for a lump-sum fee of \$76,567.00, excluding applicable taxes.

SMA can commence work upon return of the attached executed agreement and the client provided information. Additional services requested beyond the scope of services identified in the Professional Service Agreement will be provided through a contract amendment.

This proposal offer may be withdrawn, at the option of SMA, if it has not been accepted within 30 days of its date of issue. Souder, Miller & Associates appreciates the opportunity to provide professional consulting services. If you have any questions or comments concerning this proposal, please feel free to contact me at your earliest convenience.

Sincerely,

MILLER ENGINEERS, INC. d/b/a
SOUDER, MILLER & ASSOCIATES



Dale Lyons
Renewable Energy Market Sector Manager
dale.lyons@soudermiller.com



Karl E. Tonander, P.G., P.E., C.P.G.
Senior Vice President/CEO
karl.tonander@soudermiller.com

Enclosure:
SMA Professional Services Agreement

ITEM # 19-0641

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **YEAROUT ENERGY SERVICES COMPANY, LLC. (YEAROUT ENERGY)**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

RECITALS

WHEREAS, this Agreement was created for use by New Mexico government entities to obtain an Investment-Grade Energy Audit of a facility from a private energy service company (YEAROUT ENERGY);

WHEREAS, authority exists in the law for City to enter into this contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies;

WHEREAS, Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at facilities similar in size, function and system type to City's facilities;

WHEREAS, Contractor has been selected in accordance with Statewide Price Agreement 90-000-18-00017AH, pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at City's facilities;

WHEREAS, City has selected Contractor to provide the services described herein;

WHEREAS, City desires to enter into a contract to have Contractor perform an Investment-Grade Energy Audit and Project Proposal to determine the feasibility of entering into an Guaranteed Utility Savings Contract to provide for installation and implementation of energy and water conserving measures at City's facilities; and

WHEREAS, if energy and water conserving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by City, associated with an Energy Savings Performance Contracting project, the parties intend to negotiate an Guaranteed Utility Savings Contract under which the Contractor will design, procure, install, implement, maintain and monitor such energy and water conserving measures. However, this intent does not commit City to entering into such a Guaranteed Utility Savings Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, City and Contractor hereto covenant and agree that the

following Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

Contractor shall:

- A. Perform an Investment-Grade Energy Audit (Audit) in accordance with this Agreement. Contractor shall work diligently to assess validity of information provided and to confirm or correct the information as needed to provide a complete and accurate Audit. City will assist Contractor in performing the Audit as described in this Agreement. City will work diligently to provide full and accurate information needed by Contractor for the Audit. The parties contemplate that development of the Audit will be an iterative process and that City will have a reasonable amount of time, not less than 30 calendar days but not exceeding 90 calendar days from City receipt of Audit report, to review and determine acceptance of Audit report before considering issuance of the Notice of Acceptance (Exhibit A).
- B. Submit a Project Proposal (Proposal) to City within 30 calendar days of Audit report submittal that provides a package of energy and water conserving measures, including details as specified in this Agreement.
- C. In order to successfully implement this project, Contractor shall:
 - I. **Conduct assessment.**
 - (a) Meet with City to establish interests, plans, problems, and any other issues related to facilities and operation of facilities.
 - (b) Collect data and background information on buildings, equipment and facilities operation and energy use for the most recent three years (as available) from the effective date of this Contract as follows:
 - (1) Building square footage;
 - (2) Construction data of buildings and major additions including building envelope;
 - (3) Utility company invoices;
 - (4) Occupancy and usage information;
 - (5) Description of all energy-consuming or energy-saving equipment used on the premises, as available;
 - (6) Description of energy management procedures utilized on the premises;
 - (7) Description of any energy-related improvements made or currently being implemented;
 - (8) Description of any changes in the structure of the facility or energy-using or water-using equipment;
 - (9) Description of future plans regarding building modifications or equipment modifications and replacements;
 - (10) Drawings, as available (may include mechanical, plumbing,

- electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
- (11) Original construction submittals and factory data (specifications, pump curves, and any similar documentation), as available;
- (12) Operating engineer logs, maintenance work orders, and any similar documentation, as available;
- (13) Records of maintenance expenditures on energy-using equipment, including service contracts;
- (14) Prior energy audits or studies, if any.
- (c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.
- (d) Meet with City to present preliminary findings and establish agreement on measures to analyze.

II. Identify potential measures.

- (a) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
 - (1) Facility operation, including energy management procedures;
 - (2) Equipment maintenance problems;
 - (3) Comfort problems and requirements;
 - (4) Equipment reliability;
 - (5) Projected equipment needs;
 - (6) Occupancy and use schedules for the facility and specific equipment;
 - (7) Past, planned, and desired facility improvements.
- (b) Survey major energy-using equipment, including indoor and outdoor lighting, heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment, exhaust systems and equipment, hot water systems, electric motors, transmission and drive systems, special systems (including kitchen/dining equipment), renewable energy systems, other energy using systems, and water consuming systems (restroom fixtures, water fountains, irrigation systems, and other water systems).
 - (1) Verify settings of control systems that include computer controls systems and building thermostats
 - (2) Measure lighting levels at various locations in a building to determine if recommended lighting levels exist
 - (3) Inspect filters for heating and cooling systems to determine the status of maintenance activities
 - (4) Consider maintenance staff and occupant concerns related to heating, cooling, and lighting
- (c) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- (d) Develop a preliminary list of potential energy and water conserving measures. Consider the following for each system:

- (1) Comfort and maintenance problems;
- (2) Energy use, loads, proper sizing, efficiencies and hours of operation;
- (3) Current operating condition;
- (4) Remaining useful life;
- (5) Feasibility of system replacement;
- (6) Hazardous materials and other environmental concerns;
- (7) City's future plans for equipment replacement or building renovations;
- (8) Facility operation and maintenance procedures that could be affected;
- (9) Capability to monitor energy performance and verify savings.

III. Analyze measures.

- (a) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, and any other energy or fuel types. Present base year consumption in terms of energy units as used in utility bills, in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (such as averaging, selecting most representative contiguous 12 months, or other methods). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor shall account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- (b) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), Contractor will use its best judgment, spot measurements or short-term monitoring. Contractor should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
- (c) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable "real-world" limits on potential savings.
- (d) Propose adjustments to the baseline for energy and water conserving measures that will be implemented in the future. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:
 - (1) utility rates;
 - (2) number of days in the utility billing cycle;
 - (3) floor area of the facility;
 - (4) operational schedule of the facility;
 - (5) facility temperature;
 - (6) weather, if change is significant;
 - (7) amount of equipment or lighting used in the facility, if change is significant;
 - (8) space type(s) in the facility, if change is significant; and

- (9) material change(s) in or to the facility.
- (e) Develop a preliminary analysis of potential energy and water conserving measures. This resulting list of measures shall be compiled and submitted to City within 90 calendar days of the execution of this Contract. Furthermore:
- (1) List all potential measures, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water conserving devices.
 - (2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.
 - (3) For each measure, prepare a preliminary estimate of energy or water cost savings, including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
- (f) Meet with City to present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the City's terms for completing the Investment-Grade Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The City shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.
- (g) Perform final analysis of savings and costs for each energy and water conserving measure, including the following:
- (1) Follow the methodology of American Society of Heating, Refrigerating, and Air-Conditioning Engineers or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.
 - (2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
 - (3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
 - (4) Use markups and fees stated above in all cost estimates.
 - (5) Develop a preliminary measurement and verification plan for each measure.
 - (6) Follow additional guidelines for analysis and report preparation given below.
 - (7) Include cost to provide services and complete application for Energy

Star Label, LEED-EB certification for Existing Buildings, or other certification. Also include cost for EPA's Tools for Schools or other such program related to improved air quality.

IV. Provide Investment-Grade Energy Audit Report

The report provides an engineering and economic basis for negotiating a potential Guaranteed Utility Savings Contract between the City and the Contractor.

(a) Contractor shall prepare and submit to City a draft Investment-Grade Energy Audit Report within 180 calendar days of the date of execution of this Contract. The report shall provide the following information:

(1) Overview, which shall include:

- i) Contact information;
- ii) Summary table of recommended energy and water conserving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first-year cost avoidance (in dollars and energy units), simple payback and equipment service life;
- iii) Summary of annual energy and water use by fuel type and costs of existing or base year condition;
- iv) Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost;
- v) Description of the existing facility, mechanical and electrical systems;
- vi) Summary description of measures, including estimated costs and savings for each as detailed above;
- vii) Discussion of measures considered but not investigated in detail;
- viii) Conclusions and recommendations.

(2) Base year energy use, which shall include:

- i) Description and itemization of current billing rates, including schedules and riders;
- ii) Summary of all utility bills for all fuel types and water;
- iii) Identification and definition of base year consumption and description of how established;
- iv) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings).

(3) Full written description of each energy and water conserving measure, which shall include:

- i) Existing conditions;
- ii) Description of equipment to be installed and how it will function;
- iii) Discussion of facility operations and maintenance procedures that will be affected by installation/implementation;
- iv) Plan for installing or implementing the recommended measure.

(4) Allowable cost and savings factors approved for consideration. City will provide Contractor with sufficient guidance to develop savings estimates, which shall include:

- i) Payment sources that can be incorporated:
 - a) Energy and water cost savings;
 - b) Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable);
 - c) Outside labor cost savings, including maintenance contracts;
 - d) In-house labor costs;
 - e) Deferred maintenance cost;
 - f) Offset of future capital cost;
 - g) Outside incentive funds (utility incentives, grants, etc.);
 - h) Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented;
- ii) Payment sources that may also be considered and negotiated;
- iii) Additional factors related to establishing savings that cover all costs:
 - a) Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes; *NOTE: Use federal government guidelines on utility escalation rates to ensure reasonableness.*
 - b) Interest rates (municipal tax-exempt rates for public agencies);
 - c) City cash outlay (City's sole discretion);
- iv) The markup costs are presented in Exhibit B: Cost and Pricing. These rates will be used in the Investment-Grade Energy Audit and subsequent Guaranteed Utility Savings Contract.

(b) Savings calculations

- (1) Base year energy use and cost.
- (2) Post-retrofit energy use and cost.
- (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
- (4) Annual savings estimates. The cost savings for all energy conserving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
- (5) Savings estimates must be limited to savings allowed by the City as described above.
- (6) Percent cost-avoidance projected.
- (7) Description and calculations for any proposed rate changes.
- (8) Explanation of how savings interactions between retrofit options are accounted for in calculations.

- (9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
- (10) If computer simulation is used, include a short description and state key input data. If requested by City, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment-Grade Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.
- (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
- (12) Conclusions, observations, and caveats.
- (c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
 - (1) Engineering/design costs.
 - (2) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
 - (3) Permit costs.
 - (4) Construction management fees.
 - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
 - (6) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
 - (7) Conclusions, observations, and caveats.
 - (8) Other cost categories as defined above under "markups" in Section 3b above.
- (d) Other
 - (1) Estimate of average useful service life of equipment.
 - (2) Preliminary commissioning plan.
 - (3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.).
 - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
 - (5) Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be

compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.

- (6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.
- (e) Contractor shall meet with City to: review the recommendations, savings calculations and impact of the measures on the operations of the facility; describe how the projected project economics meet the City's terms for completing the Investment-Grade Energy Audit and Project Proposal; and discuss the willingness and capability of City to make capital contributions to the project to improve the economics of the overall project.
- (f) Contractor shall revise Audit Report as directed by City and shall submit **final Investment Grade Audit Report** within 30 days of the above meeting.

V. Provide Project Proposal (term sheet).

- (a) In anticipation of Contractor and City entering into an Guaranteed Utility Savings Contract to design, install, and monitor the energy and water conserving measures proposed in the Investment-Grade Energy Audit Report, Contractor shall prepare a proposal for terms to be incorporated in the Guaranteed Utility Savings Contract, which shall include:
 - (1) Project Cost is the total amount City will pay for the project and Contractor's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Investment-Grade Energy Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
 - (2) Include a List of Services that will be provided as related to each cost.
 - (3) Expected term of the Energy Performance Contract.
 - (4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to City at this time, and based on a 60-day and 90-day lock option.
 - (5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.
 - (6) Analysis of annual cash flow for City during the contract term.
 - (7) Contractor agrees to meet with City to present results and negotiate final terms.
- (b) Services will be performed on the facilities outlined in Exhibit B.

2. **Compensation.**

A. Except as provided for in subparagraphs 2D and 2E below, the City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work in the sum of one-hundred-four-thousand six-hundred-fifty dollars (\$104,650) in 2019/2020. The New Mexico gross receipts tax levied on the amounts payable under this Agreement in 2019/2020 totaling eight-thousand eight-hundred-thirty dollars (\$8,830) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one-hundred-thirteen-thousand four-hundred-eighty dollars (\$113,480) in 2019/2020.**

B. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed **one-hundred-thirteen-thousand four-hundred-eighty dollars (\$113,480)**. This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Agreement to be performed shall equal the amount stated herein. This amount is based on a maximum of 598,000 gross square feet at seventeen-and-one-half-cents US dollars (\$0.175) per square foot of audited facility floor area, as per Exhibit B, Cost and Pricing. City shall only pay for facility floor area actually audited. Areas not audited Contractor will not be charged to City.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. City shall have no payment obligations under this contract, provided that Contractor and City execute a Guaranteed Utility Savings Contract within 120 days [allows sufficient time for contract negotiation, attorney review, and City processing days], after issuance of the Notice of Acceptance (Exhibit A) of the final Investment-Grade Energy Audit and Project Proposal, but the fee indicated above shall be incorporated into Contractor's project costs in the Guaranteed Utility Savings Contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.

E. City shall have no payment obligations under this Contract in the event that Contractor's final Investment-Grade Energy Audit and Project Proposal does not contain a package of energy and water conservation measures which, if implemented and as meeting terms of Scope of Work, will provide the City with utility cost savings sufficient to fund City's payments of all costs and fees associated with the Guaranteed Utility Savings Contract, including: 1) the fee associated with the Investment-Grade Energy Audit; 2) all monthly payments on a lease purchase agreement to finance the measures; and 3) any annual fees for monitoring and maintenance incurred by the Contractor. Should the

Contractor determine at any time during the Investment-Grade Energy Audit that savings cannot be attained to meet these terms, the Investment-Grade Energy Audit will be terminated by written notice by Contractor to City. In this event, this Agreement shall be terminated and City shall have no obligation to pay, in whole or in part, the amounts specified in subparagraphs 2A or 2B.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **July 1, 2020** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management.** Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as

to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

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

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance.

Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.

- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

23. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

24. Invalid Term or Condition.

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

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless

express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Erik Litzenberg – City Manager
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87504
ejlitzenberg@ci.santa-fe.nm.us

To the Contractor:
Colby Geer – President
Yearout Energy Services Co., LLC
8501 Washington NE
Albuquerque, NM 87113
Colby.Geer@yearoutenergy.com

27. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

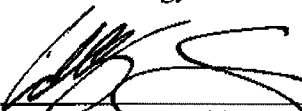
CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: 8/2/19


CONTRACTOR:

Yearout Energy Services Co., LLC

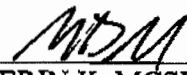

Colby Geer, President

DATE: 7/18/19
CRS# 03260362-00-2
Registration # 19.00158314

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 7-31-19

APPROVED AS TO FORM:

 6/18/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

 08.02.19
MARY MCCOY, FINANCE DIRECTOR *RM*

32010.572960
Business Unit Line Item

Exhibit A
Notice of Acceptance

Issuance of a Notice of Acceptance is contingent upon the City's review and acceptance of the Audit Report, in accordance with Scope of Work, Item 1A.

Exhibit B **Cost and Pricing**

Facility	Street Address	City	State	Zip	Gross Area (ft ²)
Public Library - Southside	6599 Jaguar Dr	Santa Fe	NM	87507	26,000
Santa Fe Regional Airport	3003 Aviation Dr	Santa Fe	NM	87507	14,000
Municipal Recreation Complex	205 Caja Del Rio	Santa Fe	NM	87507	12,000
Fire Station #8	6796 Jaguar Dr	Santa Fe	NM	87507	10,000
La Familia Medical Center	1035 Alto St	Santa Fe	NM	87501	25,000
Siringo Complex (Police Records, IT, Facilities)	2651 Siringo Rd	Santa Fe	NM	87505	34,000
Police Dept - Admin	2515 Camino Entrada	Santa Fe	NM	87507	26,000
Public Library - Main	145 Washington Ave	Santa Fe	NM	87501	40,000
Public Library - LaFarge	1730 Llano St	Santa Fe	NM	87505	23,000
Siler Complex (Parks & Rec, Environmental Services, Fleet Maintenance)	1142 Siler Rd	Santa Fe	NM	87507	40,000
Santa Fe Convention Center	201 W Marcy St	Santa Fe	NM	87501	72,000
Genoveva Chavez Community Center	3221 Rodeo Rd	Santa Fe	NM	87507	138,000
Kitchen Angels	1222 Siler Rd #A	Santa Fe	NM	87507	15,000
Sandoval Parking Garage Lot B	200 Sandoval	Santa Fe	NM	87501	-----
Fort Marcy Recreation Complex	490 Bishops Lodge Rd	Santa Fe	NM	87501	26,000
Salvador Perez Swimming Pool	601 Alta Vista St	Santa Fe	NM	87505	18,000
Canyon Road Water Treatment Plant	1780 Upper Canyon Rd	Santa Fe	NM	87505	11,000
Santa Fe Water Dept Office	801 W San Mateo Rd	Santa Fe	NM	87505	23,000
Transit Administration	2931 Rufina St	Santa Fe	NM	87507	26,000
Bicentennial / Alto Park Complex (Sr Center, Pool, Head Start, Park)	1121 Alto St	Santa Fe	NM	87501	19,000
Southside Transit Center (Remodel, Solar Only)	TBD	Santa Fe	NM	TBD	-----
Fire Station #2	TBD	Santa Fe	NM	TBD	-----
Grand Total					
Sub Total					
Total Project Cost					

Yearout Energy shall include the following pump locations as part of the IGA at no additional cost.

Pump Description	Street Address	City	State
52300 Wtr 10MG 1048 Las Montoyas	0 Ten Million Gallon Tank	Santa Fe	NM
52300 Wtr Agua Fria Well La Canada	1819 Camino La Canada	Santa Fe	NM
52300 Wtr Cristo Rey Church	1209 UpperCanyon Rd	Santa Fe	NM
52300 Wtr Dempsey Booster Station	0 Cerro Gordo Rd	Santa Fe	NM
52300 Wtr NW QDRT Booster 1 10MGal	1048 Camino de los Montoyas	Santa Fe	NM
52300 Wtr NW Well Los Montoyas	0 PL TR042 B28 A03 NE Well	Santa Fe	NM
52300 Wtr St Michaels & Railroad	0 St Michaels & SF Railroad	Santa Fe	NM
52300 Wtr Summit Booster 1212	1212 Calle De Agua Tank	Santa Fe	NM
BDD/Water Division	02 Booster Station 2A Rd	Santa Fe	NM
BDD/Water Division	0 Buckman Rd (Lift Station)	Santa Fe	NM
BDD/Water Division	01 Booster Station 1A	Santa Fe	NM
BDD/Water Division	341 Caja Del Rio (Treatment Plant) #a	Santa Fe	NM
52300 STR Cukmn Bster D & Well 10	0 Buckman Well #10	Santa Fe	NM
52300 Wtr Buckman Booster Sta 1	Booster #1	Santa Fe	NM
52300 Wtr Buckman Booster Sta 4	Buckman Booster #4	Santa Fe	NM
52300 Wtr Buckman Well 1	0 Buckman	Santa Fe	NM
52300 Wtr Bukmn Bster 3 & Well 13	0 Buckman Well 13	Santa Fe	NM



City of Santa Fe
Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: YEAROUT ENERGY SERVICES
COMPANY LLC
DBA: YEAROUT ENERGY SERVICES
COMPANY LLC

Business Location: SF COUNTY
SANTA FE, NM 87501

Owner: KEVIN YEAROUT

License Number: 224758

Issued Date: January 31, 2020

Expiration Date: December 31, 2020

CRS Number: 03260362002

License Type: Business License - Renewable

Classification: Out of Jurisdiction Contractor -
General

Fees Paid: \$10.00

YEAROUT ENERGY SERVICES COMPANY LLC
8501 WASHINGTON ST
ALBUQUERQUE, NM 87113

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Western Assurance Corp. 3701 Paseo Del Norte NE PO Box 94600 Albuquerque NM 87199-4600		CONTACT NAME: Melissa Beauchamp PHONE (A/C, No, Ext): (505)265-8481 FAX (A/C, No): (505)266-3500 E-MAIL ADDRESS: mbeauchamp@westernassurance.com													
INSURED YESCO, DBA: Yearout Energy Services Co., LLC 8501 Washington NE Albuquerque NM 87113		INSURER(S) AFFORDING COVERAGE <table border="1"><tr><td>INSURER A: National Fire Ins. of Hartford</td><td>NAIC # 20478</td></tr><tr><td>INSURER B: Valley Forge</td><td>20508</td></tr><tr><td>INSURER C: Continental Ins Co</td><td>35289</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>		INSURER A: National Fire Ins. of Hartford	NAIC # 20478	INSURER B: Valley Forge	20508	INSURER C: Continental Ins Co	35289	INSURER D:		INSURER E:		INSURER F:	
INSURER A: National Fire Ins. of Hartford	NAIC # 20478														
INSURER B: Valley Forge	20508														
INSURER C: Continental Ins Co	35289														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: 19/20

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			PMT6080031936	12/01/2019	12/01/2020	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 500,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$
	EACH OCCURRENCE	\$ 1,000,000																			
	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000																			
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GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COMP/OP AGG	\$ 2,000,000																				
	\$																				
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BUA6080031970	12/01/2019	12/01/2020	<table border="1"><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td>Medical payments</td><td>\$ 5,000</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$	Medical payments	\$ 5,000				
	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																			
	BODILY INJURY (Per person)	\$																			
	BODILY INJURY (Per accident)	\$																			
PROPERTY DAMAGE (Per accident)	\$																				
Medical payments	\$ 5,000																				
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CUE6080031967	12/01/2019	12/01/2020	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 8,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 8,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 8,000,000	AGGREGATE	\$ 8,000,000		\$								
	EACH OCCURRENCE	\$ 8,000,000																			
	AGGREGATE	\$ 8,000,000																			
		\$																			
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A			WC6080031953	12/01/2019	12/01/2020	<table border="1"><tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER		E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER																				
	E.L. EACH ACCIDENT	\$ 1,000,000																			
	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																			
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				
A	Professional / Pollution Liability			6080169394	12/01/2019	12/01/2020	<table border="1"><tr><td>Policy Limit</td><td>\$3,000,000</td></tr><tr><td>Retention</td><td>\$5,000</td></tr></table>	Policy Limit	\$3,000,000	Retention	\$5,000										
Policy Limit	\$3,000,000																				
Retention	\$5,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Santa Fe PO Box 909 200 Lincoln Ave Santa Fe NM 87504	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Melissa Beauchamp</i>

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STATEWIDE PRICE AGREEMENT

90-000-18-00017AH

STATE OF NEW MEXICO

FOR

Qualified Providers of Energy Performance Contracting Services, ESCO

THIS AGREEMENT is made and entered into by and between the **General Services Department** and the **State of New Mexico**, herein after referred to as the "Agency", and **YEAROUT ENERGY SERVICES CO.**, herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

"Agencies" or "Agency" means eligible governmental entities under the Public Facilities Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23], which are state government, local governments, public schools, higher educational institutions, and other instrumentalities of state government.

"Agreement Administrator" shall mean the State Purchasing Division (SPD) of the General Service Department.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the given date.

"Contract" means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITB) or Request For Proposals (RFP).

"Deliverable" means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

"ECMD" means the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.

"EMNRD" means the Energy, Minerals and Natural Resources Department which is responsible for managing the Whole-building Investments for Sustainable Efficiency (WISE) Program.

"Energy Conservation Measure," or "ECM", means a training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs. More specifically, ECMs that may be proposed by Qualified Providers are stated in the EPC Statute and include:

- a) Insulation of the building structure or systems within the building;
- b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
- c) Automated or computerized energy control systems;
- d) Heating, ventilating or air conditioning system modifications or replacements;

- e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
- f) Energy recovery systems;
- g) Solar heating and cooling systems or other renewable energy systems;
- h) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- i) Energy conservation measures that provide long-term operating cost reductions;
- j) Maintenance and operation management systems that provide long-term operating cost reductions;
- k) Traffic control systems; or
- l) Alternative fuel options or accessories for vehicles.

ECMs may also include "conservation-related cost savings," which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

"Energy Performance Contracting" or "EPC" means a project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.

"ESCO" means Energy Service Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.

"Guaranteed Utility Savings Contracts," means contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.

"Investment-Grade Energy Audit" means a study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.

"Local Public Body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

"New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

"Pre-qualified" means the status of an ESCO or vendor that has been selected through an RFP process, certified by EMNRD as a Qualified Provider, and has established a statewide price agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.

"Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

"Procuring Agency" means any state agency or local public body that chooses to procure products or services under this agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this agreement.

"Products and Services Schedule" refers to the complete list of products and services offered under this agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

"Qualified Provider" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets EMNRD's experience qualifications for energy conservation measures or the Office of the State Engineer for water conservation measures.

"State (the State)" means the State of New Mexico.

"Statewide Price Agreement" means the contract that selected Offerors would execute in order to be deemed a Qualified Provider.

"State Purchasing Agent," or SPA, means the purchasing agent for the State of New Mexico or a designated representative.

"Third-Party Fee" means a one (1) percent fee on the pre-gross receipts tax total of the project cost.

"Utility Cost Savings" means the amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

"Water Conservation Measure," or "WCM", means a training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

"You" and **"your"** refers to **YEAROUT ENERGY SERVICES CO.** "We," "us" or "our" refers to the State of New Mexico, agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

2. SCOPE OF WORK

Pre-qualified Energy Services Companies (ESCOs) will provide Energy Performance Contracting (EPC) services for New Mexico governmental entities ("Agencies" or "Agency"). ESCOs selected through the Request for Proposals (RFP) process and who also enter into statewide price agreements, will each be deemed Qualified Providers through the WISE¹ Program coordinated by the Energy Conservation and Management Division (ECMD) of the Energy, Minerals and Natural Resources Department (EMNRD). ESCOs selected through separate federal, state, or private procurement processes for EPC services are not pre-qualified.

The WISE Program provides a standardized process with direction and accountability for all participants in development, implementation, and measurement and verification of EPC projects by defining roles and responsibilities; formalizing process steps; establishing maximum cost schedules; providing standard contract documents; and establishing measurement and verification guidelines. Qualified Providers are approved to provide proposals to Agencies that may choose to utilize EPC services for upgrading facilities, fleets, and water infrastructure with energy and water conservation measures (ECMs and WCMs). Such EPC services are allowed by the Public Facility Energy Efficiency and Water Conservation Act (**APPENDIX P**) ("EPC Statute"), as amended. The statute citation is New Mexico Statutes Annotated (NMSA) 1978, Chapter 6, Article 23 (6-23).

Eligible Agencies under the EPC Statute are state agencies, K-12 public school districts, higher education governmental entities, municipal and county governments, and other political subdivisions. EPC enables these Agencies to access financing and accomplish energy projects without using capital budgets; project financing costs are offset by energy cost savings. The Agencies and selected Qualified Providers will follow the EPC statute and program guidelines of EMNRD.

The selected ESCOs will commit to the EPC Statute and EMNRD's program guidelines via subsequent contracts with Agencies for specific projects. The term of the Statewide Price Agreement will be four (4) years, with continuation subject to an annual review by EMNRD of each Qualified Provider's performance. The Statewide Price Agreement will contain schedules of markups and fees as stated in the Offeror's RFP response. Compensation to Qualified Providers for specific work projects will be detailed in the resulting contracts with Agencies to implement EPC projects.

Qualified Providers market their services in conjunction with the WISE Program to potential participants. When a potential project is identified, the Qualified Provider shall work with the Agency to engage EMNRD and the WISE Program for project support. The Qualified Provider will be required to develop proposals for potential projects. Agreements established between the Qualified Provider and the Agency, as described in the following, will incorporate current state statutes and directives that directly relate to EPC, including:

- Public Facility Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23] (**APPENDIX P**); and
- Energy Efficiency Standards for Public Buildings, [NMSA 1978, 15-3-36] (**APPENDIX R**).

¹ "Whole-building Investments for Sustainable Efficiency" is the current name of the EMNRD energy efficiency program for public facilities and is supported by the State Energy Program, US Department of Energy.

The selection of ESCOs and subsequent contracting with Qualified Providers serves as a major step to enable Agencies to initiate EPC projects that upgrade facilities and generate avoided energy costs. There are three (3) phases possible in a complete EPC project, after an Agency's selection of a Qualified Provider, as follows:

Phase 1: Investment-Grade Energy Audit and Project Proposal

The selected Qualified Provider and the Agency will execute the Investment-Grade Energy Audit and Project Proposal contract (**APPENDIX L**). This contract sets specific expectations and provides a detailed process for both the Qualified Provider and the Agency. The contract also defines the deliverables to Agency and establishes the basis for the Guaranteed Utility Savings Contract to follow. The Investment-Grade Energy Audit and Project Proposal will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the proposed financing term. A project proposal will present bundled ECMs and WCMs that can be financed through guaranteed savings.

Phase 2: Guaranteed Utility Savings Contract and Implementation

Upon satisfactory completion of the Investment-Grade Energy Audit and Project Proposal, the Agency will have the option to execute a Guaranteed Utility Savings Contract (**APPENDIX N**) with the Qualified Provider to implement the recommended project. The Guaranteed Utility Savings Contract will define the final agreed upon scope of work and all its associated costs and mutual responsibilities between the Qualified Provider and Agency, as well as improvement measures, the equipment and labor costs associated with them, and all guaranteed energy and maintenance cost savings. The Qualified Provider will solicit financing companies on behalf of Agency using the Financing Bid Package (**APPENDIX M**). A separate financing agreement will be developed including Qualified Provider payment schedules and lender financing terms and schedules. Upon execution of the Guaranteed Utility Savings Contract, the Qualified Provider proceeds to final design, construction, and commissioning of the ECMs and WCMs. Qualified provider shall inform EMNRD ECMD of contract execution and the total amount of the contract to initiate an invoice for the third-party fee.

Phase 3: Performance Period

The Performance Period of the Guaranteed Utility Savings Contract begins upon construction completion and project acceptance by Agency. The Guaranteed Utility Savings Contract may include a number of services the Qualified Provider will provide until the end of the contract, including, but not limited to, measurement and verification of savings, the savings guarantee, staff training, and contract maintenance services.

Each of the Agencies has the option to procure services of an ESCO to implement ECMs and WCMs in Agency facilities, which will avoid Agency energy costs. Selected ESCOs that establish Statewide Price Agreements will be deemed Qualified Providers for selection by any of the Agencies. The primary purposes of this Qualified Provider selection process are:

1. To ensure the Qualified Provider meets minimum qualifications and can implement successful EPC projects;
2. To provide each Agency with the opportunity to procure services of a Qualified Provider in a timely and cost-effective way;
3. To increase the number of successful Guaranteed Utility Savings Contracts statewide, as a means to implement comprehensive energy, transportation, and water efficiency projects.

There will be multiple ESCOs selected to become Qualified Providers. Selection will be based on the quality of proposals as determined by the evaluation committee. The number of EPC projects is not pre-determined and inclusion on a statewide price agreement is not a guarantee of engaging in EPC projects. However, it is also possible that the Qualified Provider may be engaged in developing and implementing more than one project at any point in time. The number of EPC projects moving forward for Agency facilities will depend on the subsequent proposals for potential projects, as requested by the Agencies.

3. PAYMENT PROVISIONS

All payments under this agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within fifteen (15) days from the date the procuring agency receives written notice from the contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.

C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the contractor within thirty (30) days after the date of invoice. After the thirtieth (30th) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one half percent (1.5 %) per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the contractor's designated mailing address. Payment on each invoice shall be due within thirty (30) days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.

D. Late Charges - If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than sixty (60) days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be one and one half percent (1.5%) and the corresponding Annual Percentage Rate for the State of New Mexico will be eighteen percent (18%). No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY. This Price Agreement shall begin on date approved by the agency and end four (4) years from the date of approval. The agency reserves the right to renew the Price Agreement on an annual basis by mutual agreement not to exceed a total of four (4) years.

5. DEFAULT

The State reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the State, if the Vendor fails to meet the provisions of this Price Agreement and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

6. TERMINATION

A. For Cause - Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may be amended by mutual agreement of the State Purchasing Agent and the contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the proposal and contract documents.

8. STATUS OF CONTRACTOR

The contractor, and contractor's agents and employees, are independent contractors for the agency and are not employees of the State of New Mexico. The contractor, and contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this agreement. The contractor acknowledges that all sums received hereunder are personally

reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

9. ASSIGNMENT

A. Neither this price agreement, any orders placed under this price agreement, any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this Price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

10. SUBCONTRACTING

The contractor shall not subcontract any portion of any services to be performed under this agreement without written approval from the State Purchasing Agent. The following subcontractor(s) have been approved to supply resources for this agreement

< _____ >.

11. NON-COLLUSION

In signing this agreement, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with the offer submitted to the State Purchasing Agent.

12. INSPECTION OF PLANT

The State Purchasing Agent may inspect, at any reasonable time, during Contractor's regular business hours and upon prior written notice the part of the contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. COMMERCIAL WARRANTY

The Vendor agrees that the tangible personal property or services furnished under this price agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

14. CONDITION OF PROPOSED ITEMS

All proposed items are to be NEW and of most current production, unless otherwise specified.

15. RECORDS OF AUDIT

During the term of this agreement and for three years thereafter, the contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment.

Payment under this agreement shall not foreclose the right of the agency to recover excessive or illegal payments.

16. APPROPRIATIONS

The terms of this agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this agreement. If sufficient appropriations and authorization are not made by the legislature, this agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final.

17. RELEASE

The contractor, upon final payment of the amount due under this agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico, unless the contractor has express written authority to do so, and then only within the strict limits of that authority.

18. CONFIDENTIALITY

Any confidential information provided to or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without prior written approval by the procuring agency.

19. CONFLICT OF INTEREST

The contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

20. APPROVAL OF CONTRACTOR REPRESENTATIVES

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the agency, serving the needs of the State of New Mexico adequately.

21. SCOPE OF AGREEMENT

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

22. NOTICE

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

23. EQUAL OPPORTUNITY COMPLIANCE

The contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this agreement. If contractor is found to be not in compliance with these requirements during the life of this agreement, contractor agrees to take appropriate steps to correct these deficiencies.

24. INDEMNIFICATION

The contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. The contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the agency, its officers or employees.

25. NEW MEXICO EMPLOYEES HEALTH COVERAGE.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

- 1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
- 2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;
- 3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: .

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed

against it); Contractor agrees these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a statewide price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

26. APPLICABLE LAW

This agreement shall be governed by the laws of the State of New Mexico.

27. LIMITATION OF LIABILITY

The contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the agency's, or the procuring agency's, claim. The foregoing limitation does not apply to paragraph 27 of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

28. BINDING ARBITRATION

Any controversy or claim arising between the parties shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

29. INCORPORATION BY REFERENCE AND PRECEDENCE

This agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the contractor's best and final offer; and (3) the contractor's response to the request for proposals.

In the event of a dispute under this agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the agreement in reverse chronological order; (2) the agreement, including the scope of work; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the contractor's best and final offer; and (5) the contractors response to the request for proposals.

30. WORKERS' COMPENSATION

The contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the agency.

31. IMPRACTICALITY OF PERFORMANCE

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

32. INVALID TERM OR CONDITION

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

33. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

34. PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

The contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the agency based upon contractor's trade secret infringement relating to any product or services provided under this agreement, the contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the agency shall:

- A. give the contractor prompt written notice within 48 hours of any claim;
- B. allow the contractor to control the defense of settlement of the claim; and
- C. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- A. provide the agency the right to continue using the product or service and fully indemnify the agency against all claims that may arise out of the agency's use of the product or service;
- B. replace or modify the product or service so that it becomes non-infringing; or,
- C. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the agency to the extent such modification is the cause of the claim.

35. SURVIVAL

The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification; indemnification; and limit of liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

36. DISCLOSURE REGARDING RESPONSIBILITY

The Contractor and/or any of its Principals who seek to enter into a contract greater than twenty thousand dollars (\$20,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agree to disclose whether they, or any principal of their company:

Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

Have within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.

Are presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with, commission of any of the offenses enumerated in Paragraph B of this disclosure.

Have preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied.

- A. Taxes are considered delinquent if both of the following criteria apply:
- 1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - 2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - 3) The taxpayer has within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

The Offeror shall provide immediate written notice to the Procurement Manager or Buyer if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances.

A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of an Offeror is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts. If during the performance of the contract, the contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the contractor must provide immediate written notice to the Procurement Manager or Buyer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

37. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of paragraph 38. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To agency:	Mark Hayden, State Purchasing Agent
Office address:	1100 South St. Francis Drive
(for express carrier	Joseph M. Montoya Building, Rm. 2016
and hand deliveries)	Santa Fe, New Mexico 87505-4108
	(505) 827-0472 (voice); (505) 827-2484 (fax)
	Michael.Saavedra@state.nm.us

For all US Mail use:	P. O. Box 6850
	Santa Fe, New Mexico 87505

To contractor:	YEAROUT ENERGY SERVICES CO.
	8501 Washington St. NE
	Albuquerque, NM 87113
	Alex Montano (505) 999-9025

Either party may change its representative or address above by written notice to the other in accordance with the terms of Paragraph 38. The carrier for mail delivery and notices shall be the agent of the sender.

38. AMENDMENTS

This agreement shall only be amended by written instrument executed by the parties.

39. SUCCESSION

This agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by:

The records of the Taxation and Revenue Department reflect that the contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

NM State Tax ID No.: 03-260-362-002

BY: *Juanita Fiond*

DATE: 5/31/15

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

STATE OF NEW MEXICO
General Services Department

BY: *David Mayan*

TITLE: Director
State Purchasing Agent

DATE: June 18, 2019

CONTRACTOR:
YEAROUT ENERGY SERVICES CO.
8501 Washington St. NE
Albuquerque, NM 87113
Alex Montano (505) 999-9025

Federal Tax ID No.: 14-1421675

BY: *Alex Montano*

TITLE: PRESIDENT

DATE: 5-28-19



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR: ORIGINAL CONTRACT** ☒ or **CONTRACT AMENDMENT** ☐

2 Name of Contractor Yearout Energy Services Company, LLC

3 Complete information requested

☐ Plus GRT

☒ Inclusive of GRT

Original Contract Amount: \$113,480.00

Termination Date: July 1, 2020

☒ Approved by Council

Date: July 31, 2019

☐ or by City Manager

Date: _____

Contract is for: City of Santa Fe Professional Services Contract with Yearout Energy Services Company for Investment-Grade Energy Audit of City Facilities

Amendment # 1 to the Original Contract# 19-0641

Increase/(Decrease) Amount \$ 183,981.91

Extend Termination Date to: December 31, 2020

☒ Approved by Council

Date: _____

☐ or by City Manager

Date: _____

Amendment is for: Add Scope for Solar Engineering, Design and Interconnection, Land Acquisition and FAA Coordination, and Allowance for PNM Supplemental Review

PURCHASING DIVISION
FEB 4 '20 AM 9:48

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments)

☐ Plus GRT

☒ Inclusive of GRT

Amount \$ 113,480* of original Contract# 19-0641 Termination Date: 7/1/2020

Reason: original contract (*please note-NMGRT was rounded up by \$0.16)

Amount \$ 183,981.91 amendment # 1 Termination Date: 12/31/2020

Reason: additional scope, allow for additional expenditures

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 297,461.75*

FEB 5 '20 AM 10:10
RCUD BUDGET

PS 001497



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# _____ Date: _____

RFQ ☐ _____ Date: _____

Sole Source ☐ _____ Date: _____

Other Statewide Price Agreement 90-000-18-00017AH

6 Procurement History: Amending contract to extend 6 months, increase compensation & add saw

Dylan Dunaway CPO 2/5/20
Purchasing Officer Review

Comments or Exceptions: _____

7 Funding Source: FA183200S Solarization of City Facilities **BU/Line Item:** 3209980-400210-572100

[Signature]
Budget Officer Approval

Comments or Exceptions: _____

8 Any out-of-the ordinary or unusual issues or concerns:

(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Caryn Grosse

Phone # 955-5938

10 Certificate of Insurance attached. (if original Contract) ☒

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature

Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

CITY OF SANTA FE OTHER METHOD PROCUREMENT CHECKLIST

Contractor Name: Yearout Energy Services Company, LLC

Procurement Title: Professional Services Contract with Yearout Energy Services Company for Investment-Grade Energy Audit of City Facilities Amendment #1

Other Methods: State Price Agreement ☒ Cooperative ☐ Sole Source ☐ Exempt ☐ Other ☐

Department Requesting/Staff Member: Public Works, Facilities Division, Caryn Grosse, Facilities Project Administrator

Procurement Requirements:

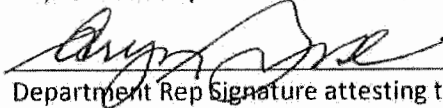
A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Departments Recommendation of Award Memo addressed to Finance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

Caryn Grosse, Facilities Project Administrator

Department Rep Printed Name and Title



Department Rep Signature attesting that all information included

 2/5/20

Purchasing Officer attesting that all information is reviewed

PURCHASING DIVISION
FEB 4 '20 AM 9:48

REQUIRED DOCUMENTS FOR OTHER METHOD FILE*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval of exempt procurement

☐ ☒ Copies of all Sole Source submittals
☐ ☐ Other: _____

AWARD*

YES N/A

☒ ☐ Fully executed Memo to Committees from the Department with recommendation of award
☐ ☐ Other: _____

CONTRACT*

YES N/A

☒ ☐ Copy of Executed Contract
☐ ☐ Copy of all documentation presented to the Committees
☐ ☐ Finalized Council Committee Minutes
☐ ☐ Other: _____

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

Caryn Grosse, Facilities Project Administrator

Department Rep Printed Name and Title



Department Rep Signature attesting that all information included

Memorandum



Buckman Direct Diversion

Date: March 5, 2020
To: Buckman Direct Diversion Board
From: Mackie Romero, BDD Financial Manager *MR*
Subject: Termination Notice of PNM Service Agreements

ITEM:

Termination Notice of PNM Electric Facilities and Services Agreements for service site Booster Station 1A and Raw Water Lift Station.

BACKGROUND:

In 2008 the Buckman Direct Diversion Board entered into an Electric Facilities and Service Agreement with Public Service Company of New Mexico (PNM), for each of our four (4) service entrance locations. These agreements were established with a ten year term and include an Annual On-Peak Energy requirement. This requirement is measured annually from July 1st to June 30th. If the energy usage falls below the requirement, the BDDDB is billed an Unused Facility charge based on the terms set in the agreement.

PNM has submitted two letters of termination for PNM Agreement 1025008, and PNM Agreement 1025007, stating the Unused Facilities requirement for the last year of the initial term has been met and no remaining obligation exists. Therefore these agreements will terminate on June 30, 2020.

There are solar arrays at the remaining service locations, which reduce our annual on-peak energy needs, therefore the Unused Facilities requirement has not been met and will be billed in June.

PNM will continue to provide electrical services under Rate 11B (Water and Sewage Pumping Service).



PNM
Corporate Headquarters
Albuquerque, NM 87158-0605



February 17, 2020

Rick Carpenter
BDD Project Manager
c/o Sangre de Cristo Water Division
P.O. Box 909
Santa Fe, NM 87504-0909

Copy to: Nancy R. Long
Long, Komer and Associates
P.O. Box 5098
Santa Fe, NM 87502-5098

Re: Termination Notice for PNM Electric Facilities and Service Agreement Under Rate 11B
PNM Agreement 1025007

Dear Mr. Carpenter:

Public Service Company of New Mexico ("PNM") and the Buckman Direct Diversion Board ("BDD") are parties to PNM Agreement 1025007, Electric Facilities and Services Agreement Under Rate 11B ("Agreement"). The Agreement is related to the Point of Delivery at BDD Service Entrance 1: Diversion Structure and Raw Water Lift Station. The Agreement is approaching the end of its initial term. This letter serves as the required notice that PNM will terminate the Agreement at the end of the Initial Term.

Per Section 6 of the Agreement as modified by Letter Agreement dated July 28, 2010, the In-Service Date was July 1, 2010. Section 6 of the Agreement provides that the Agreement ends ten years from the In-Service Date, which is defined as the Initial Term. The Agreement can continue after the Initial Term from year to year but allows either party to terminate the Agreement on sixty days written notice.

Pursuant to the Agreement's terms, the Initial Term ends on June 30, 2020. BDD has met its Unused Facilities Charge for the last year of the Initial Term, so there are no remaining obligations under the Agreement. PNM would therefore like to terminate the Agreement on June 30, 2020 and is thus providing the required written notice with this letter.

After June 30, 2020, BDD will continue to receive electric service from PNM under Rate 11B (Water and Sewage Pumping Service – Time-of-Use Rate). A copy of the current Rate No. 11B Rate Schedule is attached for your convenience.

Please let me know if you have any questions about this letter.

Sincerely,

Celestina Blair
Celestina Blair
Strategic Account Manager

cc: Leslie Padilla, Esq.
PNM Law Department

PUBLIC SERVICE COMPANY OF NEW MEXICO (PNM)

ELECTRIC FACILITIES AND SERVICE AGREEMENT UNDER RATE 11B

PNM AGREEMENT 1025007

Under the terms and conditions of this Electric Facilities and Service Agreement ("Agreement"), PNM agrees to install the facilities described herein and provide electric service pursuant to the attached rate schedule and PNM's Rules and Regulations as approved by the New Mexico Public Regulation Commission ("NMPRC").

1. **Customer Name:** Buckman Direct Diversion Board
2. **Point of Delivery:** BDD Service Entrance 1: Diversion Structure and Raw Water Lift Station
Santa Fe County, NM
3. **PNM Account No.** 1025007
4. **Billing Address:** City of Santa Fe Water Division
PO Box 909
Santa Fe, NM 87504-0909

5. **Metering, Service Voltage:** Metering will be at PNM's primary service voltage of 12,470.
6. **Term of the Agreement:** The effective date ("Effective Date") of this Agreement is the date this Agreement is accepted by PNM as noted in the signature block below. The date the Customer initially takes service under Rate 11B shall be July 1, 2011, hereinafter, the "In-Service Date." PNM, however, will endeavor to energize Service Entrance 1 by May 1, 2010, if Customer has completed all work and obtained all approvals and permits in a timely manner. This Agreement shall remain in effect beginning on the Effective Date and ending ten (10) years from the In-Service Date (the "Initial Term") and shall continue thereafter from year to year. Following the Initial Term, either party may terminate this Agreement on sixty (60) days written notice to the other party.
7. **Rate:** Upon the In-Service Date of this Agreement, electric service shall be provided to Customer and will continue under the terms and conditions of PNM Rate 11B (Exhibit "A") and this Agreement.
8. **Facilities Annual On-Peak Energy Requirement:** The Rate 11B annual on-peak energy requirement shall run for ten (10) consecutive years measured from July 1 to June 30 beginning on the In-Service Date and consists of the following two components. The substation annual on-peak energy requirement is 254,040 kWh ("Substation Annual On-Peak Energy Requirement") based upon the unit cost of equipment of \$.019556 per kWh per year, for which the Customer received an investment credit of \$35,171 towards installation of the equipment described in Exhibit "B". The distribution annual on-peak energy requirement is 254,040 kWh ("Distribution Annual On-Peak Energy Requirement"), based upon the unit cost of equipment of \$.011116 per kWh per year, for which the Customer received an investment credit of \$21,930 towards installation of the equipment described in Exhibit "B". The cost to provide the Customer with electric service at Service Entrance 1 from the equipment described in Exhibit B is \$1,001,076. This will result in preconstruction costs to Customer of \$943,974, which shall be due and payable upon the execution of this Agreement.
9. **Unused Facilities Charge:** If during any of the ten (10) consecutive years measured from July 1 to June 30 beginning on the In-Service Date, Customer's actual annual on-peak energy usage ("Actual On-Peak Energy Usage") falls below the Distribution Annual On-Peak Energy Requirement, then Customer shall pay on an annual basis an unused facilities charge ("Annual Unused Facilities Charge") calculated as follows:
 - A) Subtract from the Substation Annual On-Peak Energy Requirement the Actual On-Peak Energy Usage and multiply either (i) the difference (if the difference is greater than zero), or (ii) zero (if the difference is less than zero), by .019556 per KWh per year; PLUS



- B) Subtract from the Distribution Annual On-Peak Energy Requirement the Actual Annual On-Peak Energy Usage and multiply the difference by .011116 per KWh per year.

The Annual Unused Facility Charge will be in addition to the normal annual energy and other base tariff charges.

10. **Liquidated Damages:** In the event that Customer cancels its request for service at the above described service address before the In-Service Date, and PNM has commenced its facility investment (which may include, without limitation, such activities as ordering and otherwise procuring material for the facilities), Customer shall hold PNM harmless for any loss PNM may incur as a result of such cancellation, including without limitation, parts, materials, labor, restocking charges, demolition costs, salvage costs, and the like, and PNM shall bill Customer for all such amounts and such amounts shall become immediately due and payable to PNM by Customer.

If this Agreement or service under this Agreement is terminated by the Customer after the In-Service Date, the Customer shall pay PNM, as fixed and liquidated damages and not as a penalty, the following: the remaining net book value of PNM's equipment investment to serve the customer as reflected in Exhibit "C", attached hereto. The parties agree actual damages would be difficult to ascertain and that the foregoing is a reasonable basis for the calculation of such liquidated damages.

The parties further agree that payment of the foregoing liquidated damages are solely for the purpose of mitigating the installed cost of PNM's equipment investment and shall not release the Customer from any other liabilities or obligations under this Agreement.

11. **Description of Facilities:** PNM shall provide, own, operate, and maintain all PNM facilities, including the distribution equipment described in Exhibit B, necessary to meet the terms of this Agreement within reasonable normal tolerances (hereinafter "Facilities"), but reserves the right, at PNM's own cost and expense, to vary the size and location of the Facilities to meet PNM's own needs in the area; provided, however, that PNM shall not thereby interfere with Customer use of Customer's facilities. Under the Transformer Lease Charge Option, at the Customer's option the Company will provide one distribution transformer not to exceed 1500 kVA in size and one pad mounted switchgear, if required, placed on a pad provided by the customer.

12. **Hold Harmless and Limited Release:** Customer assumes all responsibility for the electric power and energy delivered hereunder after it leaves PNM's lines, as well as for the wires, apparatus and appurtenances used in connection therewith, at and beyond the Point of Delivery (the "Point of Delivery") of power and energy hereunder, and hereby agrees to protect and save PNM harmless for injury or damage to persons or property occasioned by such power and energy, or by such wires, apparatus, and appurtenances at and beyond said Point of Delivery, except where said injury or damage shall be shown to have been occasioned by the negligence of PNM.

PNM and Customer agree that neither Party shall be liable to the other for incidental or consequential damages. PNM and Customer each hereby releases the other, its officers, directors, employees, and agents from any and all liability or responsibility for any loss, damage or injury caused by fire or other casualty for which insurance is carried by the injured party at the time of such loss, damage or injury.

13. **Customer Operations:** The parties recognize that Customer's operations at the site served under this Agreement may necessitate the use of generating equipment. Any generating equipment shall be operated by Customer in a manner such that there will be no resultant back-feed or flow of power and energy into PNM's lines and equipment. Should Customer install facilities at the site served under this Agreement, such that generating equipment will be interconnected and capable of being operated in parallel with the PNM system, Customer will be required to enter into a separate interconnection agreement and PNM's service to Customer shall thenceforth be governed by the then-applicable NMPRC, Federal Energy Regulatory Commission rules and tariffs and PNM rules and interconnection and safety standards governing the interconnection of customer-owned generating facilities.

14. **Franchises, Rights-of-Way, Permits, Etc.:** The agreements of PNM herein contained are conditioned upon securing and retaining any necessary franchises, rights-of-way, and permits. Customer agrees to provide to PNM, free of cost: a) the easements and rights-of-way necessary for the construction of the facilities; b) rights of ingress and egress; and c) and the right of excavation as required for installation, maintenance, repair or replacement of any of the facilities services hereunder. PNM will assist the Customer in securing rights-of-way, if requested, provided Customer pays PNM for such assistance. All easements shall be of public record and, in the case of plats, clearly shown on such plats prior to final recording. Customer agrees to provide grades plus or minus three (3) inches in accordance with the "final grade and drainage plan" of record on all Customer-provided



utility easements and locate lot lines as required by PNM. All costs associated with acquiring or verifying easements and rights-of-way and any relocations due to changes in location of easements, lot lines, or grades, will be at the expense of Customer and will be non-refundable.

15. **General:** Customer agrees to install and maintain in a thoroughly safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of its lines, wiring, apparatus, machinery and appliances connected to PNM's lines. Neither party assumes the duty of inspecting the other party's lines, wiring, apparatus, machinery or appliances, or any part thereof, and shall not be responsible to the other party therefor.

Title to and ownership of all equipment furnished by PNM in order to provide the service hereunder shall remain in the name of PNM at all times regardless of any transfer or encumbrance of the premises and shall at no time become a fixture of the premises.

16. **Regulation:** This Agreement and any amendment hereto, including all tariffs made a part hereof, shall at all times be subject to such change or modification as shall be ordered from time to time by the NMPRC or other legally constituted regulatory agency having jurisdiction and authority to require such changes or modifications.

PNM reserves the right to modify the rates, terms and conditions set forth in Rate 11B at any time, and from time to time, by filing new tariffs with any legally constituted regulatory body, and the rates, terms and conditions of service hereunder shall be deemed modified at such time as such tariff becomes effective. Nothing herein contained shall be construed to prevent or prohibit Customer from asserting or claiming any right before any legally constituted regulatory body to which it may be entitled.

17. **Nonwaiver:** The failure of either party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to relieve such other party from its duty to comply with such obligations in all other instances.

18. **Laws of New Mexico:** This Agreement is made under and shall be governed by New Mexico law.

19. **Successors And Assigns:** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns, but Customer shall not assign any rights under this Agreement without first obtaining the written consent of PNM, which consent shall not be unreasonably withheld.

20. **Notice:** Any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, or by facsimile transmission to the facsimile number to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail, and if sent by facsimile, upon transmission to the intended recipient at the address and to the attention of the person or position specified below.

Customer: Nancy R. Long, Long, Pound &
Komer, P.O. Box 5098, Santa Fe, NM
87502

AND
BDD Project Manager, c/o Sangre de
Cristo Water Division, P.O. Box 909,
Santa Fe, NM 87504-0909
Attention:

PNM:

Large Customer Support

Alvarado Square

Albuquerque, NM 87158-0510

Attention: Tom Bishop

21. **Entire Agreement:** This Agreement shall take effect as of the Date of Acceptance by PNM. This Agreement contains the entire Agreement of the parties concerning the subject matter hereof and supercedes all prior or contemporaneous oral or written agreements, statements and understandings. It is understood and agreed that all representations and agreements between the parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. This Agreement may not be modified or amended except by written instrument executed on behalf of each party by an officer or other duly authorized representative.

BUCKMAN DIRECT DIVERSION BOARD

Signature: [Signature]

Printed Name: Rebecca Wurzbarger

Title: Chair

PUBLIC SERVICE COMPANY OF NEW MEXICO

Signature: [Signature]

Printed Name: JOEL IVY

Title: VP, NM OPERATIONS

Date Accepted: Sep 2, 08

APPROVED AS TO FORM:

[Signature]
Nann M. Winter

Attorney for Board

Sheehan, Sheehan & Stelzner, P.A.

Post Office Box 271

Albuquerque, NM 87103

phone (505) 247-0411

PNM
Corporate Headquarters
Albuquerque, NM 87158-0605



February 17, 2020

Rick Carpenter
BDD Project Manager
c/o Sangre de Cristo Water Division
P.O. Box 909
Santa Fe, NM 87504-0909

Copy to: Nancy R. Long
Long, Komer and Associates
P.O. Box 5098
Santa Fe, NM 87502-5098

Re: Termination Notice for PNM Electric Facilities and Service Agreement Under Rate 11B
PNM Agreement 1025008

Dear Mr. Carpenter:

Public Service Company of New Mexico ("PNM") and the Buckman Direct Diversion Board ("BDD") are parties to PNM Agreement 1025008, Electric Facilities and Services Agreement Under Rate 11B ("Agreement"). The Agreement is related to the Point of Delivery at BDD Service Entrance 2: Sediment Removal and Booster Station 1A. The Agreement is approaching the end of its initial term. This letter serves as the required notice that PNM will terminate the Agreement at the end of the Initial Term.

Per Section 6 of the Agreement as modified by Letter Agreement dated July 28, 2010, the In-Service Date was July 1, 2010. Section 6 of the Agreement provides that the Agreement ends ten years from the In-Service Date, which is defined as the Initial Term. The Agreement can continue after the Initial Term from year to year but allows either party to terminate the Agreement on sixty days written notice.

Pursuant to the Agreement's terms, the Initial Term ends on June 30, 2020. BDD has met its Unused Facilities Charge for the last year of the Initial Term, so there are no remaining obligations under the Agreement. PNM would therefore like to terminate the Agreement on June 30, 2020 and is thus providing the required written notice with this letter.

After June 30, 2020, BDD will continue to receive electric service from PNM under Rate 11B (Water and Sewage Pumping Service – Time-of-Use Rate). A copy of the current Rate No. 11B Rate Schedule is attached for your convenience.

Please let me know if you have any questions about this letter.

Sincerely,

Celestina Blair
Celestina Blair
Strategic Account Manager

cc: Leslie Padilla, Esq.
PNM Law Department

PUBLIC SERVICE COMPANY OF NEW MEXICO (PNM)
ELECTRIC FACILITIES AND SERVICE AGREEMENT UNDER RATE 11B

PNM AGREEMENT 1025008

Under the terms and conditions of this Electric Facilities and Service Agreement ("Agreement"), PNM agrees to install the facilities described herein and provide electric service pursuant to the attached rate schedule and PNM's Rules and Regulations as approved by the New Mexico Public Regulation Commission ("NMPRC").

1. **Customer Name:** Buckman Direct Diversion Board
2. **Point of Delivery:** BDD Service Entrance 2: Sediment Removal and Booster Station 1A
Santa Fe County, NM
3. **PNM Account No.** 1025008
4. **Billing Address:** City of Santa Fe Water Division
P.O. Box 909
Santa Fe, NM 87504-0909

5. **Metering, Service Voltage:** Metering will be at PNM's primary service voltage of 12,470.
6. **Term of the Agreement:** The effective date ("Effective Date") of this Agreement is the date this Agreement is accepted by PNM as noted in the signature block below. The date the Customer initially takes service under Rate 11B shall be July 1, 2011, hereinafter, the "In-Service Date." PNM, however, will endeavor to energize Service Entrance 2 by May 1, 2010, if Customer has completed all work and obtained all approvals and permits in a timely manner. This Agreement shall remain in effect beginning on the Effective Date and ending ten (10) years from the In-Service Date (the "Initial Term") and shall continue thereafter from year to year. Following the Initial Term, either party may terminate this Agreement on sixty (60) days written notice to the other party.
7. **Rate:** Upon the In-Service Date of this Agreement, electric service shall be provided to Customer and will continue under the terms and conditions of PNM Rate 11B (Exhibit "A") and this Agreement.
8. **Facilities Annual On-Peak Energy Requirement:** The Rate 11B annual on-peak energy requirement shall run for ten (10) consecutive years measured from July 1 to June 30 beginning on the In-Service Date and consists of the following two components. The substation annual on-peak energy requirement is 613,200 kWh ("Substation Annual On-Peak Energy Requirement") based upon the unit cost of equipment of \$.019556 per kWh per year, for which the Customer received an investment credit of \$84,895 towards installation of the equipment described in Exhibit "B". The distribution annual on-peak energy requirement is 613,200 kWh ("Distribution Annual On-Peak Energy Requirement"), based upon the unit cost of equipment of \$.011116 per kWh per year, for which the Customer received an investment credit of \$52,352 towards installation of the equipment described in Exhibit "B". The cost to provide the Customer electric service at Service Entrance 2 from the equipment described in Exhibit B is \$1,078,924. This will result in preconstruction costs to Customer of \$941,677, which shall be due and payable upon the execution of this Agreement.
9. **Unused Facilities Charge:** If during any of the ten (10) consecutive years measured from July 1 to June 30 beginning on the In-Service Date, Customer's actual annual on-peak energy usage between the In-Service Date and the end of the Initial Term ("Actual On-Peak Energy Usage") falls below the Distribution Annual On-Peak Energy Requirement, then Customer shall pay on an annual basis an unused facilities charge ("Annual Unused Facilities Charge") calculated as follows:
 - A) Subtract from the Substation Annual On-Peak Energy Requirement the Actual On-Peak Energy Usage and multiply either (i) the difference (if the difference is greater than zero), or (ii) zero (if the difference is less than zero), by .019556 per kWh per year; PLUS

- B) Subtract from the Distribution Annual On-Peak Energy Requirement the Actual Annual On-Peak Energy Usage and multiply the difference by .011116 per KWh per year.

The Unused Facility Charge will be in addition to the normal annual energy and other base tariff charges.

10. **Liquidated Damages:** In the event that Customer cancels its request for service at the above described service address before the In-Service Date, and PNM has commenced its facility investment (which may include, without limitation, such activities as ordering and otherwise procuring material for the facilities), Customer shall hold PNM harmless for any loss PNM may incur as a result of such cancellation, including without limitation, parts, materials, labor, restocking charges, demolition costs, salvage costs, and the like, and PNM shall bill Customer for all such amounts and such amounts shall become immediately due and payable to PNM by Customer.

If this Agreement or service under this Agreement is terminated by the Customer after the In-Service Date, the Customer shall pay PNM, as fixed and liquidated damages and not as a penalty, the following: the remaining net book value of PNM's equipment investment to serve the customer as reflected in Exhibit "C", attached hereto. The parties agree actual damages would be difficult to ascertain and that the foregoing is a reasonable basis for the calculation of such liquidated damages.

The parties further agree that payment of the foregoing liquidated damages are solely for the purpose of mitigating the installed cost of PNM's equipment investment and shall not release the Customer from any other liabilities or obligations under this Agreement.

11. **Description of Facilities:** PNM shall provide, own, operate, and maintain all PNM facilities, including the distribution equipment described in Exhibit B, necessary to meet the terms of this Agreement within reasonable normal tolerances (hereinafter "Facilities"), but reserves the right, at PNM's own cost and expense, to vary the size and location of the Facilities to meet PNM's own needs in the area; provided, however, that PNM shall not thereby interfere with Customer use of Customer's facilities. Under the Transformer Lease Charge Option, at the Customer's option the Company will provide one distribution transformer not to exceed 1500 kVA in size and one pad mounted switchgear, if required, placed on a pad provided by the customer.

12. **Hold Harmless and Limited Release:** Customer assumes all responsibility for the electric power and energy delivered hereunder after it leaves PNM's lines, as well as for the wires, apparatus and appurtenances used in connection therewith, at and beyond the Point of Delivery (the "Point of Delivery") of power and energy hereunder, and hereby agrees to protect and save PNM harmless for injury or damage to persons or property occasioned by such power and energy, or by such wires, apparatus, and appurtenances at and beyond said Point of Delivery, except where said injury or damage shall be shown to have been occasioned by the negligence of PNM.

PNM and Customer agree that neither Party shall be liable to the other for incidental or consequential damages. PNM and Customer each hereby releases the other, its officers, directors, employees, and agents from any and all liability or responsibility for any loss, damage or injury caused by fire or other casualty for which insurance is carried by the injured party at the time of such loss, damage or injury.

13. **Customer Operations:** The parties recognize that Customer's operations at the site served under this Agreement may necessitate the use of generating equipment. Any generating equipment shall be operated by Customer in a manner such that there will be no resultant back-feed or flow of power and energy into PNM's lines and equipment. Should Customer install facilities at the site served under this Agreement, such that generating equipment will be interconnected and capable of being operated in parallel with the PNM system, Customer will be required to enter into a separate interconnection agreement and PNM's service to Customer shall thenceforth be governed by the then-applicable NMPRC, Federal Energy Regulatory Commission rules and tariffs and PNM rules and interconnection and safety standards governing the interconnection of customer-owned generating facilities.

14. **Franchises, Rights-of-Way, Permits, Etc.:** The agreements of PNM herein contained are conditioned upon securing and retaining any necessary franchises, rights-of-way, and permits. Customer agrees to provide to PNM, free of cost: a) the easements and rights-of-way necessary for the construction of the facilities; b) rights of ingress and egress; and c) and the right of excavation as required for installation, maintenance, repair or replacement of any of the facilities services hereunder. PNM will assist the Customer in securing rights-of-way, if requested, provided Customer pays PNM for such assistance. All easements shall be of public record and, in the case of plats, clearly shown on such plats prior to final recording. Customer agrees to provide grades plus or minus three (3) inches in accordance with the "final grade and drainage plan" of record on all Customer-provided utility easements and locate lot lines as required by PNM. All costs associated with acquiring or verifying



easements and rights-of-way and any relocations due to changes in location of easements, lot lines, or grades, will be at the expense of Customer and will be non-refundable.

15. **General:** Customer agrees to install and maintain in a thoroughly safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of its lines, wiring, apparatus, machinery and appliances connected to PNM's lines. Neither party assumes the duty of inspecting the other party's lines, wiring, apparatus, machinery or appliances, or any part thereof, and shall not be responsible to the other party therefor.

Title to and ownership of all equipment furnished by PNM in order to provide the service hereunder shall remain in the name of PNM at all times regardless of any transfer or encumbrance of the premises and shall at no time become a fixture of the premises.

16. **Regulation:** This Agreement and any amendment hereto, including all tariffs made a part hereof, shall at all times be subject to such change or modification as shall be ordered from time to time by the NMPRC or other legally constituted regulatory agency having jurisdiction and authority to require such changes or modifications.

PNM reserves the right to modify the rates, terms and conditions set forth in Rate 11B at any time, and from time to time, by filing new tariffs with any legally constituted regulatory body, and the rates, terms and conditions of service hereunder shall be deemed modified at such time as such tariff becomes effective. Nothing herein contained shall be construed to prevent or prohibit Customer from asserting or claiming any right before any legally constituted regulatory body to which it may be entitled.

17. **Nonwaiver:** The failure of either party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to relieve such other party from its duty to comply with such obligations in all other instances.

18. **Laws of New Mexico:** This Agreement is made under and shall be governed by New Mexico law.

19. **Successors And Assigns:** This Agreement shall bind and inure to the benefit of the parties and their successors and assigns, but Customer shall not assign any rights under this Agreement without first obtaining the written consent of PNM, which consent shall not be unreasonably withheld.

20. **Notice:** Any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, or by facsimile transmission to the facsimile number to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail, and if sent by facsimile, upon transmission to the intended recipient at the address and to the attention of the person or position specified below.

Customer: Nancy R. Long, Long, Pound & Koper, P.O. Box 5098, Santa Fe, NM 87502

AND

BDP Project Manager, c/o Sangre de Cristo Water Division, P.O. Box 909, Santa Fe, NM 87504-0909
Attention:

PNM:

Large Customer Support

Alvarado Square

Albuquerque, NM 87158-0510

Attention: Tom Bishop

21. **Entire Agreement:** This Agreement shall take effect as of the Date of Acceptance by PNM. This Agreement contains the entire Agreement of the parties concerning the subject matter hereof and supercedes all prior or contemporaneous oral or written agreements, statements and understandings. It is understood and agreed that all representations and agreements between the parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. This Agreement may not be modified or amended except by written instrument executed on behalf of each party by an officer or other duly authorized representative.

BUCKMAN DIRECT DIVERSION BOARD

Signature: [Signature]

Printed Name: Rebecca Wurzbarger

Title: Chair

PUBLIC SERVICE COMPANY OF NEW MEXICO

Signature: [Signature]

Printed Name: JOEL IVY

Title: VP, NM OPERATIONS

Date Accepted: SEP 2, 05

APPROVED AS TO FORM:

[Signature]

Nann M. Winter
Attorney for Board
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, NM 87103
phone (505) 247-0411

**PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES**

**20TH REVISED RATE NO. 11B
CANCELING 19TH REVISED RATE NO. 11B**

**WATER AND SEWAGE PUMPING SERVICE—
TIME-OF-USE RATE**

Page 1 of 3

APPLICABILITY: The rates on this Schedule are available to all municipal and private corporations for municipal water and sewage pumping purposes where the combined load is in excess of 2,500 kW.

Service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the New Mexico Public Regulation Commission. These Rules and Regulations are a part of this Schedule as if fully written herein.

TERRITORY: All territory served by the Company in New Mexico.

NET RATE PER MONTH OR PART THEREOF FOR EACH SERVICE LOCATION: The rate for electric service provided shall be the sum of A, B, C, D, and E. On-Peak period is from 8:00 am to 8:00 pm Monday through Friday (60 hours per week). Off-Peak period is all times other than On-Peak period (108 hours per week).

<u>IN THE BILLING MONTHS OF:</u>	<u>June, July, and August</u>	<u>All Other Months</u>	
(A) <u>CUSTOMER CHARGE:</u> (Per Metered Account)	\$455.51/Bill	\$455.51/Bill	x
(B) <u>ENERGY CHARGE:</u>			
On-Peak kWh:	\$0.1634935/kWh	\$0.1021834/kWh	x
Off-Peak kWh:	\$0.0204367/kWh	\$0.0204367/kWh	x

- (C) **FUEL AND PURCHASED POWER COST ADJUSTMENT:** All kWh usage under this tariff will be subject to the Fuel and Purchase Power Cost Adjustment Clause ("FPPCAC") factors calculated according to the provisions in PNM's Rider 23.

The appropriate FPPCAC factors will be applied to all kWh appearing on bills rendered under this tariff.

- (D) **OTHER APPLICABLE RIDERS:** Any other PNM riders that may apply to this tariff shall be billed in accordance with the terms of those riders.
- (E) **SPECIAL TAX AND ASSESSMENT ADJUSTMENT:** Billings under this schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility

Advice Notice No. 545

EFFECTIVE

FEB - 1 2010

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT


Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524202

**PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES**

**20TH REVISED RATE NO. 11B
CANCELING 19TH REVISED RATE NO. 11B**

**WATER AND SEWAGE PUMPING SERVICE--
TIME-OF-USE RATE**

Page 2 of 3

service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

MONTHLY MINIMUM CHARGE: The monthly minimum charge under this Schedule is the customer charge.

METERING VOLTAGE: The above rates are based upon metering at a normal primary voltage of 2,400 volts or higher. The Company reserves the right to meter customer's requirements at the normal available secondary voltage, in which event the billing kWh shall be the metered kWh multiplied by 1.02 to allow for transformer losses.

SERVICE VOLTAGE: The Company will continue to serve existing installations, as of the effective date of this Schedule, at the voltages now furnished. For motor loads to be installed at new locations or additional motor loads to be installed at existing locations, the service voltage to be furnished by Company will be nominally:

For individual loads rated 50 kW or less, 240 volts, three-phase.

For individual loads rated above 50 kW, at the primary voltage available in the area.

For lighting and incidental use at voltages other than above, Company will continue to furnish such special voltages up to the capacity of its existing facilities. For additional requirements at existing locations and for new service locations, customer shall provide the necessary transformers for lighting and other incidental use.

POWER FACTOR: The above rates are based upon the customer's maintaining, at the time of its maximum demand, a power factor as determined by accepted metering standards of not less than 90 percent leading or lagging, and such minimum power factor shall be maintained by customer at each point of service.

INTERRUPTION OF SERVICE: The Company will use reasonable diligence to furnish a regular and uninterrupted supply of energy. However interruptions or partial interruptions may occur or service may be curtailed, become irregular, or fail as a result of circumstances beyond the control of the Company, public enemies, accidents, strikes, legal processes, governmental restrictions, fuel shortages, breakdown or damages to generation, transmission, or distribution facilities of the Company, repairs or changes in the Company's generation, transmission, or distribution facilities, and in any such case the Company will not be liable in damages. Customers whose reliability requirements exceed those normally provided should advise the Company and contract for additional facilities and increased reliability as may be required. The Company will not, under any circumstances, contract to provide 100 percent reliability.

Advice Notice No. 545

EFFECTIVE

FEB -1 2018

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT

Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524202

**PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES**

**20TH REVISED RATE NO. 11B
CANCELING 19TH REVISED RATE NO. 11B**

**WATER AND SEWAGE PUMPING SERVICE--
TIME-OF-USE RATE**

Page 3 of 3

ACCESSIBILITY: Equipment used to provide electric service must be physically accessible. The meter socket must be installed on each service location at a point accessible from a public right-of-way or PNM easement without any intervening wall, fence, or other obstruction.

SUBSTATION AND PROTECTIVE EQUIPMENT: For all existing installations as of April 24, 1972, the Company will continue to furnish the existing substation equipment as now installed. The Company may require the customer to advance a part or all of the cost of facilities required to provide service for new load additions at existing locations or for service at new locations when the load is 50 kW or less and the estimated revenue does not justify the necessary investment.

For service at new locations when the load is greater than 50 kW, all transformers, the necessary distribution structures, voltage regulating devices, lightning arrestors, and accessory equipment required by the customer in order to utilize the Company's service shall be installed, paid for, owned, operated, and maintained by the customer.

The customer shall also provide at his expense suitable protective equipment and devices so as to protect Company's system and its service, to other electric users, from disturbances or faults that may occur on customer's system or equipment. This must include a gang-operated switch capable of interrupting the customer's entire load.

All such substation and protective equipment is to be installed by the customer and shall be of an approved design and shall conform to the Company's standards and Rules and Regulations. The customer shall at all times keep each of the three phases balanced as far as practicable so as not to affect service and voltage to other customers served by the Company. The customer shall not operate any equipment in a manner that will cause voltage disturbances elsewhere on the Company's system.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

TERMS OF CONTRACT: Company reserves the right to require a suitable contract where additional facilities or extensions are required to be furnished by Company to provide additional or enlargement of service at existing or new service locations.

LIMITATION OF RATE: Electric service under this Schedule is not available for standby service and shall not be resold or shared with others.

Advice Notice No. 545

EFFECTIVE

FEB - 1 2018

REPLACED BY NMPRC

BY Commission Order Case #16-00276-UT


Gerard T. Ortiz

Vice President, PNM Regulatory Affairs & Economic Development
GCG#524202

City of Santa Fe, New Mexico

memo

DATE: March 5, 2020

TO: Buckman Direct Diversion Board (BDDDB)

FROM: William H. Schneider, P.G. Water Resources Coordinator 

VIA: Jesse Roach, PhD, P.E. Water Division Director 

ITEM AND ISSUE:

Pursuant to Resolution 2019-56, the Water Division (WD) is proceeding with a 40- and 80-year water planning effort and is further evaluating the technical, engineering and regulatory requirements of a return flow pipeline to the Rio Grande. A status update on these conjunctive efforts will be presented to the BDDDB as an informational item.

BACKGROUND AND SUMMARY:

The primary action items underway, include:

1. The water planning effort (scoping, budgeting, and scheduling) is currently underway with 2 key elements being investigated. The first is integrating the US Bureau of Reclamation (Reclamation) partially funded Santa Fe Basin Study Update with the 40- and 80-year Santa Fe Water Plans (Plans) for improved technical content and consistency. The second key element is City and County staff collaborating to identify synergies with City-County water resources management strategies to meet future supply demands under various growth and climate change scenarios. These synergies include but are not limited to the City-County Amended Water Resources Agreement (WRA), backup water supply for County, sustainable aquifer management, managed aquifer storage "ASR", and potential shared infrastructure initiatives. The City has developed a draft five-year planning cycle to develop the Plans and shared it with County staff for their feedback on February 17th.
2. The return flow strategy continues to explore several feasible reuse alternatives including the engineering design and necessary state and federal permits for a return flow pipeline to the Rio Grande (Pipeline). Over the next 6 months, the WD will seek approval to (a) pursue a contract to complete the engineering design of Pipeline, (b) pursue a competitively bid contract for permitting services to address the numerous permits, including NEPA for the Pipeline, and (c) anticipates notification of an impending Title

XVI grant application with Reclamation seeking funding and technical support for the Pipeline.

3. The City is continuing to meet with stakeholders, regulators, policymakers and other interest groups with the goals and objectives of addressing concerns on environmental, cultural, legal and regulatory matters pertaining to the Pipeline and the City's intentions to fully consume its imported San Juan Chama (SJC) water while lessening its reliance on Santa Fe River sources.

The BDD, as a major authority, will be consulted quarterly, or as-needed, to ensure the City's return flow strategy and the Pipeline comply with all mandates of the BDDB. Significant work still needs to be completed and approvals obtained before the Pipeline is constructed. To that end, additional information is required (engineering design, NEPA, NPDES permit evaluations etc.) and collecting this information will be the emphasis of next steps over the next 6 months.

RECOMMENDED ACTION:

No action requested.

Memorandum



Buckman Direct Diversion

Date: February 25, 2020
To: Buckman Direct Diversion Board
From: Kyle Harwood, BDD Legal Counsel
Subject: BDD Board – LANL MOUs

ITEM AND ISSUE:

As part of the 2020 workplan to develop and execute a new MOU between the BDD Board and LANL, this memo introduces the previous documents relating to the 2010, 2015 and 2017 MOUs.

No action recommended





BUCKMAN DIRECT DIVERSION BOARD

George Rael, Assistant Manager
for Environmental Programs
National Nuclear Security Administration
U.S. Department of Energy
528 35th Street, MS A316
Los Alamos Area Office
Los Alamos, New Mexico 87544

Susan Stiger, Associate Director
for Environmental Programs
Los Alamos National Laboratory
P. O. Box 1663, MS M991
Los Alamos, New Mexico 87545

Subject: LANL Contamination of water resources in Santa Fe County

Dear: Mr. Real and Ms. Stiger:

Thank you for the participation of Paul Huber and Danny Katzman at the Buckman Direct Diversion Board's meeting on October 4, 2007, regarding problems created by the Los Alamos National Laboratory (LANL) historical discharges and releases from waste disposal sites of radioactive and toxic waste to the environment. Thank you also for LANL and DOE staff cooperation with the Buckman Direct Diversion (BDD) project team.

We request commitment and look forward to continued cooperation from the Department of Energy (DOE), LANL, and Los Alamos National Security, LLC, to stop the continued migration of LANL-origin waste to the environment, mitigate the impacts of wastes that have escaped the LANL boundaries and are in the environment at the location of the planned BDD, and otherwise reduce the burdens and costs that these wastes place on our regional drinking water project. We appreciate DOE's and LANL's acknowledgement of these problems, their recognition of the need for and validity of the BDD, and their recognition that the actions we are requesting are appropriate.

For your information, the Buckman Direct Diversion Board was created to govern the Buckman Direct Diversion Project by a State-of-New Mexico approved Joint Powers

Agreement between the City of Santa Fe (City) and Santa Fe County (County). The Board consists of four elected officials and one member of the public. The City and the County are the project owners. The Board directed at its October 4, 2007 meeting that this letter be sent to you. The purpose of the BDD is to provide clean, safe, and reliable drinking water on a sustainable basis to residents of the City of Santa Fe and Santa Fe County. Certain water quality issues, however, that are related to LANL, must be addressed if the BDD Board is to achieve the aforementioned purpose.

Issues

Three different pathways have been identified to date by which LANL-origin contaminants pollute the ground and surface water resources used by the City and County to produce drinking water for their public water system customers. These include:

1. Buried transuranic and other radiological contaminants, such as plutonium, in the Rio Grande sediments deposited in the 1940s through the 1960s in the former river channel (slough) located immediately upstream of the BDD river diversion site;
2. Contaminants in the waters of the Rio Grande, including transuranics, other radiological contaminants, and other toxic wastes, from historical and current releases and waste discharges. Significant amounts of "legacy" contaminants reside in sediments in canyons on the Pajarito Plateau with watersheds that include LANL facilities, waste disposal areas, and historical and current outfalls. We understand that some of the canyon sediment beds and banks are not stable and that the contaminants are mobilized and transported to and down the Rio Grande and thence to the BDD diversion location with water is flowing from Los Alamos Canyon at its confluence with the Rio Grande; and
3. Contaminants that have flowed downward and reached the regional aquifer that underlies LANL and provides water to the Buckman well field.

The BDD Board requests the following LANL actions and programs

The BDD Board voted unanimously at its October 4, 2007 meeting to request that DOE and LANL fund and implement six actions or specific programs to protect public drinking water supplies. Each of these six is generally stated and described below:

1. Stop migration of LANL contaminants to the Rio Grande and to groundwater. We request that LANL stop radioactive and toxic contaminants from flowing into the Rio Grande through the construction of additional sediment barrier and containment systems, improved waste treatment and disposal practices, stabilization and clean-up of sediment beds and banks in the Rio Grande tributary canyons that have received LANL waste discharges, and other appropriate management actions. We believe it is

essential that DOE and LANL stop the further migration to the environment from waste disposal areas of any of the vast mass of dangerous wastes that DOE and LANL have buried or are temporarily storing within LANL boundaries. We acknowledge the discussion by New Mexico Environment Department and LANL representatives at our October 4, 2007 meeting regarding the limits of what may be possible with respect to stopping migration via vadose zone and groundwater pathways of contaminants that have previously been discharged or that have escaped waste disposal or containment areas.

2. Properly monitor the transport of legacy contaminants in both the surface water and groundwater flow systems. We appreciate the review and recommendations that LANL sought and that the National Academy of Sciences provided through the newly published report entitled *Plans and Practices for Groundwater Protection at Los Alamos National Laboratory, Final Report* (2007) many of which address the need for improved monitoring. We understand LANL has taken the position that implementation of some of the recommendations is funding-contingent but we think it is essential that the entire set of recommendations be implemented, at once. We ask that you set an especially high priority on improvements in monitoring the transport of contaminants in the regional groundwater flow toward the Buckman well field and implementation of the recommendations addressing surface water and transport of contaminants from LANL property.
3. Measure the radioactive and toxic contamination of buried sediments containing higher concentrations of post-World War II LANL legacy contaminants now buried in the slough upstream of the BDD diversion site. Determine, through core sampling and analysis of sediment layers near areas where construction will take place, whether or not portions of the BDD diversion facilities as currently aligned will intersect areas with elevated concentrations of these contaminants. Help us determine if minor realignment of project facilities could avoid these discrete areas of contaminated slough sediments. Help us assure that construction worker or public exposure to these radionuclides and other contaminants will not exceed or violate any regulatory requirements.
4. Provide an early warning system so that the BDD can temporarily cease diversion of any water from the Rio Grande when the Rio Grande is expected to contain elevated levels of contaminants of LANL origin. This action has been suggested by LANL staff and has been publicly affirmed by NMED Secretary Curry.
5. Monitor the mass of any LANL-origin contaminants diverted with BDD raw water supplies and account for that mass in water treatment plant residuals and treated drinking water.

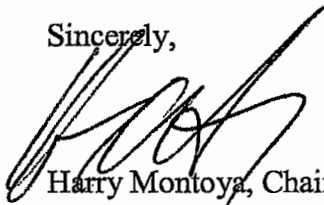
6. Provide funding for the BDD Board to retain independent peer review by qualified persons with regard to matters of LANL-origin contamination of the public drinking water resources of Santa Fe County and the City of Santa Fe.

BDD technical staff representing the BDD will continue to cooperate and work on these issues with NMED and LANL staff. BDD technical staff also will continue to meet with and discuss these issues with interest groups and concerned citizens.

Credibility of these efforts with the public water system customers that will be served by the BDD is very important to the BDD Board. We think that credibility will be fostered by conducting all monitoring and measurement programs with total public transparency extending from development of the monitoring plans to public availability of all the monitoring results. Review and oversight of these efforts including some independent peer review and quality assurance work by the NMED and BDD project resources also is important.

Thank you for your consideration of these requests. We look forward to receipt of your reply and discussion with you to reach agreement on DOE and LANL acceptance and commitment to implement these requests.

Sincerely,



Harry Montoya, Chair
Buckman Direct Diversion Board

c: BDD Board Members
City of Santa Fe Mayor, David Coss
Paul Huber
Danny Katzman
New Mexico Environment Department Cabinet Secretary, Ron Curry
BDD Project Manager, Rick Carpenter

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT
OF ENERGY AND THE BUCKMAN DIRECT DIVERSION BOARD
REGARDING WATER QUALITY MONITORING

A. PURPOSE

To establish roles and responsibilities with regard to coordination of monitoring activities by Los Alamos National Laboratory ('LANL') and the Department of Energy ('DOE') in Los Alamos Canyon, Pueblo Canyon, and the Rio Grande in relation to operation of the Buckman Direct Diversion Project ('BDD Project').

B. PARTIES

The parties to this Memorandum are the Buckman Direct Diversion Board ('BDD Board') and the U.S. Department of Energy ('DOE').

C. AUTHORITIES

1. Both parties represent that they have the authority to enter into this Memorandum and are able to meet the respective commitments herein to the extent permitted by law.

2. Department of Energy. The U.S. Department of Energy is authorized to enter into this Memorandum pursuant to the Atomic Energy Act, as amended (Title 42 U.S.C. 2011, et seq.).

3. BDD Board. The BDD Board is authorized to enter into this Memorandum pursuant to the March 7, 2005, Joint Powers Agreement between Santa Fe County and the City of Santa Fe and associated state, county and municipal laws related thereto.

D. BACKGROUND

1. The BDD Project is designed to divert water from the Rio Grande for use by the City and County of Santa Fe water utilities in the Santa Fe area and will provide a source for the water supply systems of Santa Fe County, the City of Santa Fe and Las Campanas, LLP ('BDD Project partners'). The water to be diverted is comprised of San Juan-Chama Project water (a U.S. Bureau of Reclamation interbasin water transfer project) and native New Mexico state waters regulated by the State of New Mexico.

2. The planned point of diversion for the BDD Project is located on the east bank of the Rio Grande in northern New Mexico, near the historic Buckman townsite. The point of diversion is approximately 15 miles northwest of the City of Santa Fe and is located about three miles downstream from the confluence of the Rio Grande and Los Alamos Canyon (where Route 502 crosses the Rio Grande at the Otowi Bridge).

3. LANL is located on the Pajarito Plateau above the Los Alamos/Pueblo Canyon (LA/P Canyon) system. The LA/P Canyon system intermittently and infrequently flows to the Rio Grande just below the Otowi Bridge and upstream of the BDD Project planned point of diversion. The LA/P

1 watershed contains sediments with LANL-origin contamination from historic releases from LANL.
2 These sediments could transport to the Rio Grande during infrequent intermittent flows. The LA/P
3 Canyon watershed has been investigated under the Compliance Order on Consent with the New
4 Mexico Environment Department, and measures (including infrastructure) to reduce the transport
5 of contaminated sediments have been implemented.

6 4. The New Mexico legislature encouraged the BDD Board and DOE to memorialize their
7 agreement to certain activities relating to the mitigation and monitoring of LANL origin water quality
8 contaminants. The New Mexico legislature passed resolutions in 2009 and 2010, and this
9 Memorandum will address the issues contained in those memorials.

10 5. In 2007, the BDD Board requested a written agreement with LANL and DOE, and this
11 Memorandum represents a resolution of the surface water issues requested by the BDD Board.
12 This Memorandum represents an agreement between the parties that water quality management
13 and monitoring are mutual priorities and the activities described in this Memorandum are consistent
14 with, and will be carried out subject to, the policies, regulations, and applicable laws that pertain to
15 the parties.

16 6. This Memorandum describes sampling and reporting activities relating to LANL-origin water
17 quality contaminants that will be performed in support of the BDD Project and the diversion of
18 drinking water from the Rio Grande.

19 7. The Agreement Principles outlined in this Memorandum will be utilized by the public and the
20 BDD Board to inform the operation of the BDD Project, and will provide information that will guide
21 the future water quality policies and priorities of the parties.

22 **E. AGREEMENT PRINCIPLES**

23 **1. LA/P Canyon Early Notification Gaging System**

24 Purpose: The purpose of the early notification system is to provide real time streamflow data to the
25 BDD Project at the following locations:

- 26 • Station E060 in Pueblo Canyon above the Los Alamos Canyon confluence,
- 27 • Station E050 in Los Alamos Canyon above the Pueblo Canyon confluence, and
- 28 • Station E110 in lower Los Alamos Canyon above its confluence with the Rio Grande.

29 Real-time stream flow data from these stations will enable the BDD Project to make decisions
30 regarding facility operations, including temporarily ceasing diversion of water from the Rio Grande.

31 Description: The components of the early notification system include three stations each equipped
32 with gaging (flow measurement) capabilities, real-time conveyance of stream-flow data, and
33 automated stormwater samplers. Station E110 will also be equipped with camera capabilities or
34 some other means of confirming real-time flow events, as permitted by the Pueblo of San Ildefonso.
35 The early notification system also includes DOE transmittal to the BDD Project any rain gage data
36 that DOE and/or LANL have available for DOE property in the Los Alamos Canyon watershed, as

soon as practical. The BDD Project will provide DOE a list of recipients to receive this notification electronically.

System Design/Performance Standards: Flow measurements at the gaging stations shall be measured within a trapezoidal supercritical-flow flume design as reported in "Techniques of Water-resources Investigations of the United States Geological Survey, Chapter A14, Use of Flumes in Measuring Discharge" (F.A. Kilpatrick and V.R. Snyder, 1983). This flume is designed to accurately measure stream flows between approximately 1 and 350 cubic feet per second (cfs). The system shall be capable of a low flow trigger stage of 5 cfs (and will be capable of being programmed later to a different trigger level, as agreed to by BDD and DOE in the Biannual Review Process described below). The amount of time from when a station triggers to when the notification is available to the BDD Project will be as quickly as is practical (see Appendix A for specifications).

Telemetry Performance Standard: See Appendix A.

Maintenance, Inspection, Repair and Replacement: DOE shall maintain the early notification system as necessary to support the purpose and performance standards described above. The gaging stations shall be inspected once per month and after each flow event throughout the year. Maintenance activities will be performed in accordance with LANL standard operating procedures listed in Appendix A, and includes: ensuring data logger is powered up and operational, manual data retrieval is functioning, load testing of battery and replacement of battery if needed, removing snow from solar panel in winter months if needed, removing debris from stream channel if needed, performing discharge measurement direct or indirect or ice measurement if required, checking datum and reference point levels when required. In the event that any station is not functioning, DOE shall immediately notify the BDD Project and repair the station so the time period of inoperability shall be as short as possible. The inspections and repair schedule will be contingent on safe working conditions. If the period of inoperability has exceeded or is expected to exceed 72 hours for flow measurement equipment, or exceeded or will exceed 48 hours for telemetry equipment, DOE will communicate as quickly as practical via e-mail a written description of the station's inoperability to the BDD Project, including a description of the activities and the schedule necessary to restore operability based on best estimate of availability of equipment and personnel. DOE is responsible for all equipment necessary to measure and transmit the flow information, and the BDD Board is responsible for all equipment necessary to receive the flow information.

2. LA/P Canyon Storm Water Quality Sampling System

Purpose: To provide water-quality contaminant sampling data from flow events at the stations described above in order to characterize contaminants in LA/P Canyon flows.

Description: The components of the event sampling system include three stations each equipped with automated samplers that will be triggered by the occurrence of runoff at these stations as described below. DOE will fund all sampling activities for this water quality system.

System Design/Performance Standards: The samplers shall be capable of collecting samples from flows greater than 5 cfs. The analyte list for the samplers is contained in Appendix A of this Memorandum and is generally consistent with, but contains negotiated changes to, the NMED-approved Los Alamos and Pueblo Canyons Sediment Transport Monitoring Plan for storm-water

1 monitoring in LAMP Canyon. Consistent with the NMED approved workplan, sampling will be
2 conducted from June to October of each year at each of the three gages. The parties will review
3 the available data, the analyte list and the sampling protocols (e.g. trigger stage, sample collection
4 process, etc.) during the Biannual Review process and can consider changes in accordance with
5 the Memorandum amendment provision and Biannual Review process described below. DOE will
6 notify BDD of any changes to the NMED-approved workplan. The collection and processing of
7 samples will be conducted in accordance with LANL standard operating procedures (SOPs) listed
8 in Appendix A.. The analytical methods are established by contract with DOE's analytical service
9 providers and will follow EPA guidelines and methods.

10 Maintenance, Inspection, Repair and Replacement: DOE shall maintain the event sampling
11 system as necessary to support the purpose and performance standards described above. The
12 samplers shall be inspected no less than weekly from June to October of each year, and after each
13 flow event and/or 72 hours between flow events to collect samples. General maintenance will be
14 performed in accordance with LANL SOPs listed in Appendix A, and will include ensuring sampler
15 is powered up and operational, load testing of battery and replacement of battery, inspection of
16 sampler pump tubing, line, and intake to ensure no air leaks, cracks or plugs, and test sample
17 collection cycle to ensure correct programming, tripping and volumes are correct. In the event that
18 any station is not functioning, DOE shall immediately notify the BDD project and repair the station
19 so the time period of inoperability shall be as short as possible. The inspections and repair
20 schedule will be contingent on safe working conditions. If the period of sampler inoperability has
21 exceeded or is expect to exceed 48 hours, DOE will communicate as quickly as practical via email
22 a written description of the station's inoperability to the BDD Project, including a description of the
23 activities and the schedule necessary to restore operability based on a best estimate of availability
24 of equipment and personnel.

25 **3. Rio Grande at BDD Project location Sampling Program**

26 Purpose: To provide event-based sampling of change in stage in the Rio Grande or when triggered
27 by notification of flows in Los Alamos Canyon at the E110 Gaging Station.

28 Description: The components of the sampling system include a dedicated sampling station
29 equipped with an automated sampler that can be triggered on a regular schedule, and that can
30 also be triggered by notification of Los Alamos Canyon flows at the E110 Gaging Station. DOE will
31 fund the installation of a sampler as described in Appendix A which will be capable of sampling
32 E110 gage triggered events, stage actuated events and other sampling schedules. Irrespective of
33 the procurement process used to acquire and install the sampler (see Appendix A), the BDD Board
34 shall take title to the sampling system at no cost, and shall thereby own and operate the sampling
35 system. DOE will fund up to 30 sampling events in the 5 year term of this Memorandum, as
36 determined by the BDD Board, and for those analytes described in Appendix A.

37 System Design/Performance Standards: The analyte list for this location is contained in Appendix
38 A of this Memorandum. The parties will review the analyte list and sampling protocol during the
39 Biannual Review process and will make changes in accordance with the Memorandum amendment
40 provision and Biannual Review process described below. The parties will exchange information
41 and seek to keep the Appendix A analyte list generally consistent with, but containing negotiated
42 changes to, the NMED sampling programs on the Rio Grande, however such changes will require

the consent of both parties. The BDD Board will be responsible for the collection of samples in accordance with standard operating procedures to be developed with DOE and NMED.

Maintenance, Inspection, Repair and Replacement: DOE will fund the maintenance, inspection, repair and replacement of the sampler as described in Appendix A. The BDD Board shall own and operate the sampling system, and thereby be responsible for the maintenance, inspection, repair and replacement of the system and its components.

4. Rio Grande Contaminant Fate Analysis

DOE will fund for a one year period the analytes listed in Appendix A for: 1. the raw Rio Grande water at the BDD Project location, 2. the sediment return line of the BDD Project and, 3. the finished water produced by the BDD Project Water Treatment Plant. These samples will be monthly composites of flow weighted daily sampling. The BDD Board will be responsible for the collection of samples in accordance with standard operating procedures to be developed with DOE and NMED.

5. Data Sharing

DOE shall be responsible for all costs associated with sampling analyses described in this Memorandum.

Analytical results of E050 and E060 sampling will be made available to the BDD Project via the RACER database (the Risk Analysis, Communication, Evaluation, and Reduction project is managed by the NM Community Foundation) within 30-60 calendar days after DOE receives sampling results from the analytical laboratory. Analytical results for E110 sampling will be made available as soon as practicable within the constraints of the agreement between DOE and Pueblo de San Ildefonso governing the collection and reporting of such data. Paper copies of the data will also be transmitted to the BDD Project within 90 days after DOE receives sampling results and validation from the analytical laboratory.

Analytical results of Rio Grande at BDD Project location and Rio Grande Contaminant Fate sampling programs will be provided directly to the BDD Project and DOE as soon as they are available.

6. Coordination

DOE and the BDD Project Manager will coordinate with Pueblo de San Ildefonso and the New Mexico Environment Department on any issues related to the implementation of this Memorandum, and will engage in any consultation required to accomplish the purposes of this Memorandum.

7. BDD Project Rio Grande Diversion Records

The BDD Project will make records available to the DOE when diversions have ceased, and this information shall be used in the Biannual Review process to identify changes to Appendix A, however such changes will require the consent of both parties.

8. Biannual Review

The BDD Project Manager and DOE staff shall meet twice annually to review the functioning of the early notification system and sampling programs, in March and September of each year. During this Biannual Review process, changes can be made only to Appendix A (with a presumption that such changes will be consistent with changes to the NMED approved sampling plan for LA/P Canyons), provided however that such changes will require the consent of both parties. The parties shall endeavor to keep the sampling conducted pursuant to this Memorandum consistent with changes to NMED sampling programs, subject to the provisions that govern changes to Appendix of this Memorandum. The Los Alamos Site Office Environmental Program Manager and BDD Project Manager are authorized to make such changes, provided a written Appendix A amendment is approved and executed by the authorized representatives of the parties. Any changes to this Memorandum outside of the scope of Appendix A must be made through an amendment to this Memorandum as described below and executed in the same manner as this Memorandum.

F. Contacts

All notices, correspondence and communication arising under this Memorandum shall be provided to the representatives listed below, and any notice, demand, request, or information authorized or related to this Memorandum shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed (with confirmation of transmittal) as follows:

DOE

Los Alamos Site Office
George Rael
Manager
Environmental Projects Office
Los Alamos Site Office/NNSA/DOE
phone: 505-606-0397
cell: 505-690-0734
grael@doeal.gov

with a copy to:

DOE Counsel
Silas DeRoma
phone: 505-667-4668
email: sderoma@doeal.gov

BDD Board

BDD Project Manager
Rick Carpenter
Sangre de Cristo Water Division, City of Santa Fe
801 San Mateo Road
Santa Fe, NM 87505
cell: 505-660-5696
email: rrcarpenter@santafenm.gov

with a copy to:

BDD Board Counsel
Nancy Long
Long, Pound and Komer
2200 Brothers Road
PO Box 5098
Santa Fe NM 87502
cell: 505-470-2158
email: nlong@nm.net

G. Period of Agreement, Modification, or Termination

1. This memorandum is effective upon the signature of the BDD Board and DOE as shown below. This agreement shall expire five years from the date of the last signature, or may be terminated earlier as described below.
2. The BDD Board and DOE may modify this Memorandum by written amendment and in the same manner as this Memorandum was executed. This Memorandum may not be amended or superceded by other formal agreements without the consent of the parties.
3. The BDD Board and DOE may terminate this Memorandum by mutual written consent, and a party's intent to seek termination shall be provided to the representatives listed with 90 days notice.
4. If this Memorandum has not been terminated before the date of expiration and the parties agree, this Memorandum shall continue without interruption in full force and effect until amended, superceded or terminated by the parties.

H. Other Provisions

1. Nothing in this Memorandum is intended to conflict with current requirements of the parties or applicable laws. Any such conflicting term shall be invalid, but the remainder of the Memorandum shall remain in effect. If a term is deemed invalid, the parties shall immediately review the Memorandum and take appropriate action, including amendment or termination of the Memorandum. The activities described in this Memorandum are consistent with, and will be carried out subject to, all known policies, regulations, and applicable laws that pertain to the parties.
2. If the parties disagree over how to interpret this Memorandum, representatives of the parties shall notify and present their differences to each other in writing in order to reconcile the dispute. If the parties fail to resolve their differences within 30 days, the BDD Project Manager and Los Alamos Site Office Environmental Projects Office Manager shall prepare a written description of the dispute and the BDD Board Chair and DOE Environmental Programs Manager shall meet to reconcile the dispute. These representatives shall use efforts such as negotiation, facilitation and mediation to resolve the dispute.
3. This Memorandum in no way restricts the parties from participating in any activity with other public or private agencies, organizations, or individuals.

4. Activities described in this Memorandum are subject to the availability of appropriated funds. The BDD Board and Los Alamos Site Environmental Projects Office Manager shall make the appropriation of funds for the activities described in this Memorandum a priority when seeking regular or project specific funding requests.

5. This Memorandum describes the basis on which the parties will cooperate on the topics described herein. This Memorandum is not a financial obligation that serves as a basis for expenditures, and any financial obligations necessary to carry out the activities described herein shall be addressed in other documents internal to each party. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise will be provided by each party as necessary to fulfill its obligation under this Memorandum.

6. This Memorandum is neither a fiscal nor a funds obligation document. Nothing in this Memorandum authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Any requirement for the payment or obligation of funds by DOE established by the terms of this Memorandum shall be subject to the availability of funds and Secretarial discretion, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. §1341.

7. This Memorandum is not legally enforceable and shall not be construed to create any legal obligation on the part of either party. This Memorandum shall not be construed to provide a private right, or cause of action, for or by any person or entity.

NOW, in witness whereof, each of the BDD Board and DOE has caused this Memorandum to be executed and delivered by its duly authorized representatives as of the last date shown below,

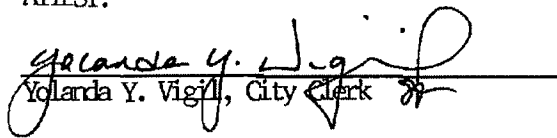
BDD Board


Rebecca Wurzbürger, BDD Board Chair, DATE

DOE


Dr. Frances Triay, Assistant Secretary for Environmental Management, Department of Energy, DATE

ATTEST:


Yolanda Y. Vigil, City Clerk

Appendix A

The tables that follow the text below contain the analytes that will be sampled in accordance with this Memorandum.

Regarding LA/Pueblo Canyon Telemetry:

1. Telemetry used to communicate flow data from the gaging stations to the BDD shall be designed to provide a received signal level at each receiver with a fade margin of no less than 25 dBm above the equipments receiver threshold. Telemetry equipment shall include battery backup sized to provide a minimum 12 hour operation after failure of primary power. Battery run time shall be calculated in a mode of operation consistent with frequent data transmission during a slow event.
2. LA/P Canyon flow confirmation at the E110 gauging station: [This section contingent on Pueblo de San Ildefonso review and approval]
3. The amount of time between a station trigger and when notification is available to the BDD Project will be as short as is practical, with a goal not to exceed 1 minute.

Regarding LA/Pueblo Canyon water quality sampling:

1. The goals of the sampling strategy are to collect data that represent variations in contaminant concentrations and suspended sediment concentration (SSC) within runoff events across a typical hydrograph for each location (Monitoring Plan for LA/P Canyon Sediment Transport Mitigation Project (LA-UR-09-6563)).
2. Each of the gages will be monitored continuously for stage. Samples at E050, E060, and E110 will be triggered by 5-cfs flows to ensure sampling at flows that may extend to the Rio Grande (Monitoring Plan for LA/P Canyon Sediment Transport Mitigation Project (LA-UR-09-6563)).
3. Prioritization of analytes if water volume is insufficient to fulfill suite: PCBs, gamma spec, iso pu, Sr-90, dioxin/furans, target analyte list metals, gross alpha, iso u, Am-241 (alpha spec), SSC
4. E110 will be analyzed for filtered and unfiltered TAL Metals and radionuclides.
5. All event exceeding 5 cfs at E050, E060 and E110 will be analyzed for the following parameters.

Regarding Rio Grande at Buckman Sampler:

The sampler will have functionality sufficient to receive a telemetry signal from early warning and operator triggered, stage & flow actuator, flowlink software, datalogger, and the ability to integrate a parallel NMED sampler.

The BDD Board and DOE agree to apply for and utilize a DOE grant to fund the maintenance, inspection, repair and replacement of the Rio Grande at Buckman sampler described above in this Appendix and in the Memorandum of Understanding. If such a grant is not available by October 1, 2010 then DOE agrees to install, implement and operate this sampler. Furthermore, and until the Rio Grande at Buckman sampler is operational, DOE agrees to equip the existing NMED sampler located at Buckman with the capability to receive a telemetry signal from the E110 gage as soon as practical following the execution of this MOU. The BDD Board will be responsible for all permit requirements and will provide DOE with a statement of work and a cost estimate for the sampler by June 1, 2010.

Regarding all detection limits in the analyte tables that follow:

Values will be reviewed at the first Biannual Review meeting, using the following principles: Method reporting limits for sample analyses for each medium shall be established at the lowest level practicable for the method and analyte concentrations and shall not exceed soil, groundwater, surface water, or vapor emissions background levels, cleanup standards, and screening levels. The preferred method detection limits are a maximum of 20 percent of the background, screening, or cleanup levels. Detection limits that exceed established soil, groundwater, surface water, or air emissions cleanup standards, screening levels, or background levels and are reported as "not detected" shall be considered data quality exceptions and an explanation for the exceedance and its acceptability for use shall be provided. (section IX.C.3.c Method Reporting Limits from the Consent Order).

**Table 1: Standard Operating Procedures for the
BDD/DOE Memorandum of Understanding**

SOP Number/Title	Application			
	Stream Gage/Sampler Maintenance	LA/P Canyon Storm Water Quality Sampling	Rio Grande at BDD Project Location Sampling	Rio Grande Contaminant Fate Analysis
LANL Procedures				
SOP-5213 Collecting Storm Water Runoff Samples and Inspecting Samplers ¹	✓	✓		
SOP-5214 Installation, Setup, and Maintenance of ISCO Samplers		✓		
SOP-5215 Processing Storm Water Samples		✓		
EP-ERSS-SOP-5057 Handling, Packaging and Transporting Field Samples		✓		
SOP-5255 Shipping of Environmental Samples by the WES Sample Management Office (SMO)		✓		
ENV-WQH-SOP-009.3 Operation and Maintenance of Stream Gaging Stations	✓			
BDD Procedures				
BDD SOPs			✓	✓

¹Or equivalent SOP used by DOE contracted sampling subcontractors.

Table 2: Los Alamos/Pueblo Canyon Storm Water Quality Sampling

Analytes	Method	Detection Limit	Field Prep Code
SSC	EPA:160.2	3 mg/L	UF
TAL metals (23), plus Hg	EPA:200.7, EPA: 200.8, EPA:245.2	0.2 – 300 mg/L	F, UF
hardness	SM:A2340B	2 mg/L	UF
Gross alpha	EPA:900	3 pci/L	F, UF
Gross beta	EPA:900	3 pci/L	F, UF
Sr-90	EPA:905.0	0.5 pci/L	F, UF
Am-241	HASL-300:AM-241	0.05 pci/L	F, UF
Gross gamma	EPA:901.1	15 pci/L	F, UF
Cs-137	EPA:901.1	5 pci/L	F, UF
Co-60	EPA:901.1	5 pci/L	F, UF
Na-22	EPA:901.1	10 pci/L	F, UF
Np-237	EPA:901.1	40 pci/L	F, UF
K-40	EPA:901.1	75 pci/L	F, UF
Pu (isotopic)	HASL-300:ISOPU	0.05 pci/L	F, UF
U (isotopic)	HASL-300:ISOU	0.05 pci/L	F, UF
dioxin-furans	SW-846:8290	0.2 – 0.5 pg/L	UF
PCBs	EPA 1668A-Congener Method	20 – 150 pg/L	UF
Ra-226 & -228	EPA:903.1 & EPA:904.4	1 pci/L	F, UF

Table 3: Rio Grande at BDD Project Location Sampling Program

Analytes	Method	Detection Limit	Field Prep Code
Gross alpha	EPA:900	3 pci/L	F, UF
Gross beta	EPA:900	3 pci/L	F, UF
Sr-90	EPA:905.0	0.5 pci/L	F, UF
Am-241	HASL-300:AM-241	0.05 pci/L	F, UF
Gross gamma	EPA:901.1	15 pci/L	
Cs-137	EPA:901.1	5 pci/L	F, UF
Co-60	EPA:901.1	5 pci/L	F, UF
Na-22	EPA:901.1	10 pci/L	F, UF
Np-237	EPA:901.1	40 pci/L	F, UF
K-40	EPA:901.1	75 pci/L	F, UF
Pu (isotopic)	HASL-300:ISOPU	0.05 pci/L	F, UF
U (isotopic)	HASL-300:ISOU	0.05 pci/L	F, UF
Ra-226, -228	903.1, 904	1 pci/L	F, UF
TAL metals (23), plus Hg	EPA:200.7, EPA: 200.8, EPA:245.2	0.2 – 300 mg/L	F, UF
TDS	EPA:160.1	10 pci/L	F
TOC	SW-846:9060	1 mg/L	UF
SSC	EPA:160.2	3 mg/L	UF
dioxin-furans	SW-846:8290	0.2 – 0.5 pg/L	UF
PCBs	SW-846:8082	0.2 ug/L	UF
PCBs	EPA 1668A-Congener Method	20 – 150 pg/L	UF
PADS-particle size analysis	ASTM C-1070-01	0.1 %	UF
perchlorate	SW846 6850 Modified	0.2 mg/L	UF

Table 4: Rio Grande Contaminate Fate Analysis

Analytes	Method	Detection Limit	Field Prep Code
Gross alpha	EPA:900	3 pci/L	F, UF
Gross beta	EPA:900	3 pci/L	F, UF
Sr-90	EPA:905.0	0.5 pci/L	F, UF
Am-241	HASL-300:AM-241	0.05 pci/L	F, UF
Gross gamma	EPA:901.1	15 pci/L	F, UF
Cs-137	EPA:901.1	5 pci/L	F, UF
Co-60	EPA:901.1	5 pci/L	F, UF
Na-22	EPA:901.1	10 pci/L	F, UF
Np-237	EPA:901.1	40 pci/L	F, UF
K-40	EPA:901.1	75 pci/L	F, UF
Pu (isotopic)	HASL-300:ISOPU	0.05 pci/L	F, UF
U (isotopic)	HASL-300:ISOU	0.05 pci/L	F, UF
Ra-226, 228	903.1, 904	1 pci/L	F, UF

Memorandum of Agreement between the Buckman Direct Diversion Board and the Pueblo de San Ildefonso

A. Introduction

This Memorandum of Agreement (MOA) is made between the Pueblo de San Ildefonso (Pueblo), a federally recognized Indian Tribe, and the Buckman Direct Diversion Board ("BDDDB") (henceforth, "Parties" or "Party" for the singular). The purpose of this MOA is to document the cooperation between the Parties and establish and document procedures for access to Pueblo Lands and information, data sharing, sampling, and responding to inadvertent discoveries, and to formalize a process for government-to-government relations between the Parties. This MOA shall be used by the Parties to facilitate the Pueblo's involvement in the BDDDB's activities on Pueblo Lands, including, but not limited to, monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project) that may affect water quality in the Rio Grande River or groundwater for the region.

The intent of this MOA is to facilitate a cooperative effort regarding BDDDB's activities on Pueblo Lands, including but not limited to, environmental surveillance, within the exterior boundaries of the Pueblo (Pueblo Lands). The purpose of this MOA is to provide a procedure by which the Pueblo and BDDDB will coordinate and carry out BDDDB activities, including but not limited to the BDDDB's sampling program. The MOA addresses only those responsibilities and functions that must be coordinated.

B. Project Description

The BDDDB desires to conduct environmental monitoring and sampling on Pueblo Lands. Samples of water and soil materials are needed to evaluate the potential impacts environmental changes on Pueblo and LANL/DOE lands have on the BDDDB facility operations. The parties shall develop an annual sampling plan by March 1 of each year. The most recent agreed upon sampling plan will remain in effect if a new plan is not agreed upon by March 1 of each year. This sampling plan is included as Appendix A to this MOA. Generally, the annual sampling plan shall contain a schedule of sampling locations and, to the extent practicable, sampling criteria and constituents for which the samples will be tested, reporting procedures, and disclosure of whether the sampling will involve ground disturbing activities, to ensure adequate information is collected and duplicative efforts are minimized. The amount of sampling performed each year will be dependent on available funding to support sampling.

Changes to the sampling plan, attached as Appendix A to this MOA, may be made by mutual agreement of the parties without formal modification of this MOA.

While the sampling program is of immediate interest to the BDDDB, the Parties anticipate that the BDDDB may desire to conduct other activities beyond the scope of a sampling program, such as flow measurements, collaborative studies, educational outreach, construct or place permanent or

temporary sampling equipment etc. In such an event, this MOA is designed to apply to any other activities that the BDDDB desires to conduct on Pueblo Lands. This MOA facilitates the Pueblo's involvement in the BDDDB's activities and anticipates the BDDDB's need to access Pueblo Lands, as well as to protect and share confidential information held by the Pueblo or by other federal agencies. This MOA sets forth responsibilities of the Pueblo and the BDDDB concerning requests to access Pueblo Lands and data sensitive to the Pueblo to help facilitate the BDDDB's activities.

C. Nature of Agreement

This MOA serves as the underlying Agreement between the Parties concerning the Pueblo's involvement in the BDDDB's activities on Pueblo Lands. In carrying out any BDDDB projects, the Parties anticipate that the BDDDB and its contractors will need 1) access to the Pueblo's Lands, 2) access to confidential data (as defined in the Protocol for Protecting Confidential Pueblo Information) that may already exist within the Pueblo's or other agencies' resources, and 3) access to the Pueblo's Lands for purposes of environmental surveillance or data gathering. This MOA requires the BDDDB and its contractors to protect confidential Pueblo information, comply with Pueblo written laws to the extent they do not conflict with applicable federal law, and obtain the different types of access permits designed specifically for each type of access request.

The BDDDB and its contractors are required to comply with the terms and conditions of each type of access permit as provided therein. The Parties also anticipate that the activities of the BDDDB and its contractors may result in "inadvertent discoveries" of cultural resources or human remains as new data is gathered or when performing ground-disturbing activities on the Pueblo's Lands. This MOA requires the BDDDB and its contractors to follow the protocols between the parties applicable to inadvertent discoveries of Native American human remains and cultural items. The Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items will apply to all ground disturbing activities permits.

1) Protocols

Protocols for confidentiality, access to Pueblo Lands, data collection, and inadvertent discoveries of Native American human remains and cultural items are developed to implement this MOA. They may be revised, amended, or supplemented without amending this MOA.

Additional protocols may be developed and agreed to between the Pueblo and the BDDDB staff as needed to implement this MOA.

2) Additional Subsidiary Agreements

Additional specific agreements, including, but not limited to the sampling plan or identification of any other project that the BDDDB desires to carry out on Pueblo Lands, may be executed in relation to the BDDDB's proposed activities on Pueblo Lands. Any such additional agreements will be subject to the terms of this MOA, and the implementing protocols.

The Parties expect that permits will be issued by the Pueblo for several purposes including, but not limited to: (1) Access permit for observation purposes only; (2) Access permit for ground

disturbing activities, which will refer to the protocols for treatment of inadvertent discoveries; and (3) Permit for data sharing with the BDDB by Pueblo and other federal agencies. The Pueblo may request other federal agencies to share data relating to the Pueblo if the BDDB requests assistance in the Project. BDDB will make certain that the Pueblo receives copies of all data shared.

Confidentiality requirements in this MOA, protocols, and other agreements between the Pueblo and the BDDB shall apply to all permits issued by the Pueblo, consistent with the Protocol for Protecting Confidential Pueblo Information.

The BDDB and the Pueblo will each designate a representative and a backup representative to act as the point of contact for this MOA. Either Party may change its point of contact at any time by providing written notice to the other Party. The following points of contact are designated by each of the Parties:

3) Pueblo Designees

The Pueblo's Primary Point of Contact shall be its Department of Environment and Cultural Protection Director or his designee. The Pueblo's backup point of contact shall be the Natural Resources Department Director.

4) BDDB Designees

The BDDB's Primary Point of Contact shall be the BDD Facilities Manager, and the BDDB's backup point of contact shall be the BDD Regulatory Compliance Officer or his/her designee.

D. Limitations

1. This Agreement does not create any independent right of action subject to judicial review.
2. Nothing in this MOA shall be deemed to affect the BDDB's obligations under the New Mexico Inspection of Public Records Act or the BDDB's ability to assert exemptions with regard to information requests.
3. This MOA shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this MOA be construed to alter, amend, repeal, interpret, or modify the Pueblo's sovereignty or sovereign immunity, any treaty rights, or other rights of the Pueblo or preempt, modify, or limit the exercise of any such rights.
4. Nothing in this MOA shall be applied to authorize the taking of species listed pursuant to the Endangered Species Act of 1973, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

E. Governing Law and Jurisdiction

This MOA shall be construed in accordance with the laws of the United States and Pueblo law.

The Project will be performed in part within the exterior boundaries of the Pueblo.

The Pueblo has the right as a government to protect its Pueblo from conduct and activities that threatens or directly affects its political integrity, economic security, health and welfare. In order to protect the Pueblo's cultural resources, any unlawful damage, destruction, disturbance or defacement of any archeological resource located on the Pueblo will be considered a violation of Section 6 of the Archeological Resources Protection Act ("ARPA"), 16 U.S.C. 470aa-mm, and may result in fines up to \$20,000 and up to 2 years in prison. Any violation of ARPA will be referred to the United States Department of Justice, along with all supporting documentation related to the violation. The Parties understand and agree that the provisions of ARPA apply to all BDDDB employees and contractors in the conduct of their activities on the Pueblo under this MOA.

Violation of any terms of any permit issued by the Pueblo to implement this MOA shall be considered a trespass which may result in immediate exclusion from the Pueblo of the individual who engaged in actions that violate either the permit or ARPA, or both.

F. Acknowledgement and Permit

Each person entering Pueblo land in order to implement this MOA must sign an acknowledgment of BDDDB's obligations under this MOA, and carry the permit issued by the Pueblo at all times while on Pueblo Lands. The Pueblo will provide the acknowledgment form for signature to accompany each permit application, and shall issue permits needed to implement this MOA.

The Parties hereto have executed this MOA as of the latest date written below.

G. Amendment/Termination

This MOA may be modified or amended by written agreement between the Chair of the BDDDB and Pueblo Governor, and this MOA may be terminated by any party upon 30 days written notice to the other. This MOA is effective when signed by all parties and will remain in effect until terminated as described herein.

Buckman Direct Diversion Board

Approved to Form



Nancy Long, BDDDB Legal Counsel

12/29/14
Date

Joseph Maestas, BDDDB Chair

Date

Pueblo de San Ildefonso



Terry Aguilar, Governor

12-22-14
Date

APPENDIX A

PLAN FOR WATER QUALITY SAMPLING AT SAN ILDEFONSO PUEBLO BY BUCKMAN DIRECT DIVERSION BOARD

As agreed between San Ildefonso Pueblo (Pueblo) and the Buckman Direct Diversion Board (BDDDB), the sampling described below will be coordinated and performed by BDDDB and Pueblo designated personnel. Appropriate coordination will occur before sampling events.

This document is updated annually and attached as Appendix A to the Memorandum of Agreement (dated 2014) between the Pueblo and the BDDDB. As agreed between the Pueblo and the BDDDB, the sampling described below will be coordinated and performed by BDDDB and Pueblo-designated personnel.

For locations with automated samplers, the BDDDB will notify the San Ildefonso DECP by phone and email at any time when access is needed to a station for sample retrieval or equipment maintenance. BDDDB personnel may access only the immediate area around these locations.

BDDDB Sampling at San Ildefonso Pueblo (2015)

Surface Water				
Sampling Location	Rad	Metals	Inorganics	Organics
Rio Grande at Otowi	E	E	E	E
Los Alamos near Otowi Bridge (E110)	E	E	E	E

Other potential sampling or field work

If any additional sampling and field work becomes necessary, such activities will be coordinated with the Pueblo on a case-by-case basis. Personnel from San Ildefonso DECP will be notified a minimum of two weeks prior to conducting sampling activities to allow sufficient time for coordinating field activities.

Rad = ^{137}Cs , $^{238,239,240}\text{Pu}$, tritium, $^{234,235,238}\text{U}$, total U, gross gamma, ^{241}Am , ^{90}Sr , gross alpha and gross beta

Metals = Ag, Al, As, B, Ba, Be, Bi, Cd, Co, Cr, Cs, Cu, Fe, Ga, Hg, Li, Mn, Mo, Ni, P, Pb, Rb, Re, Sb, Se, Si, Sn, Sr, Te, Th, Ti, Tl, U, V, W, Y, Zn, Zr

Inorganics = SiO_2 , Ca, Mg, K, Na, Cl, F, CO_3 , HCO_3 , $\text{PO}_4\text{-P}$, SO_4 , $\text{NO}_3\text{-N}$, CN, TDS, pH, Conductance, Hardness, TSS, SSC, iodate, bromate, chlorate and perchlorate

E = Event Based Sampling

Protocol for Access to Pueblo Lands

This Protocol supplements the Memorandum of Agreement (MOA) between Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy(DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This Protocol applies to all offices, personnel, agents, consultants and contractors of BDDDB that desire access to Pueblo Lands. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable protocols. For example, if the requested access also involves obtaining data located on Pueblo Lands or performing ground disturbing activities on Pueblo Lands, then BDDDB agrees to comply with the *Protocol for Protecting Confidential Pueblo Information* and *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items*, respectively.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Procedure for Obtaining Access

BDDDB (except as noted in Section 3), its contractors, consultants or agents, seeking to access Pueblo Lands for any reason must obtain an Access Permit issued by the Pueblo de San Ildefonso. The following procedure will be followed for such requests for Access Permits:

- a. The BDDDB Primary Contact Person (or Backup Contact Person), as identified in Section C(4) of the MOA, shall contact the Pueblo de San Ildefonso Primary Contact Person and Backup Contact Person with a written request a minimum of two weeks before the actual requested date of access to Pueblo Lands or actual date of access to Pueblo Lands, subject to the exceptions in Section 3. The written request may be made on a permit application form provided by the Pueblo and shall be accompanied by a signed Acknowledgement Form from each individual requesting access to Pueblo Lands. The Acknowledgement Form, provided by the Pueblo, provides that each individual requesting access to Pueblo Lands understands BDDDB's obligations under the MOA, that each individual's access is

conditioned on complying with the terms of the permit and federal law, and that any violation of such permit or federal law may result in exclusion and/or prosecution. The requests and Acknowledgement Form may be submitted via electronic mail. At a minimum, the request shall specify the names of the BDDB personnel or contractors, consultants, or agents requesting access, the purpose for accessing Pueblo Lands, a general description of the scope of work to be performed on Pueblo Lands, and a general description of the location(s) of the visit to Pueblo Lands.

- b. The Pueblo Primary Contact Person (or Backup Contact Person), as identified in Section C(3) of the MOA, shall approve or deny the access request within two business days after receipt of the written request and Acknowledgement Form(s). If the request is denied, the reason(s) for doing so shall be stated so that the Pueblo's concern can be addressed in a renewed request. Permits will be processed through the Pueblo Natural Resources Department Director. Based on the request, the Pueblo may grant the following:

- i. ***Access Permit for Observation Purposes Only.*** If the request is approved and neither involves the physical retrieval of data from Pueblo Lands nor the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit to the BDDB Primary Contact Person that describes in detail the terms and conditions, if any, to be applied to the access.
- ii. ***Access Permit/or Ground Disturbing Activities.*** If the request is approved and involves the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit, consistent with the *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items* and the *Protocol for Protecting Confidential Pueblo Information*.
- iii. ***Permitfor Data Sharing.*** If the request is approved and involves the physical retrieval of field, observational, or chemical analysis data from Pueblo offices or Pueblo Lands, or the collection of samples, except those connected to storm or unforeseen events then the Pueblo Primary Contact Person shall issue an Access Permit, consistent with the *Protocol for Protecting Confidential Pueblo Information*.

3. Exceptions to Access Policy

- a. The following BDDB key staff positions may seek access to Pueblo Lands under an exception to Section 2 of this Protocol for specific administrative reasons discussed at subsection (c) below:
 - i. BDD Water Analyst
 - ii. BDD Automation Security Specialist Administrator
 - iii. BDD Instrumentations Control Hardware & Software Administrator
- b. The appropriate individuals named above may request an exception to the permit application requirement by calling the Pueblo Point of Contact for immediate access to the affected location. The notification shall identify the type of exception requested (pursuant to subsection (c) below), provide a general description of the scope of work to be performed on Pueblo Lands, and provide a general description of the location(s)

of the visit to or through Pueblo Lands. BDDDB shall follow-up with a written notification (electronic mail is acceptable) to the Pueblo Primary Contact Person **and** Backup Contact Person.

- c. The exception to the permit application requirement applies only for the following reasons:
 - i. Safety of BDDDB employees, contractors, agents or consultants. An exception under this provision may be granted to BDDDB to respond to an emergency that involves injury to any project field staff member that requires medical assistance.
 - ii. Health and Welfare of the Pueblo. An exception under this provision may be granted to BDDDB for 1) sampling in the event of unplanned release or any "off normal occurrence" affecting or potentially affecting the Pueblo lands, or 2) emergency repair and maintenance of equipment.
 - iii. Violation of any federal law, Protocol or Access Permit. An exception under this provision may be granted to BDDDB to respond to monitor (or in the event a Pueblo staff member reports) a violation of any condition of any Protocol under the MOA or Access Permit or federal law.
 - iv. Contract management and oversight. An exception under this provision may be granted to BDDDB to respond to issues that arise with one of BDDDB's contractors, or in the performance of a contract. The appropriate official will request the exception pursuant to subsection (b).
 - v. General Administrative Purposes. An exception under this provision may be granted to BDDDB for general administrative purposes including, but not limited to, managerial contact with BDDDB staff or contractors already on Pueblo Lands under an authorized Access Permit. The appropriate official will request the exception pursuant to subsection (b).
 - vi. Storm and Other Unforeseen Events. An exception to the Permit requirement is allowed for BDDDB staff [listed in 3.a] to check, maintain, or collect samples from storm water monitoring stations close to public roads along routes normally taken by BDDDB staff, after calling Pueblo Department of Environmental and Cultural Protection (DECP) Director or designee directly and requesting (and receiving) permission to check the samplers. Immediately after receiving a call from BDDDB which requests access to Pueblo Lands pursuant to this exception, the DECP Director or designee shall notify the Pueblo's Natural Resources Director for proper internal follow up. Time, date, and location(s) to be visited for each request and data or samples collected on each such visit will be recorded and summarized by BDDDB. BDDDB staff shall contact Pueblo staff immediately upon leaving the Pueblo, confirming sites visited and data and samples collected. BDDDB staff will confirm the above information to the DECP Director by email or other written format within 72 hours of each such visit.
- d. Upon arrival on Pueblo Lands, all individuals expecting access under any exception shall check in at the tribal administration office upon arrival and will be granted access to or through Pueblo Lands by the Primary or Backup Contact Person.

4. Data Access Not Involving Physical Access to Pueblo Lands

The procedure for obtaining Access Permits, required by Section 2 of this Protocol, shall be used for requests that involve the retrieval of certain confidential data that does not require physical access to Pueblo Lands. If the request is approved for any of the requests described below, the Pueblo Primary Contact Person shall issue a Data Access Permit together with the *Protocol for Protecting confidential Pueblo Information* for the following:

- a. **Confidential Data held in Pueblo Offices.** If the request is approved and involves the review of confidential data held in Pueblo offices and such request does not involve BDDb, its contractors, consultants, or agents to access Pueblo Lands to obtain the Pueblo data, the Pueblo Primary Contact Person shall make arrangements to submit the requested data to BDDb, its contractors, consultants, or agents.
- b. **Confidential Data held in other federal agency files.** If the request is approved and involves the review of confidential data held in other federal agency offices, then the Pueblo Primary Contact Person shall send a disclosure letter to the appropriate federal agency.

5. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By:



Title:

Governor

Date:

12-22-14

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By:

(Signature)

(Print/Type Name)

Title:

Date:

Protocol for Protecting Confidential Pueblo Information

This Protocol supplements the Memorandum of Agreement (MOA) between the Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This Protocol applies to all offices, personnel, agents, consultants, and contractors of BDDDB in the collection, receipt, possession, use, review, disclosure, or dissemination of Confidential Pueblo Information and Sensitive Sampling Data for the Project. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable Protocols. For example, if BDDDB desires to obtain data located on Pueblo Land, then BDDDB agrees to comply with the *Protocol for Access to Pueblo Lands*.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any Protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Limitations on Access and Data Collection

BDDDB and its Contractors are authorized, subject to the terms of the MOA, *Protocol for Access to Pueblo Lands*, and Access Permits, to access the Pueblo Lands identified in the Access Permits, for the sole purpose of certain data collection for the Project. In no event shall BDDDB or its Contractors have access to collect data beyond the extent depicted in any Access Permit. Data collection authorized under this Agreement shall be limited to the collection of Sensitive Sampling Data identified in the Access Permit and within the sampling locations identified in the Access Permit.

3. Effective Date and Duration of Protocol and Obligations

BDDDB and its Contractors agree that their obligations hereunder were, are, or shall be effective as of the first date on which BDDDB or its Contractors first had, has, or shall have access to any Confidential Pueblo Information or prior to entering on the Pueblo Lands. Obligations of BDDDB and its Contractors hereunder shall survive the term of this Protocol and shall continue indefinitely.

4. Definitions

- a. "Confidential Pueblo Information" means all information of or about the Pueblo that is religious, cultural, ceremonial, proprietary, financial, technical, commercial, privileged, sensitive, or confidential in nature or content that relates to natural resources, cultural resources, or resource management practices of the Pueblo, and includes, but is not limited to, information pertaining to:
 - i. any federally threatened, endangered, or candidate species;
 - ii. habitat or ecosystem conditions on Pueblo lands;
 - iii. natural resource management practices or plans of the Pueblo;
 - iv. location and nature of sites of traditional cultural significance to the Pueblo;
 - v. commercial activities of the Pueblo;
 - vi. information that the Pueblo would not customarily release to the general public; and
 - vii. information gathered on Pueblo Lands related to cultural or natural resources.
- b. "Sensitive Sampling Data" means that information (including but not limited to geotechnical, hydrographic, geomorphological, and ground and surface water quality, demand and usage data), gathered or collected by BDDDB, including
 - i. Control Surveys: Field notes, global positioning system data (GPS data), point files, and maps for establishing survey control end points.
 - ii. Hydrographic Surveys: Field notes, GPS data, and point files for cross-section surveys of the river channel, field notes describing river bed material at cross section locations, and samples of river bed material and laboratory analysis of material gradation.
 - iii. Geomorphic Surveys: Field notes and sketches, or GPS files, defining river channel and floodplain locations and characteristics for assessing past changes in the river over time, and anticipated future changes to the river.
 - iv. Geotechnical Investigations: Field notes and sketches, reports, maps, or GPS files depicting subsurface geology and soil information.
 - v. Environmental Site Assessments: Field notes and other data collected to determine whether a property is, has been, or has the potential to have a hazardous substance or petroleum presence by a series of testing and interviews of current and past owners or managers. (Note: Environmental Site Assessments are distinct from environmental assessments provided under the National Environmental Policy Act [NEPA].)
 - vi. Water quality and quantity data of the Pueblo's water resources, including surface water and groundwater and related suspended sediments;
 - 1. BDDDB will include non-disclosure requirements into contracts that require Sensitive Sampling Data to be shared with or developed by BDDDB's contractors.

2. Products: Products that are technical and produced for this Project by BDDDB or its Contractors from the data collection activities specified in Sections 4(a)(i) through 4(b)(vii) of this Paragraph.

- c. "Information" means any verbal, visual, pictorial, specimen, graphic, electronically stored, printed, recorded, or written material acquired from the Pueblo or other person or entity or obtained in any way and includes, but is not limited to reports, summaries, data, maps, photographs, correspondence, phone call records, audio or video recordings, and any other information pertaining to the Pueblo or its property, assets, or interests, including information in the custody of BDDDB.

5. Use of Confidential Pueblo Information and Sensitive Sampling Data

Confidential Pueblo Information and Sensitive Sampling Data shall be used by BDDDB solely for purposes described in the MOA and cannot be used for any other purposes by BDDDB or its Contractors without prior written authorization of the Pueblo Governor (Governor).

- a. BDDDB and its Contractors acknowledge that serious damage could result to the Pueblo if any of the Confidential Pueblo Information is disclosed to any third party other than as provided herein and that such Confidential Pueblo Information has been furnished to BDDDB and its Contractors subject to, and in consideration of, BDDDB's and its Contractors' agreement to keep the information confidential as intended herein, to the extent possible under federal law and state law.
- b. BDDDB shall not copy, cite, or incorporate any Confidential Pueblo Information in any document or publication without obtaining prior written consent from the Governor for either the use of such Information or the use of certain redacted or summarized Information. BDDDB shall provide a 60 day opportunity for the Pueblo to review and consult on a draft of any document containing Confidential Pueblo Information or Sensitive Sampling Data prior to its disclosure or completion as a final document, unless otherwise required by law. The Pueblo recognizes that BDDDB responses to requests for records under the New Mexico Inspection of Public Records Act have response time parameters, and the Pueblo will be mindful of such. On day 61, following BDDDB's request, Pueblo consent shall be deemed given.
- c. Non-disclosure agreements shall be signed by BDDDB's contractors prior to disclosure of any Confidential Pueblo Data or Sensitive Sampling Data to BDDDB's contractors.

6. Retention of Sensitive Sampling Data by BDDDB

- a. The Pueblo agrees that BDDDB may retain Sensitive Sampling Data after the completion of the Project. BDDDB shall retain any original documents and electronic versions of Sensitive Sampling Data, and provide copies of all retained Sampling Data to the Pueblo. When Sensitive Sampling Data is acquired or prepared by a Contractor of BDDDB, such Contractor may also retain a copy of the Sensitive Sampling Data, provided that the Contractor or BDDDB provides copies to the Pueblo. At some point after the completion of the Project, BDDDB may update products produced for the Project or may produce new, similar products from the Sensitive

Sampling Data. If so, BDDDB shall provide copies of updated products and new, similar products to the Pueblo.

- b. The BDDDB agrees that it will not release Sensitive Sampling Data, including analytical results for samples, to the general public or any other governmental agency without providing a 60 day opportunity for consultation with the Pueblo. BDDDB shall provide a 60 day opportunity for the Pueblo to review and consult on the proposed release of Sensitive Sampling Data to the public or submitted to any other governmental agency unless otherwise required by law. The BDDDB may however rely on Sensitive Sampling Data in making decisions regarding its operations. The Pueblo recognizes that BDDDB responses to requests for records under the New Mexico Inspection of Public Records Act have response time parameters, and the Pueblo will be mindful of such.
- c. The BDDDB agrees that it will not publish any Sensitive Sampling Data arising from Pueblo land without providing prior written notice and a 60 consultation period to the Pueblo.
- d. A concerted effort will be made by both parties to share Sensitive Sampling Data that will not infringe upon the proprietary nature of such data.
 - i. For samples collected by BDDDB, part of each sample will be made available to accompanying Pueblo personnel (split sampling)..
 - ii. BDDDB shall provide the Pueblo with test results on all samples collected as part of the Sampling Plan described as Exhibit A to the MOA between the Parties. The entire process of sample handing, laboratory analysis, quality control, quality assurance, compilation, reduction, and communication of data will be designed to be completed within six months of sample collection. If unforeseen delays occur, the Pueblo will be notified and results will be provided in a timely manner after receiving quality assured data. More timely access to data will be sought through implementing new technologies such as internet connections, subject to the terms of the underlying MOA and any applicable Protocols issued therein.

7. Disclosure of Confidential Pueblo Information

- a. BDDDB shall keep all Confidential Pueblo Information confidential, and shall not disclose any Confidential Pueblo Information in any manner whatsoever, in whole or in part, to any person or entity, except disclosures:
 - i. to another person approved in writing by the Governor upon the receipt by the Pueblo and BDDDB of a Confidentiality Agreement acceptable to the Pueblo and BDDDB executed by the person;
 - ii. as otherwise required by applicable law; or
 - iii. as otherwise authorized by the Pueblo de San Ildefonso Council.
- b. The requirements of this paragraph shall not extend to any portion of the Confidential Pueblo Information that is or becomes generally available to the public other than as a result of a disclosure by BDDDB.

- c. In the event that BDDDB or its Contractors receive a request to disclose or become legally compelled to disclose any of the Confidential Pueblo Information pursuant to this paragraph, BDDDB and its Contractors who have received the request shall promptly provide notice thereof to the Governor so that the Pueblo, at its sole option and expense, but without obligation to do so, may attempt to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Protocol. BDDDB and the Pueblo recognize that *United States Department of Interior v. Klamath*, 532 U.S. 1 (2001), may apply to certain communications and result in an inability to withhold such Confidential Pueblo information.

8. Restriction on Removal of Confidential Pueblo Information from Pueblo de San Ildefonso Lands

- a. All Confidential Pueblo Information shall remain the exclusive property of the Pueblo and shall not be removed from the Pueblo's land.
- b. Upon the written approval by the Governor of an official specific written request by BDDDB to review Confidential Pueblo Information, BDDDB may review the specified Information at the Pueblo's Department of Environment and Cultural Protection (DECP) by prior appointment with the Primary Contact Person designated pursuant to Paragraph D(1) of the MOA.
- c. Upon the written approval by the Governor or Pueblo de San Ildefonso Council, of an official specific written request by BDDDB to remove Confidential Pueblo Information from Pueblo lands, BDDDB may remove Confidential Pueblo Information from Pueblo lands to carry out Pueblo-authorized purposes so long as:
 - i. only those BDDDB personnel (or BDDDB contractors, consultants, or agents) specifically authorized by the Pueblo to review the Information shall have access to it and BDDDB will take every precaution to secure the confidentiality of the Information;
 - ii. the Information shall not be photocopied, digitally copied, or reproduced in any other manner without prior written consent of the Governor;
 - iii. BDDDB will maintain and provide to the Pueblo a written record of all such Information including without limitation the date of removal, description of the Information, name of individual removing Information, the purpose and justification, and the date of return;
 - iv. the Information will not be removed for a period longer than 30 days unless otherwise specified by the Pueblo; and
 - v. BDDDB (or BDDDB contractors, consultants, or agents) shall return all information, including copies, to the Pueblo upon completion of the authorized purpose or the authorized period, whichever is sooner. The Pueblo shall also have the right to request the immediate return of any and all Information at any time, and BDDDB (or BDDDB contractors, consultants, or agents) shall immediately return it. All information shall remain the property of the Pueblo, and not of BDDDB (or BDDDB contractors, consultants, or agents).
- d. The Pueblo may develop redacted versions or summaries of Confidential Pueblo Information and, by explicit written approval by the Governor, authorize BDDDB to

retain or publish such Information in the public record or in other documents. However, providing such Information in this or any other form does not indicate that similar or like Information would customarily be released to the public by the Pueblo.

9. Audio and Video Recording and Photography

- a. BDDDB or its contractors, consultants, or agents are not permitted to make audio or video recordings or to take photographs without the prior written permission of the Governor. If requested by the Pueblo, such recording will only be conducted in the presence of a Pueblo representative designated by the Governor. All photographs and audio and video recordings shall be returned to the Pueblo and BDDDB shall not keep copies of returned photographs and audio and video recordings of Confidential Pueblo Information.
- b. Notwithstanding the foregoing, BDDDB may retain certain photographs or audio or video recordings upon written request by BDDDB and written approval of the Governor for the specified photographs or recordings to document Project work completed.

10. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By:



Title:

Governor

Date:

12-22-14

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By:

(Signature)

(Print/Type Name)

Title:

Date:

Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items

This protocol supplements the Memorandum of Agreement (MOA) between the Buckman Direct Diversion Board (BDDDB) and the Pueblo de San Ildefonso (Pueblo) (Parties, or Party in the singular) to facilitate the Pueblo's involvement in the monitoring for possible radioactive contamination and other pollutants from Department of Energy (DOE)/Los Alamos National Laboratory (LANL) operations, of lands and natural resources within the exterior boundaries of the Pueblo and LANL (Project). This protocol applies to all offices, personnel, agents, consultants and contractors of BDDDB who desire to undertake ground-disturbing activities on Pueblo Lands for the Project. The Parties acknowledge that this protocol is subject to the terms of the MOA, and further understand that the MOA references additional applicable protocols. For example, to conduct ground disturbing activities on Pueblo Lands, BDDDB understands that it must comply with the *Protocol for Access to Pueblo Lands*. Further, since any ground disturbing activity on Pueblo Lands will result in data collection, BDDDB agrees to comply with the *Protocol for Protecting Confidential Pueblo Information*.

For the purpose of this Protocol and for all references to the Native American Grave Protection and Repatriation Act (NAGPRA), Pueblo Lands is defined as all land within the limits of the Pueblo de San Ildefonso exterior boundaries.

1. Relationship with the MOA and other Protocols: Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. The Parties agree that the terms and conditions of the MOA apply to any protocol or agreement made under the MOA. In the event of any expressed conflict between the provisions of the MOA and the provisions of this protocol, the provisions of the MOA will govern and control with respect to the interpretation of this protocol. In the event of any conflict between the provisions of this protocol and any other protocol, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Scope of Protocol

This protocol applies only to NAGPRA Cultural Items discovered on Pueblo Lands. For NAGPRA Cultural Items discovered on Pueblo Lands, the Pueblo is considered to have standing to claim cultural affiliation for all human remains and associated material cultural items covered by NAGPRA throughout Pueblo Lands, and for non-Pueblo Native American sites. This Protocol applies to inadvertent discoveries on Pueblo Lands for which the Pueblo is considered to have cultural affiliation. Ground disturbing activities may take place on locations identified in the sampling plan. More specific information may be requested by the Pueblo pursuant to BDDDB's request for access pursuant to the *Protocol for Access to Pueblo Lands*.

3. Inadvertent Discovery Procedure/Notification to the Pueblo.

When notified of the discovery of human remains or other NAGPRA-related objects, the BDDDB will immediately notify the Pueblo and arrangements to visit the site will be scheduled immediately to determine if the remains are part of a recent crime scene and, if not, whether the remains are likely archaeological and of Native American descent. If the remains are determined to be Native American and not associated with a crime, the Pueblo will then take appropriate actions. The human remains and cultural objects will be evaluated in place to the extent possible. Destructive analysis is prohibited. The site will be protected and stabilized or covered as may be appropriate. Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items.

4. Options for Disposition of Human Remains or Cultural Items.

It is BDDDB's solemn intent to undertake no intentional excavation of any historic or archaeological site known or believed to include human remains or funerary items during this Project. If human remains or cultural items are inadvertently discovered, BDDDB will leave the items in place, unless, in consultation with the Pueblo, the Pueblo requests another disposition. Any other disposition will be under the Pueblo's NAGPRA authority and responsibility. The Pueblo's disposition options include leaving the human remains or cultural items in place, reburial at another site selected by the Pueblo, giving the human remains or cultural items to the Pueblo for disposition by the Pueblo, or another disposition mutually agreed to by the Parties consultation.

5. Procedures for Inadvertent Discoveries.

Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items. In a case where it is not prudent and feasible to leave human remains or cultural items in place until consultation with the Pueblo (for example, there is a danger of erosion, or where contemporaneous activities in the area might cause damage), excavation and removal of human remains and cultural items will be undertaken by BDDDB under the Pueblo's NAGPRA authority and responsibility using current professional standards for archeological data recovery. BDDDB is not proposing intentional excavation in historic properties or areas of historic properties where human remains are likely to occur; however, inadvertent discoveries could occur during the Project. In such an event, BDDDB and/or its contractors shall adhere to the following procedures:

- All trenching, sampling, excavation, photography, etc. shall cease immediately until the nature and extent of the feature are determined.
- To help identify lineal descendants, cultural resource professionals shall immediately determine the nature and extent of the burial and funerary items, while leaving all other items in place and protected.
- Analysis of human remains recovered from Pueblo Lands will be performed by a professional physical anthropologist in the field and at the site, but will be limited to standard non-destructive metrical analyses and non-metrical analyses for cultural ethnicity as required by NAGPRA. Cultural items will be subject to analysis and

documentation by photography and line drawings as warranted. There will be no destructive analysis performed on cultural items. Upon completion of analysis, the remains will be replaced in the original site and reburied or as determined by the Pueblo.

Neither BDDDB nor its contractors will assume custody, control, or collection of human remains or NAGPRA cultural items.

6. Amendments.

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

PUEBLO DE SAN ILDEFONSO

By:



Title:

Governor

Date:

12-22-14

ACCEPTED:

BUCKMAN DIRECT DIVERSION BOARD

By:

(Signature)

(Print/Type Name)

Title:

Date:

1 **MEMORANDUM OF UNDERSTANDING BETWEEN THE**
2 **U.S. DEPARTMENT OF ENERGY AND THE BUCKMAN DIRECT DIVERSION BOARD**
3 **REGARDING WATER QUALITY MONITORING**

4 **A. Parties**

5 The Parties to this MOU are the Buckman Direct Diversion Board (BDD Board) and the U.S. Department
6 of Energy (DOE).

7 **B. Background**

8 The Buckman Direct Diversion (BDD) is designed to divert water from the Rio Grande for use by the City
9 and County of Santa Fe water utilities in the Santa Fe area and to provide a source for the water supply
10 systems of Santa Fe County, the City of Santa Fe, Las Campanas Club, and Las Campanas Cooperative.

11 The water to be diverted is San Juan-Chama Project water (a U.S. Bureau of reclamation interbasin
12 water transfer project) and native New Mexico state waters regulated by the State of New Mexico.

13 The point of diversion for the BDD is on the east bank of the Rio Grande in northern New Mexico, near
14 the historic Buckman townsite. The point of diversion is approximately 15 miles northwest of the City of
15 Santa Fe and is located about three miles downstream from the confluence of the Rio Grande and Los
16 Alamos Canyon (where Route 502 crosses the Rio Grande at Otowi Bridge).

17 LANL is located on the Pajarito Plateau above the Los Alamos/Pueblo Canyon watershed. The Los
18 Alamos/Pueblo Canyon system intermittently and infrequently flows to the Rio Grande just below the
19 Otowi Bridge and upstream of the BDD Project point of diversion. The Los Alamos/Pueblo Canyon
20 watershed contains sediments with LANL-origin contamination from historic releases from LANL. Rain
21 events may cause the transport of sediments, and these sediments have in the past and may in the
22 future be transported to the Rio Grande and then to the BDD intake. The Los Alamos/Pueblo system has
23 been investigated under the Compliance Order on Consent between LANL and the State of New Mexico
24 Environment Department, and measures (including infrastructure) to reduce the transport of
25 contaminated sediment have been implemented.

26 The New Mexico legislature encouraged the BDD Board and DOE to memorialize their agreement to
27 certain activities relating to the mitigation and monitoring of LANL-origin water quality contaminants.
28 The BDD Board requested a written agreement with LANL and DOE in 2007 and the New Mexico
29 legislature passed resolutions in 2009 and 2010 that ultimately resulted in the Memorandum of
30 Understanding that was executed on May 13, 2010 (the 2010 MOU). The 2010 MOU represented an
31 agreement between the Parties that water quality management and monitoring are mutual priorities
32 and that the activities described were consistent with, and would be carried out subject to, the policies,
33 regulations, and applicable laws that pertain to the Parties.

34 This MOU will be utilized by the public and the BDD Board to inform the operations of the BDD Project,
35 and will provide information that will guide the future water quality policies and priorities of the Parties.

Upon the execution of this MOU, the 2010 MOU will be terminated in accordance with Section G.3 of that 2010 MOU and this MOU shall evidence the consent of the Parties to the termination.

C. Objective

This MOU establishes roles and responsibilities with regard to coordination of monitoring activities by the Los Alamos National Laboratory (LANL) and the Department of Energy (DOE) in Los Alamos and Pueblo Canyons in relation to operation of the BDD Project. The primary objectives of this MOU include the following:

1. To continue the relationship developed between DOE and the BDD, and
2. To determine whether LANL legacy contaminants from Los Alamos and Pueblo Canyons into the Rio Grande warrants operational constraints for diversion at the BDD intake. This determination will be made relative to regional storm water events and/or to base flow in the Rio Grande, with the goal of reducing the long-term need for the Early Notification System (ENS).

D. Authorities

The Parties represent that they have the authority to enter into this MOU and are able to meet the respective commitments herein to the extent permitted by law.

1. Department of Energy. The U.S. Department of Energy is authorized to enter into this MOU pursuant to the Atomic Energy Act, as amended (Title 42 U.S.C. 2011, et seq.).
2. BDD Board. The BDD Board is authorized to enter into this MOU pursuant to the March 7, 2005, Joint Powers Agreement between Santa Fe County and the City of Santa Fe and associated state, county, and municipal laws related thereto.

E. Agreement Principles

E.1 Memorandum of Agreement and Protocols between DOE and the Pueblo de San Ildefonso

The Parties recognize that DOE must comply with the requirements of the 2014 Memorandum of Agreement between DOE and the Pueblo, and the associated *Protocols for Access to Pueblo Lands and for Protecting Confidential Pueblo Information* pertaining to activities on, and information gathered by, DOE on Pueblo de San Ildefonso property. DOE will consult with the Pueblo as necessary regarding the use of information gathered pursuant to this MOU.

E.2 Los Alamos / Pueblo Canyons Early Notification System

The Early Notification System is to provide real time stream flow data to the BDD at the following locations to enable the BDD staff to make decisions regarding facility operations, including temporarily ceasing diversion of water from the Rio Grande. The system includes the following parts:

- LANL Gage Station E050.1 in Los Alamos Canyon above the Pueblo Canyon confluence,
- LANL Gage Station E060.1 in Pueblo Canyon above the Los Alamos Canyon confluence,
- Station E062.1 in the narrow canyon below the confluence of Los Alamos and Pueblo Canyons, and
- Station E099 in Guaje Canyon.

LANL ENS stations E050.1 and E060.1 will be equipped with gaging (flow measurement) capabilities, real-time conveyance of stream-flow data (telemetry), camera capability to act as a backup for the gaging capabilities, and automated storm water samplers. Flows at the LANL gaging stations E060.1 and E050.1 shall be measured within a trapezoidal supercritical-flow flume design as reported in "Techniques of Water-resources Investigations of the United States Geological Survey, Chapter A14, Use of Flumes in Measuring Discharge" (F.A. Kilpatrick and V.R. Snyder, 1983), and between approximately 1 and 350 cubic feet per second (cfs). The system shall be capable of a low flow trigger stage of 5 cfs (adjustable).

Flow indication at all stations will consist of either a visual (camera) or transducer signal as confirmation of storm water flows at the locations to provide for better time studies on storm water flow travel from gage stations to the Rio Grande and to the point of diversion at the BDD. Maintenance of the flow indication equipment shall be the responsibility of DOE.

The BDD Board will, at its discretion, consult with the Pueblo de San Ildefonso regarding the installation of a real-time flow indicator(s) at the lower Los Alamos Canyon and the Rio Grande.

E.3 Los Alamos / Pueblo Canyons Storm Water Quality Sampling System

The sample collection system will provide water quality contaminant sampling data from storm water flow events at the LANL ENS gage stations to characterize and quantify the relationship of LANL contaminants in Los Alamos/Pueblo Canyon storm water flows into the Rio Grande in relation to the base flows and regional storm water flows. Gage stations E050.1 and E060.1 shall be equipped with automated samplers that will be triggered by the occurrence of runoff at these stations. DOE funds all sampling activities for this water quality system as part of monitoring pursuant to Section VII of the Compliance Order on Consent to evaluate contaminant transport mitigation measures within the LA/P watershed.

The samplers shall be capable of collecting samples from flow events greater than 5 cfs such that samples can be correlated with samples collected at the BDD intake through hydrograph comparison. The analyte list for these samplers is contained in Appendix A of this MOU and is generally consistent with, but contains negotiated changes to, the NMED-approved Los Alamos and Pueblo Canyon Sediment Transport Monitoring Plan for storm water monitoring in Los Alamos and Pueblo Canyons. Sampling shall be conducted from June through October of each year.

The Parties will review the available data, the analyte list, and the sampling protocols (e.g., trigger stage, sample collection process, etc.) during the Biannual Review. DOE will notify the BDD Board of any

changes in the NMED-approved workplan. The collection and processing of samples will be in accordance with the LANL standard operating procedures (SOP) listed in Appendix A. The analytical methods are listed in Appendix A and will follow EPA guidelines and methods.

DOE shall maintain the sampling system as necessary, with samplers to be inspected weekly from June through October and after each flow event, in accordance with LANL SOPs listed in Appendix A. Samples will be collected after each flow event or within 72 hours of the event. In the event any station is not functioning, DOE shall notify the BDD and repair the station so the time period of inoperability is as short as possible. Inspection and repair schedules will be contingent on safe working conditions. If the period of operability is expected to exceed 48 hours, the DOE will communicate as quickly as practicable with the BDD staff via telephone call and/or email.

The Parties acknowledge that the inoperability of any ENS station during subsequent flow events and the inability to collect another set of samples is not an invalidation of the sampling program. Every event is not necessary to be sampled to contribute to the contaminant fate analysis and the evaluation of LANL contaminant contributions to the samples collected at the BDD intake location.

E.4 Rio Grande at BDD Project Location Sampling Program

The purpose is to provide both base-flow and event-based sampling of the Rio Grande when triggered by notification of flows in Los Alamos and/or Pueblo Canyons or as determined by the BDD Board for the purpose of water quality sampling at the Rio Grande at BDD in the search for operational criteria for ceasing diversion.

The sampling system includes a dedicated sampling station equipped with automated samplers that can be triggered by notification of Los Alamos and Pueblo Canyons' flows from the ENS gage stations, or by the BDD staff. The BDD Board shall retain title to the sampling equipment and shall own and operate the equipment at the BDD intake.

DOE shall pay up to \$96,000 in sampling and analytical costs per year for each of the three (3) years under this MOU (2015, 2016, and 2017). The BDD Board shall be responsible for any additional sampling costs, and the BDD Board is responsible for all maintenance, inspection and repair of the sampling station located at the BDD intake. DOE will seek funding via a grant to the BDD Board for the sampling and analytical costs. If such a grant is not available by March 31, 2015, DOE will be directly responsible for all sampling and analytical costs until an alternative funding mechanism is implemented.

The analyte list for these samplers is contained in Appendix A of this MOU. Sampling shall be conducted from June through October of each year. The Parties will review the available data, the analyte list, and the sampling protocols (e.g., trigger stage, sample collection process, etc.) during the Biannual Review. The collection and processing of samples will be in accordance with BDD sampling procedures listed in Appendix A of this MOU and that are consistent with the LANL standard operating procedures (SOP) listed in Appendix A. The analytical methods are listed in Appendix A and will follow EPA guidelines and methods.

The BDD Board shall fund the maintenance, inspection, and repair of the BDD intake sampling system as necessary effective July 1, 2015. Samplers shall be inspected weekly from June through October and after each flow event. Samples will be collected after each flow event or within 72 hours of the event. In the event the station is not functioning, BDD staff shall notify DOE and repair the station so the time period of inoperability is as short as possible. Inspection and repair schedules will be contingent on safe working conditions. If the period of operability is expected to exceed 48 hours, BDD staff will communicate as quickly as practicable with the DOE via telephone call and/or email.

The Parties acknowledge that the inoperability of the BDD intake station during subsequent flow events and the inability to collect another set of samples is not an invalidation of the sampling program. It is not necessary that every event be sampled to contribute to the contaminant fate analysis and the evaluation of LANL contaminant contributions to the samples collected at the BDD Project location.

E.5 TREAT Study

BDD Board will fund a continuation of the Contaminant Fate Analysis that was started under the 2010 MOU under "The Removal Efficiency and Assessment of Treatments" (TREAT) Study. The TREAT Study will examine the treatment efficiency of the conventional and advanced treatments at the BDD with respect to contaminants in order to help determine the BDD operational criteria for diversion from the Rio Grande. The TREAT Study will focus on the capabilities of the BDD with respect to removal of contaminants as they are found to occur in the Rio Grande at BDD intake.

E.6 Analysis

The BDD Board will fund and BDD staff will be the lead on an annual report on the analysis of the data collected under this MOU. DOE will provide input and comments to the BDD report. Each annual report will be updated with the data from the latest monitoring period. The objective of the report is to summarize and present the collected data in the search for BDD operational criteria that determines the operational criteria for diversions from the Rio Grande. The report shall be reviewed and comments provided by DOE by May 31 of each year with the goal of revising the Appendix A sampling plan before the next storm season.

The BDD Board will conduct an evaluation of the water quality monitoring results and TREAT data and make a determination on operational parameters or criteria on whether or when to cease diverting from the Rio Grande. DOE will provide technical input on the report and shall be afforded an opportunity to review and comment on the report.

F. BDD Project Data Sharing

DOE shall be responsible for the costs associated with the sampling and analyses from the primary ENS components listed in Section E.2 in Los Alamos and Pueblo Canyons. Analytical results from E060.1 and E050.1 sampling will be made available to the BDD staff via the Intellus database within 30-60 calendar days after DOE receives sampling results from the analytical laboratory. Paper copies of the results will

not be provided. Flow results from the secondary locations listed in Section E.1 shall be transmitted to the BDD staff no later than concurrently with the primary sample results.

DOE will, on at least an annual basis, update the transit time for storm water flows (from meteorological tower reports, the E050.1 and E060.1 gage stations, E062.1, and E099 flow indicators) between Lower Los Alamos Canyon at Rio Grande flow indication location and the BDD intake to determine transit time for various storm intensities and flows. BDD staff will provide technical input on the report and shall be afforded an opportunity to review and comment on the information.

Analytical results from the BDD intake will be made available to both the BDD Board and DOE via the Intellus database as soon as they are available.

The BDD Board will make records available to the DOE consistent with this MOU and that are generally available to the public, and this information shall be used in the Biannual Review process.

G. Coordination

DOE and the BDD Board will coordinate as necessary with the Pueblo de San Ildefonso and the New Mexico Environment Department on any issues related to the implementation of this MOU, and will engage in any consultation required to accomplish the purposes of this MOU.

Coordination between the Parties shall be to the mutual benefit of both parties and shall include data sharing (as above), technical assistance, and data and analysis reviews. Both parties should allow at least one week for response when requesting technical assistance or data and for analysis reviews, and should strive for more time to meet needs.

H. Biannual Review

The Parties shall meet twice annually to discuss issues related to this MOU. The meeting target months shall be October and April each year.

I. Contacts

All notices, correspondence, and communications arising under this MOU shall be provided to the representatives listed below, and any notice, demand, request, or information authorized of related to this MOU shall be deemed to have been given if mailed (return receipt requested), hand-delivered, or faxed (with confirmation of transmission) as follows:

- DOE
Peter Maggiore
Assistant Manager, Environmental Projects Office
Los Alamos Field Office / NNSA / DOE
3747 West Jemez Road, MS-A316

207 Los Alamos, NM 87544
208 Phone: 505-665-05925
209 Cell: 505-695-5109
210 Email: Peter.Maggiore@nnsa.doe.gov

211
212 With copy to:
213 DOE Counsel
214 Silas Deroma
215 Phone: 505-667-4668
216 Email: Silas.Deroma@nnsa.doe.gov

217
218 • **BDD Board**
219 Charles Vokes
220 BDD Facility Manager
221 Buckman Direct Diversion
222 341 Caja De Rio Road
223 Santa Fe, NM 87506
224 Phone: 505-955-4507
225 Email: cmvokes@ci.santa-fe.nm.us

226
227 With copy to:
228 BDD Board Counsel
229 Nancy Long
230 Long and Komer
231 2200 Brothers Road
232 P.O. Box 5098
233 Santa Fe, NM 87502
234 Cell: 505-470-2158
235 Email: nlong@nm.net

236 **J. Period of Agreement, Modification, or Termination**

237 This MOU is effective upon the signature of the BDD Board and DOE as shown below. This agreement is
238 intended to address 2015, 2016 and 2017 and shall expire on December 1, 2017, UNLESS both Parties
239 agree to extend this MOU for an optional three (3) year period. This optional extension may be
240 executed by a re-signed copy of the signature page by the respective authorized parties to this MOU.

241 The Parties may modify this MOU by written amendment and in the same manner as this MOU was
242 executed. Either Party may unilaterally terminate this MOU before the date of expiration, provided the
243 party seeking termination provides written notice to the other party's representative 90 days before the
244 intended termination date.

K. Dispute Resolution

If the Parties disagree over how to interpret this MOU, representatives of the Parties shall present their differences in writing to the Points of Contact for the other Party. If the Parties fail to resolve their differences within 30 days, the BDD Project Facility Manager and the Los Alamos Field Office Environmental Projects Office Assistant Manager shall prepare a written description of the dispute and the BDD Board Chair and the DOE Los Alamos Field Office Manager shall meet to reconcile the dispute. These representatives shall use efforts such as negotiation, facilitation, and mediation to resolve the dispute.

L. Other Provisions

Nothing in this MOU is intended to conflict with requirements of the Parties or applicable laws. Any such conflicting terms shall be invalid, but the remainder of this MOU shall remain in effect. If a term is deemed invalid, the Parties shall take appropriate action, including amendment or termination. The activities described in this MOU are consistent with, and will be carried out subject to, all known policies, regulations, and applicable laws that pertain to the parties.

This MOU in no way restricts the Parties from participating in any activity with other public or private agencies, organizations, or individuals.

Activities described in this MOU are subject to the availability of appropriated fund. Both the BDD Board and Los Alamos Field Office Environmental Projects Office Assistant Manager shall make the appropriations of funds for the activities described in this MOU a priority when seeking regular or project specific funding requests.

This MOU describes the basis on which the parties will cooperate on the topics described herein. This MOU is NOT a financial obligation that serves as a basis for expenditures, and any financial obligations necessary to carry out the activities described herein shall be addressed in other documents internal to each party. Expenditure of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise will be provided by each party as necessary to fulfill its obligations under this MOU.

This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Any requirement for the payment or obligation of funds by DOE established by the terms of this MOU shall be subject to availability of funds and Secretarial discretion, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

This MOU is not legally enforceable and shall not be construed to create any legal obligation on the part of either party. This MOU shall not be construed to provide a private right, or cause of action, for or by any person or entity.

M. Signatures

NOW, each of the BDD Board and DOE has caused this MOU to be executed and delivered by its duly authorized representatives as of the last date shown below,

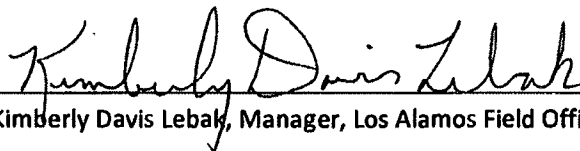
BDD Board



Joseph Maestas, BDD Board Chair

1-8-15
Date

DOE



Kimberly Davis Lebak, Manager, Los Alamos Field Office

1/12/15
Date

This Memorandum of Understanding is valid for three years from the date of the last signature.

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Appendix A

Sampling and Analysis Plan

The tables that follow the text below contain the analytes for the water quality sampling in accordance with this Memorandum.

Regarding LA/Pueblo Canyon Telemetry:

1. Telemetry used to communicate flow data from the gaging stations to the BDD shall provide a received signal level at each receiver with a fade margin of no less than 25 dBm above the equipment receiver threshold. Telemetry equipment shall include battery backup sized to provide a minimum 12 hour operation after failure of primary power. Battery run time shall be calculated in a mode of operation consistent with frequent data transmission during a slow event.
2. The amount of time between a station trigger and when notification is available to the BDD will be as short as is practical, with a goal not to exceed 1minute.

Regarding LA/Pueblo Canyon Water Quality Sampling:

1. The goals of the sampling strategy are to collect data that represent variations in contaminant concentrations and suspended sediment concentration (SSC) within runoff events across a typical hydrograph for each location (Monitoring Plan for LA/P Canyon Sediment Transport Mitigation Project (LA-UR-09-6563)).
2. Each of the gages will be monitored continuously for stage. Samples at E050 and E060 will be triggered by 5-cfs flows to ensure sampling at flows that may extend to the Rio Grande (Monitoring Plan for LA/P Canyon Sediment Transport Mitigation Project (LA-UR-09-6563)).
3. Prioritization of analytes if water volume is insufficient to fulfill suite is unfiltered, then filtered, and by constituents: SSC, Isotopic Plutonium, Am-241 (HASL-300), Sr-90, Isotopic Uranium, Radium-226/228, Gross alpha/beta, radionuclides by gamma spec, target analyte list metals, PCBs, dioxin/furans, perchlorates, cyanide, TOC.
4. All events exceeding 5cfs at E050.1 and E060.1 will be analyzed for the parameters in Table 2.

Regarding Detection Limits in the Analyte Tables:

Method reporting limits for sample analyses for each medium shall be established at the lowest level practicable for the method and analyte concentrations and shall not exceed soil, groundwater, surface water, or vapor emissions background levels, cleanup standards, and screening levels. The preferred method detection limits are a maximum of 20 percent of the background, screening, or cleanup levels. Detection limits that exceed established soil, groundwater, surface water, or air emissions cleanup standards, screening levels, or background levels and are reported as "not detected" shall be considered data quality exceptions and an explanation for the exceedance and its acceptability for use shall be provided. (Section IX.C.3.c Method Reporting Limits from the Consent Order).

Regarding BDD Intake Water Quality Sampling:

The sampler set up at the BDD intake contains 4 autosamplers. The samplers installed at the BDD intake are ISCO Model 3700. The BDD staff maintains the equipment of these samplers.

The samplers can communicate remotely with the BDD Treatment Plant. The samplers can be started or stopped at any time during storm events, and can be programmed to sample at any frequency and order. Sample collection timing and bottle fill sequence for each sampler can be programmed as well.

Sampling Strategy at BDD Intake

The early notification for BDD to stop diverting and start sampling is a 5 cfs flow in the LA/P canyon system. Consequently, the time for this flow's arrival at the BDD is programmed into the software program or estimated the BDD operators, and at that time the "storm event" procedure is triggered: stop diversion, start sampling. The sampling sequence may be triggered by change in stage of the Rio Grande as well.

Automated Storm Event Sample Collection at BDD Intake

When a flow greater than 5 cfs is detected by a sensor at E050.1 and/or E060.1, a signal is automatically transmitted electronically to the BDD's Supervisory Control and Data Acquisition system (SCADA).

Usually, 75 minutes (or as determined by the BDD operator) after the transmission of the signal from either E050.1 or E060.1, SCADA will automatically transmit a start signal to autosamplers located near the BDD's diversion structure, and it would fill out the pre-loaded collection containers at programmed intervals. Signals are automatically transmitted electronically to the BDD's Supervisory Control and Data Acquisition system (SCADA). When a flow greater than 5 cfs is detected by the SCADA at E050.1 and/or E060.1 or a combined flow of the two stations is greater than 5 cfs, the ENS sequencing will begin. After time calculated delays have expired (or as determined by the BDD operator), SCADA will automatically transmit a start signal to autosamplers located near the BDD's diversion structure, and it would fill out the pre-loaded collection containers at programmed intervals.

Deviations from Pre-Programmed Sample Collection

The LANL gauging stations are equipped with cameras which may help in estimating the LA/P canyon flow arrival or whether to determine if any false alarm is triggered. The BDD operators do not rely exclusively on the early 5cfs notification. After the notification is received at the BDD, the storm event is verified by the video cameras at the gauging stations, or evaluated from weather point of view and/or timing in the season, in order to correct the flow arrival in determining the best time to stop diversion and start sampling. The BDD operator may correct or change the pre-programmed trigger times listed earlier. Sometimes, equipment may be malfunctioning, or in case of very strong flash floods, sensors

may be out of service. At such times the cameras become the sole tool for estimating flow arrival, or verification of a storm event.

Notification to Partners

Storm events and sampling during events is communicated to the BDD partners via email.

Analytes and Methods

Samples collected during stormwater sampling will be screened at BDD in order to determine the best representatives of before, during, and after the event. Then, the samples will be sent to a lab and analyzed for the following analytes using the methods listed in Table 3.

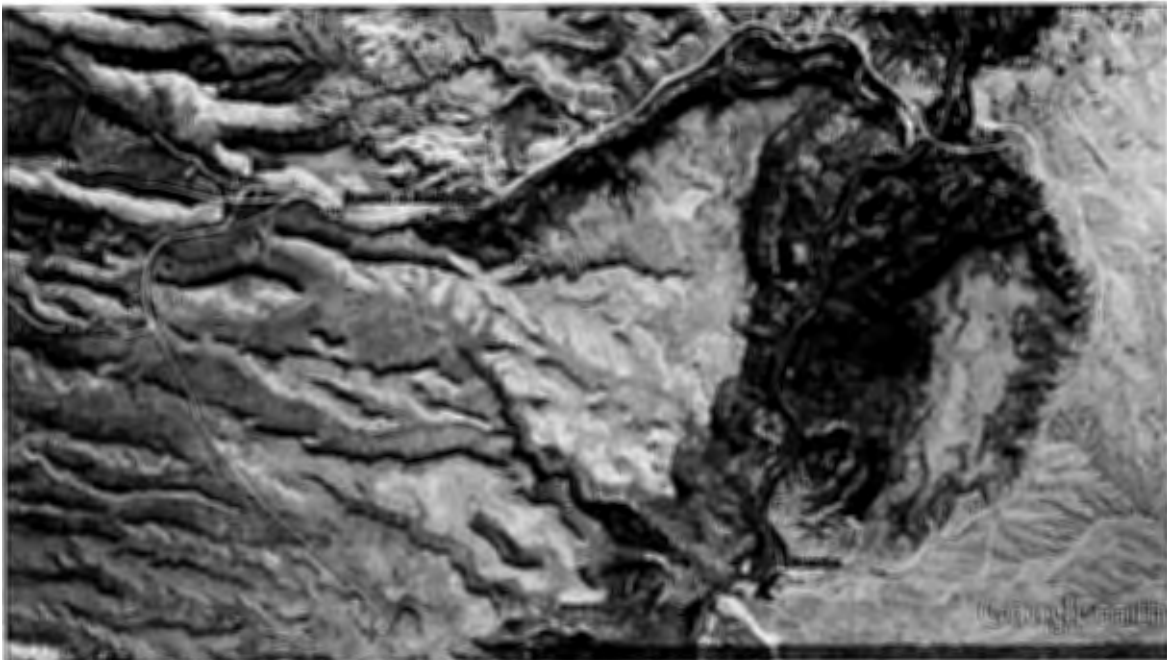


Table 1: Standard Operating Procedures

SOP Number/Title	Application			
	Stream Gage/Sampler Maintenance	LA/P Canyon Storm Water Quality Data	Rio Grande above Otowi Location	Rio Grande at BDD Diversion Location
SOP-5213 Collecting Storm Water Runoff Samples and Inspecting Samplers	✕	✕	✕	
SOP-5214 Installation, Setup and Maintenance of ISCO Samplers		✕	✕	
SOP-5215 Processing Storm Water Samples		✕	✕	
EP-ERSS-SOP-5057 Handling, Packaging and Transporting Field Samples		✕	✕	
SOP-5255 Shipping of Environmental Samples by the WES Sample Management Office (SMO)		✕	✕	
ENV-WQH-SOP-009.3 Operation and Maintenance of Stream Gaging Stations	✕	✕	✕	
BDD Procedures				
BDD SOP				✕

Table 2: Los Alamos/Pueblo Canyon Storm Water Quality Sampling

Analytes	Method	Detection Limit	Field Prep Code
Suspended Sediment Concentration	ASTM:D3977-97	3 mg/L	UF
TAL metals (23) plus Hg	EPA:200.7, EPA: 200.8, EPA:245.2	0.2-300 mg/L	UF
Hardness	SM:A2340B	2 mg/l	UF
Gross alpha	EPA:900	3 pCi/L	F, UF
Gross beta	EPA:900	3 pCi/L	F, UF
Strontium-90	EPA:905.0	0.5 pCi/L	UF
Americium-241	HASL-300:AM-241	0.05 pCi/L	UF
Gross gamma	EPA:901.1	15 pCi/L	UF
Cesium-137	EPA:901.1	5 pCi/L	UF
Cobalt-60	EPA:901.1	5 pCi/L	UF
Sodium-22	EPA:901.1	10 pCi/L	UF
Neptunium-237	EPA:901.1	40 pCi/L	UF
Potassium-40	EPA:901.1	75 pCi/L	UF
Radionuclides by gamma spec	EPA:901.1	varies	UF
Plutonium (isotopic)	HASL-300:ISOPU	0.05 pCi/L	UF
Uranium (isotopic)	HASL-300:ISOU	0.05 pCi/L	UF
Dioxin/Furans	SW-846:8290	0.2-0.5 pCi/L	UF
PCBs	EPA 1668A	20-150 pCi/L	UF
Radium-226 & 228	EPA:903.1 & EPA:904.4	1 pCi/L	UF

Table 3: Rio Grande at BDD Diversion Sampling Program

Analytes	Method	Detection Limit	Field Prep Code
Suspended Sediment Concentration	ASTM:D3977-97	3 mg/L	UF
TAL metal (23) plus Hg	EPA:200.7, EPA: 200.8, EPA:245.2	0.2-300 mg/L	F, UF
Hardness	SM:A2340B	2 mg/l	UF
Gross alpha	EPA:900	3 pCi/L	F, UF
Gross beta	EPA:900	3 pCi/L	F, UF
Strontium-90	EPA:905.0	0.5 pCi/L	F, UF
Americium-241	HASL-300:AM-241	0.05 pCi/L	F, UF
Gross gamma	EPA:901.1	15 pCi/L	UF
Cesium-137	EPA:901.1	5 pCi/L	F, UF
Cobalt-60	EPA:901.1	5 pCi/L	F, UF
Sodium-22	EPA:901.1	10 pCi/L	F, UF
Neptunium-237	EPA:901.1	40 pCi/L	F, UF
Potassium-40	EPA:901.1	75 pCi/L	F, UF
Radionuclides by gamma spec	EPA:901.1	varies	UF
Plutonium (isotopic)	HASL-300:ISOPU	0.05 pCi/L	F, UF
Uranium (isotopic)	HASL-300:ISOU	0.05 pCi/L	F, UF
Dioxin/Furans	SW-846:8290	0.2-0.5 pCi/L	UF
PCBs	EPA 1668A	20-150 pCi/L	UF
Radium-226 & 228	EPA:903.1 & EPA:904.4	1 pCi/L	F, UF
TDS	EPA:160.1	10 pCi/L	F
TOC	SW-846:9060	1 mg/L	UF
PADS-particle size analysis	ASTM C-1070-01	0.1 %	UF
Perchlorate	SW846 6850 Modified	0.02 mg/l	UF

1 *AMENDMENT #1 TO MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN*
2 *THE U.S. DEPARTMENT OF ENERGY AND THE BUCKMAN DIRECT DIVERSION BOARD*
3 *REGARDING WATER QUALITY MONITORING*
4

5 A. Preamble to Amendment
6

7 This Amendment is made by the U.S. Department of Energy (DOE) and the Buckman Direct
8 Diversion Board (BDD Board), parties to the Memorandum of Understanding between the U.S.
9 Department of Energy and the Buckman Direct Diversion Board Regarding Water Quality
10 Monitoring, dated January 12, 2015. The original MOU was executed by Ms. Kimberly Davis
11 Lebak, Manager, Los Alamos Field Office for the National Nuclear Security Administration (NA-
12 LA) and Joseph Maestas, BDD Board Chair.
13

14 On September 17, 2015, a MOU was executed between NA-LA and DOE, Environmental
15 Management, Los Alamos Field Office (EM-LA) for the transition of legacy waste environmental
16 cleanup work at the Los Alamos National Laboratory (LANL). As part of that MOU, EM-LA was
17 designated as DOE's lead point of contact for the Buckman Direct Diversion Project.
18

19 B. Deletions and Substitutions Pursuant to this Amendment
20

21 Except as set forth in this Amendment, the MOU between DOE and the BDD Board is unaffected
22 and shall continue in full force and effect in accordance with its terms.
23

24 The MOU between DOE and the BDD Board, dated January 12, 2015 is hereby amended to
25 designate EM-LA as DOE's primary point of contact for the BDD Board:
26

- 27 a. On Page 6 of 11, Section I. Contacts at lines 202- 210 (on Page 7 of 11) – replace "Pete
28 Maggiore, Assistant Manager, Environmental Projects Office, Los Alamos Field
29 Office/NNSA/DOE, 3747 West Jemez Road, MS-A316, Los Alamos, NM 87544, Phone:
30 505-655-05925, Cell: 505-695-5109, Email: Peter.Maggiore@nnsa.doe.gov" with
31 "Douglas E. Hintze, Manager, Department of Energy, Environmental Management, Los
32 Alamos Field Office, 3747 West Jemez Road, NM 87544, Phone: 505-665-5658, Cell: 505-
33 695-5103, Email: Douglas.Hintze@em.doe.gov."
34
- 35 b. On Page 7 of 11, Section I. Contacts at lines 213 -216 – replace "DOE Counsel, Silas
36 Deroma, Phone: 505-667-4668, Email: Silas.Deroma@nnsa.doe.gov" with "DOE Counsel,
37 Ben Underwood, Phone 505-667-4995, Email: Ben.underwood@em.doe.gov."
38
- 39 c. On Page 8 of 11, Section K. Dispute Resolution at lines 247-252 – replace "If the Parties
40 fail to resolve their differences within 30 days, the BDD Project Facility Manager and the
41 Los Alamos Field Office Environmental Projects Office Assistant Manager shall prepare a
42 written description of the dispute and the BDD Board Chair and the DOE Los Alamos
43 Field Manager shall meet to reconcile the dispute" with "If the Parties fail to resolve

their differences within 30 days, the BDD Project Facility Manager and the DOE, Environmental Management, Los Alamos Field Office (EM-LA) Manager shall prepare a written description of the dispute and the BDD Board Chair and the DOE EM-LA Manager shall meet to reconcile the dispute."

- d. On Page 8 of 11, Section L. Other Provisions at line 261-264 – replace "Both the BDD Board and Los Alamos Field Office Environmental Projects Office Assistant Manager shall make the appropriations of funds for the activities described in this MOU a priority when seeking regular or project specific funding requests" with "Both the BDD Board and the DOE, EM-LA Manager shall make the appropriations of funds for the activities in the MOU a priority when seeking regular or project specific funding requests."
- e. On Page 9 of 11, Section M. Signatures at lines 292-296 – replace "DOE, Kimberly Davis Lebak, Manager, Los Alamos Field Office" with "DOE, Douglas E. Hintze, Manager, Environmental Management, Los Alamos Field Office."

BDD Board:

C. Dominguez

Chair Carmichael Dominguez

5.5.14

Date

DOE, Environmental Management, Los Alamos Field Office

Douglas E. Hintze

Douglas E. Hintze, Manager

10 May 2016

Date

1 *MEMORANDUM OF UNDERSTANDING BETWEEN THE*
2 *U.S. DEPARTMENT OF ENERGY AND THE BUCKMAN DIRECT DIVERSION BOARD*
3 *REGARDING NOTIFICATION AND WATER QUALITY MONITORING*

4 **A. Parties**

5 The Parties to this MOU are the Buckman Direct Diversion Board (BDD Board) and the U.S. Department
6 of Energy (DOE).

7 **B. Background**

8 The Buckman Direct Diversion (BDD) is designed to divert water from the Rio Grande for use by the City
9 and County of Santa Fe water utilities in the Santa Fe area and to provide a source for the water supply
10 systems of Santa Fe County, the City of Santa Fe and the Club at Las Campanas. The diverted water is
11 San Juan-Chama Project water (a U.S. Bureau of Reclamation interbasin water transfer project) and
12 native New Mexico state waters regulated by the State of New Mexico.

13 The point of diversion for the BDD is on the east bank of the Rio Grande in northern New Mexico, near
14 the historic Buckman townsite. The point of diversion is approximately 15 miles northwest of the City of
15 Santa Fe and is located about three miles downstream from the confluence of the Rio Grande and Los
16 Alamos Canyon (where Route 502 crosses the Rio Grande at Otowi Bridge).

17 The Los Alamos National Laboratory (LANL) is owned and operated by DOE and is located on the Pajarito
18 Plateau above the Los Alamos/Pueblo Canyon watershed. The Los Alamos/Pueblo Canyon system
19 intermittently and infrequently flows to the Rio Grande just below the Otowi Bridge and upstream of
20 the BDD Project point of diversion. The Los Alamos/Pueblo Canyon watershed contains sediments with
21 LANL-origin contamination from historic releases from LANL. Rain events may cause the transport of
22 sediments, and these sediments have in the past and may in the future be transported to the Rio
23 Grande and then to the BDD intake. The Los Alamos/Pueblo system has been investigated under the
24 2005 Compliance Order on Consent between DOE and the State of New Mexico Environment
25 Department and which has been superseded by the 2016 Compliance Order on Consent. Measures
26 have been implemented (including infrastructure installation) to reduce the transport of contaminated
27 sediment.

28 The New Mexico legislature encouraged the BDD Board and DOE to memorialize their agreement to
29 certain activities relating to the mitigation and monitoring of LANL-origin water quality contaminants.
30 The BDD Board requested a written agreement with LANL and DOE in 2007 and the New Mexico
31 legislature passed resolutions in 2009 and 2010 that ultimately resulted in the Memorandum of
32 Understanding that was executed on May 13, 2010 (the 2010 MOU). The 2010 MOU represented an
33 agreement between the Parties that water quality management and monitoring are mutual priorities
34 and that the activities described were consistent with, and would be carried out subject to, the policies,
35 regulations, and applicable laws that pertain to the Parties. On January 12, 2015, the parties executed a
36 second and renegotiated MOU to further govern operations of the BDD Project. Upon the execution of

this MOU, the 2015 MOU will be terminated in accordance with Section J of that 2015 MOU and this MOU shall evidence the consent of the Parties to the termination.

C. Objective

This MOU establishes roles and responsibilities with regard to coordination of notification activities by the DOE and their contractor in Los Alamos and Pueblo Canyons and with regard to water quality sampling by the BDD at the BDD intake in relation to operation of the BDD Project. The primary objectives of this MOU include the following:

1. To continue the relationship developed between DOE and the BDD, and
2. To maintain the Early Notification System (ENS) to enable BDD staff to make decisions regarding facility operations, and
3. To support water quality surveillance monitoring at the BDD Project location as part of its sampling program.

D. Authorities

The Parties represent that they have the authority to enter into this MOU and are able to meet the respective commitments herein to the extent permitted by law.

1. DOE. DOE is authorized to enter into this MOU pursuant to the Atomic Energy Act, as amended (Title 42 U.S.C. 2011, et seq.).
2. BDD Board. The BDD Board is authorized to enter into this MOU pursuant to the March 7, 2005, Joint Powers Agreement between Santa Fe County and the City of Santa Fe and associated state, county, and municipal laws.

E. Agreement Principles

E.1 Memorandum of Agreement and Protocols between DOE and the Pueblo de San Ildefonso

The Parties recognize that DOE must comply with the requirements of the 2014 Memorandum of Agreement between DOE and the Pueblo de San Ildefonso (Pueblo), as amended in 2015, and the associated *Protocols for Access to Pueblo Lands and for Protecting Confidential Pueblo Information* pertaining to activities on, and information gathered by, DOE on Pueblo property. DOE will consult with the Pueblo as necessary regarding the use of information gathered pursuant to this MOU, and provide an update to BDD Project Staff.

E.2 Los Alamos / Pueblo Canyons Early Notification System

The ENS will continue to provide real time stream flow data or visual verification of flow to the BDD at the following gage station locations to enable the BDD staff to make decisions regarding facility

operations, including temporarily ceasing diversion of water from the Rio Grande. The ENS includes the following parts:

- LANL Gage Station E050.1 in Los Alamos Canyon above the Pueblo Canyon confluence,
- LANL Gage Station E060.1 in Pueblo Canyon above the Los Alamos Canyon confluence,
- Station E062 in the narrow canyon below the confluence of Los Alamos and Pueblo Canyons (visual verification of flow only), and
- Station E099 in Guaje Canyon on Pueblo property above the confluence of Los Alamos canyon (transducer flow verification only). Date transmission to BDD is dependent upon BDD obtaining a permit from the Pueblo to receive the data.

LANL ENS stations E050.1 and E060.1 will be equipped with gaging (flow measurement) capabilities, real-time conveyance of stream-flow data (telemetry), and camera capability to act as a visual verification and backup (or secondary flow indication) for the gaging capabilities. Flows at the LANL gage stations E050.1 and E060.1 are measured within a trapezoidal supercritical-flow flume design as reported in "Techniques of Water-resources Investigations of the United States Geological Survey, Chapter A14, Use of Flumes in Measuring Discharge" (F.A. Kilpatrick and V.R. Snyder, 1983), and between approximately 1 and 350 cubic feet per second (cfs). The system shall be capable of a low flow trigger stage of 5 cfs (adjustable).

Secondary flow indication at stations will consist of either a visual (camera) or transducer signal as confirmation of storm water flows. Note that stations E062 and E099 provide primary flow verification only. Maintenance of the flow indication equipment shall be the responsibility of DOE.

Should force majeure destroy or render inoperable some or all of the identified ENS stations, or if operational costs become excessive for some or all of the identified stations, DOE shall have the prerogative to utilize the most cost effective and technologically advanced techniques to provide BDD with equivalent flow data to meet the objective of the ENS.

The BDD Board will, at its discretion, consult with the Pueblo regarding the installation of a real-time flow indicator(s) at the lower Los Alamos Canyon and the Rio Grande and to obtain permission for data transmittals from ENS station E099.

E.3 Rio Grande at BDD Project Location Sampling Program

The purpose is to provide both base-flow and event-based sampling of the Rio Grande when triggered by notification of flows in Los Alamos and/or Pueblo Canyons or as determined by the BDD Board for the purpose of water quality sampling of the Rio Grande at BDD in the search for operational criteria for ceasing diversion (BDD Project Location Sampling Program).

DOE shall pay up to \$96,000 in sampling and analytical costs per year for each of the three (3) years under this MOU (2018, 2019, and 2020) toward the BDD Project Location Sampling Program at the BDD intake. The BDD Board shall be responsible for any additional sampling and analytical costs, and the BDD Board is responsible for all maintenance, inspection and repair of the sampling station located at

105 the BDD intake. DOE will seek funding via a grant to the BDD Board for the sampling and analytical costs,
106 and provide an update to the BDD Project Staff.

107 E.4 TREAT Study

108 BDD Board will fund a continuation of the Contaminant Fate Analysis that was started under the 2010
109 MOU under "The Removal Efficiency and Assessment of Treatments" (TREAT) Study. The TREAT Study
110 will continue to examine the treatment efficiency of the conventional and advanced treatments at the
111 BDD with respect to contaminants in order to help determine the BDD operational criteria for diversion
112 from the Rio Grande. The TREAT Study will focus on the capabilities of the BDD with respect to removal
113 of contaminants as they are found to occur in the Rio Grande at the BDD intake.

114 E.5 Analysis

115 The BDD Board will evaluate the BDD Project Sampling Program results and TREAT data and make a
116 determination on operational parameters or criteria on whether or when to cease diverting waters from
117 the Rio Grande.

118 F. BDD Project Data Sharing

119 Real-time flow data and visual verification data from the ENS stations shall be provided by DOE and their
120 contractors to BDD Project as specified in Section E.2. Analytical results from the BDD intake will be
121 made available to both the BDD Board and DOE via the Intellus database as soon as they are available.

122 The BDD Board will make records available to the DOE consistent with requirements specified in the
123 grant.

124 G. Coordination

125 DOE and the BDD Board will coordinate as necessary with the Pueblo on any issues related to the
126 implementation of this MOU, and will engage in any consultation required to accomplish the purposes
127 of this MOU.

128 Coordination between the Parties shall be to the mutual benefit of both Parties and shall include data
129 sharing (as above), technical assistance, and data and analysis reviews. Both Parties should allow at
130 least one week for response when requesting technical assistance or data and for analysis reviews.
131 Additional coordination will occur on an as needed basis.

132 H. Contacts

133 All notices, correspondence, and communications arising under this MOU shall be provided to the
134 representatives listed below and any notice, demand, request, or information authorized of related to
135 this MOU shall be deemed to have been given if mailed (return receipt requested), hand-delivered, or
136 faxed (with confirmation of transmission) as follows:

137 • **DOE**
138 Douglas E. Hintze
139 Manager
140 DOE, Environmental Management
141 Los Alamos Field Office
142 1900 Diamond Drive, MSM984
143 Los Alamos, NM 87544
144 Phone: 505-665-5658
145 Cell: 505-695-5103
146 Email: douglas.hintze@em.doe.gov
147
148 With copy to:
149 DOE Counsel
150 Ben Underwood
151 Phone: 505-667-4995
152 Email: ben.underwood@em.doe.gov
153
154 • **BDD Board**
155 Charles Vokes
156 BDD Facility Manager
157 Buckman Direct Diversion
158 341 Caja De Rio Road
159 Santa Fe, NM 87506
160 Phone: 505-955-4507
161 Email: cmvokes@ci.santa-fe.nm.us
162
163 With copy to:
164 BDD Board Counsel
165 Nancy Long
166 Long, Komer & Associates
167 2200 Brothers Road
168 P.O. Box 5098
169 Santa Fe, NM 87502
170 Cell: 505-470-2158
171 Email nancy@longkomer.com
172

173 **I. Period of Agreement, Modification or Termination**

174 This MOU is effective upon the signature of the BDD Board and DOE as shown below. This agreement is
175 intended to address 2018, 2019 and 2020 and shall expire on December 1, 2020, UNLESS both Parties

176 agree to extend this MOU for an optional three (3) year period. This optional extension may be
177 executed by a re-signed copy of the signature page by the respective authorized parties to this MOU.

178 The Parties may modify this MOU by written amendment and in the same manner as this MOU was
179 executed. Either Party may unilaterally terminate this MOU before the date of expiration, provided the
180 Party seeking termination provides written notice to the other Party's representative 90 days before the
181 intended termination date.

182 J. Dispute Resolution

183 If the Parties disagree over any issue related to this MOU, representatives of the Parties shall present
184 their differences in writing to the Points of Contact for the other Party. If the Parties fail to resolve their
185 differences within 30 days, the BDD Project Facility Manager and the DOE, Environmental Management,
186 Los Alamos Field Office (EM-LA) Manager shall prepare a written description of the dispute and the BDD
187 Board Chair and the DOE EM-LA Manager, along with appropriate staff, shall meet to reconcile the
188 dispute. These representatives shall use alternative dispute resolution methods such as negotiation,
189 facilitation, and mediation to resolve the dispute.

190 K. Other Provisions

191 Nothing in this MOU is intended to conflict with requirements of the Parties or applicable laws. Any
192 such conflicting terms shall be invalid, but the remainder of this MOU shall remain in effect. If a term is
193 deemed invalid, the Parties shall take appropriate action, including amendment or termination. The
194 activities described in this MOU are consistent with, and will be carried out subject to, all known
195 policies, regulations, and applicable laws that pertain to the Parties.

196 This MOU in no way restricts the Parties from participating in any activity with other public or private
197 agencies, organizations, or individuals.

198 Activities described in this MOU are subject to the availability of appropriated funds. Both the BDD
199 Board and DOE EM-LA Manager shall make the appropriations of funds for the activities described in this
200 MOU a priority when seeking regular or project specific funding requests.

201 This MOU describes the basis on which the Parties will cooperate on the topics described herein. This
202 MOU is NOT a financial obligation that serves as a basis for expenditures, and any financial obligations
203 necessary to carry out the activities described herein shall be addressed in other documents internal to
204 each Party. Expenditure of funds, human resources, equipment, supplies, facilities, training, public
205 information, and technical expertise will be provided by each Party as necessary to fulfill its obligations
206 under this MOU.

207 This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is
208 intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or
209 transfer or receive anything of value. Any requirement for the payment or obligation of funds by DOE

210 established by the terms of this MOU shall be subject to availability of funds and Secretarial discretion,
211 and no provision herein shall be interpreted to require obligation or payment of funds in violation of the
212 Anti-Deficiency Act, 31 U.S.C. §1341.

213 This MOU is not legally enforceable and shall not be construed to create any legal obligation on the part
214 of either Party. This MOU shall not be construed to provide a private right, or cause of action, for or by
215 any person or entity.

216 **L. Signatures**

217 NOW, each of the BDD Board and DOE has caused this MOU to be executed and delivered by its duly
218 authorized representatives as of the last date shown below,

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220 BDD Board

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228 DOE

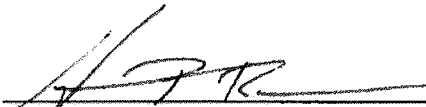
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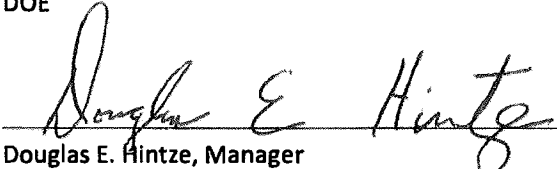
233



Henry Roybal, BDD Board Chair

Date

11/12/17



Douglas E. Hintze, Manager
Environmental Management, Los Alamos Field Office

Date

24 Nov 2017

234 This Memorandum of Understanding expires on December 1, 2020.

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Memorandum



Buckman Direct Diversion

Date: February 25, 2020

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Facilities Manager and Kyle Harwood, BDD Legal Counsel

Subject: Memorandum of Agreement with the Middle Rio Grande Endangered Species Collaborative Program

ITEM AND ISSUE:

The BDD Board authorized staff to request to be a signatory to the Middle Rio Grande Endangered Species Collaborative Program (MRGESCP).

BACKGROUND AND SUMMARY:

The request was made by letter last fall and a presentation was made to the Executive Committee on January 10, 2020. After an executive session the Executive Committee voted to approve the membership of the BDD Board to the Executive Committee.

The Executive Committee provided the attached Memorandum of Agreement for BDD Board approval and execution. As a signatory the BDD Board representatives will have the ability to fully participate in the dialogue at committee meetings and will give the BDD the ability to vote on matters concerning the MRGESCP.

The Executive Committee requested that the Board identify a staff Representative to the Executive Committee.

The MRGESCP was established as a collaborative effort consisting of federal, state, and local government entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws.

RECOMMENDED ACTION:

Staff recommends that the BDD Board approve the MOU and designate Rick Carpenter, BDD Facilities Manager as the Board's staff Representative to the Executive Committee.



**MEMORANDUM OF AGREEMENT
for the
MIDDLE RIO GRANDE ENDANGERED SPECIES COLLABORATIVE PROGRAM**

STATEMENT OF PURPOSE

The Middle Rio Grande Endangered Species Collaborative Program (Program) is established by this Memorandum of Agreement (MOA) as a collaborative effort consisting of federal, state, and local government entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of Program participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws. To achieve these ends, the Program may not impair state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.

In April, 2002, a Memorandum of Understanding (MOU) was executed by federal agencies, the State of New Mexico, Indian Pueblos, and other parties that set forth certain interim agreements with respect to establishment of the Program. Through a series of amendments, the MOU was subsequently extended by parties through December 2008. This MOA supersedes the MOU, as amended. The signatories to this MOA agree to participate in and support the Program.

AUTHORITIES

- A. Consultation and Coordination. Under section 4(f) of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq., the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may enlist the services of public and private agencies, individuals and institutions, including Program

Memorandum of Agreement for the Middle Rio Grande Endangered Species Collaborative Program
5/15/2008

signatories, in development and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by Program signatories, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Program does not create an agency, board, commission, or any other entity of state government, nor does the MOA create a state advisory committee subject to Section 9-1-9 NMSA 1978.

- B. Applicable Tribal Law. Pursuant to the applicable Tribal laws, and inherent Tribal sovereignty, the tribes have the authority to administer water rights, to oversee the development of water resources, and to protect and manage fish and wildlife resources within the boundaries of their reservations.
- C. Statement of Authorities. The signatories hereby state that they have legal authority to enter into this MOA, and have legal authority to work toward the intent of the Program.

TERMS AND CONDITIONS

- A. Effective Date and Duration. This MOA shall remain in effect for a period of 13 years from the date of its execution by any agency of the United States and any additional non-Federal signatory, unless extended by written agreement.
- B. Amendment. This MOA may be amended by written agreement of the signatories. Any signatory may withdraw from this MOA upon written notice to the other signatories.
- C. No Delegation or Abrogation. All signatories to this MOA have statutory legal responsibilities that cannot be delegated. This MOA does not and is not intended to abrogate any statutory or legal authorities.
- D. Consistency with Applicable Law. This MOA is subject to and is intended to be consistent with all applicable Federal, State, and Tribal laws and interstate compacts. Federal agency consultation with Tribes shall occur for all Program activities affecting Tribal resources in conformance with all applicable Executive and Secretarial Orders and Policies.
- E. Legislative Approval. All funding commitments to carry out the Program are subject to approval by the appropriate State, Tribal, and Federal legislative bodies.

Memorandum of Agreement for the Middle Rio Grande Endangered Species Collaborative Program
5/15/2008

- F. Governance and Operating Procedures. The governing body of the Program (Executive Committee) shall operate pursuant to Program Bylaws and other documents, as needed, specifying Program governance and operating procedures, and may amend those documents as needed.
- G. Program Modifications. Modifications to the Program may be made pursuant to Bylaws adopted by the Executive Committee of the Program and without modification to this MOA or the additional written consent of the signatories.

The Buckman Direction Diversion Board (BDDDB) has been accepted as a member of the Middle Rio Grande Endangered Species Collaborative Program by the Executive Committee on February 10, 2020. The BDDDB hereby agrees to be a signatory to the above Memorandum of Agreement as of the date following the BDDDB Chair's signature:

BUCKMAN DIRECT DIVERSION BOARD

By: _____
JoAnne Vigil Coppler, BDDDB Chair

Date: _____

APPROVED AS TO FORM



Nancy R. Long, BDDDB Counsel

ATTEST

Yolanda Y. Vigil, City Clerk

File Date: _____

**MEMORANDUM OF AGREEMENT
for the
MIDDLE RIO GRANDE ENDANGERED SPECIES COLLABORATIVE PROGRAM**

STATEMENT OF PURPOSE

The Middle Rio Grande Endangered Species Collaborative Program (Program) is established by this Memorandum of Agreement (MOA) as a collaborative effort consisting of federal, state, and local governmental entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of Program participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and, second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws. To achieve these ends, the Program may not impair state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.

In April, 2002, a Memorandum of Understanding (MOU) was executed by certain federal agencies, the State of New Mexico, Indian Pueblos, and other parties that set forth certain interim agreements with respect to establishment of the Program. Through a series of amendments, the MOU was subsequently extended by the parties through December 2008. This MOA supersedes the MOU, as amended. The signatories to this MOA agree to participate in and support the Program.

AUTHORITIES

- A. Consultation and Coordination. Under section 4(f) of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq., the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may enlist the services of public and private agencies, individuals and

institutions, including Program signatories, in developing and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by Program signatories, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Program does not create an agency, board, commission, or any other entity of state government, nor does the MOA create a state advisory committee subject to Section 9-1-9 NMSA 1978.

- B. Applicable Tribal Law. Pursuant to the applicable Tribal laws, and inherent Tribal sovereignty, the tribes have the authority to administer water rights, to oversee the development of water resources, and to protect and manage fish and wildlife resources within the boundaries of their reservations.
- C. Statement of Authorities. The signatories hereby state that they have legal authority to enter into this MOA, and have legal authority to work toward the intent of the Program.

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- B. Amendment. This MOA may be amended by written agreement of the signatories. Any signatory may withdraw from this MOA upon written notice to the other signatories.
- C. No Delegation or Abrogation. All signatories to this MOA have statutory legal responsibilities that cannot be delegated. This MOA does not and is not intended to abrogate any statutory or legal authorities.
- D. Consistency with Applicable Law. This MOA is subject to and is intended to be consistent with all applicable Federal, State, and Tribal laws and interstate compacts. Federal agency consultation with Tribes shall occur for all Program activities affecting Tribal resources in conformance with all applicable Executive and Secretarial Orders and Policies.

E. Legislative Approval. All funding commitments to carry out the Program are subject to approval by the appropriate State, Tribal, and Federal legislative bodies.

F. Governance and Operating Procedures: The governing body of the Program (Executive Committee) shall operate pursuant to Program Bylaws and other documents, as needed, specifying Program governance and operating procedures, and may amend those documents as needed.

G. Program Modifications. Modifications to the Program may be made pursuant to Bylaws adopted by the Executive Committee of the Program and without modification to this MOA or the additional written consent of the signatories.

Insert the name of your organization here:

ABCWAA

Sign here



INSERT YOUR NAME HERE,

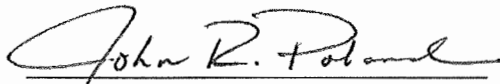
Insert your title here

Executive Director

7/17/08

Date

**Department of Interior
Bureau of Reclamation
Albuquerque Area Office**



**JOHN R. POLAND,
Area Manager**

5/21/08
Date

Insert the name of your organization here: CITY OF ALBUQUERQUE

MATTHEW F. SCHMADER

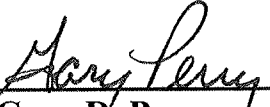
Sign here 
INSERT YOUR NAME HERE,

Insert your title here


SUPERINTENDENT, OPEN SPACE DIVISION
PARKS AND RECREATION DEPARTMENT

July 15, 2008
Date

Middle Rio Grande Conservancy District
P.O. Box 581
Albuquerque, NM 87103

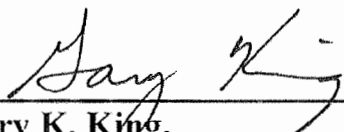


Gary D. Perry,
Chairman



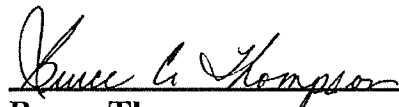
Date

Office of the New Mexico Attorney General:



Gary K. King,
New Mexico Attorney General

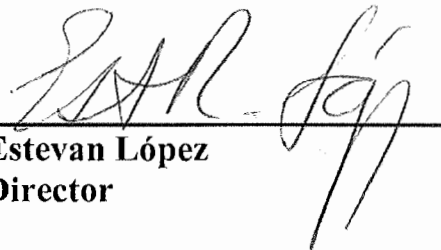
New Mexico Department of Game and Fish



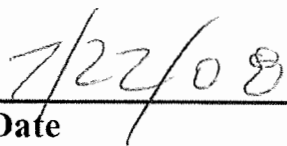
Bruce Thompson,
Director

7-22-08
Date

New Mexico Interstate Stream Commission

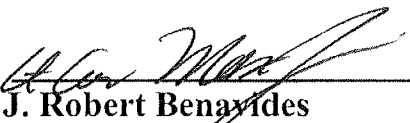


Estevan López
Director



Date

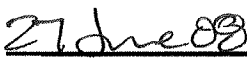
Pueblo of Isleta:


For **J. Robert Benavides**
Governor

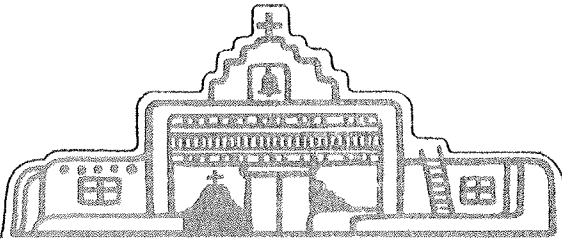
Pueblo of Santa Ana



Ulysses G. Leon
Governor




Date



Santo Domingo Tribe

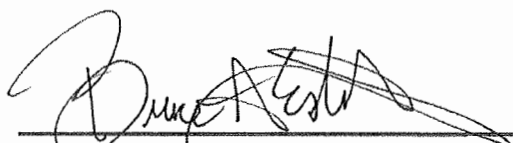
OFFICE OF THE GOVERNOR P.O. BOX 70, SANTO DOMINGO PUEBLO, NEW MEXICO 87052 TELEPHONE (505) 465-0055 FAX (505) 465-0056

Santo Doming Tribe:


Sisto Quintana,
Governor Santo Domingo


Date

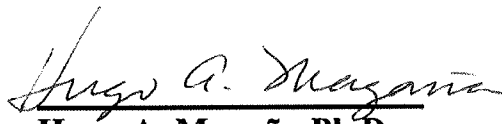
**U.S. ARMY CORPS OF ENGINEERS
Albuquerque District**



B. A. Estok
Lieutenant Colonel, U.S. Army

Date signed: 9 JUN 08

U.S.D.A. Forest Service, Rocky Mountain Research Station



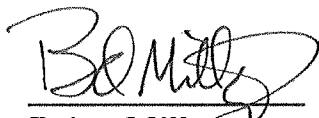
Hugo A. Magaña Ph.D.

Insert your title here

Dec. 8, 2008

Date

U.S. Fish and Wildlife Service:

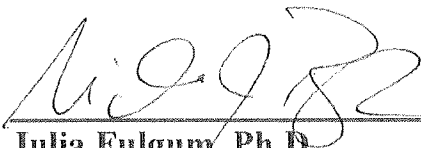


**Brian Millsap,
Fish and Wildlife State Administrator,
New Mexico**

17 July 2008

Date

The University of New Mexico

for 
Julia Fulgum, Ph.D.
Interim Vice President for Research

Date signed:



New Mexico Department of Agriculture

Office of the Director/Secretary

MSC 3189

New Mexico State University

P.O. Box 30005

Las Cruces, NM 88003-8005

Tel: 575-646-3007

Fax: 575-646-8120

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December 15, 2008

Lisa K. Croft
Deputy Area Manager
Middle Rio Grande ESA Collaborative Program Manager
Albuquerque Area Office Bureau of Reclamation
555 Broadway NE, Suite 100
Albuquerque, New Mexico 87102

Dear Ms. Croft:

Enclosed you will find the New Mexico Department of Agriculture's (NMDA) signed signature page for the Middle Rio Grande Endangered Species Collaborative Program (MRG) Memorandum of Agreement signifying NMDA's continued commitment to the MRG program.

Thank you for your support for this important effort.

Sincerely,

I. Miley Gonzalez, Ph.D.
Director/Secretary

IMG/jm/hb

Attachment: NMDA signature sheet

New Mexico Department of Agriculture



Dr. I. Miley Gonzalez
Director/Secretary

12/15/08
Date

**Middle Rio Grande
Endangered Species Collaborative Program**

c/o Bureau of Reclamation
555 Broadway Ave NE, Suite 100
Albuquerque NM 87102
PHONE 505-462-3541 I FAX 505-462-3783



www.mrgesa.com

Federal Co-Chair: **David Sabo**
Non-Federal Co-Chair: **Estevan Lopez**
Program Manager: **Lisa K. Croft**

David K. Mitchell, President
Assessment Payers Association of the MRGCD
P.O. Box 326
Los Lunas, NM 87031

August 21, 2008

Dear Mr. Mitchell

Thank you for your letter of May 19, 2008 regarding representation on the Executive Committee of the Collaborative Program.

The Executive Committee met on July 17, 2008 and at that time determined that additional information was needed before a final decision could be made on your application. The By-laws for Collaborative Program state:

The Executive Committee may consider among other things the following criteria in determining whether to accept an application, provided that an applicant need not meet all criteria, and further provided that meeting the criteria does not guarantee an applicant's acceptance as a signatory. These criteria include:

- a) representation of a sizable constituency, for example through public outreach or membership;*
- b) contribution to the non-federal cost share, including in-kind services;*
- c) ownership of an interest affected by the Program, such as land, water, or other property rights;*
- d) jurisdictional or regulatory responsibility, including sovereignty; and*
- e) commitment to participation.*

The Executive Committee would like any additional information you would like to provide that addresses the above criteria regarding the Assessment Payers Association of the MRGCD, but in particular would appreciate additional information regarding criteria (a) and (c). This additional information will help the Executive Committee to make a better informed decision regarding your application for membership to the Executive Committee.

The APA has been a valued and active participant in the Collaborative Program and we look forward to continuing to work with your organization as they provide a critical link to the agricultural community. Please feel free to contact Lisa Croft, Program Manager at 505 462-3541 or Estevan Lopez, Non Federal Co-Chair, at 505 827-6103; if you have any questions or concerns.


Thank you again for your support and commitment to the Collaborative Program.

Sincerely,

Dave Sabo
Federal Co-Chair

Estevan Lopez
Non-Federal Co-Chair

**Assessment Payers Association of the Middle Rio Grande
Conservancy District:**



5-16-08

**David K. Mitchell,
President**

**Middle Rio Grande
Endangered Species Collaborative
Program**

c/o Bureau of Reclamation
555 Broadway Ave NE, Suite 100
Albuquerque NM 87102
PHONE 505-462-3541 | FAX 505-462-3783



<http://www.mrgesa.com/>

Federal Co-Chair: **David Sabo**
Non-Federal Co-Chair: **Estevan Lopez**
Program Manager: **Lisa K. Croft**

Governor Stuart Paisano
Pueblo of Sandia
481 Sandia Loop
Bernalillo, New Mexico 87004

August 21, 2008

Dear Governor Paisano:

The Middle Rio Grande Endangered Species Collaborative Program recently finalized the Memorandum of Agreement for Program participants. Enclosed you will find the signature page for you to complete and return to the Program.

As a long time Program member we look forward to your continuing participation and involvement in achieving the Program goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Sabo".

Federal Co-Chair
Dave Sabo

A handwritten signature in black ink, appearing to read "Estevan Lopez".

Non-Federal Co-Chair
Estevan Lopez

Pueblo of Sandia

Governor Stuart Paisano

August , 2008

**MEMORANDUM OF AGREEMENT
for the
MIDDLE RIO GRANDE ENDANGERED SPECIES COLLABORATIVE PROGRAM**

STATEMENT OF PURPOSE

The Middle Rio Grande Endangered Species Collaborative Program (Program) is established by this Memorandum of Agreement (MOA) as a collaborative effort consisting of federal, state, and local governmental entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of Program participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and, second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws. To achieve these ends, the Program may not impair state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.

In April, 2002, a Memorandum of Understanding (MOU) was executed by certain federal agencies, the State of New Mexico, Indian Pueblos, and other parties that set forth certain interim agreements with respect to establishment of the Program. Through a series of amendments, the MOU was subsequently extended by the parties through December 2008. This MOA supersedes the MOU, as amended. The signatories to this MOA agree to participate in and support the Program.

AUTHORITIES

- A. Consultation and Coordination. Under section 4(f) of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq., the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may enlist the services of public and private agencies, individuals and

Memorandum of Agreement for the Middle Rio Grande Endangered Species Collaborative Program
5/15/2008

institutions, including Program signatories, in developing and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by Program signatories, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Program does not create an agency, board, commission, or any other entity of state government, nor does the MOA create a state advisory committee subject to Section 9-1-9 NMSA 1978.

- B. Applicable Tribal Law. Pursuant to the applicable Tribal laws, and inherent Tribal sovereignty, the tribes have the authority to administer water rights, to oversee the development of water resources, and to protect and manage fish and wildlife resources within the boundaries of their reservations.
- C. Statement of Authorities. The signatories hereby state that they have legal authority to enter into this MOA, and have legal authority to work toward the intent of the Program.

TERMS AND CONDITIONS

- A. Effective Date and Duration. This MOA shall remain in effect for a period of 13 years from the date of its execution by any agency of the United States and any additional non-Federal signatory, unless extended by written agreement.
- B. Amendment. This MOA may be amended by written agreement of the signatories. Any signatory may withdraw from this MOA upon written notice to the other signatories.
- C. No Delegation or Abrogation. All signatories to this MOA have statutory legal responsibilities that cannot be delegated. This MOA does not and is not intended to abrogate any statutory or legal authorities.
- D. Consistency with Applicable Law. This MOA is subject to and is intended to be consistent with all applicable Federal, State, and Tribal laws and interstate compacts. Federal agency consultation with Tribes shall occur for all Program activities affecting Tribal resources in conformance with all applicable Executive and Secretarial Orders and Policies.

Memorandum of Agreement for the Middle Rio Grande Endangered Species Collaborative Program
5/15/2008

E. Legislative Approval. All funding commitments to carry out the Program are subject to approval by the appropriate State, Tribal, and Federal legislative bodies.

F. Governance and Operating Procedures: The governing body of the Program (Executive Committee) shall operate pursuant to Program Bylaws and other documents, as needed, specifying Program governance and operating procedures, and may amend those documents as needed.

G. Program Modifications. Modifications to the Program may be made pursuant to Bylaws adopted by the Executive Committee of the Program and without modification to this MOA or the additional written consent of the signatories.

MEMORANDUM OF UNDERSTANDING

MIDDLE RIO GRANDE ENDANGERED SPECIES ACT COLLABORATIVE PROGRAM

I. BACKGROUND

At the beginning of calendar year 2000, the Bureau of Reclamation (Reclamation), the U.S. Army Corps of Engineers (Corps), the U.S. Fish and Wildlife Service (Service), the Bureau of Indian Affairs (BIA), and non-Federal organizations executed a memorandum of understanding to form the Middle Rio Grande Endangered Species Act Workgroup (ESA Workgroup) to develop the Middle Rio Grande Endangered Species Act Collaborative Program (Program) for protecting and improving the status of listed species while simultaneously protecting existing and future water uses; to contribute to recovery of those species; and to secure interim and long-term funding, all while complying with state and federal law, including compact delivery obligations. For the purpose of this Memorandum of Understanding (MOU), listed species shall mean federally listed endangered species with special emphasis on the Rio Grande silvery minnow and the southwestern willow flycatcher. The signatories to the original memorandum of understanding recognized the potential conflicts between recovery efforts for endangered species and existing and future water uses in the Middle Rio Grande¹. The signatories also realized that a collaborative effort offered a path towards resolving such conflicts, and committed to work together to develop the Program.

During the calendar years of 2000 and 2001, significant progress was made in developing this collaborative process; securing funding for planning and executing on-the-river restoration projects; conducting research and monitoring supportive of the Service's Rio Grande Silvery Minnow Recovery Plan; accomplishing restoration work and other actions to improve habitat for the southwestern willow flycatcher; and supporting the implementation of the Service's Middle Rio Grande Water Management Biological Opinion dated June 29, 2001.² The ESA Workgroup produced a draft Program document on January 19, 2001, which served as a guide for recovery activities during calendar year 2001. Other activities included securing short-term water supplies for the benefit of the Rio Grande silvery minnow and working towards development of a long-term, comprehensive recovery strategy.

¹ The Middle Rio Grande ESA Collaborative Program area (Program area) is here defined as the headwaters of the Rio Chama watershed and the Rio Grande, including tributaries, from the New Mexico-Colorado state line downstream to the elevation of the spillway crest of the Elephant Butte Reservoir at 4450 feet mean sea level. Indian Pueblo and Tribal lands and resources within the Program area will not be included in activities under this MOU and the Program without their express written consent.

² *Programmatic Biological Opinion on the Effects of Actions Associated with the U.S. Bureau of Reclamation's, U.S. Army Corps of Engineers', and Non-Federal Entities' Discretionary Actions Related to Water Management on the Middle Rio Grande, New Mexico, June 29, 2001.*

The ESA Workgroup finds that the collaborative process requires additional time and focus to build on the last two years' progress and define an interim strategy to develop the long-term Program to support recovery of the listed species, while complying with New Mexico state law, interstate compacts, and federal law. Parties interested in the recovery of these two species, including research and habitat restoration projects that benefit this effort, as well as those whose use of water potentially impacts these species, would be considered partners in this collaborative effort and are welcome to sign this MOU.

II. PURPOSE

The signatories agree that an interim (two-year) strategy is necessary to build on accomplishments to date and create the long-term Program. Specifically, the intent of the signatories to this MOU includes, but is not limited to:

- A. Within the Middle Rio Grande Program area, act to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species, in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem.
- B. Exercise creative and flexible options under the ESA so that water use and development can proceed in compliance with applicable federal and state laws. This requires that the Program will not impair valid state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.
- C. Within six weeks of the signing of this MOU, the Interim Steering Committee will meet the following milestones:
 - 1. Negotiate and agree on the roles and responsibilities of each of the Interim Steering Committee members.
 - 2. Negotiate and agree on a plan for implementing this Interim MOU, including definition of the proposed actions for National Environmental Policy Act (NEPA) review, including but not limited to near-term and long-term water acquisition elements and habitat restoration elements, and related scheduling and reporting.
 - 3. Negotiate and agree on interim goals for monitoring and evaluating habitat restoration projects.
- D. The Interim Steering Committee will promptly establish procedures for determining jointly how funding will be spent and projects managed.
- E. Expand upon the progress that has been made toward an understanding of what is required for a permanent solution to the conflicts regarding ESA requirements on the Middle Rio Grande. The signatories agree that further negotiation toward a Program will include, but not be limited to, the following issues:
 - 1. Water needs, including changes in water management, for interim and long-term Program actions will be identified. A plan will be prepared for acquisition of Program water, including identification of the sources of water and funding.

2. The need for supplemental water.
3. How resolution of water resource issues in concert with conservation of listed species will be achieved.
4. The need for rigorous evaluation criteria for the Program, and a peer-review process.
5. Clarify the role of research, including priorities, integration, and synthesis, in the Program.
6. Address the extent of participation by eligible entities under the ESA consultation and NEPA processes.

III. COLLABORATIVE PROCESS

- A. Under section 4(f)(2) of the ESA, 16 U.S.C. § 1536(f)(2), the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may procure the services of public and private agencies, individuals and institutions in developing and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by signatories to this MOU, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app.2.
- B. The signatories recognize that this collaborative process does not constitute nor supplant the requirement for government-to-government consultation between the Federal government and potentially affected Indian Pueblos and Tribes pursuant to the Federal government's Indian trust responsibilities to those Indian Pueblos and Tribes, and furthermore, that the Federal government's participation in, and activity under, this MOU is subject to its trust responsibilities and its commitment to perform government-to-government consultation with Indian Pueblos and Tribes.
- C. The signatories commit to:
 1. Establish an Interim Steering Committee, pursuant to section 4(f)(2) of the ESA, to guide activities described in this MOU. Any signatory to this MOU may have a seat on the Interim Steering Committee. The Interim Steering Committee will determine its rules of order and operation, and establish interim committees or subgroups, as needed. The Interim Steering Committee shall terminate upon the expiration of this MOU. Membership on this Interim Steering Committee does not imply nor convey any right or obligation to membership on the governing body established under the Cooperative Agreement for the Program.
 2. Engage in civil dialogue and problem-solving activities, in order to make continued progress towards achieving the interim goals defined below.
 3. Meet regularly to receive progress reports, define upcoming issues, evaluate, and if necessary, adjust strategy, and attempt to achieve consensus on actions that will support the interim goals.
 4. To the extent possible, publicly support strategies collaboratively agreed upon by the signatories to achieve interim goals.

5. Conduct their activities in an open and public manner, unless constrained by applicable Federal or State law.
6. Participate in such subgroups or committees as may be designated by the signatories to efficiently address necessary actions to achieve interim goals and produce draft recommendations for the consideration of the signatories.
7. "...[C]ooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." 16 U.S.C. §1531(c)(2).

IV. GOALS OF THE SIGNATORIES OF THE INTERIM MOU

- A. Development of the Middle Rio Grande Endangered Species Act Collaborative Program (Program) – The signatories to this MOU shall develop a long-term Program within the term of this MOU. The Program shall provide a framework for coordinated actions to enhance habitat, increase populations, and contribute to the recovery of the listed species. The Program shall outline a process for the development of an adaptive management plan, and identify practical solutions which can be fully funded, consistent with agreed upon cost sharing. The Program document shall describe the resolution of outstanding Program issues and include detailed descriptions of Program activities, including recognition of the legal and institutional framework within which Program activities will be conducted. The Program document shall also define a long-term budget.
- B. Support for the Development of a Long-Term Biological Assessment and Biological Opinion – The signatories recognize that it is the intent of Reclamation and the Corps (Federal action agencies) to develop a long-term biological assessment, and of the Service to develop a long-term biological opinion for ongoing and proposed actions that would occur under the Program.
- C. Support for Compliance Activities under the National Environmental Policy Act (NEPA) – The signatories recognize that it is the responsibility of the Federal agencies to conduct appropriate NEPA review for all activities of the Program to the extent applicable. The NEPA review process shall be conducted in accordance with federal law, including evaluation of potential socioeconomic and other impacts. The Federal agencies agree to proceed with NEPA review on the Program with the intent of completing a programmatic environmental impact statement, from which NEPA compliance on specific activities can be tiered, by September 2003. Pursuant to NEPA regulations, the Federal action agencies invite eligible entities to be Cooperating Agencies.
- D. Support for Federal and Non-Federal Funding of Interim Recovery Activities – The signatories recognize that the success of interim recovery activities is highly dependent on adequate Federal and non-Federal funding of those activities. The signatories agree to lend their active support to obtaining necessary funding, to the extent possible and appropriate.
- E. Support for the Development of Federal Authorizing Legislation for the Program – The signatories recognize that the success of the Program depends upon continued funding and requires Federal legislation. The non-Federal signatories agree that they will

collaboratively participate in the development of such draft legislation and, to the extent possible, publicly support such legislation before the Congress.

- F. Development of Long-Term Federal and Non-Federal Cost Sharing and Financing – The signatories recognize that within the context of potential Federal authorizing legislation, it is critical to develop a ratio for Federal and non-Federal cost sharing for the Program. The signatories agree to collaborate in the identification, justification, and support of an acceptable cost sharing approach.

**V. PUEBLO AND TRIBAL TRUST ASSETS AND RESOURCES
POTENTIALLY AFFECTED BY THE PROGRAM – FEDERAL
GOVERNMENT'S TRUST RESPONSIBILITIES**

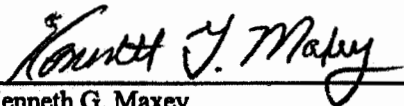
- A. Tribal Participation - Pueblos and Tribes are welcome and encouraged to become signatory members to this MOU. However, the signatories recognize that the Indian Pueblos and Tribes may rightfully elect to not sign this MOU, and rather, conduct their sovereign affairs privately, which may include activities that contribute to the interim goals of this MOU and expend interim funding under this MOU. Nothing in this interim MOU shall obligate any nonsignatory Indian Pueblo or Tribe to participate in, contribute to, or otherwise adopt elements of this MOU. The Federal government continues to have a trust responsibility to all potentially affected Indian Pueblos and Tribes, whether or not an Indian Pueblo or Tribe signs this MOU.
- B. Trust Responsibility - Executive Memoranda, Executive Orders, Secretarial Orders, and executive agency policies require that the federal government fulfill its trust obligation and consult with Pueblos and Tribes on a government-to-government basis. *See e.g.* Executive Memorandum of April 29, 1994; Executive Order #13084 issued May 14, 1998; superseded by Executive Order No. 13175 issued November 6, 2000; Secretarial Order #3206, dated June 5, 1997; and Secretarial Order #3215, dated April 28, 2000; Secretarial Order #3175, dated November 8, 1993, now incorporated in 512DM2; Reclamation's August 31, 1994 ITA Policy; COE Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes. Accordingly, nothing in this MOU shall affect or impede the obligation of the Federal government to protect tribal trust assets and resources resulting from actions undertaken pursuant to this MOU or the Program. Nothing in this MOU shall diminish or impair the Federal government's trust duties to any Indian Pueblo or Tribe, or the Federal government's obligation to consult with the Pueblos and Tribes on a government-to-government basis. Specifically, the Federal signatories to this MOU commit to meeting their trust responsibilities in all matters arising under this MOU or in the Program. The Federal signatories will also make good faith efforts to identify opportunities for the Pueblos and Tribes to promote and protect their trust assets and resources and secure funding of projects on Pueblo and Tribal lands. The Federal signatories to the MOU agree to conduct government-to-government consultation with the Pueblos and Tribes, including but not limited to, timely communications regarding progress, proposed revisions and pending decisions regarding this MOU or the Program and/or related activities. Most importantly, the federal signatories hereby agree to advise and consult with the Indian Pueblos and Tribes on potential effects on any Indian trust assets and

resources, Tribal sovereignty, and specifically, any potential implications to Indian water rights and/or Indian water use.

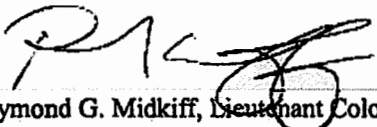
VI. EFFECTIVE DATE, DURATION, MODIFICATIONS AND SOVEREIGNTY

- A. Duration - This MOU shall be effective upon execution by any agency of the United States and any additional non-Federal signatory. This MOU shall terminate on December 31, 2003, or upon execution of a Cooperative Agreement, whichever is earlier. It is intended that this MOU will be succeeded by a Program document and execution of a Cooperative Agreement.
- B. Individual and Full Termination - During the term of this MOU, any signatory may terminate its participation in the MOU by written notice to the other signatories. Termination by individual Federal or non-Federal signatories shall not terminate this MOU, which shall continue to apply with respect to the remaining signatories. Termination by all of the Federal signatories, or by all non-Federal signatories, shall fully terminate this MOU.
- C. Recommitment not Prejudiced - Any signatory who terminates its participation pursuant to paragraph B of this section may elect to reinstate its participation during the term of this MOU; however, one precondition is that the signatory seeking reinstatement must accept all decisions arising under the MOU up to the date of its recommitment.
- D. Modification of MOU - Existing or potential signatories may propose modification or amendment of this MOU, which shall be effected by written consent of all current signatories to the MOU.
- E. Sovereignty - This MOU does not constitute a waiver or alteration of any sovereign rights and immunities.
- F. Execution in Part and Additional Signatories - This MOU may be executed by the signatories through multiple signature pages. New signatories to this MOU may be added at any time through the duration of this MOU.
- G. Contingent on Appropriation or Allotment of Funds - The expenditure or advance of any money or the performance of any obligation of the United States or non-Federal entities under this MOU shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States or any non-Federal entities in the event that funds are not appropriated or allotted.
- H. Nothing in this MOU shall obligate any signatory to participate in, contribute to, or otherwise adopt elements of the Program, when adopted.
- I. This MOU is not intended to conflict with or abrogate any legal rights or responsibilities of any signatory or other party.

VII. SIGNATURES


Kenneth G. Maxey
Area Manager, Albuquerque Area Office
Bureau of Reclamation


4/23/02
Date


Raymond G. Midkiff, Lieutenant Colonel, EN
District Engineer
U. S. Army Corps of Engineers

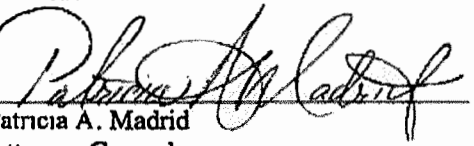
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H. Dale Hall
Acting Regional Director
U.S. Fish and Wildlife Service

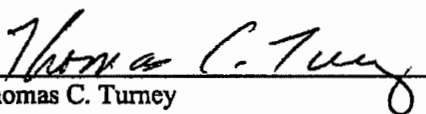
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Walter Bradley
Lieutenant Governor
State of New Mexico

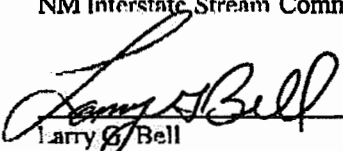
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Date


Patricia A. Madrid
Attorney General
State of New Mexico

4/23/02
Date


Thomas C. Turney
Secretary
NM Interstate Stream Commission

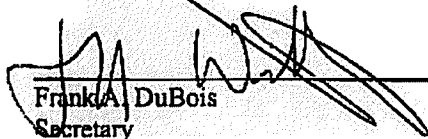
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Larry G. Bell
Director
NM Department of Game and Fish

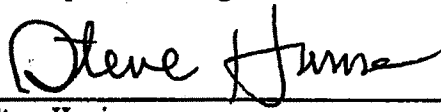
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Peter Maggiore
Cabinet Secretary
NM Environment Department

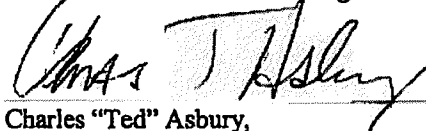
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Frank A. DuBois
Secretary
NM Department of Agriculture

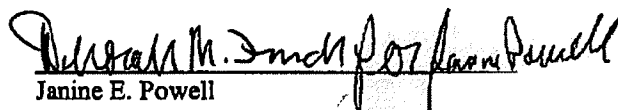
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Steve Harris
Chair
Alliance for Rio Grande Heritage

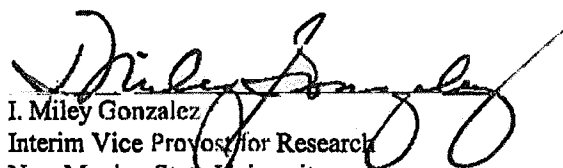
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Charles "Ted" Asbury,
Director, Public Works Department
for Jay Czar, Chief Administrative Officer
City of Albuquerque

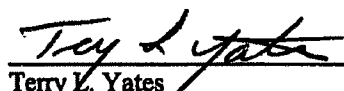
April 22, 2002
Date


Janine E. Powell
Assistant Station Director for Research
USDA FS, Rocky Mountain Research Station

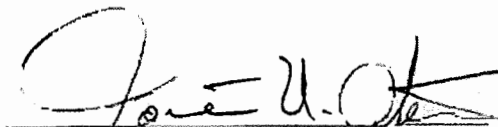
4/23/02
Date


I. Miley Gonzalez
Interim Vice Provost for Research
New Mexico State University

4/25/02
Date


Terry L. Yates
Vice Provost for Research
University of New Mexico

4/23/02
Date



José U. Otero
Chairman of the Board
Middle Rio Grande Conservancy District

05-13-02

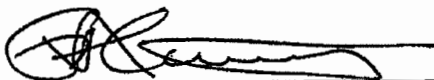
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Carolyn Monroe
2002 NAIOP-NM President

April 2002

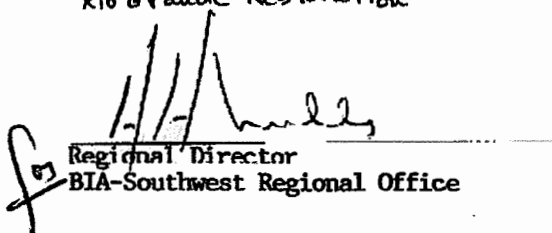
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Francisco Guevara, President
Rio Grande Restoration

5-20-02

Date


Regional Director
BIA-Southwest Regional Office

4/23/03

Date

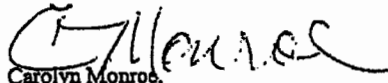


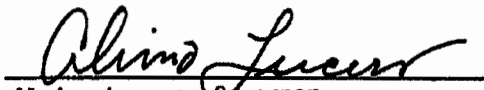
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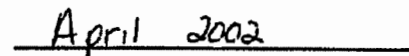
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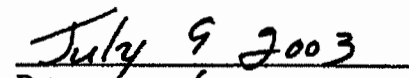
José U. Otero
Chairman of the Board
Middle Rio Grande Conservancy District


Carolyn Monroe,
2002 NAIOP-NM President


Alvino Lucero, Governor
Pueblo of Isleta

Date


Date


Date

Date

Date

Date

Date

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington
J. PHELPS WHITE, III, Vice-Chairman, Roswell
JOHN R. D'ANTONIO, JR., P.E., Secretary, Santa Fe
BUFORD HARRIS, Mesilla
BLANE SANCHEZ, Isleta
JULIA DAVIS STAFFORD, Cimarron
PATRICIO GARCIA, Rio Chama
MARK S. SANCHEZ, Albuquerque
JAMES WILCOX, Carlsbad



BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 26102
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
FAX:(505)827-6188

April 1, 2008

Senator Jeff Bingaman
United States Senate
703 Hart Senate Office Building
Washington, D.C. 20510

Re: Middle Rio Grande Endangered Species Act Collaborative Program
Authorizing Legislation

Dear Senator Bingaman:

We appreciate your continued support for the Middle Rio Grande Endangered Species Act Collaborative Program ("Collaborative Program"). Based on the most recent reports, with your help, the silvery minnow is doing better than it has in the past several years, and we anticipate the progress will continue toward the ultimate goal of recovery.

As you know, the New Mexico Interstate Stream Commission and other non-federal entities have been active participants in the program since its creation in 2000 and are invested in the continued progress and sustainability of the program. Since 2000, the State has contributed over \$8 million toward Collaborative Program projects for the benefit of Middle Rio Grande water users and the environment.

The State supports the authorization and funding for the Collaborative Program provided through the Consolidated Appropriations Act of 2008 (HR 2764). We are concerned though, that the language passed last year may need some minor amendments based on statements made by the Bureau of Reclamation most recently to the Rio Grande Compact Commission at its meeting on March 27, 2008. At that meeting, representatives of the Bureau of Reclamation from the Albuquerque and Salt Lake City offices indicated that the 2008 Consolidated Appropriations Act authorization may only be effective for one year. Therefore, to avoid ambiguity and to ensure that the authorization for the Collaborative Program extends beyond one year, we request that

Senator Jeff Bingaman
April 1, 2008
Page 2

the following additions be made to Section 205 (b) and (c) of the 2008 Consolidated Appropriations Act:

SEC. 205(b). The Secretary of the Interior (referred to in this section as the "Secretary") shall establish and maintain an Executive Committee of the Middle Rio Grande Endangered Species Collaborative Program (referred to in this section as the "Executive Committee") consistent with the bylaws of the Middle Rio Grande Endangered Species Collaborative Program adopted on October 2, 2006.

SEC. 205(c). Hereafter, in compliance with applicable Federal and State laws, the Secretary (acting through the Commissioner of Reclamation), in collaboration with the Executive Committee, may enter into any grants contracts, cooperative agreements, interagency agreements, or other agreements that the Secretary determines to be necessary to comply with the 2003 Biological Opinion described in section 205(b) of the Energy and Water Development Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2949) as amended by section 121(b) of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2256) or any related subsequent biological opinion, or in furtherance of the objectives set forth in the collaborative program long term plan.

Although the United States Army Corps of Engineers stated at the Rio Grande Compact Commission meeting that the 2008 Consolidated Appropriations Act authorizes the Collaborative Program activities into the future, in order to be consistent with the changes proposed for Section 205, we also request the following additions to Section 109 of the 2008 Consolidated Appropriations Act which amended Section 121 of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2256):

SEC. 109. Section 121 of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2256) is amended by striking subsection (a) and inserting the following:

(a) Hereafter, the Secretary of the Army may carry out and fund planning studies, watershed surveys and assessments, or technical studies at 100 percent Federal expense to accomplish the purposes of the 2003 Biological Opinion described in section 205(b) of the Energy and Water Development Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2949) as amended by subsection (b), or any related subsequent biological opinion, and the collaborative program long-term plan. In carrying out a study, survey, or assessment under this subsection, the Secretary of the Army shall consult with Federal, State, tribal and local governmental entities, as well as entities participating in the Middle Rio Grande Endangered Species Collaborative Program referred to in section 205 of

Senator Jeff Bingaman
April 1, 2008
Page 3

this Act: *Provided*, That the Secretary of the Army may also provide planning and administrative assistance to the Middle Rio Grande Endangered Species Collaborative Program, which shall not be subject to cost sharing requirements with non-Federal interests.

The New Mexico Interstate Stream Commission is committed to the continued progress of the Collaborative Program and the ultimate recovery of the silvery minnow, and we believe the proposed changes to the 2008 Consolidated Appropriations Act legislation will benefit all program participants.

Thank you again for your continued support and for your consideration of our request. If you have any questions, please contact me at 505-699-4665.

Sincerely,



Estevan R. López, P.E., Director
New Mexico Interstate Stream Commission

cc: Mark Sanchez, Albuquerque-Bernalillo County Water Utility Authority
Subhas Shah, Middle Rio Grande Conservancy District

SEC. 205. (a) Section 209 of the Energy and Water Development Appropriations Act, 2004 (Public Law 108-137; 117 Stat. 1850) is repealed.

(b) The Secretary of the Interior (referred to in this section as the 'Secretary') shall establish and maintain an Executive Committee of the Middle Rio Grande Endangered Species Collaborative Program (referred to in this section as the 'Executive Committee') consistent with the bylaws of the Middle Rio Grande Endangered Species Collaborative Program adopted on October 2, 2006.

(c) Hereafter, in compliance with applicable Federal and State laws, the Secretary (acting through the Commissioner of Reclamation), in collaboration with the Executive Committee, may enter into any grants, contracts, cooperative agreements, interagency agreements, or other agreements that the Secretary determines to be necessary to comply with the 2003 Biological Opinion described in section 205(b) of the Energy and Water Development Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2949) as amended by section 121(b) of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2256) or any related subsequent biological opinion or in furtherance of the objectives set forth in the collaborative program long-term plan.

(d)(1) The acquisition of water under subsection (c) and any administrative costs associated with carrying out subsection (c) shall be at full Federal expense.

(2) Not more than 15 percent of amounts appropriated to carry out subsection (c) shall be made available for the payment of administrative expenses associated with carrying out that subsection.

(e)(1) The non-Federal share of activities carried out under subsection (c) (other than an activity or a cost described in subsection (d)(1)) shall be 25 percent. The non-Federal cost share shall be determined on a programmatic, rather than a project-by-project basis.

(2) The non-Federal share required under paragraph (1) may be in the form of in-kind contributions, the value of which shall be determined by the Secretary in consultation with the executive committee.

(f) Nothing in this section modifies or expands the discretion of the Secretary with respect to operating reservoir facilities under the jurisdiction of the Secretary in the Rio Grande Valley, New Mexico.

SEC. 106. Section 121 of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2256) is amended by striking subsection (a) and inserting the following:

`(a) Hereafter, the Secretary of the Army may carry out and fund planning studies, watershed surveys and assessments, or technical studies at 100 percent Federal expense to accomplish the purposes of the 2003 Biological Opinion described in section 205(b) of the Energy and Water Development Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2949) as amended by subsection (b) or any related subsequent biological opinion, and the collaborative program long-term plan. In carrying out a study, survey, or assessment under this subsection, the Secretary of the Army shall consult with Federal, State, tribal and local governmental entities, as well as entities participating in the Middle Rio Grande Endangered Species Collaborative Program referred to in section 205 of this Act: *Provided*, That the Secretary of the Army may also provide planning and administrative assistance to the Middle Rio Grande Endangered Species Collaborative Program, which shall not be subject to cost sharing requirements with non-Federal interests.'.

BY-LAWS
MIDDLE RIO GRANDE ENDANGERED SPECIES COLLABORATIVE PROGRAM

Adopted by the Executive Committee on October 2, 2006
Amended by the Executive Committee on July 17, 2008
Amended by the Executive Committee on January 15, 2009
Amended by the Executive Committee on September 17, 2009

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1.0 PURPOSE

The Middle Rio Grande Endangered Species Collaborative Program (Program) is established by this Memorandum of Agreement (MOA) as a collaborative effort consisting of federal, state, and local governmental entities, Indian Tribes and Pueblos, and non-governmental organizations. The intent of Program participants is two-fold: first, to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of the listed species within the Program area in a manner that benefits the ecological integrity, where feasible, of the Middle Rio Grande riverine and riparian ecosystem; and, second, to exercise creative and flexible options so that existing water uses continue and future water development proceeds in compliance with applicable federal and state laws. To achieve these ends, the Program may not impair state water rights or federal reserved water rights of individuals and entities; federal or other water rights of Indian nations and Indian individuals, or Indian trust assets; San Juan-Chama Project contractual rights; and the State of New Mexico's ability to comply with Rio Grande Compact delivery obligations.

1.1 Authority

Under section 4(f)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(f)(2), the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may enlist the services of public and private agencies, individuals and institutions in developing and implementing such recovery plans. Advice from such agencies, individuals, and institutions, such as that offered by signatories, is not subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Program is consistent with section 4(f) (2). The Program does not create an agency, board, commission, or any other entity of state government, nor does the MOA create a state advisory committee subject to Section 9-1-9 NMSA 1978.

1.2 Definitions

- a) **Corps** - U.S. Army Corps of Engineers.
- b) **ESA** - Endangered Species Act, 16 U.S.C. §§ 1531 to 1544.
- c) **Executive Committee** - The Program's governing body.
- d) **Flycatcher** - southwestern willow flycatcher (*Empidonax traillii extimus*).
- e) **Listed species** - the flycatcher and silvery minnow.
- f) **Long Term Plan (LTP)** - The Program's long-term plan, an evolving work plan and budget that provides a description of the Program activities that will be conducted over the following ten years of the Program.

- g) **Memorandum of Agreement (MOA)** – This agreement among the parties sets forth the responsibilities of the signatories in achieving the Program's goals and objectives collaboratively.
- h) **NEPA** - National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.
- i) **Program** - Middle Rio Grande Endangered Species Collaborative Program.
- j) **Program activities** - The coordinated series of actions implemented by the Program to contribute to the recovery of the listed species.
- k) **Program area** - The headwaters of the Rio Chama watershed and the Rio Grande, including tributaries, from the New Mexico-Colorado state line downstream to the elevation of the spillway crest of the Elephant Butte Reservoir at 4450 feet above mean sea level, excluding the land area reserved for the full pool of the Elephant Butte Reservoir. Indian Pueblo and Tribal lands and resources within the Program area will not be included in the Program without their express written consent of the affected Indian Pueblo or Tribe.
- l) **Reclamation** - Bureau of Reclamation
- m) **Service** - U.S. Fish and Wildlife Service
- n) **Signatory(ies)** - Signer(s) of the Memorandum of Agreement
- o) **Silvery minnow** - Rio Grande silvery minnow (*Hybognathus amarus*)

1.3 Effective Date

These by-laws shall be effective when adopted by vote of the Executive Committee.

1.4 Amendment

Modifications to the by-laws may be made only by vote of the Executive Committee.

2.0 PROGRAM MEMBERSHIP

2.1 Initial Signatories

The following entities are invited to sign the MOA:

- a) U.S. Bureau of Reclamation;
- b) U.S. Fish and Wildlife Service;
- c) U.S. Army Corps of Engineers;
- d) State of New Mexico Interstate Stream Commission;

- e) State of New Mexico Department of Game and Fish;
- f) New Mexico Attorney General;
- g) Pueblo of Santo Domingo;
- h) Pueblo of Sandia;
- i) Pueblo of Isleta;
- j) Pueblo of Santa Ana;
- k) Middle Rio Grande Conservancy District;
- l) Albuquerque-Bernalillo County Water Utility Authority;
- m) City of Albuquerque, New Mexico;
- n) an organization that represents a significant portion of the environmental community;
- and
- o) an organization that represents a significant portion of the farming community.

2.2 Addition of Signatories

Any organization having a demonstrated interest in the success of the Program may apply to become a signatory. To qualify for consideration, the applicant organization must submit a letter of interest to the Executive Committee co-chairs supporting the goals and success of the Program and expressing its intent to sign the MOA if the application is accepted. While the number of signatories is unlimited, the number of signatories on the Executive Committee shall not exceed twenty (20). Any signatory not listed in section 2.1 (a) through (m) may apply to the Executive Committee for membership on the Executive Committee as outlined in section 5.1.

The Executive Committee may consider among other things the following criteria in determining whether to accept an application, provided that an applicant need not meet all criteria, and further provided that meeting the criteria does not guarantee an applicant's acceptance as a signatory. These criteria include:

- a) representation of a sizable constituency, for example through public outreach or membership;
- b) contribution to the non-federal cost share, including in-kind services;
- c) ownership of an interest affected by the Program, such as land, water, or other property rights;
- d) jurisdictional or regulatory responsibility, including sovereignty; and
- e) commitment to participation.

Acceptance of an application requires consensus by the Executive Committee. Within one week following Executive Committee action on an application, the co-chairs will notify the applicant in writing of the Executive Committee's decision.

2.3 Resignation and Reinstatement of Signatories

A signatory may resign from the Program at any time upon written notice to the co-chairs. Signatories may request reinstatement subject to the same approval process and requirements described in these by-laws.

3.0 TRIBAL INTERESTS AND PARTICIPATION

3.1 Trust Responsibilities

The Executive Committee recognizes that the federal government and federal agencies have trust responsibilities to Pueblo and Tribal governments pursuant to applicable federal law. *See e.g.* Executive Memorandum of April 29, 1994; Executive Order #13084 issued May 14, 1998 and superseded by Executive Order No. 13175 issued November 6, 2000; Secretarial Order #3206, dated June 5, 1997 and Secretarial Order #3215, dated April 28, 2000; Secretarial Order #3175, dated November 8, 1993, now incorporated in 512DM2; Reclamation's August 31, 1994 ITA Policy; and COE Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes. The federal participants will conduct government-to-government consultations with Tribes and Pueblos potentially affected by the Program.

3.2 Pueblo and tribal involvement

The Executive Committee recognizes that Indian Pueblos and Tribes are sovereign entities and encourages them to become members of the Executive Committee by signing the MOA. Whether or not any or all of the Tribes and Pueblos become directly involved, the Executive Committee will seek to engage and establish working partnerships with Pueblos and Tribes in implementing the Program.

The signatories recognize that the Indian Pueblos and Tribes may elect to not sign the MOA, and rather, conduct their sovereign affairs privately, which may include activities that contribute to the interim goals of the Program and expend funding under the MOA. Nothing in the MOA shall obligate any non-signatory Indian Pueblo or Tribe to participate in, contribute to, or otherwise adopt elements of the MOA. The Federal government continues to have a trust responsibility to all potentially affected Indian Pueblos and Tribes, whether or not an Indian Pueblo or Tribe signs the MOA.

4.0 ORGANIZATION

The organizational structure of the Program consists of four groups: the Executive Committee; the Coordination Committee; work groups; and the Program Management Team. General descriptions of the organizational responsibilities are provided in this section. More specific descriptions are provided in subsequent sections.

Executive Committee

The Executive Committee is the governing body of the Program. The Executive Committee provides policy, budget approval and decision-making on all issues, unless specifically delegated to the Program Management Team, Coordination Committee or work groups.

Coordination Committee

The Executive Committee will establish a Coordination Committee that meets on a regular basis to identify concerns associated with Program activities, work to resolve those concerns, and develop consensus recommendations to the Executive Committee. The Coordination Committee reviews Program activities and consults with the Executive Committee representatives to keep their respective members informed on the Program. Coordination Committee assures that their respective EC members are apprised of Program.

Work Groups

The Executive Committee may establish work groups as needed to provide assistance and expertise to address specific Program tasks. Members of a work group may consist of professionals, signatories, contractors, and other parties who have expertise related to the assignment given to the work group.

Program Management Team

The Program Management Team (PMT) consists of a Program Manager and management staff employed by Reclamation, Department of the Interior and Corps staff, administrative and clerical staff (federal employees or contractors), and Signatory representatives. The PMT provides management and technical support to the Executive Committee, Coordination Committee and work groups.

5.0 EXECUTIVE COMMITTEE

5.1 Membership

The Executive Committee will be made up of the signatories listed in Section 2.1. The total membership of the Executive Committee shall not exceed twenty (20). If there are 20 members already on the Executive Committee, the signatory(ies) must wait until vacancies occur before becoming a member of the Executive Committee. Vacancies will be filled based in the date-order on which signatories applied to the Executive Committee for membership.

Each member of the Executive Committee shall designate, by written notice to the Program Manager, one representative who is authorized to vote and otherwise act on its behalf on matters before the Executive Committee. Each member may appoint one or more alternates to act as its voting representative in the absence of its regular representative on the Executive Committee.

5.1.1 Addition of Executive Committee Members

Any signatory not listed in section 2.1 (a) – (m) may apply to the Executive Committee for membership on the Executive Committee. Acceptance of an application requires consensus by the Executive Committee. The Executive Committee shall make decisions regarding acceptance of applications received in a closed session. Applications shall be submitted to the co-chairs through the Program Manager and will be considered in the date-order they are received. Criteria for selection are listed in section 2.2 (a) – (e). The Executive Committee will make a decision on the application within 90 days of receiving the application. The co-chairs will notify the applicant in writing of the Executive Committee's decision within one week following the Executive Committee action on the application.

5.1.2 Additional Executive Committee Members not on the list of Initial Signatories

Additional Executive Committee members now include:

- o) The Assessment Payers Association of the MRGCD, an organization that represents a significant portion of the farming community;
- p) New Mexico Dept. of Agriculture;

5.2 Responsibilities

The primary responsibility of the Executive Committee is to direct and coordinate the Program. Specific responsibilities of the Executive Committee include but are not limited to:

- a) setting Program priorities;
- b) providing direction, assigning tasks to, and overseeing the work of the PMT, Coordination Committee, and work groups;
- c) ensuring development and implementation of the LTP to achieve the purposes of the Program;
- d) coordinating Program activities with other Federal and non-federal activities in the Program area to achieve the greatest effect and limit unnecessary duplication of other efforts;
- e) authorizing work groups;
- f) developing multi-year budget recommendations to the Corps, Reclamation, Service, other Federal agencies and non-federal entities;

- g) reviewing and approving annual reports and work plans, budgets, and policy or position papers on behalf of the Program;
- h) establishing operating procedures for the Program;
- i) representing the Program to executive agencies, legislative bodies and other third parties;
- j) monitoring progress in achieving Program goals;
- k) ensuring implementation of a quality assurance/quality control program;
- l) coordinating requests for funding and resources to Congress, the New Mexico state legislature, and other sources;
- m) ensuring sound financial management of Program resources and timely reporting of the financial status of the Program;
- n) ensuring coordination among participants in carrying out Program actions and policies;
- o) providing periodic reports to Congress, the New Mexico state legislature, interest groups and the public regarding the Program; and
- p) conducting other activities necessary or advisable to achieving the goals of the Program.

5.3 Voting Procedures

The Executive Committee is empowered to make decisions at any meeting at which a quorum is present. A quorum shall constitute 50% of all Executive Committee members at that time.

If two members request, decision items may be tabled until the next meeting. No agenda item may be tabled for more than one meeting without the unanimous consent of the Executive Committee.

The Executive Committee shall seek consensus in reaching decisions. If consensus cannot be reached, the decision will be tabled until the following meeting at which a quorum is present. In lieu of consensus, the decision may be approved by a super majority (75%). If a non-consensus decision is made, the minority may submit a report to the co-chairs of the Executive Committee to be included with official minutes of the Executive Committee. The Executive Committee may, in limited circumstances, allow for votes to be taken via e-mail.

It is recognized that the federal, state, tribal and other governmental agencies cannot achieve consensus, vote on issues, or be bound by Executive Committee decisions that would violate their obligations under applicable federal, state, tribal or local laws.

5.3.1 Resolution of Concerns

Any signatory having a concern with issues related to the Program may submit a written request for resolution to the Executive Committee in a timely manner, identifying the issue of concern with a recommended resolution. The Executive Committee will determine appropriate resolution of the dispute in a timely manner.

5.4 Meetings

The Executive Committee will hold meetings as necessary to conduct its business. Executive Committee meetings will be open to the public and public comments will be welcome and encouraged. The co-chairs will ensure adequate opportunities for public comments and input at meetings. At a minimum, the Executive Committee shall meet twice per year and at such other times as called by a co-chair. If a signatory is not represented at two consecutive Executive Committee meetings the co-chairs shall provide written notice to that signatory that its membership on the Executive Committee is suspended and will be terminated unless that signatory is represented at the next Executive Committee meeting.

5.4.1 Notice of Meetings

The Program Manager shall provide adequate notice to interested parties and the public of meeting times and places, which will include draft and final agendas that the co-chairs have approved with date, time, location, and decisions to be made. Any member may request of the co-chairs that an item be included or changed on an agenda. Modifications to the agenda may be made at meetings, subject to approval of the Executive Committee. Final agendas should be accompanied by a packet of supporting materials relevant to items on the agenda, except materials submitted to the Executive Committee pursuant to a nondisclosure or confidentiality agreement, pertaining to the closed portion of the meeting or declared confidential by law. Packets will be distributed at least one week prior to a scheduled Executive Committee meeting to Executive Committee members.

5.4.2 Special and Emergency Meetings

Either co-chair, at his or her discretion, may call special and emergency meetings with one week's notice. The Program Manager shall publish notice of such meetings as soon as they are scheduled and prepare packets.

5.4.3 Cancellation of Meetings

The Program Manager shall publish notice of cancellation or postponement as early as possible, and the notice shall explain the reasons for postponement or cancellation.

5.4.4 Closed Sessions

The Executive Committee may hold closed sessions to address sensitive issues related to contract, membership, personnel or legal matters. The purpose of the closed session shall be noted in the minutes of the Executive Committee. Only the Executive Committee member and their designated representative shall attend a closed session.

5.5 Officers

The officers of the Executive Committee shall include a Federal co-chair and a non-federal co-chair.

5.5.1 Election of Federal and Non-federal Co-chairs

At the first meeting of the Executive Committee following the effective date of the MOA, and at its first meeting following the beginning of the fiscal year thereafter, the Secretary of the Interior will designate the Federal co-chair.

The non-federal members of the Executive Committee shall elect from among the non-federal Signatories a non-federal co-chair. The non-federal co-chair shall be elected from the non-federal members of the Executive Committee on approval by $\frac{3}{4}$ of the non-federal members of the Executive Committee.

5.5.2 Removal of Federal and Non-federal Co-Chairs

The Secretary of the Interior shall replace the Federal co-chair on a vote of no confidence by $\frac{3}{4}$ of the members of the Executive Committee.

The non-federal co-chair shall be removed on a vote of no-confidence by $\frac{3}{4}$ of the non-federal members of the Executive Committee.

5.5.3 Resignation of Co-Chairs

Federal and non-federal co-chairs must provide a letter of resignation to the members of the Executive Committee at least 30 days before they resign. Additionally, the Federal co-chair shall provide a copy to the Secretary of Interior.

5.5.4 Replacement of Co-Chairs

Upon resignation or no-confidence removal of the Federal co-chair the Secretary of the Interior shall select a new Federal co-chair, as soon as possible, and notify the Executive Committee of that selection. That individual will immediately assume the responsibilities of the Federal co-chair.

Upon the resignation or removal as a result of a no-confidence vote of a non-federal co-chair the non-federal Executive Committee members shall elect a new co-chair in accordance with 5.5.1 at the next Executive Committee meeting.

5.5.5 Terms of Co-Chairs

The term of the non-federal co-chair shall be one year.

5.5.6 Responsibilities of Officers

The Federal co-chair shall be a non-voting member of the Executive Committee, shall convene the Executive Committee, shall develop meeting agendas, and shall schedule votes and other decision-making processes in consultation with the non-federal co-chair.

The non-federal co-chair shall be a voting member of the Executive Committee, and shall develop meeting agendas jointly with the Federal co-chair. Either co-chair may chair meetings in the absence of the other co-chair.

Each co-chair shall interact with the PMT, as necessary, to assure that assignments from the Executive Committee are completed and to determine action items and agendas necessary for the Executive Committee meetings.

5.6 Public involvement

The Executive Committee will consider the interests of all stakeholders and the general public in implementing the Program. Public involvement and comment is invited and encouraged. The Executive Committee will ensure that there are adequate formal and informal opportunities for public comment on Program activities.

Work product, reports, meeting summaries, and other program materials will be available to the public via the list serve, website, and/or other appropriate means.

6.0 COORDINATION COMMITTEE

6.1 Membership

Each member of the Executive Committee will appoint one member to the Coordination Committee. Each member may also appoint one or more alternate members.

6.2 Officers

The Coordination Committee will elect a chair and a vice-chair, each serving for a term of one year with no more than one consecutive term. Any member of the Coordination Committee may serve as chair. The chair or vice-chair will report on committee activities at each Executive Committee meeting.

6.3 Meetings

The meeting requirements for the Executive Committee will apply to the Coordination Committee, including public notice of meetings. The Coordination Committee will meet approximately every four to six weeks.

6.4 Responsibilities

The Coordination Committee responsibilities include:

- a) carrying out the directives of the Executive Committee;
- b) reviewing and providing comments and recommendations on formation of work groups, the LTP, annual reports, work plans, budgets, operating procedures, congressional reports, work group deliverables, and other documents prior to submittal to the Executive Committee by the PMT;
- c) working to achieve consensus recommendations for the Executive Committee on unresolved issues; and
- d) consulting regularly with their Executive Committee representatives on issues of concern to ensure that recommendations reflect the viewpoints of organizations participating in the Executive Committee and Executive Committee members and assuring that Executive Committee members are informed on matters coming before the Executive Committee.

7.0 WORK GROUPS

7.1 Establishment of Work Groups

The Executive Committee may establish work groups and designate members of work groups on its own initiative or on the recommendation of the Coordination Committee when additional assistance or expertise is beneficial to accomplishing the goals of the Program. Work groups will operate with specific schedules, objectives, and scopes of work established by the Executive Committee.

The Program Manager will assign Program staff to support each work group so that the objectives and work products are clearly identified, work group schedules are met, and necessary administrative support is provided. Upon formation of the work group, a group leader will also be designated to work with the assigned staff to establish a schedule and identify deliverables.

7.2 Membership

Membership on work groups will vary depending on the subject matter and may include:

- a) Signatories and/or their representatives;
- b) professionals with expertise in the subject matter who may or may not be involved in the Program;
- c) contractors as deemed appropriate by the Executive Committee; or
- d) other parties, including members of the public, with experience in the subject matter addressed by the work group.

7.3 Meetings

Work groups will meet as needed. The PMT will post work group meeting schedules, locations, and agendas on the Program website. All meetings will be open to the public. The work group leader will keep meeting summaries, which shall accurately reflect actions of the work group and shall be made available on the website within one week after the meeting.

7.4 Work Products

All final work group work products are subject to approval by the Executive Committee, and upon approval, the PMT will make them available to the public.

7.5 Annual Review of Work Groups

The Program Manager, with input from the PMT, will review the accomplishments of each work group annually with respect to its mission, schedule, participation by members, and objectives, and make recommendations to the Executive Committee regarding continuation or termination of the work group, changes in mission, schedule, or membership.

8.0 PROGRAM MANAGEMENT TEAM

The Program requires management and administration support to accomplish its goals and objectives. The Program Management Team (PMT) consists of a Program Manager and management staff employed by Reclamation, Department of the Interior and Corps staff, administrative and clerical staff (federal employees or contractors), and Signatory representatives. The PMT provides management and technical support to the Executive Committee, Coordination Committee and work groups.

8.1 Staffing

The Program Management Team (PMT) includes a Program Manager and staff. The Program Manager is an employee of Reclamation. Reclamation is responsible for selecting a Program Manager; however, Reclamation may solicit input from the Executive Committee during the recruitment process. Reclamation provides administrative staff to support the Program Manager and other support staff to administer the Program, including contract administration.

As directed by the Secretary of the Interior, any agency of the Department of the Interior will provide staff for the PMT as necessary. Additionally, each member of the Executive Committee may provide a representative on a voluntary basis, full time or part-time, to work as staff for the PMT. All PMT members shall work under the direction of the Program Manager. The PMT shall be comprised of qualified individuals to carry out the duties in these by-laws.

The Corps' Program staff responsibilities will include ensuring coordination of Corps activities (studies, surveys, assessments, planning, design, NEPA compliance, construction, funding) with Program activities and may include contract administration and other activities mutually agreed upon by Reclamation and the Corps to support the Program.

8.2 Evaluation of the Program Management Team

On an annual basis, the Executive Committee will evaluate the performance of the PMT with respect to its assigned duties and responsibilities.

8.3 Roles and Responsibilities

The following are the general roles and responsibilities of the PMT.

8.3.1 Program Manager

The Program Manager will provide direction to staff for PMT activities and will report regularly on Program activities and accomplishments to the Executive Committee. The Program Manager is responsible for determining the most expeditious and reasonable manner to carry out assignments as directed by the Executive Committee, whether through a work group, assignment to the PMT or outsourcing. The Program Manager is a part of the PMT.

8.3.2 General Duties

The duties of the PMT include:

- a) providing administrative support for all Program operations;
- b) drafting a Long-Term Plan and annual revisions;
- c) drafting annual revisions, annual work plans, budget requests, and activity and fiscal reports consistent with the Long-Term Plan;

- d) providing information to the public concerning activities of the Program and undertaking community outreach;
- e) collaborating with other efforts relating to the protection and recovery of the listed species carried out under other Federal and non-federal programs, including:
 - (1) silvery minnow and flycatcher recovery teams under the direction of the Service;
 - (2) other ecosystem recovery programs under the Service and Corps;
 - (3) river maintenance and water operations under the direction of Reclamation; and
 - (4) other related programs;
- f) administering project proposal processes;
- g) tracking contracts, grants, and cooperative agreements;
- h) ensuring that all activities undertaken by the Program comply with applicable laws and regulations; and
- i) undertaking such other duties as are assigned by the Executive Committee and necessary to carry out the Program.

8.3.3 Support of Executive Committee

The PMT shall provide general administrative support, as the Executive Committee requests, to include transmittals of Executive Committee communications, recordkeeping, liaison with entities, and meeting organization.

Before each Executive Committee meeting the Program Manager will prepare and post on the web site a packet of supporting materials. At each Executive Committee meeting, the Program Manager will provide a brief report to the Executive Committee on the status of the Program activities and milestone accomplishments. After an Executive Committee meeting, the Program Manager will distribute a draft meeting summary to Executive Committee members for review. The draft and final meeting summaries will be made available to the public via an established Program distribution network.

8.3.4 Support of Coordination Committee

The PMT will provide support for meetings of the Coordination Committee, including distribution of agendas and meeting materials, and development and distribution of meeting summaries.

The Program Manager will provide Program documents subject to Executive Committee approval to the Coordination Committee for review and discussion, and will assist the Coordination Committee in developing recommendations to the Executive Committee.

Memorandum



Buckman Direct Diversion

Date: February 25, 2020

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Facilities Manager
Kyle Harwood, BDD Legal Counsel

Subject: BDD Board comment letter regarding LANL Stormwater NPDES permit

ITEM AND ISSUE:

The BDD Board has been previously briefed on this LANL Stormwater NPDES permit.

RECOMMENDED ACTION:

Staff recommends that the BDD Board direct that the comment letter be submitted to the regulatory agencies.





Buckman Direct Diversion

341 Caja del Rio Santa Fe, NM 87506

TK, 2020

Sarah Holcomb, Program Manager-PSRS
New Mexico Environment Department
Surface Water Quality Bureau (N2050)
1190 Saint Francis Drive
P.O. Box 5469
Santa Fe, NM 87502-5469

**RE: AUTHORIZATION TO DISCHARGE TO WATERS OF THE UNITED STATES
NPDES PERMIT NO. NM0030759
COMMENT FROM THE BUCKMAN DIRECT DIVERSION BOARD**

Dear Ms. Holcomb:

The Buckman Direct Diversion Board (the Board) is the governing body for the Buckman Direct Diversion, a single diversion point on the Rio Grande that the City of Santa Fe, Santa Fe County, and their limited partner, Las Campanas, share to divert their San Juan-Chama and native Rio Grande water rights. Diverted water is treated and introduced into the regional water system. The government entities are represented on the Board.

The Buckman Direct Diversion is on the Rio Grande, approximately 3 miles downstream of Otowi Bridge. NPDES Permit No. NM0030759 (the Permit) covers locations of discharge of industrial pollutants (Sites) from storm water at Los Alamos National Laboratory (LANL) to waters of the U.S., in this case the Rio Grande. Almost 80 of the locations covered by the Permit are in the Los Alamos Canyon watershed¹, whose confluence with the Rio Grande is approximately three miles upstream of the Buckman Direct Diversion Project intake structure. The Board is therefore understandably concerned about runoff in Los Alamos Canyon and its tributaries, and provides the following comments.

Background Threshold Values (BTVs)

The Board has concerns that the use of BTVs could be inappropriately used to remove Sites under the permit by establishing BTVs that are less than Target Action Levels (TALs). Disturbed, but undeveloped, reference sites are the most obvious example of circumstances where high BTVs could be established that do not reflect the actual background. The Board discourages the use of BTVs, but if BTVs are retained a lower screening value (say, 75 percentile) should be used. If retained, BTVs should also be used for identifying and providing permit coverage for upgradient (of the subject site) Sites not otherwise covered or discovered. This is particularly important in the Los Alamos/Pueblo Canyon watershed where discharges and disposal of contaminants dates back to the 1940s, and surface waters – particularly floods – have

¹ For purposes of these comments, the Los Alamos Canyon watershed included Los Alamos, Pueblo, and Guaje Canyons and their tributaries. An additional two sites are in Rendija Canyon are also covered by the Permit. Rendija Canyon's confluence with the Rio Grande is also upstream of the Buckman Direct Diversion's intake structure.

redistributed sediments beyond site boundaries. We further note that development of BTVs is not subject to public scrutiny. As a public governing body, the Board urges the U.S. Environmental Protection Agency (EPA) to use the most transparent methods in developing its regulatory frameworks, including those associated with the Permit.

Confirmation Sampling

In numerous locations in the Permit, confirmation samples are required for certain regulatory actions (e.g., site deletion). The permittees are given allowances if they are unable to obtain more than one confirmation sample. It is the Board's position that at least two confirmation samples should be required for any action taken under the Permit where confirmation samples are required, regardless of the ability of the permittees to obtain a second sample. With respect to Site deletion, in such an event (i.e., only one confirmation sample exists) the Site should remain covered by the Permit.

Run-on/Runoff

The Board believes that storm water and sediment that runs onto a Site should not influence the regulatory action taken on that Site. If runoff from a Site is shown to have entrained pollutants that exceed a given TAL, the permittees should have to take corrective actions (e.g., additional monitoring; installation of best management practices (BMPs)) regardless of the source of the pollutants. The Permit should incorporate a mass balance approach to evaluating run-on to and runoff from Sites to provide appropriate protection of surface waters potentially destined for a drinking water supply (i.e., in Los Alamos/Pueblo and Rendija Canyons).

Deletion of Sites

The Board is concerned about the number of and basis for deleted Sites, particularly those in Los Alamos/Pueblo Canyons. This watershed contains the majority of Sites that are no longer U.S. Department of Energy (DOE) property and therefore problematic for permittees' sampling. Deletion of Sites should not be allowed because of insufficient data or results, regardless of whether or not the Site has in the past or might in the future be subject to a land transfer from DOE to another entity.

Water Quality Criterion for Polychlorinated Biphenyls (PCBs)

Los Alamos/Pueblo and Rendija Canyons are the only watersheds on the Pajarito Plateau whose surface waters have the potential to directly affect a drinking water supply (i.e., the Buckman Direct Diversion). Application of wildlife habitat criterion for PCBs in Los Alamos Canyon is therefore not appropriate, and could constitute backsliding. If such a criterion is retained in the Permit, the permittees should be **required** to implement a watershed control plan to address persistent human health – organisms only (HH-OO) pollutants, like PCBs, in the Los Alamos/Pueblo Canyon watershed.

Compliance Deadlines

The Board is concerned about the two-year compliance deadline for corrective actions. Under this framework, two monsoon seasons could pass before corrective actions are implemented on a

Site. This essentially eliminates for two full years a significant protection for the intake structure against flood effects in Los Alamos/Pueblo Canyon. The Board urges EPA to require a one-year compliance deadline for corrective actions.

Relation to Hazardous Waste Sites

Many Sites under the Permit are also co-located with solid waste management units (SWMUs) or areas of concern (AOCs) under the permittees' Hazardous Waste Facility Permit (HWFP) and the Compliance Order on Consent (Consent Order) that governs corrective action for the SWMUs/AOCs. The Board urges EPA to ensure that monitoring and corrective actions under the Permit augments and supports those actions under the HWFP and the Consent Order, and vice versa. For example, the Consent Order allows for Corrective Action Complete for SWMUs/AOCs even when migration of pollutants beyond the SWMU/AOC boundary has been documented. As previously discussed, the Permit framework also allows for Sites to be deleted from the Permit in certain instances also when pollutants have migrated beyond the Site boundary. The Board objects to the allowance of this possibility, as such pollutants could adversely affect the drinking water source derived from the Rio Grande with no requirement for the permittees to mitigate. At a minimum, Sites co-located with SWMUs/AOCs under the HWFP or the Consent Order should not be deleted or receive Corrective Action Complete under the Permit without also receiving concomitant status under the HWFP and Consent Order.

The Buckman Direct Diversion plays a unique role by deriving drinking water from the Rio Grande downstream of LANL, and delivering it safely and effectively to regional customers. We urge EPA to recognize this fact, and ensure the Permit provides special requirements for Sites in Los Alamos/Pueblo and Rendija Canyon watersheds reflecting that recognition and providing the necessary storm water protections at LANL for this important utility. Because of the serious deficiencies in the Permit discussed above, the Board lacks confidence that the proposed Permit as written sufficiently provides these protections.

We appreciate the opportunity to provide these comments, and look forward to your response.

Respectfully,

JoAnne Vigil Coppler
Chairperson

Anna Hansen
Vice Chairperson

Carol Romero-Wirth
Member

Anna Hamilton
Member

JC Helms
Member