AGENDA

BUCKMAN DIRECT DIVERSION BOARD
FEBRUARY 04, 2021 AT 4:00 PM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR BUCKMAN DIRECT DIVERSION BOARD MEETING

Attendance: In response to the State's declaration of a Public Health Emergency, the Mayor's Proclamation of Emergency, and the ban on public gatherings of more than five (5) people, the Buckman Direct Diversion Board meeting will be conducted virtually.

Viewing: Members of the public may stream the meeting live on the City of Santa Fe's YouTube channel at https://www.youtube.com/user/cityofsantafe. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this meeting will also remain available for viewing at any time on the City's YouTube channel at https://www.youtube.com/user/cityofsantafe. Staff is available to help members of the public access pre-recorded meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Agenda: The agenda for the meeting will be posted at https://santafe.primegov.com/public/portal.

Written Comments: The public may submit written comments on any of the consent items to be considered on the Consent Agenda, through 1:00 p.m. the day of the meeting, via the virtual comment "button" at santafe.primegov.com/portal/search.

Public Comment: To provide live public comment during the *Public Comment* section, you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link:https://santafenm-gov.zoom.us/j/92589962542?pwd=Z3c0eEpneEFJbG5vQzVMcTlpdE5pUT09

Passcode: 970269

Attendees should use the "Raise Hand" function to be recognized by the Chairman to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: US: +16699006833,- Webinar ID: 925 8996 2542 Passcode: 970269

Phone attendees should press *9 to use the "Raise Hand" function to be recognized by the Chairman to speak at the appropriate time.

AGENDA

BUCKMAN DIRECT DIVERSION BOARD
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1. **CALL TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF AGENDA**

4. **APPROVAL OF CONSENT AGENDA**

5. **APPROVAL OF MINUTES**

   a. Approval of Minutes from the January 7, 2021 Buckman Direct Diversion Board Meeting.

6. **MATTERS FROM THE PUBLIC:**

Buckman Direct Diversion Board will take matters from the public in written form via email through 1:00pm on Thursday December 3, 2020. Emails must identify the submitting party's name and should be sent to Jamie-Rae Diaz, City of Santa Fe, Public Utilities, Administrative Manager, jldiaz@santafenm.gov. These comments will be distributed to the Board for review prior to the meeting and placed in the minutes of the meeting.

7. **PRESENTATION/INFORMATIONAL ITEMS**

   a. Monthly Update on the BDD Operations. (Randy Sugrue, BDD Operations Superintendent, rcsugrue@santafenm.gov, 955-4501)

   b. Report from the Facilities Manager. VERBAL. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4507)

   c. Proposed San Juan Chama Return Flow Pipeline Status Update. (Jesse Roach, Water Division Director, jdroach@santafenm.gov, 955-4309)

8. **ACTION ITEMS: CONSENT**

   a Request for the Approval of Professional Services Agreement in the total amount of $15,442,785.00 for Energy Performance Contracting with Yearout Energy Services Company and approve City Attorney to make minor, mutually agreeable modifications to the agreement prior to

execution. (Caryn Grosse, Project Administrator. clgrosse@santafenm.gov, 955-5938)

b Request for Approval to enter into a Service Agreement with TLC Company, Inc. in the amount of $59,118.89 exclusive of NMGRT to replace and install a new chiller unit located at Booster Station 4A and 5A. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4507 and Monique Maes, BDD Contract Administrator, mmmaes@santafenm.gov, 955-4508

1.Request for Approval of a Budget Amendment Resolution (BAR) in the amount of $64,108. (Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4507 and Monique Maes, BDD Contract Administrator, mmmaes@santafenm.gov, 955-4508)

9. **ACTION ITEMS: DISCUSSION AND ACTION**

a. Discussion and Possible Action on BDD Board support for NEPA permit changes consistent with the Proposed SJC Return Flow Pipeline. (Kyle Harwood, BDD Legal Counsel, kyle@egolflaw.com, and Rick Carpenter, BDD Facilities Manager, rrcarpenter@santafenm.gov, 955-4206)

b. Request for BDDB Acknowledgment of BDD Shared Pool Agreement between the City of Santa Fe and the Santa Fe County. (John Dupuis, Santa Fe County Utilities Director, jdupuis@santafecountynm.gov and Jesse Roach, City of Santa Fe Water Division Director, jdroach@santafenm.gov, 955-4309)

c. Election of Chair and Vice Chair of the Buckman Direct Diversion Board. (Nancy R Long, BDD Legal Counsel, nancy@longkomer.com, 982-8405)

10. **MATTERS FROM THE BOARD**

11. **NEXT MEETING: Thursday, March 4, 2021 at 4:00 PM**

12. **ADJOURN**

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

MINUTES OF THE

THE CITY OF SANTA FE & SANTA FE COUNTY

BUCKMAN DIRECT DIVERSION BOARD MEETING

January 7, 2021

1. This meeting of the Santa Fe County & City Buckman Direct Diversion Board meeting was called to order by Councilor JoAnne Vigil Coppler, Chair, at approximately 4:00 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, public entities are authorized to conduct virtual meetings.

[For clarity purposes, repetitive identification and confirmations of those on the line and their audibility have been eliminated and/or condensed in this transcript.]

2. Roll was called and the following members were present:

BDD Board Members Present:
Councilor JoAnne Vigil Coppler, Chair
Commissioner Anna Hansen, Vice Chair
Commissioner Anna Hamilton
J.C. Helms, Citizen Member
Councilor Carol Romero-Wirth
Tom Egelhoff, Las Campanas [non-voting]

Member(s) Excused:
None

BDD Board Alternate Members Present:
Peter Ives, Community Alternate

Others Present:
Rick Carpenter, BDD Facilities Manager
Nancy Long, BDD Legal Counsel
Kyle Harwood, BDD Legal Counsel
Bernardine Padilla, BDD Public Relations Coordinator
Randy Sugrue, BDD Operations Superintendent
Jamie-Rae Diaz, City Administrative Assistant
Joe Abeyta, City IT
Jesse Roach, City Water Division Director
Marcos Martinez, City Assistant Attorney
Gregory S. Shaffer, County Attorney

Jay Lazarus, Glorieta Geoscience
Daniel Frost, Snell & Wilbur
Monique Maes, City Finance
Luke Pierpont, Egolf + Frelic + Martinez + Harwood
Daniela Bowman, BDD

3. APPROVAL OF AGENDA

There were no changes and Commissioner Hansen moved to approve as published. Mr. Helms seconded. The Chair requested a roll call vote and the motion passed unanimously [5-0].

4. APPROVAL OF CONSENT AGENDA

Staff had no changes to the consent agenda. Councilor Romero-Wirth requested that the two items on the consent agenda (a. and b.) be removed for discussion.

Following discussion on whether a motion was required, Chair Vigil Coppler requested a motion to amend the consent agenda removing both items. Commissioner Hansen so moved and Mr. Helms seconded. The motion passed by unanimous [5-0] roll call vote.

5. APPROVAL OF MINUTES: December 3, 2020

For the record, Chair Vigil Coppler stated that: The only matter discussed during the executive session of our last meeting, December 3, 2020, was the matter as stated in the motion to go into executive session and no action was taken.

Commissioner Hansen requested the following corrections:
Page 4, 8 lines from the bottom where Commissioner Hansen is speaking: "I only wan**t** to ask…"
Page 8, 4th paragraph, where Mr. Carpenter is speaking: "…two more items…they both~~er~~ are…"

Commissioner Hansen moved to approve as corrected. Mr. Helms seconded and the motion passed by unanimous [5-0] roll call vote.

6. MATTERS FROM THE PUBLIC

Ms. Jamie-Rae Diaz confirmed that no public comments were received.

7. PRESENTATION/INFORMATIONAL ITEMS

a. Monthly Update on BDD Operations

CHAIR VIGIL COPPLER: Randy Sugrue.
RANDY SUGRUE (Operations Superintendent): Thank you, Madam

Chair, members of the Board. For the month of December 2020, raw water diversions averaged about 4.5 mgd. Our drinking water deliveries through our Booster Station 4A/5A averaged 4.4 million gallons per day. Las Campanas did not divert water in December. Our onsite treated and un-treated water storage was about 100,000 gallons per day. BDD providing about 74 percent of the water supply to the City and County for the month.

On page 2, you'll see a regional demand drought summary. Unfortunately, we're still looking at a La Niña situation and likely dry weather through the winter. You see the graph at the bottom of page 1 shows about 140 million gallons for December. I wanted to make a point that if you look at the table on page 3, because this report is produced before the meeting those final numbers of the year 2020 are not final numbers and so those final numbers will be available within the next couple of weeks. I want to let the City and County know that SJC native diversion number that is not actually the final number. It's close but not quite. So that's all I have to report for this month. I stand for questions.

CHAIR VIGIL COPPLER: Does anyone on the Board have questions? Commissioner Hamilton.

COMMISSIONER HAMILTON: Not exactly a question, from my own direct information I would totally agreed on the continued La Niña prediction. I was just informed by somebody else who tends to follow and look at this kind of thing that NOAA – those predictions are put out by a couple of agencies that NOAA recently revised their projection for this area to be closer to average. So this is just kind of a prurient interest thing for everybody. I have not had the time to research that directly but I thought if anybody's interested or anybody else has looked at that, the new NOAA predictions.

MR. SUGRUE: That's an optimistic suggestion and I certainly will. Mother Nature can surprise us and I hope for the best. All in all, just to summarize BDD actually with the final numbers I think we may have produced with our best efforts and despite our mechanical and the issues with the river this year, we may have produced more water this year than we have in any previous year.

CHAIR VIGIL COPPLER: Former Councilor Ives.

MR. IVES: Thank you, Madam Chair. Just looking at the chart on page 2, it appears to indicate that we have more water in storage now than we did in the same point in time last year and presumably that is not withstanding the very dry conditions that we have experienced in the last several months; is that correct?

MR. SUGRUE: I'll defer that to Rick, somewhat. We did maximize our native water diversions through late summer and fall which then would allow our SJC storage to accumulate somewhat. Rick, I don't know if you have any other detail on that.

RICK CARPENTER (Facilities Manager): No, that is exactly correct. We attempted and were successful in maximizing native water this year. So that left more water in storage from SJC. There could be some nuances there too between Heron, El Vado and Abiquiu and how BOR moves water, stores water and how it ends up in our storage pool in Abiquiu. But Randy for the most part is absolutely correct. That's the reasons primarily of using native water and saving SJC water.

MR. IVES: And one final question because I cannot recall our annual San Juan-Chama allocation; what percentages did we receive this past year and what's it looking like on a going forward basis?

MR. SUGRUE: I don't recall the final report, if we got 100 percent allocations here. I think we did.

MR. CARPENTER: I don't have the report here in front of me but my recollection is that if we didn't get 100 percent it was right at 100 percent. Mr. Ives, if you would like for me to get to you with a specific number, I can. What I can tell you is if it wasn't 100 percent, it was very, very close.

MR. IVES: Got you. No, that is great news. I know at times that was not necessarily what was being predicted.

MR. CARPENTER: And the river stayed higher longer than we thought it was going to. If you'll think back many months ago we were not so confident that that was going to be the case but we were able to maintain diversions and so it worked out.

MR. IVES: Good, thank you.

CHAIR VIGIL COPPLER: Any other questions? Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you, Madam Chair. That was an interesting point, Councilor Ives. And as sort of a follow-up is it possible that this slightly higher storage is already reflecting some of the shared pool change in management?

MR. SUGRUE: I don't have an answer to that. But I do know that we worked mostly with Santa Fe County to maximize their native water diversions because those waters cannot be stored and we store our San Juan-Chama waters. So we are working closely with the County for mutual benefit between City and County.

COMMISSIONER HAMILTON: Sure, sure. I don't know if Dr. Roach is on and if he has any thoughts.

JESSE ROACH (City Water Division Director): Commissioner, I believe that Randy is correct in saying that by maximizing native use during the year we are able to conserve San Juan-Chama storage. The question about the shared pool is that those operations are reflected – and I apologize I don't remember what it's called – in this year's operating plan and it was called Maximization of Water Resources or something. The shared pool would allow that credit that the County sort of built up to pass-through to next year and that shared pool has not been formally adopted yet.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: So I believe, and Commissioner Hamilton you can correct me, have we not approved that at the BDD? I thought we had approved it. So is it the City that hasn't approved it?

CHAIR VIGIL COPPLER: I thought that it was on the agenda and then it was removed.

MR. ROACH: Madam Chair, members of the Board, it has not been approved by the City yet. It starts through our committee process next week.

CHAIR VIGIL COPPLER: Any other questions?

KYLE HARWOOD (BDD Counsel): I have the actual 2020 San Juan-Chama allocations if you'd like me to share it or we can move on.

CHAIR VIGIL COPPLER: What's the pleasure of the Board?

COUNCILOR ROMERO-WIRTH: It's just a number; right? You could give it to us.

MR. HARWOOD: The number is 81.

CHAIR VIGIL COPPLER: Thank you. I thought you were referring to a whole chart or presentation. [Mr. Harwood shares a screen of information.] Okay, thank you.

MR. HARWOOD: So it was a total of 78,000 out of 96,200.

CHAIR VIGIL COPPLER: Great, thank you. Anything else from the Board? Thank you, Randy.

MR. SUGRUE: Thank you much, Happy New Year.

CHAIR VIGIL COPPLER: Same to you.

7. b. Report from the Facilities Manager

MR. CARPENTER: Thank you, Madam Chair and members of the Board. Getting back to the correction in the minutes, it would be a little bit difficult to report that we had some key positions, those staff members resigned and you're aware of them. I wanted to update the Board at this meeting on what we have been able to do about that so far. I think we're making good progress not the least of which is the maintenance superintendent that was vacated by Bryan Armstrong. We wrapped up interviews for that position on Tuesday of this week which is a pretty rapid pace to be able to do that. We had good candidates. We have a preferred candidate in mind. I have been processing, yesterday and today, all of the forms, paperwork and information, checking references and things like that so that hopefully by tomorrow I can submit that up the management chain and into HR to keep that moving. And, hopefully, if all things work out, we'll be able to make that hire in very short order. So that I think it is good news, certainly good news to BDD staff to have that mission critical position filled as soon as possible.

As far as Mackie Romero's old position, we are making progress on it. Right now it is in the hands of the HR Department but they know that it is a priority as well. I am hoping to move that forward at a similar pace once we get the approval to do so. So that's in the works as well.

I think lastly that another very important position that has been vacant for awhile, in fact, we have not been successful the last three times we've advertised for it, the instrumentation control technician. It's hard to fill. It has a very specific skill set and job description so we didn't even receive applications in the past. It just hasn't happened. I've been working on our end to make some changes. I can't be real specific about it right now because it's still in the works, but the changes that we're advocating for would make that position more marketable, more attractive in the marketplace and responsive to what we feel the marketplace is signaling to us. So those changes are also in the works and I hope that will result in more success in the future when we do advertise for this position which again I hope will be much sooner rather than later. And that's my update for the Board.

CHAIR VIGIL COPPLER: Thank you. Mr. Egelhoff.

MR. EGELHOFF: Rick, can we expect all billing to cease until Mackie's position is filled?

MR. CARPENTER: That's a tough one for me to answer definitively, Mr. Egelhoff. I don't think we're going to have any significant hiccups in our process. We're working with Mackie still to keep essential functions moving while that position is vacant. Monique is doing a really good job also for adapting to the essential functions of that position. If there were going to be any significant issues associated with that, I would report

that to the Board. I can't do that at this time because I don't think there's going to be. It's going to be difficult. We're going to have to pull together but I think that we're going to be able to maintain the essential functions of that position even with the vacancy that currently exists.

CHAIR VIGIL COPPLER: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Rick, very much. I am happy to hear you have Monique Maes there to help you. That makes me feel a little bit better that you are not completely alone and that Mackie is out there also. So, I just wanted to say that.

CHAIR VIGIL COPPLER: Any other comments? Rick, have you concluded your report?

MR. CARPENTER: Madam Chair that is correct, thank you.

CHAIR VIGIL COPPLER: Thanks to Bernardine Padilla, I am sure you have been pitching in as well – as well as all the staff.

MR. CARPENTER: Madam Chair, Bernardine has been very helpful and continues to do so and to rise to the occasion.

CHAIR VIGIL COPPLER: Great. Commissioner Hansen.

COMMISSIONER HANSEN: On that point, I didn't know where the right point was to recognize Bernardine Padilla but I want to thank her. She is one of the best distributors of information. I love all of your emails. Thank you once again in the new year. You really do a great job. I get a lot of information from you that I don't get from anyone else so I am grateful for your constant attention to those kinds of details. I'm glad to hear that you're also helping Rick with that. So thank you and I did not mean to leave you out.

BERNARDINE PADILLA (BDD PR Coordinator): You are welcome.

CHAIR VIGIL COPPLER: Seeing no other questions for Rick, we can move on.

8. a. Request for Approval to prepare and file amicus brief in *State of California et al., v. Wheeler et al.*, Case No. 3-20-cv-03005 (N.D. Cal.) challenging the Navigable Waters Protection Rule which redefines Waters of the United States for purposes of Clean Water Act Jurisdiction

b. Request for Approval of amendment to the legal services agreement with Long, Komer & Associates for additional legal services associated with preparing and filing an amicus brief in *State of California et al., vs. Wheeler et al.*, Case No. 3-20-cv-03005, in the amount of $30,000 plus New Mexico gross receipts tax [Amount amended to $20,000 – See page 16]

MR.HARWOOD: Thank you, Madam Chair. I have share-screened the memo that was in the packet. As you all know, this was a topic of conversation at previous Board meetings. We have discussed both the regulatory and policy implications that are raised by the current Navigable Waters Protection Rule, otherwise referred to as the, "Dirty Water Rule." We have advised you on several and current pieces of litigation around the country. We've also discussed with you that the New Mexico AG's Office is involved in this particular case and that we've been in discussions with them on potentially filing an amicus where we would explain the significant anticipated impact of the Dirty Water Rule

or the Trump WOTUS rule ephemeral and other streams upstream of the BDD intake. And this memo describes the background that we've also verbally discussed and provides the recommendation of filing an amicus brief in that matter. As you all know, there is also a concurrent contract amendment that was on the agenda that was similarly removed from the consent so that if the Board does choose to direct us to provide such an amicus filing we would need additional funds to Nancy Long's contract that I work under for you the Board so that manner has also been pulled from the consent agenda. So I stand for any questions or clarifications that you would like.

CHAIR VIGIL COPPLER: Councilor Romero-Wirth pulled this from consent so Councilor, would you like to –

COUNCILOR ROMERO-WIRTH: Not yet. I do have some questions and I think there was somebody else that Kyle mentioned who was going to give us underlying information about this.

MR. HARWOOD: I'd be happy to hand the microphone to Jesse Roach who wanted to, I believe, address the Board on this topic.

CHAIR VIGIL COPPLER: Before you do that, Commissioner Hansen has had her hand up for some time.

COMMISSIONER HANSEN: Thank you, Madam Chair. I wanted you to know that I did share a video on the Dirty Water Rule that I did for Vox Media out of New York. They were here a few weeks ago and called me and I had a moment in-between some meetings to be able to go down and sit by the Santa Fe River. It was actually right after the day that it snowed and it was quite chilly and I did send it to all of you. It's a short video and I think it was done really well and really explains the issue of the Dirty Water Rule. And I don't know, Bernie, if you were on that list; did you get it?

MS. PADILLA: No, but if you could share it with me I would really appreciate it.

COMMISSIONER HANSEN: So if you will send me an email I'll send it right back and anybody else who didn't get it. I might not have sent it to Jesse but I did send it, I think, to everybody else.

CHAIR VIGIL COPPLER: Commissioner, I watched it and it really put everything in layman terms and was very easy to understand and it's not very long.

COMMISSIONER HANSEN: Thank you. And I also felt like I was really happy to sit along the Santa Fe River and I am also grateful to sit on the Santa Fe River Commission for the City of Santa Fe. So I was really honored to be able to speak on our behalf.

CHAIR VIGIL COPPLER: Thank you. Kyle, were you going to turn it over now?

MR. HARWOOD: Yes, I was going to virtually hand the microphone to Mr. Roach, Dr. Roach, excuse me.

MR. ROACH: Madam Chair, members of the Board, thank you for your time. I apologize that I missed the discussion about his in executive session last month. I wanted to raise a few concerns on behalf of the City of Santa Fe water ratepayers. I am not convinced that BDD spending $30,000 on an amicus brief will alter the outcome of a lawsuit that already includes the legal power of 18 states. I wonder why we don't just send a letter of support saying that we do support the lawsuit.

The lawsuit also challenges the Trump administration's Navigable Waters Protection Rule and I'm wondering what will happen to that rule with the new administration and wondering why we don't wait until we understand what the fate of this lawsuit is or that actual rule before we move forward to try and find $30,000 if we can to try and fight it.

And, finally, it is my understanding that the way this cost would be coded is that the City of Santa Fe ratepayer would bear about 75 percent of the cost. I guess I wonder in this case if this is something that the Board chooses to pursue would it not make sense to specify that that cost be shared 50-50. So I guess in conclusion I am just questioning if this is a wise use of limited BDD funds at this time and I thank you for your time and consideration.

CHAIR VIGIL COPPLER: Okay, Councilor Romero-Wirth, did you have anything to add since you pulled this?

COUNCILOR ROMERO-WIRTH: Thank you, Madam Chair. I'm just curious about a number of things. So this isn't a budgeted item so we were going to have to find $30,000 and I'm just curious where we're pulling that money from.

MR. CARPENTER: Madam Chair, Councilor Romero-Wirth, I have not identified exactly what line item that would come from. It's probably more likely that that would come from multiple line items. I haven't even done a whole lot of research into it as of yet because I wanted to see how this item was going to turn out. In the past, if someone has come to me or Mackie or other facility managers going back in history, if the Board's will is to go find $30,000 we are able to do it. But the net outcome would be that that $30,000 would not be spent on something else that was already budgeted.

COUNCILOR ROMERO-WIRTH: So does that mean it would come from some sort of reserve fund?

MR. CARPENTER: It means we would probably partially defund some other line item. Whether that's chemicals or materials for maintenance and repair or defer a cost that we could maybe re-incur at a later date that is probably more likely. We're usually able to do it, it's just that it's not a budgeted item currently so I would have to go back into the budget and see where we can spare a cut here or there in order to come up with the money.

COUNCILOR ROMERO-WIRTH: Okay. That concerns me a little bit. I don't know who this question is for, Madam Chair, maybe for one of the attorneys: are there other options? Jesse spoke about could we send a letter of support instead of filing an amicus brief? I'm just curious if that's an option at all. I guess I want to say at the outset that obviously this rule that has been put forward is unacceptable and needs to be over turned. What I'm concerned about is our role in doing that and whether spending $30,000 in a tight budget situation and having the fire power that is already out there whether it will really tip the balance and is it really necessary for us to play a role? Even though, we have a unique story. I know it's interesting and I know people would be interested in it but I'm not sure – and I have expressed this before and I'm a little uncomfortable with us jumping in here because I don't think it's going to change the outcome which I think is already going in our favor and it probably will be overturned one way or the other.

I understand the important of this but I'm curious: is there another option? Could we send a letter of support?

MR. HARWOOD: Let me take the first swing at it. There are several attorneys on the call that may want to add in other points. We can't send a letter to the judge. That's not appropriate as a non-party to the case and the letter wouldn't appropriate

if we were a party to the case. This is the one most efficient manner that we've identified where we know we can get something before the judge about our particular circumstances. We could obviously send a letter to the editor. We could send a letter to the AG. We could send a letter to the other AGs that are plaintiffs in the matter expressing our support for the litigation. So there are letters that could be sent to parties. But short of intervening as a party which is a much, much bigger project, this was the step where we knew we would be getting our materials in front of the judge in a manner that would not require us to do additional briefing or respond and discovery if the case were to go in that direction. So it was sort of the simplest safest way of knowing we could get our story directly in front of the judge given the nature of the litigation. That's not to say that there aren't all of the other sort of more general public relations type ways we can express our opinion or hopes but I think it's fair to say that this really the only way we know we can get our story directly in front of the judge for their consideration as they rule on the case.

With respect to both Jesse and you Councilor referencing what's expected under the new administration, I think that it is generally anticipated that the incoming administration is going to make changes. How, when and how quickly that all happens, I think is an unknown.

COUNCILOR ROMERO-WIRTH: Yes, but on that point, we also don't know how quickly the different legal paths will resolve the issue either.

MR. HARWOOD: That is true. The current litigation schedule has this mid-February deadline for the filing that we are talking about. And then I believe and Luke maybe you can help me – I think there was a summer hearing, if I'm remembering correctly, – a June or July hearing on this phase of the proceedings. And, of course, judges can move those deadlines often when they want to. That's absolutely correct; we don't know the outcome nor the schedule of this litigation. We do know the deadline for what we've briefed you on is mid-February. So it's not practical, just as a note, it's not really practical to delay this decision until February because there's not really enough time between the February Board meeting and the deadline for the filing. There's time but there's not much time. We wouldn't want to rush the drafting this. We would like a decision today. Perhaps I'm answering a question that was not asked but I just wanted to make that clear.

COUNCILOR ROMERO-WIRTH: I think there's no reason not to make a decision today. That's not what I'm arguing. I guess – are there any other attorneys who wanted to weigh in on this aside from the attorney who is going to benefit from it?

CHAIR VIGIL COPPLER: Nancy Long, I see you unmuted, did you want to say something?

NANCY LONG (BDD Counsel): I was just going to chime in on the letter idea and confirm that I don't see a way to be supportive by way of letter unless it is to the parties but not necessarily to the court because it just wouldn't be appropriate, nor would it get the right attention, so it probably wouldn't be worthwhile doing.

CHAIR VIGIL COPPLER: Okay. I have on the attorney request for opinion, I have Councilor Ives and then I have Commissioner Hansen and Commissioner Hamilton in the queue.

COUNCILOR ROMERO-WIRTH: I do have a couple more questions, Madam Chair. And I don't know if Marcos Martinez wanted to weigh in on this but I also have a question for him as well.

CHAIR VIGIL COPPLER: I'll have Councilor Ives go first and then Marcos Martinez.

MR. IVES: Thank you, Madam Chair. At our last meeting, I had indicated that I wasn't clear that this was a prudent path forward as a fiscal proposition because evidence of the harm, in my mind, was not solidly made. In other words, it existed as a possibility as opposed to a concrete thing where we can say the City has been and the County has been harmed in the following ways. And correcting this rule would result in those harms being remedied. Without that concreteness it didn't seem to me to be the most prudent expenditure of funding for the Board and the only alternative route I can think of, and I agree a letter probably does not make sense, but clearly the Attorney General's Office is briefing. There is no reason we couldn't be utilized in the briefing and I don't know where that briefing stands or whether it would be appropriate at this point in time but whether we tell the story through an amicus or tell the story through briefing by the Attorney General who is representing the interests of the people of the State of New Mexico, that might be a possibility. And, again, procedurally I'm not sure where the case stands. So I don't know if that's in fact the case. But without being able to just demonstrate significant and concrete harm, again, it just did not seem a prudent expenditure. Thank you, Madam Chair.

CHAIR VIGIL COPPLER: Marcos Martinez.

MARCOS MARTINEZ (Assistant City Attorney): Thank you, Madam Chair. I guess, I agree largely with the comments that Jesse has made and I understand many of the questions that Councilor Romero-Wirth has also made. I'm not sure that an amicus brief will tip the scales in any way. In particular, amicus briefs at the district court stage are not even really contemplated by the federal rules of civil procedure. So to what extent it really gets before the judge and makes a difference is not entirely clear to me. I understand though that it is an important topic. I guess in support of some of the other references that both Kyle and Councilor Romero-Wirth have made, I would say that there's litigation in other circuits. There's litigation in the 10th Circuit which the City is a part of and Colorado has already obtained an injunction against the navigable water rule. That injunction has been appealed by the Army Corps of Engineers. That appeal has been fully briefed and argued and so I think the opportunities to express skepticism towards navigable water rules are still out there. That is actually an interesting case. The stage of litigation is such that there is an injunction while the merits hearing will go along and they'll be another opportunity, in other words, for the City possibly to participate in that case which is in our own circuit.

So I don't think that choosing at this moment in time really loses anything for the BDD Board or the City and County in particular. And I'll stand for questions.

COUNCILOR ROMERO-WIRTH: Madam Chair, if I can.

CHAIR VIGIL COPPLER: Yes.

COUNCILOR ROMERO-WIRTH: In the 10th Circuit the State of New Mexico for any non-lawyers who aren't familiar with this or maybe you're a non-lawyer and you are familiar with this, but we are part of the 10th Circuit. So if that injunction holds on appeal we are part of that 10th Circuit and I think, Marcos correct me if I'm wrong, we stand the possibility of having the injunction of the rule apply to us here in New Mexico.

MR. MARTINEZ: It may depend on how broadly the court applies the injunction. Colorado is really arguing for itself and only sought an injunction in the State of

Colorado and received that. So the rule is not applying. It's been held in abeyance in Colorado already. The 10th Circuit does serve many other states and New Mexico is one of them. As I said before, they're at the injunctive relief stage of the case. The merits will continue and there may be other opportunities for the State of New Mexico and/or the Board to join.

COUNCILOR ROMERO-WIRTH: Okay. And I guess the other question I would have too is that, alright so it sounds from multiple voices that a letter isn't necessarily going to be an alternative for us but there may be, as Marcos just suggested, other places where we could join as litigation in the 10th Circuit moves.

I also wonder if with the new administration point some ammunition, letters, and tell our story to the incoming administration, the new cabinet secretaries and make our case there for how important it is that this rule not be allowed to go forward.

Again, I'm concerned that this is not the best use of our money because I'm not sure it changes the outcome. There is already 18 states suing. There is a new administration and I think there's a good chance that we can get overturned with that. I had one other thought but I guess that's where I'll leave it, Madam Chair. Thank you.

CHAIR VIGIL COPPLER: Thank you. Commissioner Hansen and then Commissioner Hamilton.

COMMISSIONER HANSEN: Thank you very much, Madam Chair. Thank you all the attorneys. I also want to say, Jesse, I'm a little disappointed that you're late to the table and that you were not at our meeting in December to talk about this because as I think this Board well knows I have very strong feelings about this dirty water rule and I have very strong feelings that it impacts on LANL, on the Rio Grande, and the BDD, and of course on the Santa Fe River that is impacted over 90 percent and where we are losing protection and money to protect our waters in the Santa Fe River and on the Pajarito Plateau. So far from what I hear, LANL has been playing nice and that doesn't mean that they will continue to and they don't really play nice anyhow – a pejorative term of them not being really interested in what they do to anybody as long as they get their way. I do sit on the technical working group with LANL and NB3 and we're talking about issues of cleanup and issues of cap and cover which I am completely opposed to.

I am concerned that if we don't tell our story which is incredibly unique and really has the ability to impact the rest of the country such as places like Savannah River and the Columbia River and all the other nuclear facilities throughout the United States that are impacted by this rule, that we're missing an opportunity to protect the citizens and the ratepayers, as you pointed out, of New Mexico and of Santa Fe. And protecting the ratepayers to me is one of the more important things. The health and public safety of our constituents and this rule is basically taking away our protections of our water. So that is why I think that it is important to file this amicus brief. I recognize that it is possibly a City burden but I am a resident of the City of Santa Fe and a ratepayer in the City of Santa Fe even though I am a County Commissioner, and so I have both hats on in that regard and my concern is very deep for our water quality and we've been impacted in the past. The New Mexico Environment Department does not have oversight of radionuclides. They only have oversight of vapors. So when we're having runoff and there's no oversight and no way to protect us and protect our water that we're in taking from the Rio Grande, there is some real impacts.

I do understand the financial cost and I would have liked to have seen it more in the $20,000 range. I think everybody would have felt a little more comfortable. But at the same time, I guess this is a question for Kyle and Luke, is there any way for somewhat less money that we can attach a story with the AG Hector Balderas and ask him to include our story and maybe this is Jay also who could weigh in on this, so that we can get some impact because I do feel very strongly that our story is very important and not just to the New Mexican but nationwide. The lack of oversight on nuclear facilities and their impact on water quality. Every single river, every single body of water that is beside a nuclear facility is contaminated. We haven't reached a high contamination. We definitely have runoff and things like that. But every other facility throughout the United States – so therefore that is why I feel it is important to file this amicus brief. I know Rick feels that -- he recommended that we file this and I appreciate him sticking his neck out sort of speak in recognizing how important this is to the citizens and the ratepayers of Santa Fe and Santa Fe County. Thank you.

MR. HARWOOD: Shall I respond to at least that one question, Madam Chair?

CHAIR VIGIL COPPLER: Yes, please.

MR. HARWOOD: Thank you. We certainly hope to get the work contemplated done for less than the budget amount. The budget amount is an estimate. It has some funding in it to use the services of Glorieta Geoscience to make sure that we make sure we get all of our regulatory descriptions very precise. They've been the Board's advisory on that regulatory program in some detail and we have consummate professionals in James Bearzi and Jay Lazarus to help us make sure that that part of the amicus brief is as good as it can be. One of the other reasons we have rounded to the high side in the estimate is because we're not exactly sure how much coordination both with the AG and the other claimants' counsel – we're not quite sure what that work effort is going to take. So it may be that it is very simple and there's one phone call and we don't need the other time that is in the budget. It may be that it's five phone calls or 10 phone calls reviewing drafts. So not being aware of how much work that will require we have, like I said, amply estimated. So it's quite likely that the work effort will come in below and even significantly below the budget but we wanted to make sure that if it did take a full effort of some of these unknown steps that the Board will have decided to make that time available for us to get that done.

I guess what I can say is if you approve a lower number, we'll work within in, and if you approve this number, we'll work to get it as low – well, we're going to do the work that is necessary to have the very best filing and hope that it is significantly below the budgeted estimate. If you give us a lower number, we'll do our best within a lower number. And if you tell us not to do it, we'll be happy not to do it.

CHAIR VIGIL COPPLER: Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you, Madam Chair. There are few points that I wanted to make. Frankly, this is a horrible rule. The only thing I actually – which there's no disagreement about, right, everybody on the Board agrees that this is something – and frankly, the only thing that I kind of disagree with, sorry about this, is Councilor Ives, the lack of demonstrative harm. Should this be fully implemented over time and everything takes time to trot out, it would take away most of the protections upstream of where we get water and it would impact us directly. So I was initially really trying to depend on the answer to the question Councilor Romero-Wirth and actually Dr. Roach

probably as well asked early on which was how much this would tip the scale. Because it is a really good point that we have a great story to tell but we have immediate fiscal responsibilities and it kind of concerned me that this would be taken right out of a different budget item. So it's kind of hard to decide how to balance that. Do we need to do the amicus brief or buy chemicals to produce good water. That really concerns me.

The harm is potentially real. The thing about waiting for the EPA within the new administration – the new administration is not going to sit with this, I don't believe. The person that they have nominated and especially now that there's a chance that nominations might actually be approved, the person they've nominated to run EPA is really good. Because this rule was fully implemented by EPA under the current administration changing it is going to take a full EPA rulemaking and I think the world of EPA and think the world of many of the people who work there. They're quite a bureaucracy and their rulemaking and then my god this rulemaking took years to go through. So just from that point of view I feel like the only hope is that under the new administration which is two weeks away, if they can make changes fast enough, they won't rush to enforce the rule and eliminate, for instance, all the NPDES permitting authority and that sort of thing.

Having said that, I have no idea whether that's a possibility that they will slow walk it. Yes, I believe that the EPA will ultimately change it but I think that dangers are real and substantial so I guess it kind of drives me back to doing my best to put Kyle on the hotspot again and say, is there something about tipping the scale here that makes it worth looking at this despite an obvious Covid-driven tight budget couple of years?

MR. HARWOOD: It's very, very hard to know what will sway a judge even after you have gotten the decision. We also don't know what other amicus curiae that might be filed and of course it's very hard to know in this complex regulatory and legal environment how quickly things might change from beyond state rule in New Mexico which is the current reality – it's just very hard to know. And those are issues that folks other than BDD funded or BDD adjacent people are working on very hard. There's a lot of legal work and a lot of advocacy work going in to making new priorities for the new administration. But how, when and where they get to it and how it unfolds and what it means for the interim – and what we've heard from James and others is that the Lab is not taking advantage of the current rule partly I think because they had lots of work invested in compliance with the old rule and they figured that this rule is going to be very controversial and could be overturned either by court or by a succeeding administration so they have been continuing .I hope Jay or James will interrupt me if I'm mischaracterizing what I've heard. But how long that goes and how things unfold, I don't know if any of the other lawyers have a crystal ball on that or want to add their perspective to it. I'm afraid from my perspective a very hard question to answer, Commissioner.

COMMISSIONER HAMILTON: I guess my only – I appreciate the try – my only follow-up question would be for the Rick to confirm that this is something that we directly take needed supplies or needed operational O & M from someplace else.

MR. CARPENTER: Madam Chair, Commissioner Hamilton, as I've stated on the record and off the record many times as the facilities manager I would never sacrifice necessary funds that would impact the mission critical objectives of the operations of the BDD vis-a-vis water quality. So I would not seek to go there with those funds if I thought it would negatively impact the way we run the facility. There are other funds that I can think of that may not be so critical that I could pick from here and there – as I said, $5,000 here,

$10,000 there or defer until some later date. We've been able to come up with figures like $30,000 in the past and so if it was the Board's will, I would go back in the budget and find that money. But I would not sacrifice the ability of the BDD to provide good, clean, reliable, safe water to our customers.

COMMISSIONER HAMILTON: I understand that. Thank you.

CHAIR VIGIL COPPLER: Councilor Romero-Wirth, do you have your hand up?

COUNCILOR ROMERO-WIRTH: Yes, thank you, Madam Chair. I guess Rick I'm sorry that you haven't had an opportunity yet to find where you would take the money from because think that would help us. Because while I understand the extreme of you won't compromise the operations, I am still curious where the money would come from when it's not a budgeted line item.

I don't know, my understanding is that the City and I'm not exactly sure why, maybe under our agreements, ends up paying 75 percent of this and the County would be paying 25 percent and I'm wondering if in this situation if this is as important as it is to Commissioner Hansen, is there a way to split if 50-50 and could we also look at maybe reducing the amount of the contract so that – I'm wondering if there is some sort of compromise here? Again, I want to say this is a bad rule. It has to be changed. I get that but we're in tight fiscal times. We don't know right at this moment where this money is coming from and it's not clear to me that this is going to change the outcome given all the people who are already working to overturn this rule. If this was going to be the tipping point and this was going to make sure that this rule was overturned, then I would say spend the money, absolutely. But because we don't know we're going to be spending precious resources in a constricted financial time and not know that it's going to do anything for us for getting the result we want. I just don't know – and I said this in executive session, I'm really torn on this. Thank you, Madam Chair.

CHAIR VIGIL COPPLER: Any other comments?

MR. HELMS: Yes, I'd like to make one.

CHAIR VIGIL COPPLER: Alrighty. Mr. Helms.

MR. HELMS: I'll try and be brief. If I recall at the last meeting the topic came up of why doesn't New Mexico have the ability to create its own rules and implement them even if the federal government goes off into a different direction and the comment was made that we are simply not in a position to do that administratively or moneywise or even legally. Actually ultimately what New Mexico needs is its own laws governing the protection of its own waters and where does that stand? I guess my question is to Kyle.

MR. HARWOOD: Thank you, JC. James has helped me with this general topic because it overlaps into NMED so I'm going to ask James or Jay to weigh in here in a minute. But there are things that the State of New Mexico can do. Those are things that have not happened yet and I think under the current situation with the state we don't expect it to be happening anytime soon. Do you want to add to that, Jay?

JAY LAZARUS (Glorieta Geoscience): Chairman, members of the Board, thank you. Thanks, Kyle. I've been working on New Mexico trying to obtain primacy for surface water quality regulation for over 20 years. And as we have said in a previous meeting, the biggest push back there is politically is from the Association of General Contractors and ACI. Financially, the department isn't even close to being set up to handle a program like this which would probably at least take $1 million in a time of shortfalls just

to get it going let alone having the recurring revenues on it. And the Water Quality Control Commission when this was brought up most recently, the department said that they would just have to increase fees, and then those entities that are regulated by EPA right now don't pay a fee. So financially for the state at the moment, I think financially it is a non-starter. Politically it all depends on how strong a coalition would be to try and get the ear of the governor to make this a priority and then finding the money to do it. But nothing is going to happen in the next couple of years easily.

MR. HELMS: Okay, thank you.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, JC, for that question and Madam Chair and JC. I wholeheartedly agree with you that we need to have primacy in this state. I have spoken with the secretary of Environment. I have lobbied for primacy. I feel that that it is something we absolutely need in this state considering that we are only one of three states in the entire United States that do not have primary. It might be down to two, I'm not positive. I haven't kept up on what's happened. I know Massachusetts and I believe New Hampshire is the other one – I might be wrong on the states – but I feel very strongly about that and every time I get in front of anybody that will listen to me, I advocate for primacy and for us to have water protection rules. So I agree with you on that. But we're also a poor state and we have depended on EPA for many, many years to oversee our water quality and with this rule it just kind of wiped it out, all of our protection. And I think Commissioner Hamilton could speak probably more eloquently to the EPA and how it is affected and how it will affect New Mexico.

CHAIR VIGIL COPPLER: Okay, anybody else wish to weigh in?

COUNCILOR ROMERO-WIRTH: Madam Chair.

CHAIR VIGIL COPPLER: Yes.

COUNCILOR ROMERO-WIRTH: I'm sorry. Is there any way to split the cost of this? I didn't – it's sort of rhetorical but –

CHAIR VIGIL COPPLER: Commissioner.

COMMISSIONER HANSEN: I don't think that Commissioner Hamilton and I would have the authority to make that decision. That is something we would have to take back to the Board of County Commissioners and get the money allocated. I don't want to make decisions that I'm not entitled to make. So it's not that I'm not interested it's just I wish that this could have come in December or at some other point and we could have brought that forward as a topic and we could have at least discussed it with the County manager, with our County attorney and with the Board because I don't feel that Commissioner Hamilton and I the authority to make that decision.

COUNCILOR ROMERO-WIRTH: I appreciate that.

CHAIR VIGIL COPPLER: Commissioner Hamilton.

COMMISSIONER HAMILTON: Yes, I would agree with that. So I wonder if it's worth considering and would it be more reasonable to consider a lower amount. I guess one of the points that's been made is that it is hard to know. You either have to grab the opportunity to weigh in to try to tip the balance or not so who can predict whether we would. And I think the fights on all the avenues are worth pursuing and yet I think it's a valid point about our immediate fiduciary responsibility to the bigger picture responsibility. And we're not fighting everybody else's battles. I truly believe this will have negative impacts on New Mexico, on Santa Fe and on the BDD if it goes through for

several years because it's going to take that long to fix the problem. And there are a lot of things that fall into this category from the current administration. There are things that everybody may want to fix now but it's going to take years to do it.

I also recognize that at some point you can cut the budget down too much it's not enough budget to do something effective. But is it possible to do something that is reasonable, that gets our story there and maybe not as extensively for $20k instead of $30k so that we can balance between not putting BDD in a bad position and not losing this chance to weigh in and push the issue forward.

MR. HARWOOD: We would be – we'll do our level best with whatever direction and budget you give us.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: Madam Chair, I don't know if this is an appropriate time; would it be appropriate for me to make a motion?

CHAIR VIGIL COPPLER: You can make a motion and we'll see what happens.

COMMISSIONER HANSEN: I want to request approval of amendment to the legal services agreement with Long, Komer & Associates for additional legal services associated with preparing and filing an amicus brief in the State of California et al., vs. Wheeler et al., Case No. 3-20-cv-03005, in the amount of $20,000 plus New Mexico gross receipts tax.

CHAIR VIGIL COPPLER: Do I hear a second.

COUNCILOR ROMERO-WIRTH: Second.

CHAIR VIGIL COPPLER: It's been moved by Commissioner Hansen and seconded by Councilor Carol Romero-Wirth to approve the amicus brief in the amount of $20,000. Any further discussion?

The motion passed by majority [4-1] roll call vote with Mr. Helms voting against.

9. ACTION ITEMS: Discussion and Action

a. Consideration and Possible Action on Resolution 2021-1. Determining Reasonable Notice for Public Meetings of the Buckman Direct Diversion Board and allowing the Board to continue to Limit Public Attendance at Meetings Provided there is Sufficient Means to Allow Remote Participation and Allowing the Board to Cancel any Meeting to Preserve the Public Health, Safety and Welfare and Allowing for Alternate Forms of Attendance by its Public Members

MS. LONG: Madam Chair, members of the Board, as you know we annually, as you do with your respective public bodies for the Councilors and Commissioners, pass an Open Meetings Act Resolution which is required by state law that we do each year. We actually passed two last year so that we could take into account the meeting restrictions made necessary by the public health emergency and also considering safe meeting practices. So the resolution before you is the same resolution that you passed in May but this just meets our annual requirements. It is our Open Meetings Act Resolution but then with the provisions at the end of the resolution that allow for virtual participation so long as the public can hear or view the Board meeting.

And we will take direction from the New Mexico Attorney General's Office as they provide any for public meetings. We recommend that you approve this resolution for this year.

CHAIR VIGIL COPPLER: Thank you. Does anyone have any questions? Do I hear a motion to approve? Commissioner Hamilton.

COMMISSIONER HAMILTON: I think I had a quick question just to make sure – we're retaining the ability in this to have virtual meetings; yes?

MS. LONG: That is correct.

COMMISSIONER HAMILTON: I just wanted to double-check.

MS. LONG: We kept that in there.

COMMISSIONER HAMILTON: I would so move because I think this is going to be necessary for months more. At least potentially and I move to approve.

CHAIR VIGIL COPPLER: Commissioner Hansen.

COMMISSIONER HANSEN: I second.

The motion passed by unanimous [5-0] roll call vote.

10. MATTERS FROM THE BOARD

CHAIR VIGIL COPPLER: Does the Board have anything to say that matters. I hate to put it that way. Commissioner Hansen.

COMMISSIONER HANSEN: I want to say Happy New Year to everybody. Yesterday which was the – I think a heart wrenching day for all of us and I think that we have to acknowledge that. That it was really unfortunate and sad to see what was happening in our capitol in DC. It was also a happy day in Georgia.

I think that matters and I think that it's important to acknowledge that we are facing really dangerous times in the next two weeks and we need to all be prepared.

CHAIR VIGIL COPPLER: Thank you. Any other comments? I'll just say that I'm really looking forward to the future on what happened yesterday. I'm looking forward to good resolutions of what things our country is going through and I'm looking forward to an EPA that is concerned about water, clean water and the like for all of the items that we work on which are really, really important.

11. NEXT MEETING: Thursday, February 4, 2021 at 4:00 p.m.

12. EXECUTIVE SESSION

In accordance with the New Mexico Open Meetings Act NMSA 1978, §I0-15-l(H)(7), discussion regarding pending litigation in which the BDDB is a participant, or may become a participant, including, without limitation, : 1) *Buckman Direct Diversion Board v. CDM Smith, et al.*, First Judicial District

CHAIR VIGIL COPPLER: We will be adjourning to go into executive session. Does anyone want to make a motion?

MR. HELMS: So moved.

COMMISSIONER HAMILTON: Madam Chair, I think we need to have Attorney Long explain what we're going in for to include that as part of the motion.

CHAIR VIGIL COPPLER: I was going to coach JC if he had the agenda in front of him.

MR. HELMS: Somewhere I have it.

CHAIR VIGIL COPPLER: Okay, then if you don't mind, I'll ask Ms. Long to finish the motion for you.

MR. HELMS: Thank you.

MS. LONG: Yes, Madam Chair and Mr. Helms, the motion would be to adjourn and to go into executive session in accordance with the New Mexico Open Meetings Act Section 10-15-1 (H)(7) for discussion regarding pending litigation in which the BDD is a participant for the case as described on your agenda.

MR. HELMS: So moved.

COUNCILOR ROMERO-WIRTH: Second.

The motion to adjourn and go into executive session passed by unanimous [5-0] roll call vote as follows:

Councilor Vigil Coppler	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Councilor Romero-Wirth	Aye
Mr. J.C. Helms	Aye

[The Board adjourned and met in executive session at 5:25 p.m.]

13. ADJOURNMENT

Chair Vigil Coppler declared this meeting adjourned at approximately 5:25 p.m.

Approved by:

_____
JoAnne Vigil Coppler, Board Chair

Respectfully submitted:

Karen Farrell, Wordswork

ATTEST TO

_____
KRISTINE BUSTOS-MIHELCIC
SANTA FE CITY CLERK

Buckman Direct Diversion

Date: **February 4, 2021**

To: **Buckman Direct Diversion Board**

From: **Randy Sugrue, BDD Operations Superintendent**

Subject: **Update on BDD Operations for the Month of January 2021**

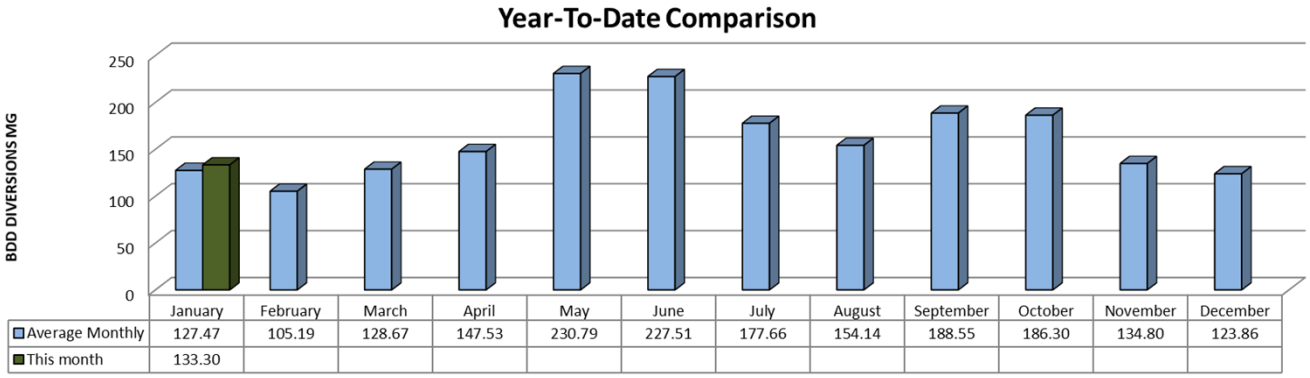
ITEM:

1. This memorandum is to update the Buckman Direct Diversion Board (BDDB) on BDD operations during the month of January 2021. The BDD diversions and deliveries have averaged, in Million Gallons Per Day (MGD) as follows:
    a. Raw water diversions: 4.30 MGD.
    b. Drinking water deliveries through Booster Station 4A/5A: 4.14 MGD.
    c. Raw water delivery to Las Campanas at BS2A: 0.00 MGD.
    d. Onsite treated and non-treated water storage: 0.16 MGD Average.

2. The BDD is providing approximately 69% percent of the water supply to the City and County for the month.

3. Regional Demand/Drought Summary and Storage-see page 2.

4. The BDD year-to-date diversions are depicted below:



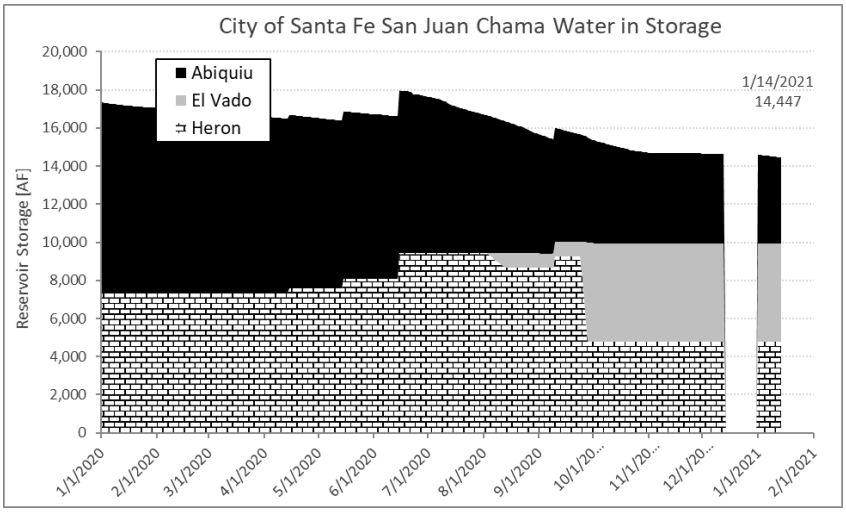
	January	February	March	April	May	June	July	August	September	October	November	December
Average Monthly	127.47	105.19	128.67	147.53	230.79	227.51	177.66	154.14	188.55	186.30	134.80	123.86
This month	133.30											

Regional Water Overview

Daily metered regional water demand for the month of January 2021 is approximately 6.0 MGD.

Rio Grande flows for January 2021 averaged approximately 500 CFS (cubic feet per second.)

City/County/LC Storage- as updated by partners.



ENSO Summary

January 19, 2021

ENSO Alert System Status: La Niña AdvisoryLa Niña conditions are present.*Equatorial sea surface temperatures (SSTs) are below average from the west-central to eastern Pacific Ocean. The tropical atmospheric circulation is consistent with La Niña.La Niña is expected to continue through the Northern Hemisphere winter 2020-21 (~95% chance during January-March), with a potential transition to ENSO-neutral during the spring 2021 (55% chance during April-June).

Buckman Direct Diversion Monthly SJC and Native Diversions

Jan-21 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	**411.857**	**194.806**	**0.000**	217.051	**217.051**	**0.000**	2.229
FEB	**0.000**	**0.000**	**0.000**	0.000	**0.000**	**0.000**	0.000
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	**411.857**	**194.806**	**0.000**	**217.051**	**217.051**	**0.000**	**2.229**

In Million Gallons

Month	**Native** COUNTY	**Native** Las Campanas	**SJC** TOTAL	**SJC** CITY	**SJC** Las Campanas	**All Partners Diversions**
JAN	63.455	0.000	69.875	69.875	0.000	133.330
FEB	0.000	0.000	0.000	0.000	0.000	0.000
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	**63.455**	**0.000**	**69.875**	**69.875**	**0.000**	**133.330**

Buckman Direct Diversion Monthly SJC and Native Diversions

Dec-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	**396.508**	**218.194**	**0.000**	178.314	**178.314**	**0.000**	1.679
MAR	**357.764**	**185.598**	**0.000**	172.165	**172.165**	**0.000**	1.621
APR	**372.408**	**187.945**	**0.000**	184.463	**122.188**	**62.275**	1.737
MAY	**641.374**	**529.897**	**0.000**	111.477	**111.477**	**0.000**	0.889
JUN	**637.220**	**509.818**	**0.000**	127.402	**1.618**	**125.784**	1.017
JUL	**784.520**	**0.000**	**0.000**	784.520	**784.520**	**0.000**	3.663
AUG	**886.856**	**12.503**	**0.000**	874.354	**839.919**	**34.435**	4.214
SEP	**762.357**	**0.000**	**0.000**	762.357	**682.674**	**79.683**	3.556
OCT	**593.109**	**0.000**	**0.000**	593.109	**539.638**	**53.472**	5.845
NOV	**390.743**	**353.481**	**0.000**	37.261	**37.261**	**0.000**	0.345
DEC	**392.394**	**355.317**	**0.000**	37.077	**37.077**	**0.000**	0.377
TOTAL	**6,654.050**	**2,487.186**	**0.000**	**4,166.864**	**3,805.100**	**361.764**	**27.701**

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	71.073	0.000	57.454	57.454	0.000	128.527
MAR	60.456	0.000	55.473	55.473	0.000	115.928
APR	61.220	0.000	59.435	39.440	20.101	120.655
MAY	172.605	0.000	35.812	35.812	0.000	208.417
JUN	166.065	0.000	40.927	0.520	40.407	206.992
JUL	0.000	0.000	252.754	252.754	0.000	252.754
AUG	4.073	0.000	281.681	271.072	11.113	285.754
SEP	0.000	0.000	245.686	219.960	25.726	245.686
OCT	0.000	0.000	191.019	174.109	17.252	191.019
NOV	115.140	0.000	12.008	12.008	0.000	127.148
DEC	115.738	0.000	11.937	11.937	0.000	127.676
TOTAL	**810.158**	**0.000**	**1,342.289**	**1,226.843**	**116.574**	**2,152.447**

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**

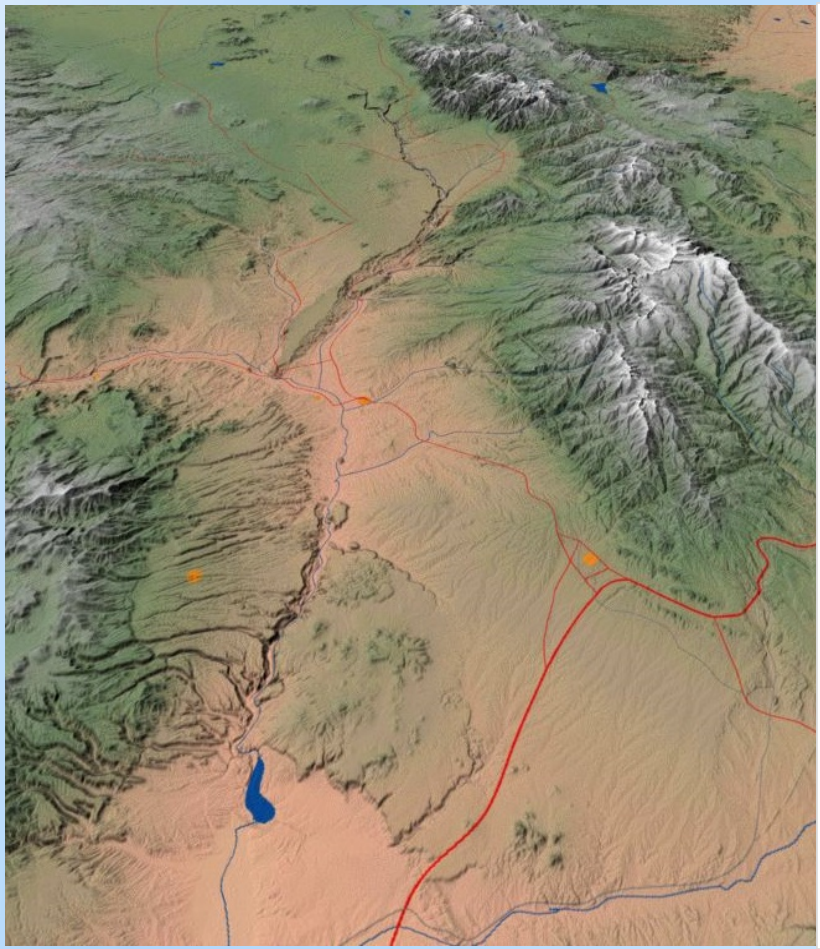
In Acre-Feet

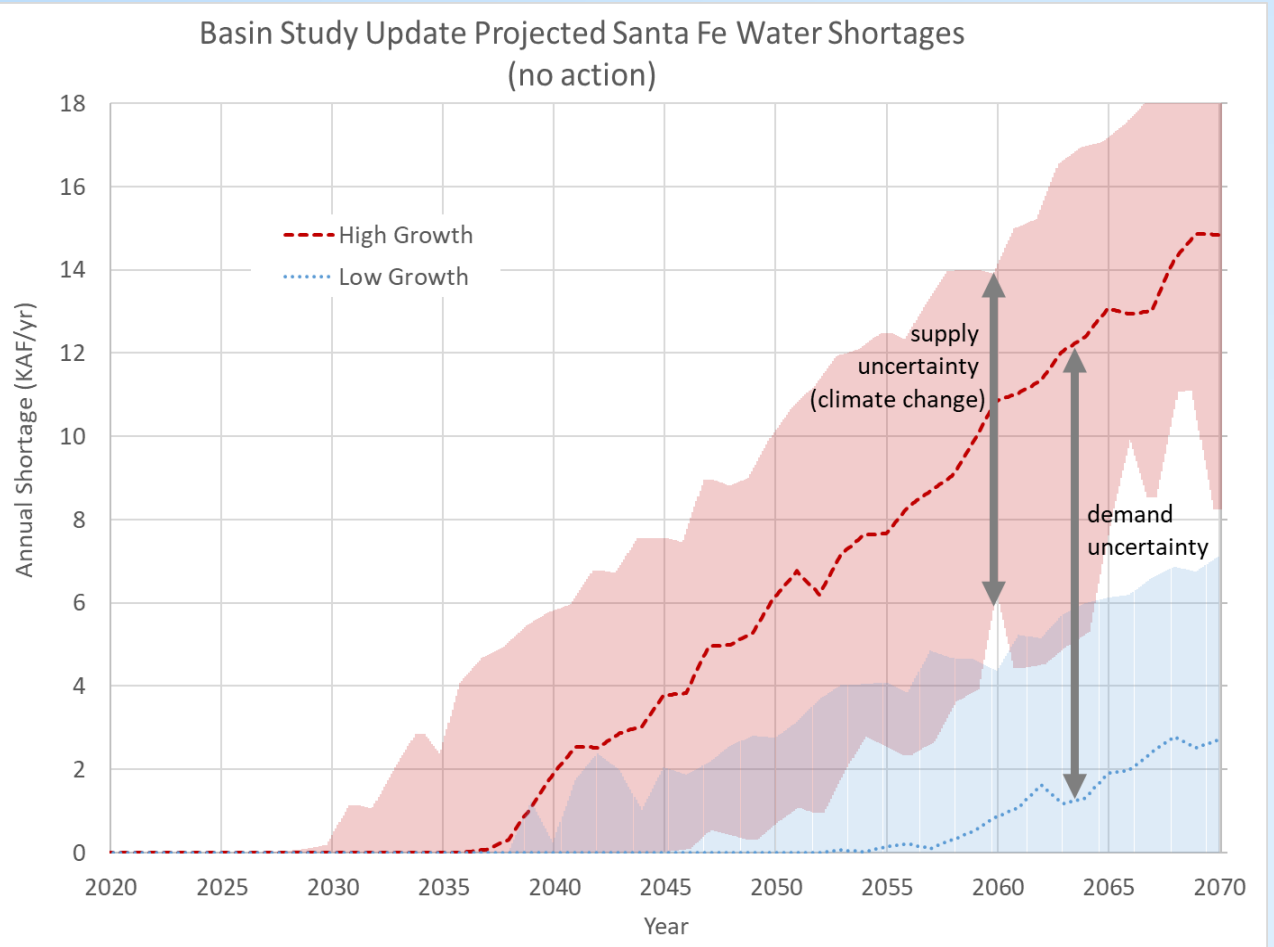
Month	**Native** COUNTY	**Native** Las Campanas	**SJC** TOTAL	**SJC** CITY	**SJC** Las Campanas	**All Partners Diversions**
JAN	77.954	0.000	302.916	302.916	0.000	380.870
FEB	75.227	0.000	265.825	265.825	0.000	341.052
MAR	267.512	0.000	92.231	92.231	0.000	359.744
APR	569.253	0.000	89.256	89.256	0.000	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**

City of Santa Fe Water

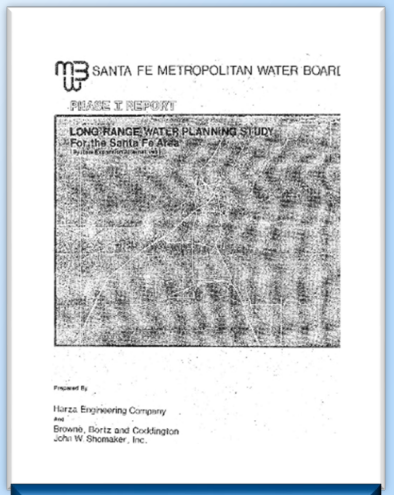
Proposed SJC Return Flow Pipeline Status Update

January 13, 2021

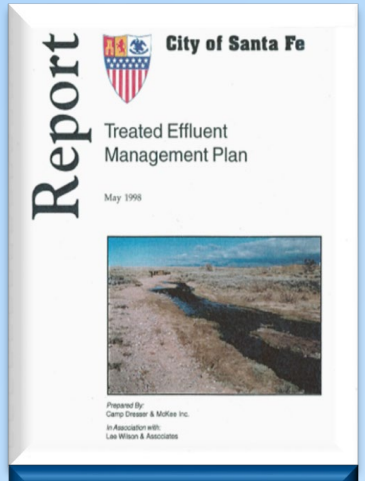




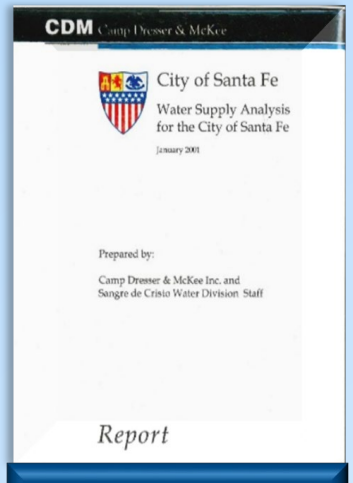
30 Years of Santa Fe Water Planning



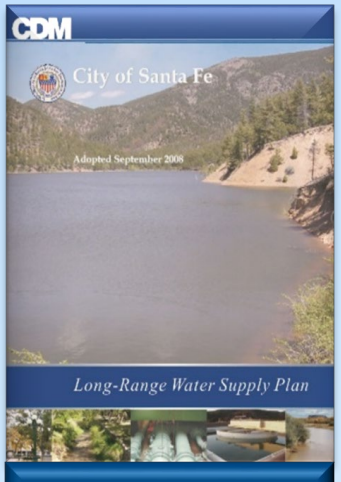
1988



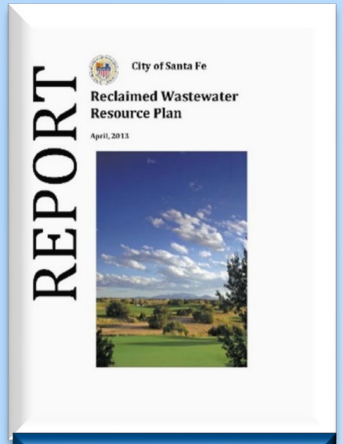
1998



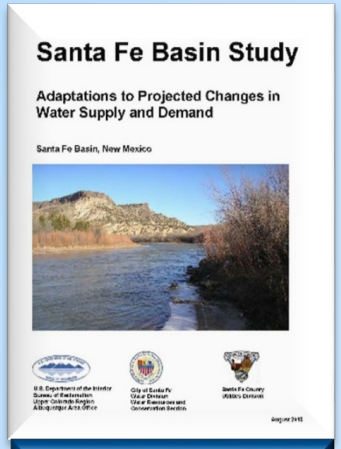
2001



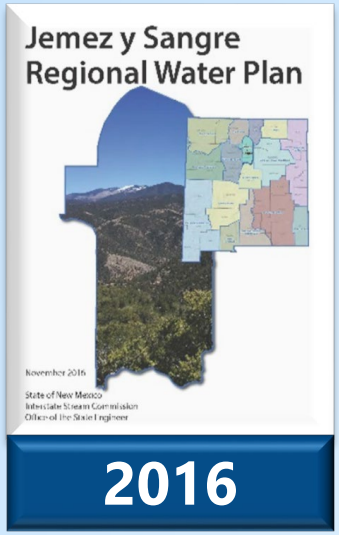
2008



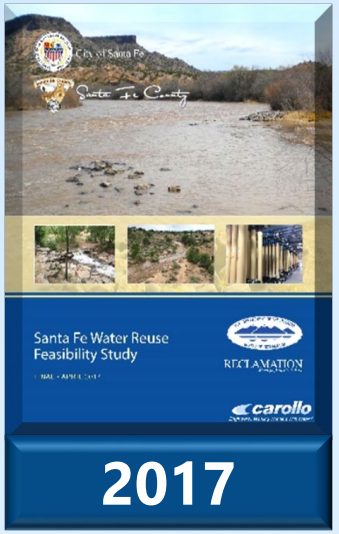
2013



2015



2016

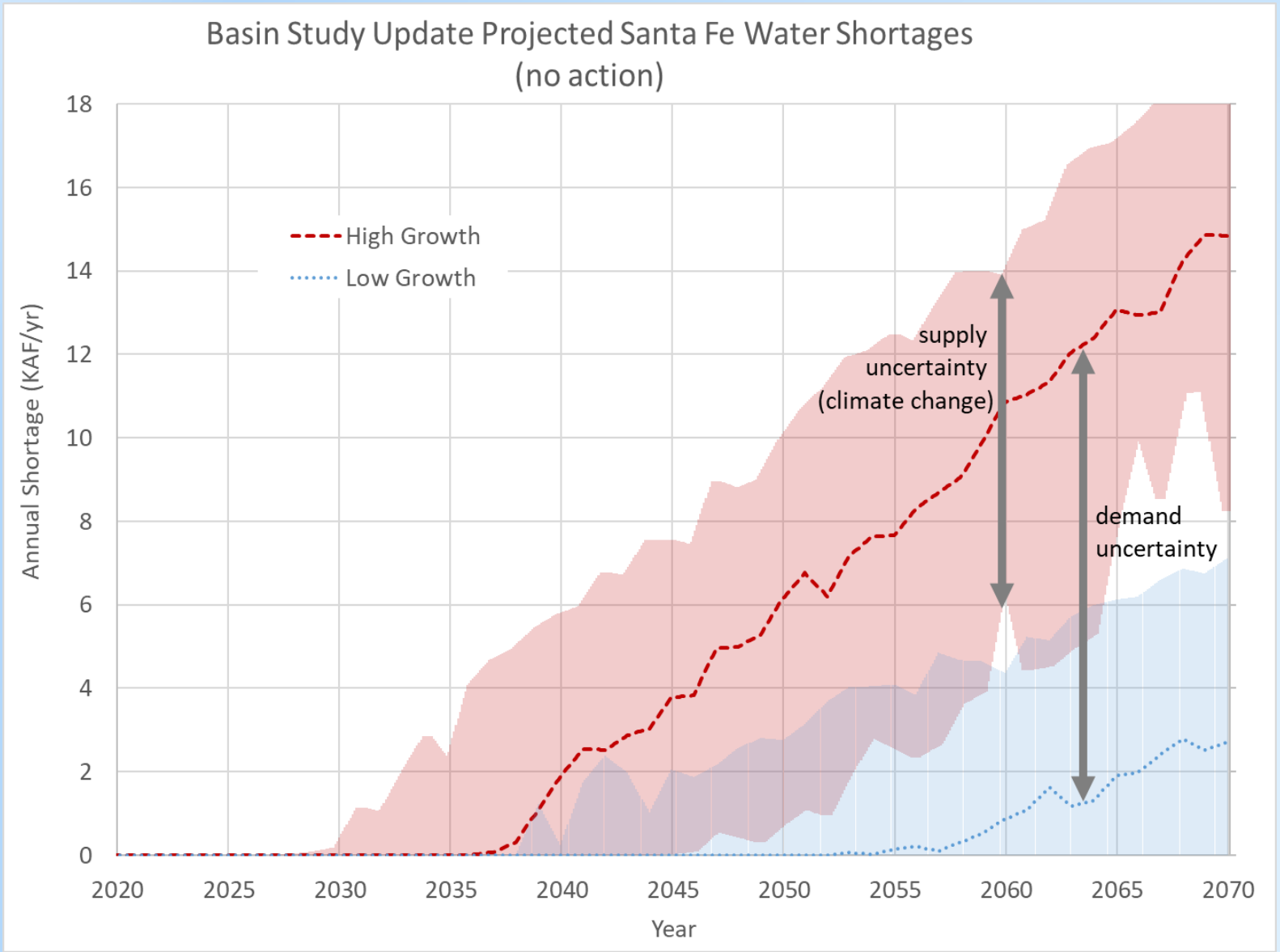


2017

Most recent planning efforts

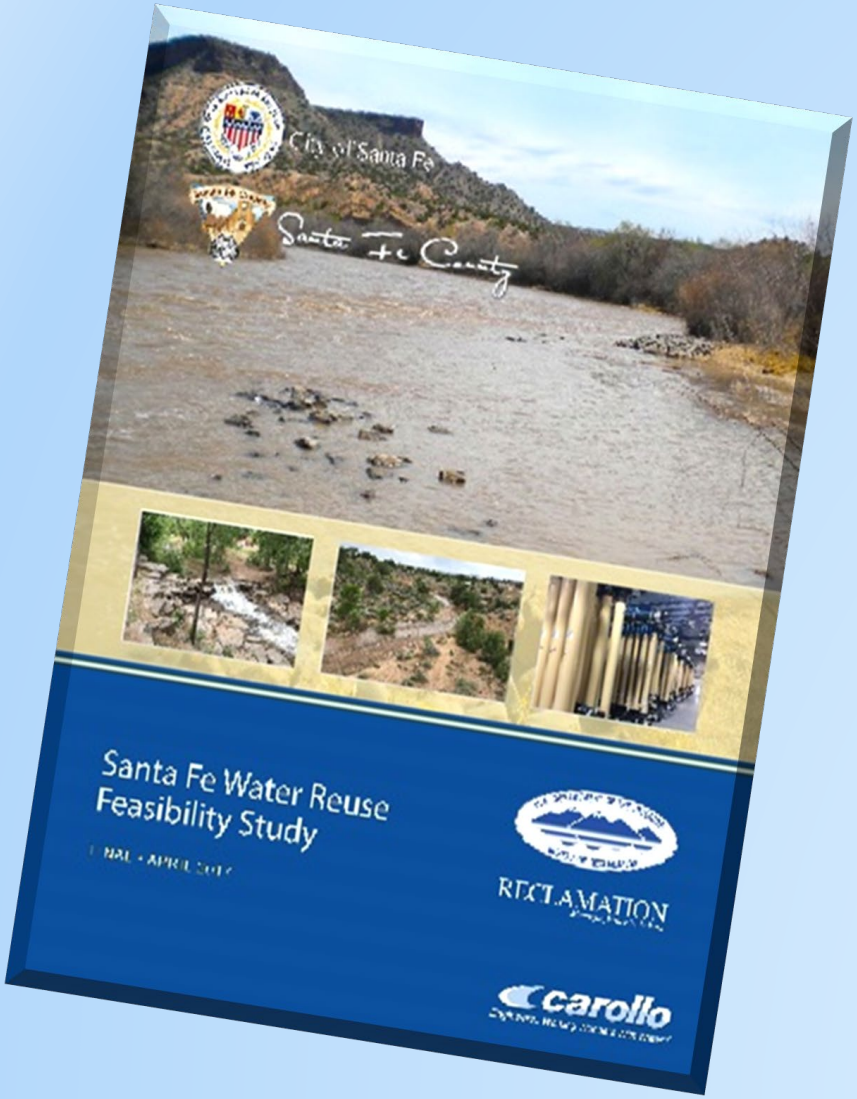
Santa Fe Basin Study and Basin Study Update:

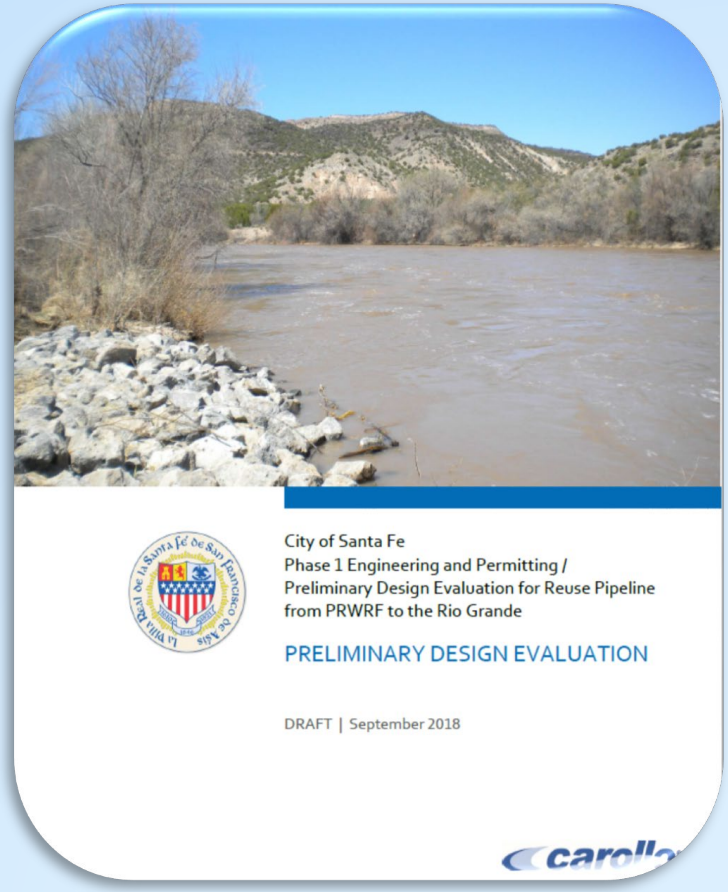
- Growing demand & less reliable supply will lead to shortages *if nothing is done*
- Best way to avoid these shortages is utilization of effluent



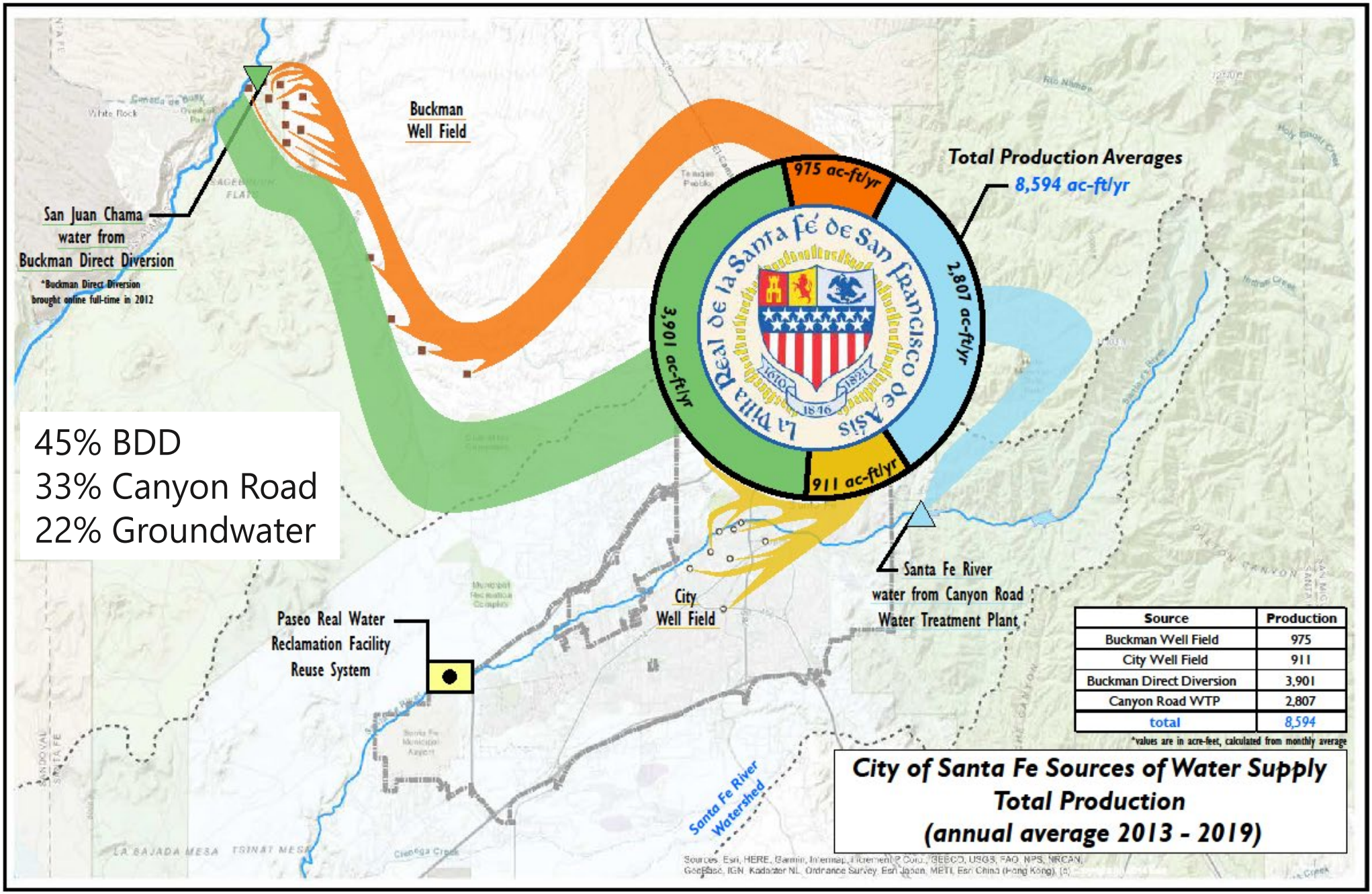
Current focus: SJC return flow pipeline

Returning water originating from the BDD to the Rio Grande was contemplated in the original BDD design, and was identified in the last round of planning as the preferred alternative for using effluent to increase our water supply.





2013-2019 City Water Use

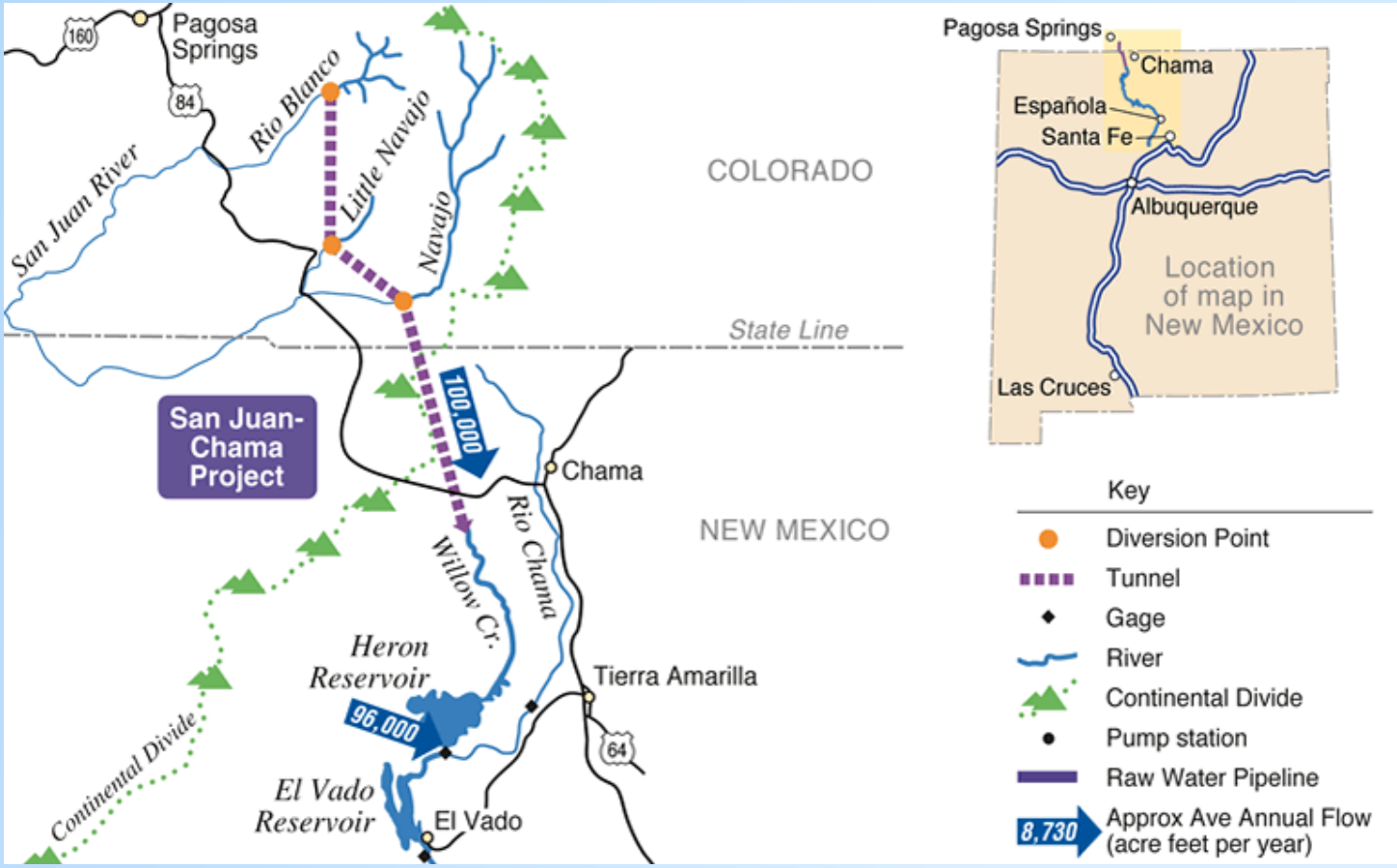


Source	Production
Buckman Well Field	975
City Well Field	911
Buckman Direct Diversion	3,901
Canyon Road WTP	2,807
total	8,594

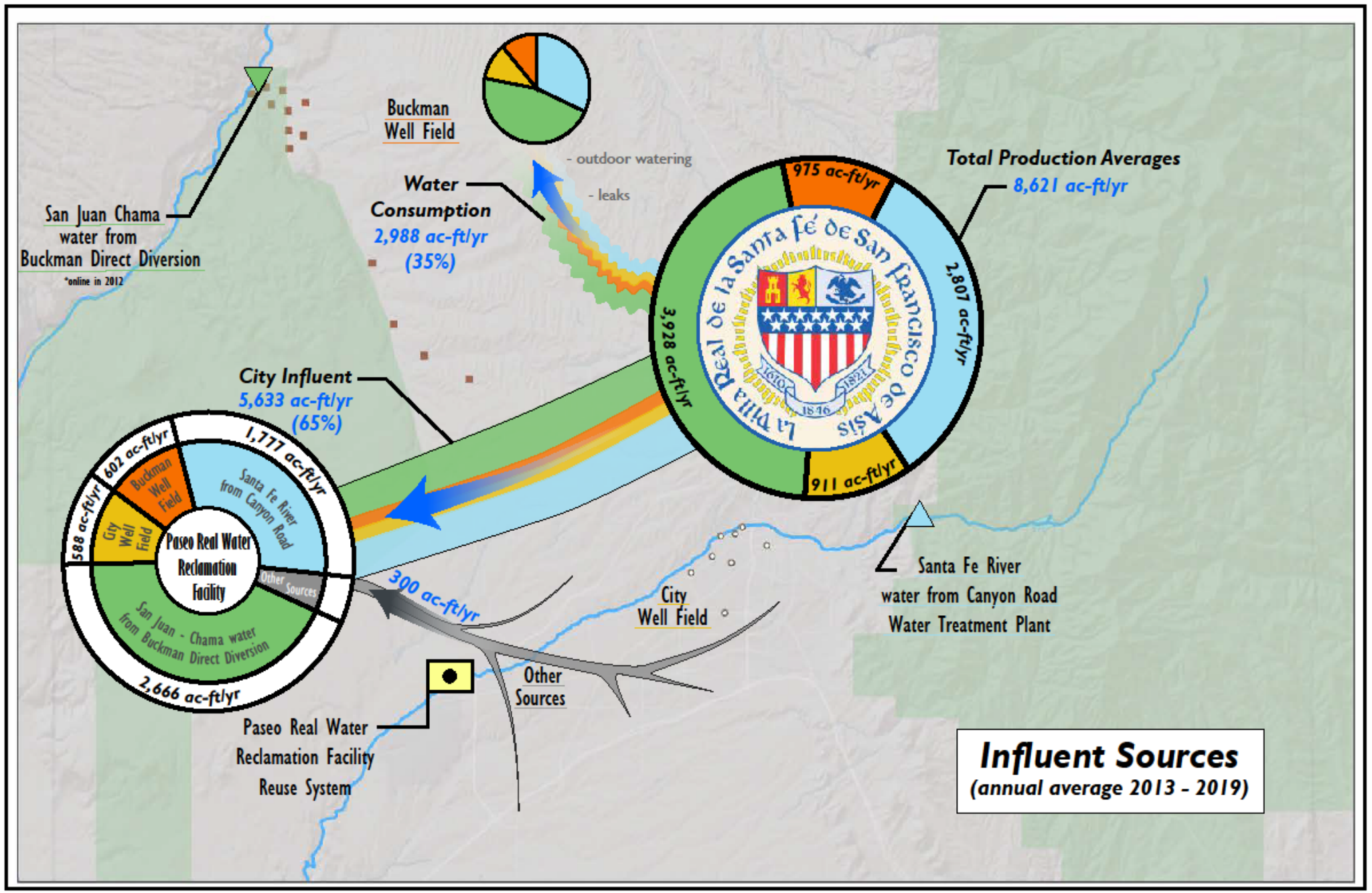
*values are in acre-feet, calculated from monthly average

San Juan - Chama (SJC) Water

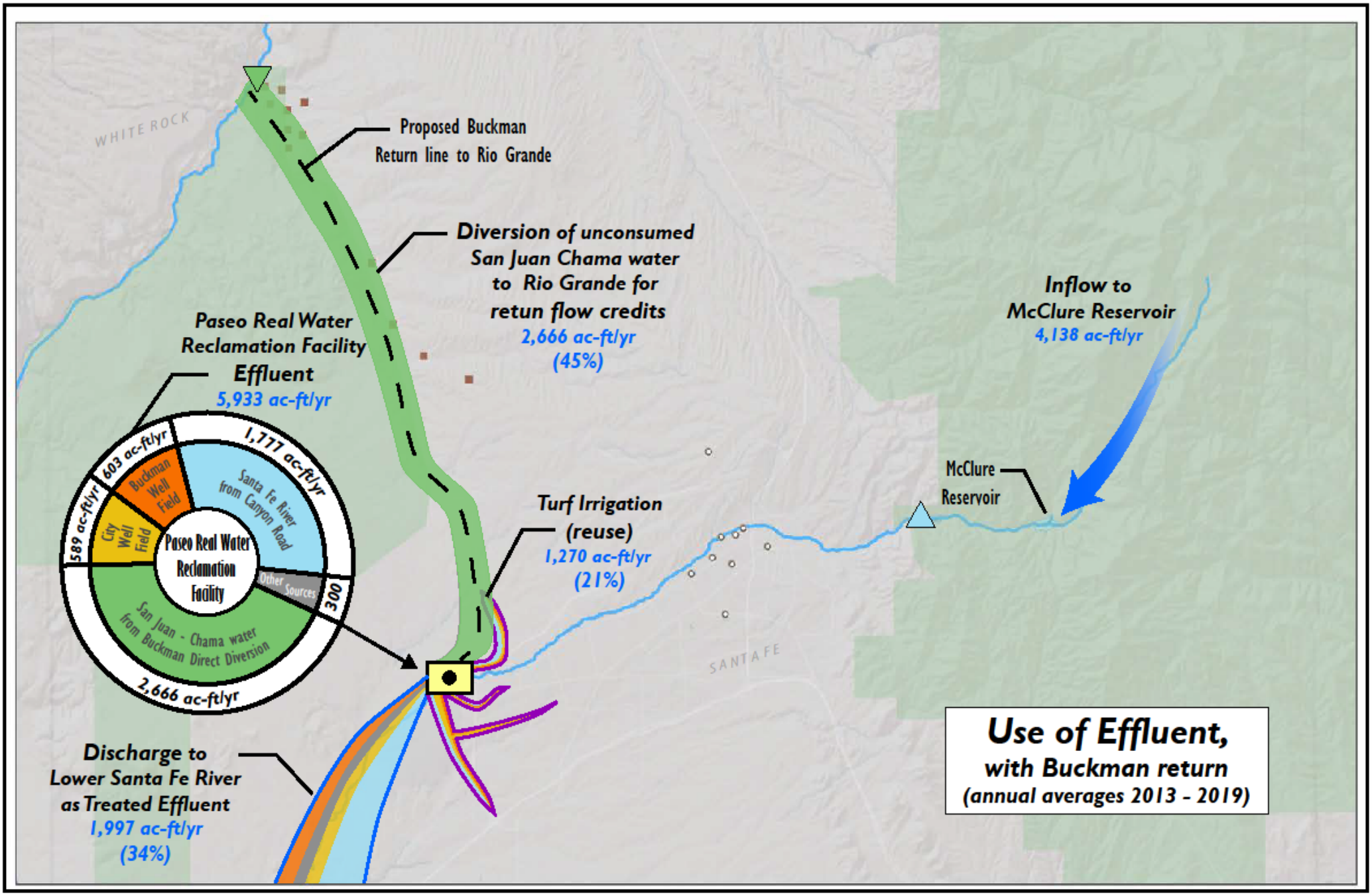
- Portion of NM's legal share of Colorado River water.
- Water from tributaries to the San Juan, gravity flow through tunnels into Chama system.
- City full allocation 5230 AF/yr.
- City has the right to fully consume this imported water.



2013-2019 Flows to WWTP (influent)

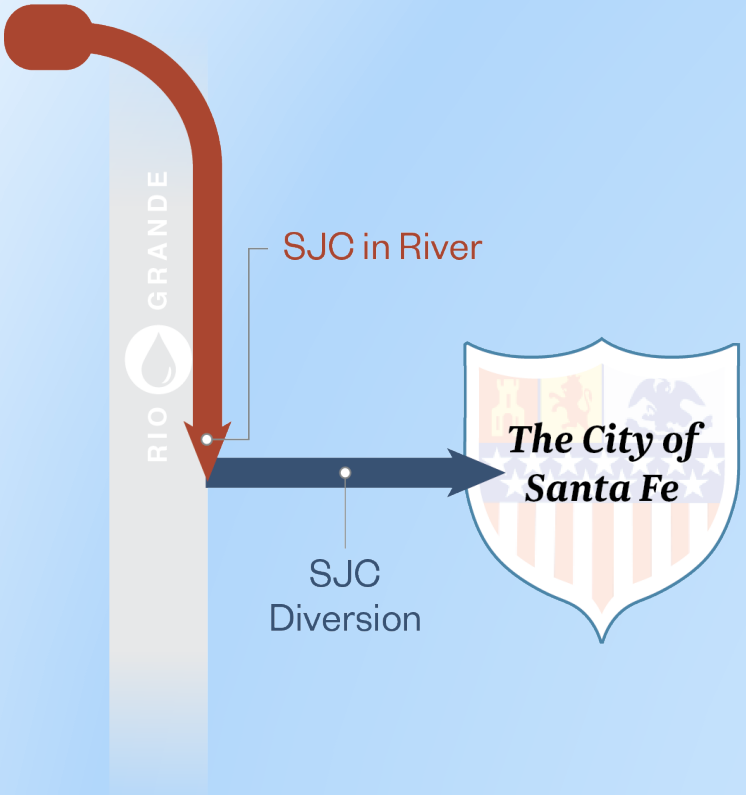


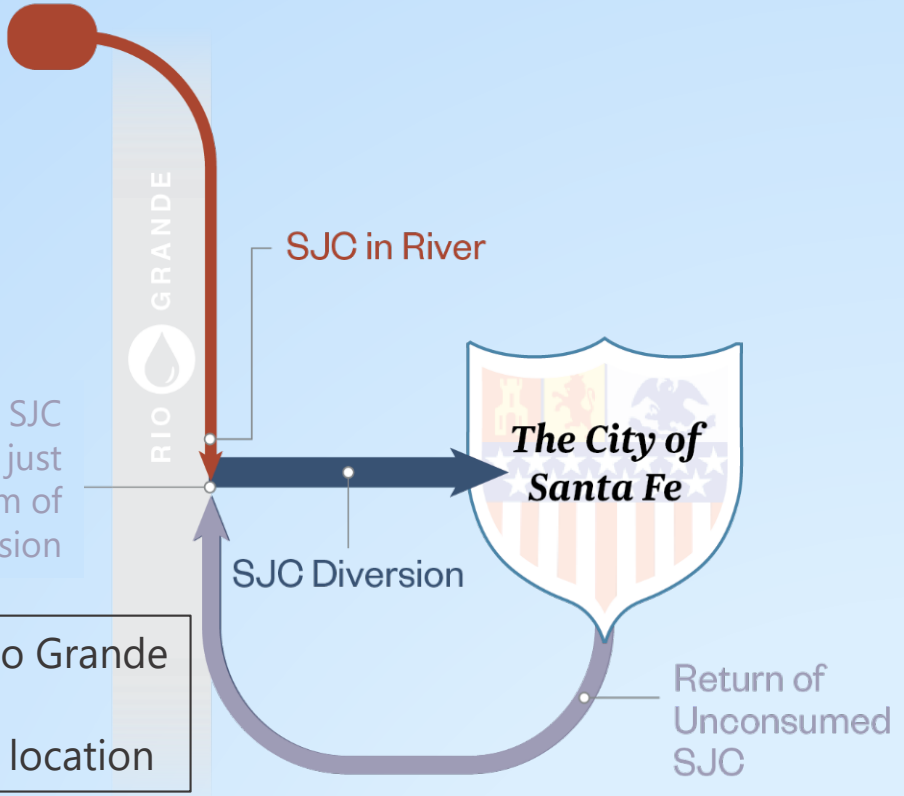
Current City focus: SJC return flow pipeline



Current City focus: SJC return flow pipeline

Goal: Achieve full consumption of SJC water by getting credit for returning unconsumed SJC water (we get no credit for discharge to lower Santa Fe River) to the Rio Grande.





No change to Rio Grande flows below diversion/return location

Current: all diversions at BDD from upstream reservoir releases

With pipeline: same diversions at BDD with less release from upstream reservoirs. River "made whole" with effluent return.

Resolution 2019 - 56

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE CITY OF SANTA FE that …(CoSF staff)… develop and propose a forty-year water plan and a longer range, eighty-year water plan to evaluate the City's water demand and supplies…

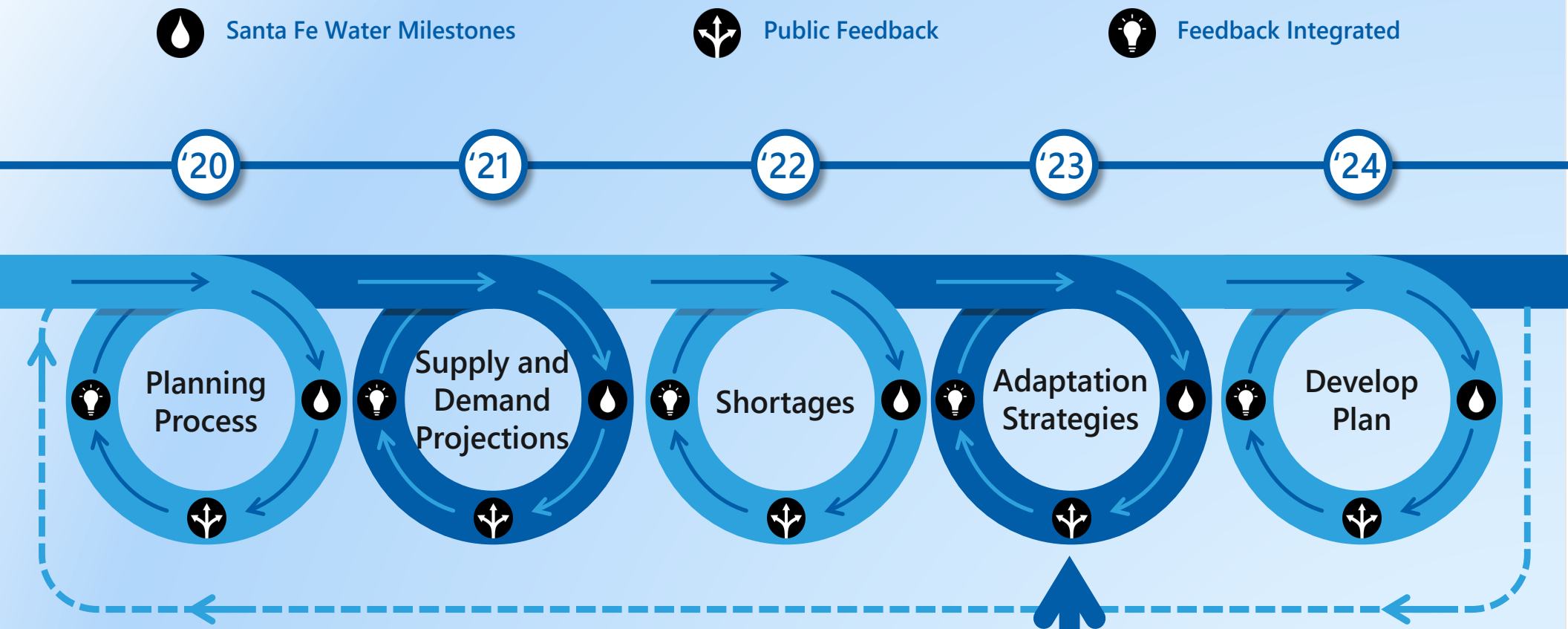
…

BE IT FURTHER RESOLVED that public outreach and community input be an important part of shaping these plans and policies…

…

BE IT FURTHER RESOLVED that the City maximize the City's allocation of San Juan Chama water by implementing the design and construction of a return flow pipeline including acquiring the necessary state and federal permits…

Santa Fe 2100 Water Plan



When a cycle ends and an updated plan is in place, the 5-year cycle can be tweaked and started again. The result is a fluid process with uploaded plans developed every 5 to 10 years depending on need.

Ongoing Studies

Anticipated Studies:

- Living River Aquifer Storage/Recovery
- Buckman Well Field 10-13 Aquifer Storage/Recovery
- Paseo Real Water Reclamation Facility Optimization

Long Range Planning (Water 2100) Status

- Draft combined City/County long range water planning process presented to and discussed with members of the community.
  - 42 individuals attended 2 webinars in October 2020
  - 18 individuals attended 3 virtual breakout sessions
- Based on public input received from these sessions, a roadmap for the long range planning process has been completed and is available at https://www.santafenm.gov/water_resources_planning

Year	Objective	Spring	Summer	Fall	Winter
2020	**Define Process**		Draft 5-Year Planning Process	Public workshops to define process	Final 5 Year Planning Process (this document)
2021	**Supply & Demand Scenarios**	Public workshops on supply and demand	Draft Supply and Demand Scenarios	Public Comment	Final Supply and Demand scenarios
2022	**Evaluate Shortages**	Public workshop on shortages		Public workshop on multiple criteria ranking	
2023	**Evaluate Adaptation Strategies**	Public workshop on adaptation strategies	Draft Ranked Project List	Public Comment	Final Ranked Project List
2024	**Develop Plan**		Draft 80 Year Water Plan	Public Comment	Final 80 Year Water Plan

Color Key:	**Public Input**	**Public Engagement**	**Draft Deliverable**	**Final Deliverable**

San Juan Return Flow Pipeline next steps

Procurement | Project Activity | Public Process | City Decision | Agency Decision | Milestone

PLANNING

- ● MOA with USBR to partner on Rio Grande Basin Study
- ◆ Santa Fe Water participation in USBR Rio Grande Basin Study
- ● MOA with USBR for $300k cost-share WaterSMART Basin Study Pilot grant
- ● Contract technical services to develop Santa Fe Water Model (WaterSMART Pilot cost share)

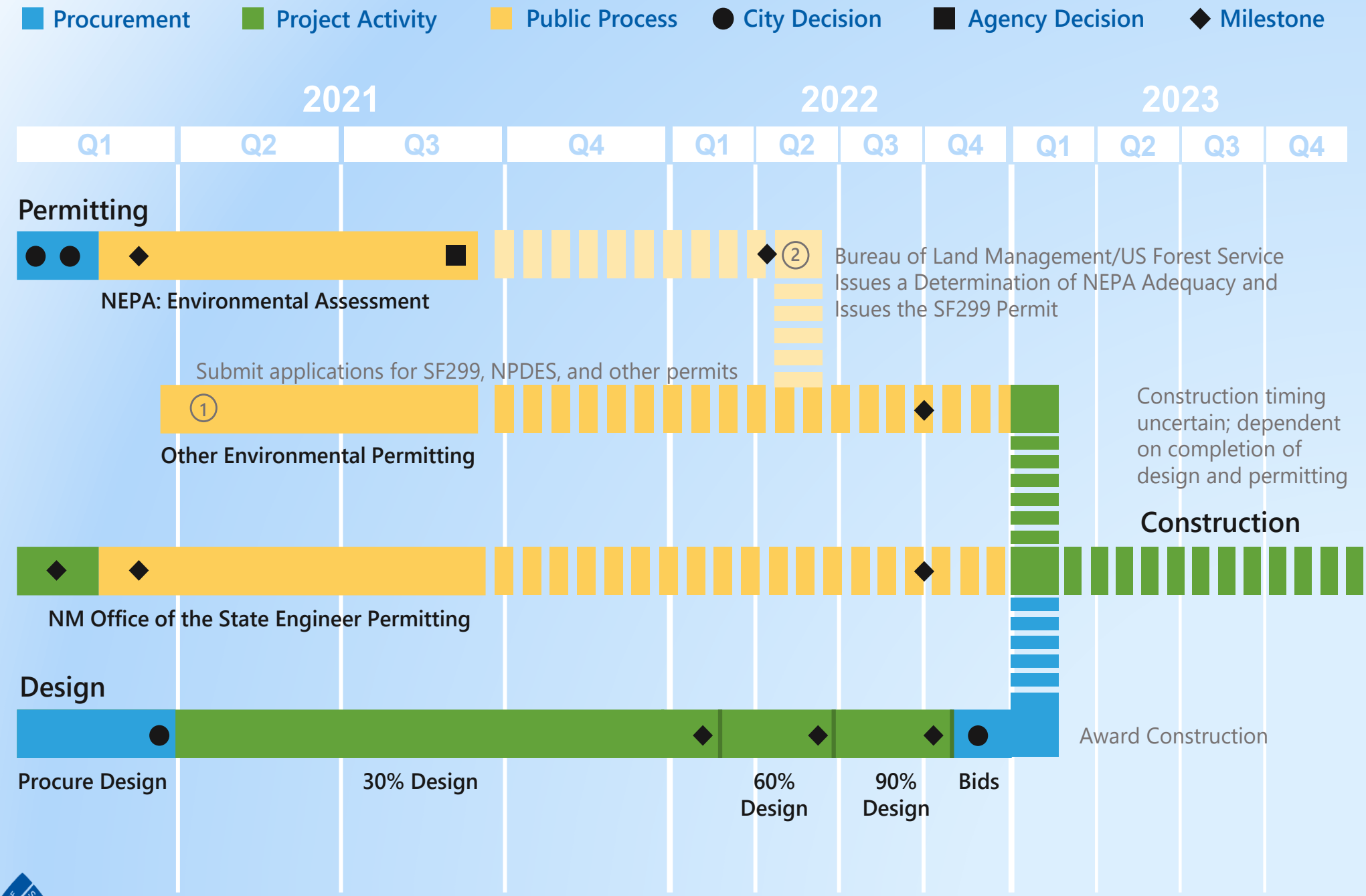
DESIGN

- ● Procure engineering design for SJC Return Flow pipeline

PERMITTING

- ● CFA with USBR for technical services to complete Environmental Assessment under NEPA
- ● Contract amendments to on-call contracts for technical services for NEPA/OSE/NMED permitting
- ◆ Public notice and scoping/public meetings for NEPA
- ◆ Public notice OSE return flow application

SJC Return Flow Pipeline Implementation Timeline



Questions?

'20
'21
'22
'23
'24
Planning: Santa Fe Water 2100
Ongoing Studies To Support Planning
Engineering Design
Return Flow Pipeline
Permitting
Construction

City of Santa Fe, New Mexico
Memorandum

DATE: **January 22, 2021**

TO: **Buckman Direct Diversion Board**

VIA: **Regina Wheeler, Public Works Department Director** RW

FROM: **Caryn Grosse, Facilities Project Administrator** CG

ITEM AND ACTION:
Request for the Approval of Professional Services Agreement in the Total Amount of $15,442,785.00 for Energy Performance Contracting with Yearout Energy Services Company and approve City Attorney to make minor, mutually agreeable, modifications to the agreement prior to execution; Caryn Grosse, clgrosse@santafenm.gov, 955-5938

BACKGROUND AND 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 $925,000 to install behind the meter solar arrays at a number of City facilities using a public private partnership. Because solar and lighting retrofits generate significant savings on energy bills, the legislative appropriation will 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 municipal governments. 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.

Yearout Energy Services Company, LLC was selected from a list of seven pre-qualified 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.

Performing an Investment-Grade Energy Audit (IGA) was the first step. The IGA contract was approved 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 ft^2 of gross facility area.

After assessing all of the meters, buildings and systems listed above and meeting with key City stakeholders for their knowledge of the sites and energy use patterns, Yearout provided a preliminary scope, conceptual design, costs and payback estimates for solar, LED retrofit, lighting, transformer retrofits, water conservation and building envelope improvements that met the City's criterial for feasibility.

The final IGA report included 17 solar arrays, providing 2.75 MW of solar for 7 City facilities, 8 Water facilities and 2 BDD facilities, as well as a number of other Facility Improvement Measures (FIMs) which will reduce energy and water usage. Four BDD facilities, BDD Main, BDD Booster Station 1A, BDD Booster Station 2A and BDD Lift Station are slated to receive LED lighting retrofits, and two, BDD Booster Station 1A and BDD Lift Station, to receive solar. A matrix showing which measures will be constructed at each site is attached to this memo. New Mexico Energy Minerals and Natural Resources certified the IGA after review of the technical and financial information in the report, which is a standard part of the state's defined EPC process.

To further define the constructability of these projects and reduce risk before pursuing financing, the City amended the original contract with Yearout to include a due diligence phase for solar interconnection applications and land acquisition. The amendment amount was $169,666 + NMGRT and was executed on March 2, 2020 after approval by the Governing Body.

Activities undertaken in the due diligence phase are listed below along with current status of these items:

1. Solar Engineering Design and Interconnection Applications submitted to PNM
    a. 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 an array and request changes to solar design which may include additional grid protection hardware or other design modifications. The contractor designed the arrays and submitted the interconnection applications to PNM.
    b. PNM interconnection applications have been approved for 20 facilities as of January 19, 2021. These approved applications account for 73.3% of the proposed solar capacity.
    c. Three facilities, Buckman Booster Station 1 (~60kW), Buckman Booster Station 4 (396 kW) and BDD Lift Station (~277 kW), are still in supplemental review process. PNM has indicated that the reviews are expected to be completed by early February 2021.
    d. No applications have been denied to date.

2. Land Agreements
    a. Several of the proposed solar arrays at booster and pumping stations are on land which is not owned by the City. The City has successfully established agreements in the past to place structures, including solar arrays, for Buckman Well Field and Buckman Direct Diversion (BDD) with Santa Fe County, United States Forest Service and Bureau of Land Management who are the owners of the land of interest for the new solar arrays. Yearout subcontracted with Sauder Miller & Associates (SMA) to establish agreements with these entities for the arrays.
    b. Santa Fe County: A verbal agreement was reached for an easement agreement at Booster Station 4. The easement agreement was in final review with the City's Legal Office as of the date of this memo. The agreement is expected to be executed in February 2021.
    c. U.S. Forest Service: Special Use Permit (SUP) applications and Class I Archeological reports were submitted in August. USFS has recently requested a field study and Class III Cultural Resources report, which are in progress. This affects BDD Lift Station and BDD Booster Station 1A. This is expected to be completed in March 2021.
    d. Bureau of Land Management: Right of Way (ROW) applications were submitted in August. Field study and Class III reports were completed and submitted in December, and have been reviewed by BLM and deemed satisfactory. The City is waiting decision by BLM as to whether ROWs will be additive to existing BDD ROWs or stand-alone. This affects Buckman Booster D & Well 10, Buckman Booster Station 1, and Buckman Booster Station 3 & Well 13. This is expected to be completed in March 2021.

3. FAA Coordination
    a. Approval must be obtained by the FAA for the solar equipment proposed at the Santa Fe Regional Airport.
    b. Applications were prepared by SMA and submitted to FAA by Santa Fe Regional Airport. FAA review is expected to be completed by mid-March 2021.

The final stage is the Energy Performance Contract (EPC), under which the solar PV systems will be constructed, and the retrofits installed for energy and water conservation. The projected savings are guaranteed by the contractor, and will be measured and verified after completion of the work, and again after a year of service. New Mexico Energy Minerals and Natural Resources Department provides third-party certification of the measurement and verification results to ensure that the project delivers the promised savings. The savings from the measures with faster returns on investment, like water and lighting, supplement the funding for capital intensive measures like solar, as well as helping move the City of Santa Fe forward toward the goals set by the "Sustainable Santa Fe 25-year Plan."

This project will be funded via municipal financing pursued by the City of Santa Fe in the form of Tax Exempt Lease Purchase financing. There is no up front capital cost to Buckman Direct Diversion Project for these FIMs. Buckman Direct Diversion (BDD) Board is a party to this EPC agreement since the electric utility savings realized as a result of the new solar arrays and other FIMs on BDD facilities are being pledged to repay the financing and BDD will own the assets when the financing has been paid off.

The Preliminary Project Financial Analysis prepared by Yearout was based on a finance term of 18 years at 2.25% interest rate and the City expects to close on the financing on February 24, 2021, and achieve a financing rate below 2.25% for an 18 year term.

PROCUREMENT METHOD:
The procurement method is the NM Statewide Price Agreement (SWPA) # 90-000-18-00017AH which expires on June 12, 2023.

CONTRACT NUMBER:
The FY21 Munis contract number is 3202404.

FUNDING SOURCE:
Unencumbered balance of the Legislative appropriation is: $627,538.25

Project/Org/Object strings are being set up to receive funds once financing is received.

The funding source is:
Fund Name/Number: Solarization of City Facilities/Project FA183200S
Munis Org Name/Number: TBD
Munis Object Name/Number: TBD

YEAROUT ENERGY

City of Santa Fe

Investment Grade Audit (IGA) Report

Executive Summary

August 21, 2020

Proprietary and Confidential

1.0 Executive Summary

The City of Santa Fe (COSF) engaged Yearout Energy (YE) in August 2019 to perform an Investment Grade Audit (IGA) of several facilities of various types located in Santa Fe, NM. The goal of an IGA is to identify the potential project scope for budget-neutral facility upgrades thanks to reduced utility and O&M costs. The IGA was developed following the program guidelines outlined by the New Mexico Energy, Minerals, and Natural Resources Department (NM-EMNRD) and New Mexico General Services Department (NM-GSD).

The project specific objectives for this IGA include:

- Developing a self-funding, budget-neutral project with a finance period ≤ 20 years
- Reduce energy and water consumption
- Reduce utility and operational costs
- Standardize equipment throughout city facilities
- Accelerate the implementation of renewable energy where feasible to support the Sustainable Santa Fe 25-Year Plan
- Implement LED lighting retrofit/replacement opportunities
- Reduce the COSF's environmental impact

An essential step in the IGA process is to establish the baseline performance for each facility from which proposed improvements will be measured. The following tables depict a summary of the baseline annual cost and energy consumption by utility type for all COSF facilities included in the IGA.

Table 1: Baseline Annual Cost Breakdown by Utility Type

Utility	$/year
Electricity	$3,888,817
Natural Gas	$335,028
Water & Sewer	$317,231
Total	$4,541,076

Table 2: Baseline Annual Energy Consumption Breakdown by Utility Type

Utility	kBTU/year
Electricity	159,107,775
Natural Gas	75,732,660
Total	234,840,435

As a result of the comprehensive IGA process, Yearout Energy and the COSF have co-developed the following recommended Guaranteed Energy Service Performance Contract (GESPC) project:

Table 3: GESPC Project Summary

Turn-Key GESPC Project Price	$15,442,785
Up-front Capital Contribution by COSF	$1,125,000
Approximate Net Financed Amount	$14,280,347
Year 1 Utility Savings	$752,137
Year 1 Operations and Maintenance Savings	$27,643
Estimated Incentives from Utility Provider(s)	$230,392
Project Financing Period	18.0 Years
Weighted Average Service Life of Proposed Measures	31.0 Years
Percent Reduction in Annual Utility Costs*	16.8%
Environmental Impact (Reduction in Annual Emissions)	6,717,430 lbs. CO_2
Environmental Impact (Direct Reduction in Annual Water Consumption)	2,007,380 gallons
Environmental Impact (Indirect Reduction in Annual Water Consumption)	3,264,992 gallons

*The percent reduction in annual utility costs takes into consideration existing or future REC payments made to the COSF

A fundamental benefit of GESPC projects is that they allow for the savings from measures with quicker returns on investment to supplement the funding of critical infrastructure improvements and/or high priority capital intensive measures such as renewable energy.

Throughout the IGA process, Yearout Energy collaborated closely with COSF to identify and co-develop Facility Improvement Measures (FIM) that would allow COSF to leverage future energy and operational savings to fund essential facility capital improvements through a GESPC. The FIMs recommended for implementation include:

- Upgrading approximately 9,000 existing lighting fixtures to LED technology
- Install 2.750MW DC renewable energy systems which are sized for a target offset of 80% of post-retrofit On-Peak consumption at select COSF facilities and a 60% of post-retrofit On-Peak consumption at select Water Utilities and Buckman Direct Diversion (BDD) sites
- Repair the underperforming existing solar PV carports at Genoveva Chavez Community Center to recover lost production and available REC payments
- Upgrade approximately 760 existing domestic water fixtures to reduce water consumption
- Remediate ~200 square feet of existing air leakage in building envelope
- Install 28 new high efficiency transformers
- Identify and correct billing errors to reduce utility costs
- Replace the roof at the Canyon Road Water Treatment Plant in order reduce energy and operational costs and support the installation of rooftop solar PV.

The benefits from those measures are summarized in the following table.

Table 4: Facility Improvement Measures (FIM) Summary

FIM No.	FIM Name	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Year 1 Total Annual Savings	Labor, Equip & Material Costs	Estimated Utility Rebate	Net Cost	Average Service Life Years
1.00	LED Lighting	$217,056	$21,761	$238,818	$2,222,158	$192,032	$2,030,126	15.0
2.00	Renewable Energy	$473,609	$0	$473,609	$7,167,913	$0	$7,167,913	37.0
3.00	Water Conservation	$14,404	$1,135	$15,539	$173,807	$21,450	$152,357	20.0
4.00	Building Envelope	$10,477	$1,572	$12,048	$206,170	$0	$206,170	20.0

FIM No.	FIM Name	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Year 1 Total Annual Savings	Labor, Equip & Material Costs	Estimated Utility Rebate	Net Cost	Average Service Life Years
5.00	HE Transformers	$9,567	$1,435	$11,002	$199,171	$7,766	$191,405	32.0
6.00	Utility Management	$1,821	$0	$1,821	$0	$1,516	($1,516)	---
7.00	GCCC Solar Carport Repairs	$25,204	$0	$25,204	$155,730	$7,628	$148,102	20.0
8.00	Roof Replacement	$0	$1,740	$1,740	$199,918	$0	$199,918	20.0
Total		$752,137	$27,643	$779,780	$10,324,867	$230,392	$10,094,474	31.0

* Total Annual Savings include Utility Savings and O&M Savings.

Additional FIMs were investigated during the IGA but not recommended for a variety of reasons. A description of these FIMs is provided in Section 4.0 of this report.

The reduction in greenhouse gas (GHG) emissions is of particular interest for the City of Santa Fe. The "Sustainable Santa Fe 25-year Plan" calls for carbon neutrality by 2040 and targets 50% renewable energy consumption by 2025. The installation of solar photovoltaic (PV) energy, energy efficient lighting, high efficiency transformers and building envelope remediation make a significant contribution towards achieving these goals. The annual 6.7-million-pound reduction in CO_2 emissions is equivalent to planting 833 acres of trees or not driving 3.96 million miles each year. It is worth noting that these values are based on the current electricity supply mix and should the targets of the New Mexico Energy Transition Act be achieved, the reductions in GHG emissions by COSF would be even greater.

Following the review and acceptance of this report by COSF, NM-EMNRD and NM-OSE, Yearout Energy will develop a Guaranteed Utility Savings Contract (GUSC) to implement the final agreed-upon project scope. Yearout Energy anticipates the implementation of this project to commence in Q4, 2020, with a 16-month overall construction period.

Table 68: FIM Matrix

Site		1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00
		Lighting LED	Ren. Energy	Water Cons.	Bldg. Env.	HE Xfrms	Utility Mgt	GCCC Solar Repair	Replace Roof
COSF Facilities									
Bicentennial / Alto Park Complex	01	●	●	●	●	●			
Fire Station #2	02								
Fire Station #8	03	●	●	●	●				
Fort Marcy Recreation Complex	04	●		●	●				
Genoveva Chavez Community Center	05	●		●	●		●	●	
La Familia Medical Center	06	●		●	●				
Municipal Recreation Complex	07	●	●		●	●	●		
Police Dept - Admin	08	●	●	●	●				
Public Library - Main	09	●		●	●				
Public Library - Southside	10	●	●	●	●	●			
Salvador Perez Swimming Pool	11	●		●	●				
Sandoval Parking Garage Lot B	12			●					
Santa Fe Convention Center	13	●		●	●				

Site		1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00
		Lighting LED	Ren. Energy	Water Cons.	Bldg. Env.	HE Xfrms	Utility Mgt	GCCC Solar Repair	Replace Roof
Santa Fe Regional Airport	14	●	●		●				
Siler Complex	15	●		●	●				
Siringo Complex	16	●		●	●				
Southside Transit Center	17		●						
Transit Administration	18	●		●	●	●			
Water Utilities Department									
Canyon Road Water Treatment Plant	19		●		●	●			●
Santa Fe Water Dept Office	20	●		●	●				
WWTP	21	●				●			
10M Gallon Tank	22	●	●						
10M Gallon Tank Booster Station #1	23								
Buckman Booster Station #1	24	●	●						
Buckman Booster Station #3 & Well #13	25		●						
Buckman Booster Station #4	26		●						
Buckman Well #1	27	●							

Site		1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00
		Lighting LED	Ren. Energy	Water Cons.	Bldg. Env.	HE Xfrms	Utility Mgt	GCCC Solar Repair	Replace Roof
Buckman Well #10	28	●	●						
Calle De Agua Tank	29								
Camino La Canada	30	●	●						
Cristo Rey Church	31	●							
Dempsey Booster Station	32	●							
St Michaels & SF Railroad	33								
Well Los Montoyas	34	●	●						
Buckman Direct Diversion (BDD)									
BDD Main	35	●							
BDD Booster Station #1A	36	●	●						
BDD Booster Station #2A	37	●							
BDD Lift Station	38	●	●						
Total Qty		29	17	15	17	6	2	1	1

6.8 Preliminary Project Financial Analysis

General Inputs	
Length of Analysis	25 Years
Turn-Key Project Cost	$15,442,785
Up-Front Capital Contribution	$1,125,000
Other Grants & Incentives	$0
Utility Rebate	$230,392
Capitalized Interest (16 Month Construction Period)	$3,340
Cost of Issuance	$189,614
Net Financed Amount	$14,280,347
Type of Amortization	Savings
Finance Term	18 Years
Annual Interest Rate	2.250%
Measurement & Verification	
Year 1 M&V Fee	$68,632
M&V Duration	3 Years
Annual Maintenance	
Year 1 Maintenance Fee	$16,571
On-Going Maintenance Duration	25 Years
Inverter Equipment Replacement (Appears in Maintenance Column)	
Estimated Cost to Replace Solar PV Inverters	$416,700
Anticipated Year of Replacement	Year 15
Annual Amount Set Aside for Equip Replacement	$27,780

	Annual Savings				Annual Costs			Total Annual Savings Less Costs	Amortization Schedule				
	Electricity	Natural Gas	Water & Sewer	O&M	M&V	Maintenance	Equipment Replacement		Interest	Principal	Total Payment	Ending Balance	Annual Cash Flow
Annual Escalation -->	3.600%	4.000%	3.000%	3.000%	2.500%	3.000%							
Year 1	$729,086	$10,887	$12,165	$27,643	($68,632)	($16,571)	($27,780)	$666,797	($321,308)	($345,490)	($666,796)	$13,934,857	$1
Year 2	$755,333	$11,322	$12,530	$28,472	($70,348)	($17,068)	($27,780)	$692,461	($313,534)	($378,927)	($692,460)	$13,555,930	$1
Year 3	$782,525	$11,775	$12,906	$29,326	($72,106)	($17,580)	($27,780)	$719,065	($305,008)	($414,057)	($719,064)	$13,141,873	$1
Year 4	$810,696	$12,246	$13,293	$30,206	$0	($18,107)	($27,780)	$820,553	($295,692)	($524,861)	($820,552)	$12,617,012	$1
Year 5	$839,881	$12,736	$13,692	$31,112	$0	($18,650)	($27,780)	$850,990	($283,883)	($567,107)	($850,989)	$12,049,905	$1
Year 6	$870,116	$13,245	$14,102	$32,046	$0	($19,210)	($27,780)	$882,520	($271,123)	($611,397)	($882,519)	$11,438,508	$1
Year 7	$901,441	$13,775	$14,525	$33,007	$0	($19,786)	($27,780)	$915,182	($257,366)	($657,816)	($915,181)	$10,780,692	$1
Year 8	$933,892	$14,326	$14,961	$33,997	$0	($20,380)	($27,780)	$949,017	($242,566)	($706,452)	($949,016)	$10,074,240	$1
Year 9	$967,513	$14,899	$15,410	$35,017	$0	($20,991)	($27,780)	$984,068	($226,670)	($757,397)	($984,067)	$9,316,843	$1
Year 10	$1,002,343	$15,495	$15,872	$36,068	$0	($21,621)	($27,780)	$1,020,377	($209,629)	($810,748)	($1,020,376)	$8,506,095	$1
Year 11	$1,038,427	$16,115	$16,348	$37,150	$0	($22,269)	($27,780)	$1,057,991	($191,387)	($866,604)	($1,057,990)	$7,639,491	$1
Year 12	$1,075,811	$16,760	$16,839	$38,264	$0	($22,938)	($27,780)	$1,096,956	($171,889)	($925,067)	($1,096,955)	$6,714,424	$1
Year 13	$1,114,540	$17,430	$17,344	$39,412	$0	($23,626)	($27,780)	$1,137,320	($151,075)	($986,246)	($1,137,319)	$5,728,178	$1
Year 14	$1,154,663	$18,127	$17,864	$40,594	$0	($24,334)	($27,780)	$1,179,135	($128,884)	($1,050,251)	($1,179,134)	$4,677,927	$1
Year 15	$1,196,231	$18,852	$18,400	$41,812	$0	($25,065)	($27,780)	$1,222,452	($105,253)	($1,117,198)	($1,222,451)	$3,560,729	$1
Year 16	$1,239,296	$19,606	$18,952	$43,067	$0	($25,816)	($27,780)	$1,267,324	($80,116)	($1,187,208)	($1,267,323)	$2,373,520	$1
Year 17	$1,283,910	$20,391	$19,521	$44,359	$0	($26,591)	($27,780)	$1,313,809	($53,404)	($1,260,405)	($1,313,808)	$1,113,115	$1
Year 18	$1,330,131	$21,206	$20,106	$45,689	$0	($27,389)	($27,780)	$1,361,965	($25,045)	($1,113,115)	($1,138,159)	$0	$223,805
Year 19	$1,378,016	$22,055	$20,710	$47,060	$0	($28,210)	($27,780)	$1,411,850	$0	$0	$0	$0	$1,411,850
Year 20	$1,427,624	$22,937	$21,331	$48,472	$0	($29,057)	($27,780)	$1,463,527	$0	$0	$0	$0	$1,463,527
Year 21	$1,479,019	$23,854	$21,971	$49,926	$0	($29,928)	($27,780)	$1,517,062	$0	$0	$0	$0	$1,517,062
Year 22	$1,532,263	$24,808	$22,630	$51,424	$0	($30,826)	($27,780)	$1,572,519	$0	$0	$0	$0	$1,572,519
Year 23	$1,587,425	$25,801	$23,309	$52,966	$0	($31,751)	($27,780)	$1,629,970	$0	$0	$0	$0	$1,629,970
Year 24	$1,644,572	$26,833	$24,008	$54,555	$0	($32,703)	($27,780)	$1,689,485	$0	$0	$0	$0	$1,689,485
Year 25	$1,703,777	$27,906	$24,728	$56,192	$0	($33,685)	($27,780)	$1,751,139	$0	$0	$0	$0	$1,751,139
Total	$28,778,531	$453,390	$443,517	$1,007,836	($211,086)	($604,151)	($694,500)	$29,173,536	($3,633,833)	($14,280,347)	($17,914,162)	----------	$11,259,374

YEAROUT ENERGY IS NOT A FINANCIAL ADVISOR, IS NOT REGISTERED WITH THE SEC AS A FINANCIAL ADVISOR AND CANNOT GIVE ADVICE WITH RESPECT TO SECURITIES OR FINANCIAL PRODUCTS. THE INFORMATION PROVIDED IS FOR EDUCATIONAL PURPOSES ABOUT POSSIBLE FINANCING OPTIONS, OR UNDER THE ENGINEER CARVE OUT OF THE WALL STREET REFORM AND CONSUMER PROTECTION ACT (2010), AND IS NOT THE PROVISION OF ADVICE, OR A RECOMMENDATION TO PURSUE, ANY PARTICULAR FINANCING OPTION. CONSULT WITH YOUR FINANCIAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR YOUR SITUATION. YEAROUT ENERGY SERVICES CAN PROVIDE INFORMATION TO YOUR FINANCIAL ADVISOR ABOUT THE HYPOTHETICAL ASSUMPTIONS AND EDUCATIONAL SCENARIOS USED IN THESE MATERIALS.

Project Summary by Group

City of Santa Fe

September 24, 2020

Item	Facilities	Water Utilities	BDD	Total
Turn-Key Cost	$6,122,614	$5,495,534	$3,824,638	$15,442,785
Estimated Rebate	$176,046	$37,074	$17,272	$230,392
Capital Infusion	$925,000	$200,000	$0	$1,125,000
Net Amount After Rebate & Infusion	$5,021,568	$5,258,460	$3,807,365	$14,087,393
Year 1 Savings	$301,821	$261,155	$216,804	$779,780
Construction Period Interest (Capitalized Interest)	$169,896	$177,911	$128,816	$476,623
Closing Costs / Lender Fees	$103,829	$108,727	$78,724	$291,280
Total Financed Amount	$5,295,293	$5,545,099	$4,014,905	$14,855,297

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Secretary

Louise N. Martinez, Director
Energy Conservation and Management Division

September 12, 2020

BY EMAIL: mayor@santafenm.gov

Mayor Alan Webber
City of Santa Fe
200 Lincoln Ave
Santa Fe, NM 87504

SUBJECT: **Certification of Guaranteed Energy Savings under the Public Facility Energy Efficiency and Water Conservation Act (NMSA 1978, Section 6-23-5) – City of Santa Fe**

Dear Mayor Webber:

The Investment Grade Energy Audit submitted by the City of Santa Fe to implement energy efficiency and renewable measures in city facilities has been reviewed and is hereby approved. The Investment Grade Energy Audit was performed by Yearout Energy Services Co. (YESCO).

The Energy Conservation and Management Division (ECMD) of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) has certification responsibilities and provides technical assistance to governmental entities under the Public Facility Energy Efficiency and Water Conservation Act (Act). The two certifications needed from EMNRD for each energy performance contracting project under the Act are:

- Vendor is a Qualified Provider and meets EMNRD experience requirements; and
- Guaranteed energy savings appear to be accurately estimated and reasonable.

EMNRD reviewed the Investment Grade Energy Audit. EMNRD now issues the following certification:

- Qualifications were provided on December 1, 2017 approving YESCO as a qualified entity under EMNRD's experience criteria.

- EMNRD certifies that the guaranteed energy savings from the proposed efficiency measures appear to be accurately estimated and reasonable.

The City of Santa Fe Investment Grade Audit is hereby certified with these Special Conditions:

- Certification is contingent upon implementation of the measures as outlined in the investment grade energy audit. No significant changes in scope are to be considered unless submitted for review and approval by EMNRD.

- Section 6-23-4 Requires that the savings be guaranteed by the provider. Measurement and Verification of the savings is essential to determine if the savings are being met. A copy of the Annual Measurement and

Verification Report shall be provided to EMNRD every year the contract is in place by January 31st of the following year. These reports are essential to meet legislative reporting requirements.

- The 3-rd party reviewer costs of 1.0% percent of the total project cost are to be included and accounted for in the project contract to reimburse EMNRD.

Pursuant to NMSA 1978, Section 6-23-5 of the Act, EMNRD has performed its certification duties. It is recommended that The City of Santa Fe implement its approval requirements to comply with NMSA 1978, 6-23-8 of the Act. Please contact me at Harold.Trujillo@state.nm.us, 505-490-7912 or Louise.N.Martinez@state.nm.us , 505-476-3315 if there are any questions.

Sincerely,

Harold J Trujillo

Harold Trujillo, PE
Bureau Chief
ECMD Energy Technology & Engineering

cc: Regina Wheeler, Public Works Director rawheeler@santafenm.gov
Caryn Grosse, Project Administrator clgrosse@santafenm.gov
Louise Martinez, Director ECMD
David Griego, Engineer ECMD
Alex Montano, YESCO

ITEM # _____

MUNIS CONTRACT # _3202404__

CITY OF SANTA FE, NM

PROFESSIONAL SERVICES CONTRACT

FOR ENERGY PERFORMANCE CONTRACTING

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PROFESSIONAL SERVICES CONTRACT #_____

THIS CONTRACT is made and entered into by and between **City of Santa Fe, NM**, hereinafter referred to as the "Agency," and **YEAROUT ENERGY SERVICES COMPANY**, a New Mexico Limited Liability Company, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by all parties.

RECITALS

WHEREAS, Agency owns and operates the Project Site(s), and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Agency has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as hereinafter defined); and

WHEREAS, Contractor has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of Agency; and

WHEREAS**,** Contractor was awarded a Statewide Price Agreement (#90-000-18-0001AH) with the State of New Mexico pursuant to a Request for Proposal, published and reviewed in accordance with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-29 et seq., which resulted in the award of a contract for the Investment Grade Audit and Project Development Proposal (as hereinafter defined), after a determination that its services were most advantageous to the Agency; and

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in Schedule Q (Description of Project Site(s)), which was delivered to Agency as an Investment-Grade Energy Audit Report which Agency has approved and is attached as Appendix D; and

WHEREAS, Agency desires to retain Contractor to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Agency is authorized under the New Mexico Constitution and the Public Building Energy Efficiency and Water Conservation Act (the "Act"), NMSA 1978, Sections 6-23-1 et seq., to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. **Definitions.**

a. "Commencement Date" means the date described in Section 6 (Commencement Date);

b. "Contract" means this Energy Performance Contract and all Schedules, Exhibits, and Appendices attached hereto;

c. "Contract Sum" means the sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project;

d. "Energy and Cost Savings Guarantee" means the guarantee of Schedule A (Savings Guarantee) that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule J (Compensation to Contractor for Annual Services) and in accordance with the Savings Calculation Formula as set forth in Schedule C (Savings Measurement and Verification (M&V) Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements);

e. "Energy and Water Cost Savings" means the savings as provided in Schedule A (Savings Guarantee);

f. "Equipment" means the material goods enumerated in Schedule R (Equipment to be Installed by Contractor) that is now, or hereafter from time to time, attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof;

g. "Event of Default" means those events described in Sections 65 (Events of Default by Contractor) and 64 (Events of Default by Agency) hereof;

h. "Guarantee Period" or "Performance Guarantee Period" means the period of time during which the Contractor has guaranteed energy savings. That period shall commence upon project completion, as specified in Schedule S (Construction and Installation Schedule) and conclude 25 years thereafter.

i. "Interim Period" means the period from contract execution until the Commencement Date;

j. "Investment Grade Audit" means a study by the Contractor selected for a particular energy performance contracting project, which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements;

k. "Project Site(s)" means the facilities of the Agency in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s);

l. "Qualified Provider" means the Contractor, who is a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the Energy, Minerals and Natural Resources Department (EMNRD) for energy conservation measures or the Office of the State Engineer for water conservation measures;

m. "Substantial Completion" means the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose.

n. "Work" means the Equipment, materials, professional services and construction services for the project at the Agency's Project Site, as described by this Contract and attachments.

2. **Scope of Work.**

Contractor shall:

a. perform and complete the Work at the Agency's Project Site, as defined and described in this Contract and the attached Schedules, Exhibits, and Appendices;

b. provide the Equipment, together with installation, maintenance and other services as provided herein, as in Schedule R (Equipment to be Installed by Contractor) based upon the terms and conditions set forth in Schedule S (Construction and Installation Schedule);

c. provide the Work and all related services identified in Schedule R (Equipment to be Installed by Contractor) and the services detailed in Schedule BB (Contractor's Maintenance Responsibilities) and Schedule J (Compensation to Contractor for Annual Services);

d. supervise and direct the Work and shall be responsible for the engineering, design, and quality control; construction means, methods, techniques, sequences, and procedures; and for coordinating all portions of the Work under this Contract; and

3. **Compensation.**

a. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of fourteen-million two-hundred-forty-one-thousand one-hundred-eighty-five dollars ($14,241,185) in FY2021/FY2022. The New Mexico gross receipts tax levied on the amounts payable under this Contract in FY2021/FY2022 totaling one-million two-hundred-one-thousand six-hundred dollars ($1,201,600) shall be paid by the Agency to the Contractor. The total amount payable to the Contractor under this Contract, including gross receipts tax and expenses, shall not exceed fifteen-million four-hundred-forty-two-thousand seven-hundred-eighty-five dollars ($15,442,785) in FY2021/FY2022.

b. Payment in FY2021/FY2022 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices must be received

by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

c. The total amount payable to the Contractor under this Contract, including gross receipts tax and expenses shall not exceed fifteen-million four-hundred-forty-two-thousand seven-hundred-eighty-five dollars ($15,442,785) as set forth in Schedule H (Final Project Cost & Project Cash Flow Analysis). This amount is a maximum and not a guarantee that the work assigned to the Contractor under this Contract to be performed shall equal the amount stated herein. Payment terms are described in Schedule I (Financing Contract and Payment Schedule).

d. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency 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 Agency 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 Agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

4. **Term.**

a. This Contract shall terminate upon conclusion of the performance guarantee period unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with NMSA 1978, Section 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150. An exception is provided for contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act NMSA 1978), Section 6-23-1 et seq., the term of which shall not exceed twenty-five years, including all extensions and renewals.

b. Subject to the following sentence, the term of this Contract shall be defined by the Performance Guarantee Period. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to the Agency, and if required, can be attributed by the Contractor to offset a shortfall in the first year guaranteed savings if properly verified.

5. **Termination.**

a. Termination. This Contract may be terminated by the Agency upon written notice delivered to the Contractor at least ten (10) days prior to the intended date of termination. By such termination, the Contractor may not nullify obligations already incurred for performance or failure to perform prior to the date of termination.

Notwithstanding the foregoing, this Contract 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 Agency or if, during the term of this Contract, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS CONTRACT.

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

6. **Commencement Date.**

a. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency and Contractor shall have delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in Schedule R (Equipment to be Installed by Contractor) and in accordance with the provisions of Schedule S (Construction and Installation Schedule) and Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment); and the Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in Exhibit VI (Certificate of Project Substantial Completion).

b. Notwithstanding anything to the contrary in **Sections herein (Purchase and Sale; Commencement Date and Terms; Interim Period)**, the Commencement Date shall not occur and the Agency shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by Contractor in accordance with the terms and conditions of this Contract. Agency shall have 10 days after notification by the Contractor to inspect and accept the Equipment. Agency reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until after the punch list is completed and Contractor has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Agency.

c. Compensation payments due to Contractor for on-going services and maintenance under this Contract as set forth in Schedule J (Compensation to Contractor for Annual Services) shall begin no earlier than 90 days from the Commencement Date as defined herein.

7. **Performance Measures.**

Contractor shall substantially perform the following Agency Performance Measures:

a. Contractor will perform the Work and provide the Equipment in accordance with the scope of work indicated in Schedule R (Equipment to be Installed by Contractor) based upon the terms and conditions set forth in Schedule S (Construction and Installation Schedule);

b. Contractor's Work shall create the savings indicated in Schedule A (Savings Guarantee) and Schedule D (Operations and Maintenance O&M Savings), all as collectively indicated in Schedule H (Final Project Cost & Project Cash flow Analysis)

Agency Performance Measures documentation is provided as Attachment I.

8. **Contractor is Qualified Provider.**

Contractor is certified as a Qualified Provider by NM-GSD to perform the Work, pursuant to NMSA 1978, Sections 6-23-2E and 6-23-5 and as shown by Exhibit III (NM-GSD Certification of Contractor as Qualified Provider).

9. **Investment-Grade Energy Audit Report and Project Development Proposal.**

Contractor has provided the complete Investment-Grade Energy Audit Report and Project Development Proposal of the Project Site(s), as set forth in Appendix D (Investment-Grade Energy Audit and Project Proposal Contract) and dated August 21, 2020. The Investment-Grade Energy Audit Report includes all energy conservation measures agreed upon by the Agency and Contractor for implementation in the Work. The guaranteed energy savings of energy conservation measures stated in the Investment-Grade Energy Audit Report appear to be accurately estimated and reasonable and are certified by NM-EMNRD and NM-OSE, as shown in Exhibit IV (NM-EMNRD and NM-OSE Certification of Guaranteed Energy Savings).

10. **Schedules, Exhibits and Appendices.**

Contractor has provided and Agency has approved the Schedules, Exhibits and Appendices, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment II and made a part of this Contract by reference.

11. **Purchase and Sale.**

a. Agency agrees to fund all or a portion of the Equipment through a third-party financier, the debt service schedule for which, following funding becoming available pursuant thereto, shall be attached hereto as Schedule I (Financing Agreement and Payment Schedule).

b. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

12. **Energy Usage Records and Data.**

Agency has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

13. **Location and Access.**

Contractor acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Agency shall provide access to the Project Site(s) for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the Agency. Contractor shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The Contractor's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Agency. Contractor shall immediately notify the Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

14. **Permits and Approvals.**

Agency shall use its best efforts to assist the Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall the Agency, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by Contractor shall at all times conform to all federal, state and local code requirements. Contractor shall furnish copies of each permit or license which is required to perform the work to the Agency before the Contractor commences the portion of the work requiring such permit or license.

15. **Coordination During Installation.**

The Agency and Contractor shall coordinate the activities of Contractor's equipment installers with those of the Agency, its employees, and agents. Contractor shall not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency.

16. **Construction Schedule; Equipment Installation.**

Construction and equipment installation shall proceed in accordance with the construction schedule approved by the Agency and attached as Schedule S (Construction and Equipment Installation Schedule).

17. **Systems Startup and Equipment Commissioning.**

The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment) and prior to acceptance of the project by the Agency as specified in Exhibit VI (Certificate of Project Substantial Completion). Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The Contractor shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment). The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Agency acceptance Contractor shall also provide the Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule R (Equipment to be Installed by Contractor).

18. **Equipment Warranties.**

a. Contractor warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of at least one (1) year from the date of the Substantial Completion for the particular energy conservation measure, if operated and maintained in accordance with the procedures established per building. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and Exhibit V (Certificate of Acceptance – Measure) is fully executed.

b. After the warranty period, the Contractor shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in Schedule BB (Contractor's Maintenance Responsibilities).

c. Contractor further agrees to assign to the Agency all available manufacturer's warranties relating to the Equipment and include such written warranties in the O&M manuals. Contractor will have no responsibility for performing repairs beyond the 1-year warranty period.

d. All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties shall specify that only new, not reconditioned, parts may be used and

installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

e. Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the Contractor from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

19. **Standards of Comfort.**

Agency shall maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in Schedule U (Standards of Comfort). During the term of this Contract, Contractor and Agency will maintain, according to Schedule BB (Contractor's Maintenance Responsibilities) and Schedule CC (Agency's Maintenance Responsibilities), and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in Schedule U (Standards of Comfort).

20. **Environmental Requirements, Excluded Material and Activities.**

Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at Agency's Project Site(s), Contractor may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof; (ii) fungus (any type of form of fungi, including mold or mildew, and mycotoxins, spores, scents or by-products produced or released by fungi); (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this Contract; or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel or subcontractors from the site, and notify the Agency. The Agency shall be responsible to handle such Materials at its expense. Contractor shall undertake no further work on the Project Site(s) except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by the Agency. In the event of such stoppage of work by Contractor, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result will be added by Change Order.

Contractor shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

21. **Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.**

a. Contractor shall enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Agency's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to the Agency.

Contractor's responsibility shall be for the proper and legal management of any of Agency's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal Contractor's vehicle for transportation.

b. Contractor shall enter into an agreement with an approved lamp disposal company, who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

c. Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

22. **Training by Contractor.**

The Contractor shall conduct the training program described in Schedule V (Contractor's Training Responsibilities) hereto. The must be completed prior to acceptance of the Equipment installation. The Contractor shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Agency and shall have no effect on prior acceptance of Equipment installation.

23. **Equipment Service, Actions by Contractor.**

Contractor shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule BB (Contractor's Maintenance Responsibilities). Agency shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedule J (Compensation to Contractor for Annual Services), provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and Contractor can so demonstrate such causal connection, Contractor may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

24. **Malfunctions and Emergencies.**

a. Agency shall use its best efforts to notify the Contractor or its designated subcontractors within 24 hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

b. Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify Contractor within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. Contractor shall respond or cause its designee(s) to respond within 72 hours and shall promptly proceed

with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to Contractor from Agency. If Agency unreasonably delays in so notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, Contractor may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that Contractor is able to show the direct causal connection between the delay and the loss.

c. The Contractor shall provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

25. **Actions by Agency.**

Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of Contractor except as set forth in Schedule CC (Agency's Maintenance Responsibilities). Notwithstanding the foregoing, the Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify the Contractor before taking any such actions. In the event of such an emergency, the Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by the Contractor. Agency agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

26. **Modification of Equipment.**

During the Term of this Contract, Agency will not, without the prior written consent of Contractor, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without Contractor’s prior written approval, which shall not be unreasonably withheld.

27. **Upgrade or Alteration of Equipment.**

a. Contractor shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the Contractor complies with the standards of comfort and services set forth in Schedule U (Standards of Comfort) herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the Contractor to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the Contractor.

b. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to

the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The Contractor shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 41 (Ownership of Certain Proprietary Rights) and Schedule BB (Contractor's Maintenance Responsibilities). All replacements of and alterations or additions to the Equipment shall become part the Equipment described in Schedule R (Equipment to be Installed by Contractor) and shall be covered by the provisions and terms of **Section 16 (Construction Schedule; Equipment Installation).**

28. **Material Change Defined.**

a. A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) by at least 3.0% after adjustments for climatic variations.

b. Actions by the Agency which may result in a Material Change include, but are not limited to, the following:

i) manner of use of the Project Site(s) by the Agency; or

ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or

iii) Permanent changes in the comfort and service parameters set forth in Schedule U (Standards of Comfort); or

iv) occupancy of the Project Site(s); or

v) structure of the Project Site(s); or

vi) types and quantities of equipment used at the Project Site(s) or

vii) modification, renovation, or construction at the Project Site(s); or

viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule CC (Agency's Maintenance Responsibilities); or

ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,

x) casualty or condemnation of the Project Site(s) or Equipment, or

xi) changes in utility provider or utility rate classification, or

xii) any other conditions other than climate affecting energy or water use at the Project Site(s).

xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

xiv) Other changes described in Schedule B.

29. **Reported Material Changes; Notice by Agency.**

The Agency shall use its best efforts to deliver to the Contractor a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least 30 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the Contractor of Material Changes which results because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within 72 hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

30. **Other Adjustments.**

As agreed in **Section 29 (Reported Material Changes; Notice by Agency)** Agency will alert Contractor of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the Contractor shall work with the Agency to investigate, identify, and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, Contractor and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline) and Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). Any disputes between the Agency and the Contractor concerning any such adjustment shall be resolved in accordance with the provisions of Schedule JJ (Alternative Dispute Resolution Procedures) hereto.

31. **Corrective Action; Accuracy of the Services.**

a. Contractor shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in Schedule U (Standards of Comfort) and the construction schedule specified in Schedule S (Construction and Installation Schedule). Contractor shall repair and restore to its original condition any area of damage caused by Contractor's performance under this Contract. The Agency reserves the right to review the work performed by Contractor and to direct Contractor to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by Contractor's performance of the work shall be borne by Contractor.

b. Contractor shall remain responsible for the professional and technical accuracy of all services performed, whether by the Contractor or its subcontractors or others on its behalf, throughout the term of this Contract.

32. **Annual Reporting Requirements.**

At the end of each year during the guarantee period as specified in Schedule A (Savings Guarantee) and no later than ninety (90) days thereafter, the Contractor shall complete and submit the data required in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements).

33. **Other Documents.**

This Contract incorporates herein and makes a part hereof the entire Request for Proposal and Project Development Proposal, labeled Appendix A and B, respectively. Notwithstanding, the provisions of this Contract and the attached Schedules, Exhibits and Appendices shall govern in the event of any inconsistencies between the Investment-Grade Energy Audit Report and the provisions of this Contract.

34. **Energy and Cost Savings Guarantee.**

Contractor has formulated and, subject to the adjustments provided for in Sections 28, 29 and 30 (Material Changes), has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements). The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule A (Savings Guarantee) and has been structured by the Contractor to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule J (Compensation to Contractor for Annual Services) and Schedule I (Financing Agreement and Payment Schedule).

35. **Annual Review and Reimbursement/Reconciliation.**

a. Energy-related cost savings shall be measured and/or calculated as specified in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements) and a report provided within ninety (90) days of the end of the year for the previous year for each anniversary of the Commencement Date.

b. Annual savings shall exceed annual payments each and every year while this Contract is in effect. In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in Schedule A (Savings Guarantee), Contractor shall pay the Agency an amount equal to the deficiency.

c. The Contractor shall remit such payments to the Agency within 60 days of written notice by the Agency of such monies due. Such excess savings will be retained by the Agency

and will not be allocated to shortfalls in savings in other years. In no event shall credit for excess savings be used to satisfy saving guarantees in any other year(s) of the Contract.

36. **Contractor Compensation and Fees.**

Contractor has structured the Energy and Cost Savings Guarantee referred to in Section 34 above, to be sufficient to include any and all annual payments required to be made by the Agency in connection with financing/purchasing the Equipment to be installed by Contractor under this Contract as set forth in Schedule I (Financing Agreement and Payment Schedule). Actual energy and operations savings achieved by Contractor through the operation of Equipment and performance of services by Contractor shall be sufficient to cover any and all annual fees to be paid by Agency to Contractor for the provision of services as set forth and in accordance with the provisions of Schedules J (Compensation to Contractor) and BB (Contractor's Maintenance Responsibilities).

37. **Billing Information Procedure.**

a. Payments due to Contractor shall be calculated each quarter in the following manner:

i) By the 15th day after receipt, Agency shall provide Contractor with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;

ii) Upon receipt of the required information, the Contractor shall calculate the savings in accordance with the agreed-upon calculation formulae in Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements).

b. Based upon paragraphs (i) and (ii) above, Contractor shall prepare and send to Agency a Measurement & Verification invoice which shall set forth for each year the amounts of the energy and operations dollar savings calculated in accordance with Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)and for the services as provided for in Schedule J (Compensation to Contractor for Annual Services). The invoice will set forth the total quarterly payment due from the Agency.

38. **Payment.**

Agency shall pay the Contractor within 30 days of receipt of the Contractor's invoice.

39. **Effective Date of Payment Obligation.**

Notwithstanding the above provisions, Agency shall not be required to begin any payments to Contractor under this Contract unless and until all equipment installation is completed by Contractor in accordance with the provisions of Section 16 (Construction Schedule; Equipment Installation) and Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment), and accepted by Agency as evidenced by the signed Certificate of Acceptance as set forth in Exhibit V (Certificate of Acceptance - Measure), and unless and until said equipment is fully and properly functioning.

40. **Open Book Pricing.**

Open book pricing will be required, such that the Contractor shall fully disclose all costs of materials and labor purchased and subcontracted by the Contractor and a list of hourly rates and position descriptions for labor or services provided by the Contractor. Estimates for the number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the owner or shall not be paid. Contractor shall maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor shall afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

41. **Ownership of Certain Proprietary Property Rights.**

Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The Contractor shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. Contractor shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

42. **Ownership of Existing Equipment.**

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Agency in writing of all equipment and materials to be replaced at the Project Site(s) and the Agency shall within 5 days designate in writing to the Contractor which equipment and materials that should not be disposed of off-site by the Contractor. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The Contractor shall be responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

43. **Damages to Equipment or Property.**

Contractor shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of Contractor's performance under this Contract.

44. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Gverning Body, this Agreement shall terminate immediately 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. If the Agency 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.

45. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its 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 Contract. 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 State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

46. **Subcontracting.**

The Contractor shall notify the Agency of all subcontractors delivering any portion of the services to be performed under this Contract.

47. **Release.**

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

48. **Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Contract 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 Agency. Contractor’s systems, methods, means and methodologies of evaluating, implementing, and performing under this Agreement shall be considered confidential. When any request for disclosure of such information is made under the New Mexico Inspection of Public Records Act, Agency shall provide prompt notice to Contractor so that Contractor may have the opportunity to object.

49. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall be the property of the Contractor.

50. **Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract. The Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee or former state employee have been followed.

51. **Amendment.**

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

52. **Merger.**

This Contract 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 Contract. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

53. **Penalties for violation of law.**

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

54. **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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

55. **Applicable Law.**

The laws of the State of New Mexico shall govern this Contract, 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 NMSA 1978, Section 38-3-1 (G). By execution of this Contract, 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 Contract.

56. **Insurance.**

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

A. **Commercial General Liability** insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than $2,000,000 per occurrence and $2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the Agency of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. **Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than $1,000,000 per accident.

C. **Broader Coverage and Limits**. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the Agency 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.

57. **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 Contract may be terminated by the Agency.

58. **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 this Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency to recover excessive or illegal payments.

59. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency 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 Contract, 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 Contract. 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 Contract is brought against the Contractor, the Contractor shall, as soon as practicable but no later than ten (10) days after it receives notice thereof, notify the legal counsel and insurer of the Agency by certified mail.

60. **Invalid Term or Condition.**

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

61. **Enforcement of Contract.**

A party's failure to require strict performance of any provision of this Contract 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 Contract 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.

62. **Conditions Beyond Control Of The Parties.**

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "Force Majeure Event") include, but are not limited to: acts of God; epidemics; pandemics; viruses; quarantines; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions

or degradations in telecommunications, computer, or electronic communications systems; changes in Laws; or unavailability of parts, materials or supplies.

Notwithstanding any provision(s) of this Contract, if as a direct or indirect result of any virus, disease, contagion, or any other widespread communicable disease that causes disruption, including but not limited to COVID-19, (individually or together "Epidemic") the Work is delayed, disrupted, suspended, or otherwise impacted by, including, but not limited to (1) disruptions to material and/or equipment supply; (2) illness of the Contractor's workforce and/or unavailability of labor; (3) government quarantines, shelter-in-place orders, closures or other mandates, restrictions and/or directives; (4) Agency restrictions and/or directives; and/or (5) fulfillment of Contractor's contractual or legal health and safety obligations associated with an Epidemic; then the Contractor shall be entitled to an equitable adjustment to the Contract Schedule and duration to account for such disruptions, suspensions, and impacts. To the extent any of the causes identified herein results in an increase in the price of labor, materials, or equipment used in the performance of the Work, Contractor shall be entitled to an equitable adjustment to the Contract Price for such increases, provided Contractor presents documentation of such increases (including the original prices and/or estimates) and evidence of the Contractor's reasonable efforts to find alternative sources of material or equipment supply and/or labor at the original/non-impacted prices and/or estimates.

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to a Force Majeure Event (or if Contractor is otherwise unable to perform any of its obligations due to Agency failure to provide Contractor reasonable access to the premises to complete the Work in accordance with the project schedule), performing party's obligations shall be suspended until the said events shall have ended and, if applicable, an equitable adjustment in the time for performance, price and payment terms, and the Energy Cost and Savings Guarantee shall be made.

63. **Events of Default by Agency.**

a. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

i) any failure by Agency to pay Contractor any sum due for a service and maintenance period of more than 45 days after written notification by Contractor that Agency is delinquent in making payment and provided that Contractor is not in default in its performance under the terms of this Contract; or

ii) any other material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for 30 days after notice to Agency demanding that such failures to perform be cured or if such cure cannot be effected in 30 days, Agency shall be deemed to have cured default upon the commencement of a cure within 21 days and diligent subsequent completion thereof; or

iii) any representation or warranty furnished by Agency in this Contract which was false or misleading in any material respect when made.

12. **Events of Default by Contractor.**

a. Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

i) the standards of comfort and service set forth in Schedule U (Standards of Comfort) are not provided due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by Agency to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or

ii) any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made; or

iii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Schedule R (Equipment to be Installed by Contractor) and Schedule S (Construction and Installation Schedule); or

iv) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in Schedule U (Standards of Comfort) are maintained, any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within 90 days after written notice by the Agency to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or

v) any lien or encumbrance upon the equipment by any subcontractor, laborer or material vendor of Contractor; or

vi) the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor; or

vii) failure by the Contractor to pay any amount due the Agency or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in Schedule A (Savings Guarantee).

12. **Remedies upon Default by Agency.**

If an Event of Default by Agency occurs, Contractor may, without a waiver of other remedies which exist in law or equity, exercise any remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by

Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

13. **Remedies Upon Default by Contractor.**

In the Event of Default by Contractor, Agency may exercise any remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees.

14. **Assignment.**

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

15. **Assignment by Contractor.**

The Contractor may, with prior written approval of the Agency, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize Contractors, provided that any assignee(s), delegee(s), or Contractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the Contractor shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Agency for all of its obligations under this Contract.

16. **Assignment by Agency.**

Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Agency shall remain jointly and severally liable with its assignees or transferees to the Contractor for all of its obligations under this Contract.

17. **Representations and Warranties.**

a. Each party warrants and represents to the other that:

i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

12. **Additional Representations of the Parties.**

a. Agency hereby warrants, represents and promises that:

i) it has provided or shall provide timely to Contractor, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by Contractor and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Agency shall provide Contractor with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter within 14 days after execution thereof.

b. Contractor hereby warrants, represents and promises that before commencing performance of this Contract:

i) it shall have become licensed or otherwise permitted to do business in the State of New Mexico.

ii) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;

iii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

iv) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;

v) the Equipment will meet or exceed the provisions set forth in Section 17 (Systems Start Up and Equipment Commissioning) and in Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment;

vi) the Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems,

subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation; and

vii) it is financially solvent, able to pay its debts as they mature and possess sufficient working capital to complete the Work and perform its obligations under this Contract.

13. **Construction Performance and Payment Bonds, Labor and Material Payment Bonds.**

Such executed bonds are incorporated herein by reference as Exhibit I (Performance Bond) and Exhibit II (Labor and Material Payment Bond, if applicable). The Performance and Payment Bonds shall cover Contractor warranty obligations under this Contract but only for a period of one (1) year from the date of substantial completion. All other warranty and maintenance obligations in the Contract shall be excluded from the Performance and Payment Bonds. Further, the Performance and Payment Bonds shall exclude any and all coverage for the Energy Performance, Energy and Cost Savings Guarantees, and Annual Review and Reimbursement/Reconciliation obligations arising under the Contract. The limitation of Performance and Payment Bond liability as provided above shall not amend or limit the warranty and energy savings obligations that may be owed by the Contractor or any manufacturers' warranties required under the Contract.

14. **Further Documents.**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

15. **Methods of Operation by Agency.**

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by the Agency on a regular and continuous basis. Agency's Maintenance Responsibilities.

16. **Agency's Maintenance Responsibilities.**

Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule CC (Agency Maintenance Responsibilities), to be attached hereto and made a part hereof after Agency's approval, such approval not to be unreasonably withheld, conditioned or delayed.

17. **Inspection of Project Site(s).**

Agency agrees that Contractor shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Agency is complying, and shall have complied with its obligations as set forth in **Section 75 (Agency's Maintenance Responsibilities).** For the purpose of determining Agency's said compliance, the checklist to be set forth at **Schedule DD (Facility Maintenance Checklist)** as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record Agency's

said compliance. Agency shall make the Project Site(s) available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. Agency may complete its own checklist at the same time. Contractor agrees to not interfere with the Agency operations during any monthly inspection.

18. **Waiver of Liens.**

Contractor shall obtain and furnish to Agency a Waiver of Liens from each subcontractor, vendor, material manufacturer, supplier and laborer in the supply, installation and servicing of each piece of Equipment.

19. **Conflicts of Interest.**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

20. **Notices.**

Any notice required to be given to either party by this Contract 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 Agency:
Jarel LaPan Hill
City Manager
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87504
(505) 955-6848
jlapanhill@santafenm.gov

To the Contractor:
Colby Geer
President or Successor
Yearout Energy Services Company
8501 Washington St NE
Albuquerque, NM 87113
(505) 991-7711
colby.geer@yearoutenergy.com

21. **Non-Substitution.**

In the event of a termination of this contract due to the non-appropriation of funds or in the event this

Contract is terminated by Contractor due to a default by the Agency, the Agency agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by Contractor under the terms of this Contract for a period of three-hundred sixty five (365) calendar days following such default by Agency, or termination of this Contract due to non-appropriations.

22. **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.

23. **Authority.**

If Contractor is other than a natural person, the individual(s) signing this Contract 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 Contract as of the date of signatures below.

CITY OF SANTA FE:

_____
ALAN WEBBER, MAYOR

DATE: _____

CONTRACTOR:

_____
COLBY GEER, PRESIDENT
Yearout Energy Services Company, LLC
DATE: _____
CRS# 03260362-00-2
Registration # 224758

ATTEST:

_____
KRISTINE BUSTOS-MIHELCIC, CITY CLERK

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Jan 19, 2021 11:55 MST)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

_____
MARY MCCOY, FINANCE DIRECTOR

Project Code: FA183200S, Org: 3209980, Object: 572960

APPROVED FOR BUCKMAN DIRECT DIVERSION:

_____
JOANNE VIGIL COPPLER, BDD BOARD CHAIR

CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

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Savings Guarantee Schedules

Schedule A. Savings Guarantee Schedule

The following table depicts the calculated estimated savings for each measure prior to applying a guarantee factor.

ANNUAL UTILITY SAVINGS (BEFORE GUARANTEE FACTOR)

Measure No.	Measure Name	GF	Electricity		Natural Gas	Water
			kW	kWh	therm	kgal
1.00	LED Lighting	90%	3,559	2,578,138	(4,089)	0
2.00	Renewable Energy	90%	0	4,816,946	0	0
3.00	Water Conservation	90%	0	0	6,509	2,230
4.00	Building Envelope	90%	0	2,060	30,140	0
5.00	HE Transformers	90%	70	134,830	0	0
6.00	Utility Management	100%	0	0	0	0
7.00	GCCC Solar Carport Repairs	90%	0	529,737	0	0
8.00	Roof Replacement	N/A	0	0	0	0
Total			3,629	8,061,710	32,560	2,230

A measure specific guarantee factor is applied to the calculated estimated savings to determine the guaranteed savings for each measure. The applied guarantee factor is dependent on the measure type, methodology for calculating savings, understanding of the facility, experience implementing similar measures, and the level of risk acceptable to meet the Agency's financial objectives for the project.

Where the estimated savings are positive, the guarantee factor is applied as follows:

[Guaranteed Savings = Estimated Savings * Guarantee Factor]

Where the Estimated Savings are a negative value, the Guarantee Factor is applied as follows:

[Guaranteed Savings = Estimated Savings * (1 + (1 – Guarantee Factor))]

The following table depicts the guarantee factor applied to each measure and the resultant guaranteed savings.

GUARANTEED ANNUAL UTILITY SAVINGS (AFTER GUARANTEE FACTOR)

Measure No.	Measure Name	GF	Electricity		Natural Gas	Water
			kW	kWh	therm	kgal
1.00	LED Lighting	90%	3,203	2,320,324	(4,498)	0
2.00	Renewable Energy	90%	0	4,335,251	0	0
3.00	Water Conservation	90%	0	0	5,858	2,007
4.00	Building Envelope	90%	0	1,854	27,126	0
5.00	HE Transformers	90%	63	121,347	0	0
6.00	Utility Management	100%	0	0	0	0
7.00	GCCC Solar Carport Repairs	90%	0	476,763	0	0
8.00	Roof Replacement	N/A	0	0	0	0
Total			3,266	7,255,538	28,486	2,007

Guarantee Accounting

Contractor shall prepare an annual reconciliation statement within ninety (90) calendar days of the last day of each Performance Guarantee Period to determine whether Realized Annual Savings for such Performance Guarantee Period resulted in an Excess Savings or a Savings Shortfall by comparing the Annual Guaranteed Savings and the Realized Annual Savings.

All operational, maintenance, and energy costs avoided by the Agency from any steps taken by

Contractor will be included in the Realized Annual Savings for each year. If, during the Construction Period, additional measures are identified and implemented that generate additional energy, maintenance, and operational savings, these savings may be included in the Realized Annual Savings after the Performance Commencement Date. In addition, any refunds collected, including but not limited to

refunds from utility companies or maintenance Contractors after the Performance Commencement Date will be added to total savings.

If Contractor can correct a shortfall through operational improvement at no expense to the Agency and with no future operational expenses or negative impact on the operations of the Agency, and the Agency declines to allow such operational improvement without reasonable cause, then any future shortfall the improvement would have corrected will be deemed met and added to the savings on an annual basis. Should the Accumulated Realized Savings at the end of the Annual Period be less than the Accumulated Guaranteed Savings, Contractor shall pay the Agency the Savings Shortfall within sixty (60) days following the completion of the annual reconciliation for such Annual Period.

Guarantee Limits

The payments and credits based on Savings Shortfalls, if any, are the sole remedy of Agency for this Performance Guarantee. Any payments made or to be made to the Agency under the terms of this Performance Guarantee shall not exceed the payments actually made by Agency to Contractor for the Contract Sum.

Schedule B. Baseline Energy Consumption; Methodology to Adjust Baseline

B.1. Baseline Energy Consumption

Refer to **Section 3 of Appendix D – Investment Grade Audit (IGA) Report** for baseline utility consumption and cost information.

B.2 Methodology to Adjust Baseline.

Periodically (at least on an annual basis), the baseline will be adjusted to account for the prevailing conditions during the measurement period. Adjustments made to the energy baseline shall be made for any of the following changes in conditions affecting the facility:

- **Weather:** Adjustments for actual weather conditions during the performance period will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy calculations developed during the IGA.
- **Occupancy / Population:** Refer to Schedule Q for baseline population information. Significant changes to the facility's occupancy / population will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.
- **Floor Area:** Refer to Schedule Q for baseline facility information. Significant changes to the facility's floor area will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.
- **Space Type(s):** Refer to Schedule Q for baseline facility information. Significant changes to the facility's space types will be normalized against the established baseline. These changes will be

accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.

- **Operational Schedule:** Refer to Schedule Q for baseline facility information. Significant changes to the facility's operational schedule will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.
- **Temperatures Set Points:** Refer to Schedule U for proposed Standards of Comfort. Any changes to the values will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.
- **Equipment & Materials Change(s):** Refer to existing equipment schedule and proposed equipment retrofits/replacement. Any changes to the facility's equipment will be normalized against the established baseline. These changes will be accounted for by adjusting the applicable baseline and proposed variables in the energy model developed during the IGA.
- **Rate Escalation:** The approved annual escalation rates are as follows:

RATE ESCALATION SUMMARY

Electricity	3.600% / Year
Natural Gas	4.000% / Year
Water/Sewer	3.000% / Year
Operations & Maintenance	3.000% / Year

Schedule C. Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements

C.1 Savings Measurement and Verification Plan.

RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
1. Financial	
a. Interest rates: Neither the Contractor nor the Agency has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the Contract signing may impact the available interest rate and project cost.	At the time of Contract, an estimated interest rate of 2.250% was carried in the preliminary project proforma. The Agency will work directly with its financial advisor to secure funding for the project.

b. Construction costs: The Contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the Agency assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the Contractor may find that the project or measure is no longer viable and drop it before the Contract award. In any design/build contract, the Agency loses some design control.	During the Design/Pre-Construction phase, if determined that the cost to implement any individual measure is 10% or greater than the amount budgeted at the time of Contract, Contractor will notify the Agency and either submit a change order to the project scope or eliminate the measure altogether.
c. M&V confidence: The Agency assumes the responsibility to determine the confidence that it desires to have in the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and the Contractor must consider the requirement prior to submission of the final proposal.	Refer to the M&V Plan provided herein.
d. Energy Related Cost Savings: The Agency and the Contractor may agree that the project will include savings from *recurring* and/or *one-time* costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the Agency. Recurring savings generally result from reduced O&M expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions.	Limited historic records were available during the IGA to support significant operations and maintenance (O&M) savings. Therefore, the Contractor is proposing a conservative annual O&M savings as detailed in the IGA Report.
e. Delays: Both the Contractor and the Agency can cause delays. Failure to implement a viable project in a timely manner costs the Agency in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization).	Refer to Schedule S – Construction and Installation Schedule Any delays will be clearly communicated to the Agency and added to the overall project schedule if necessary.
f. Major changes in facility: The Agency controls major changes in facility use, including closure.	The Agency agrees to immediately notify the Contractor of any major changes to the facility. An appropriate course of action will then be

	determined based on the severity of the change, and impact to the project scope and guarantee. These changes may require adjustment to the energy calculations developed during the IGA.

RESPONSIBILITY/DESCRIPTION	Contractor PROPOSED APPROACH
2. Operational	
a. Operating hours: The Agency generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in "savings" depending on the M&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis).	The Agency agrees to immediately notify the Contractor of any major changes to the operating hours of the facility. An appropriate course of action will then be determined based on the severity of the change, and impact to the project scope and guarantee. Operating hours are stipulated, and any changes will require adjustment to the energy calculations developed during the IGA.
b. Load: Equipment loads can change over time. The Agency generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in "savings" depending on the M&V method.	The Agency agrees to immediately notify the Contractor of any major changes to the equipment loads of the facility. An appropriate course of action will then be determined based on the severity of the change, and impact to the project scope and guarantee. Equipment loads are stipulated, and any changes will require adjustment to the energy calculations developed during the IGA.
c. Weather: A number of energy efficiency measures are affected by weather. Neither the Contractor nor the Agency has control over the weather. Should the Agency agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings.	Significant variations in weather will require adjustment to the energy calculations developed during the IGA.
d. User participation: Many facility improvement measures require user participation to generate savings (e.g., control settings). The savings can be variable, and the Contractor may be unwilling to invest in these measures.	The Agency agrees to maintain the proposed HVAC setpoints and sequences of operation proposed as part of this project. Any changes to these variables must be immediately reported to the Contractor in writing. If 5% or more of the conditioned space area deviates from the above proposed space temperature set points, the Contractor shall calculate the impact to the guaranteed savings and apply adjustments accordingly.

RESPONSIBILITY/DESCRIPTION	Contractor PROPOSED APPROACH
3. Performance	
a. Equipment performance: The Contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The Contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency.	Contractor is responsible for the proper installation, commissioning, and initial verified performance of the installed equipment (Post-Installation of 1st year of operation). The Agency agrees to thereafter properly document and maintain the new equipment per the manufacturer's and Contractor's recommendations. Failure by the Agency to properly maintain the equipment will void the long-term performance guarantee.
b. Operations: Performance of the day-to-day operations activities is negotiable and can impact performance. However, the Contractor bears the ultimate risk regardless of which party performs the activity.	The Agency will be responsible for the operation of the equipment and agrees to immediately notify the Contractor of any major changes to the operation. An appropriate course of action will then be determined based on the severity of the change, and impact to the project scope and guarantee.
c. Preventive Maintenance: Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the Contractor bears the ultimate risk regardless of which party performs the activity.	Contractor is responsible for the proper installation, commissioning and initial verified performance of the installed equipment (Post-Installation of 1st year of operation). The Agency agrees to thereafter properly document and maintain the new equipment per the manufacturer's and Contractor's recommendations. Failure by the Agency to properly maintain the equipment will void the long-term performance guarantee.
d. Equipment Repair and Replacement: Performance of day-to-day repair and replacement of Contractor-installed equipment is negotiable; however, it is often tied to project performance. The Contractor bears the ultimate risk regardless of which party performs the activity.	Contractor will provide an industry standard 1-Year materials and workmanship warranty on all new work. Any material warranties that extend beyond the standard 1-Year period will be transferred to the Agency upon project closeout. The Agency will be responsible for the repair and replacement of all installed equipment following the standard 1-Year warranty period.

M&V PLAN AND SAVINGS CALCULATION METHODS OUTLINE

PROPOSED ANNUAL SAVINGS OVERVIEW

Measure No.	Measure Name	Electricity		Natural Gas	Water	All Utilities	O&M	Total
		kW	On-Peak kWh	therm	kgal	$	$	$
1.00	LED Lighting	3,203	1,244,780	(4,498)	0	$217,056	$21,761	$238,818
2.00	Renewable Energy	0	3,199,669	0	0	$473,609	$0	$473,609
3.00	Water Conservation	0	0	5,858	2,007	$14,404	$1,135	$15,539
4.00	Building Envelope	0	1,091	27,126	0	$10,477	$1,572	$12,048
5.00	HE Transformers	63	45,009	0	0	$9,567	$1,435	$11,002
6.00	Utility Management	0	0	0	0	$1,821	$0	$1,821
7.00	GCCC Solar Carport Repairs	0	351,158	0	0	$25,204	$0	$25,204
8.00	Roof Replacement	0	0	0	0	$0	$1,740	$1,740
Total		3,266	4,841,707	28,486	2,007	$752,137	$27,643	$779,780

Conversion Factors
Electric (MMBtu) = kWh * 0.003412
Natural Gas (MMBtu) = therm * 0.1
Propane (MMBtu) = gallon * 0.092

SITE USE AND SAVINGS OVERVIEW

	Total Energy	Electricity		Natural Gas
	MMBtu	kW	On- Peak kWh	therm
Total Proposed Savings	19,369	3,266	4,841,707	28,486
Usage for Entire Site	234,840	27,570	46,631,822	757,327
% of Total Site Usage Saved	8.25%	11.85%	10.38%	3.76%
Project Area (ft^2)	1,023,900			

Total Site Area (ft^2)	1,023,900
% of Total Site Area Affected	100.00%

Guarantee Types

There are five options to measure and verify savings:

Option A – Partially Measured Retrofit Isolation
Option B – Retrofit Isolation
Option C – Whole Facility Energy Use
Option D – Calibrated Simulation
Option E – Non-Measured

Option A – Partially Measured Retrofit Isolation

Option A is a retrofit isolation approach designed for projects in which the potential to generate savings must be verified, but the actual savings can be determined from short-term data collection, engineering calculations, and non-measured factors. Post-installation energy use, equipment performance, and usage are NOT measured throughout the term of the CONTRACT. Post-installation and baseline energy use is estimated using an engineering analysis of information that does not involve long-term measurements.

The intent of Option A is to verify performance through pre- and post-retrofit measurements. Usage factors can be measured or deemed based upon engineering estimates, operating schedules, operator logs, typical weather data, or other documented information sources. Post-retrofit measurements are made only once. Thereafter, inspections verify that the 'potential to perform' exists. As long as the 'potential to perform' is verified, the savings are as originally claimed and do not vary over the CONTRACT term.

Option B – Retrofit Isolation

Option B is a retrofit isolation or system level approach and requires continuous measurement to provide long-term verification of the savings. This method is intended for retrofits with performance factors and operational factors that can be measured at the component or system level and where long-term performance needs to be verified. Option B is similar to Option A but uses periodic or continuous metering. Short-term periodic measurements can be used when variations in the measured factor are small. Continuous monitoring information can be used to improve or optimize the operation of the equipment over time, thereby improving the performance of the retrofit.

The intent of Option B is to verify performance periodically or continuously with long-term measurements. Usage factors may be pre-determined as in Option A or measured continuously.

Option C – Whole Facility Energy Use

Option C is a whole-building verification method. Savings are based on actual energy consumption as measured by the utility meter(s) and/or regression modeling. Estimated savings will vary over the CONTRACT term.

Option C verification methods determine savings by studying overall energy use in a facility. The evaluation of whole-building or facility-level metered data is completed using techniques ranging from simple billing comparison to multivariate regression analysis. Regression analysis can be used to account for weather and other factors to adjust the baseline and determine savings.

Option C is an appropriate and cost-effective method ONLY if facility operation is stable and savings are expected to exceed 20% of total energy consumption. However, Option C cannot verify the performance of individual measures but can verify the total performance of all measures including interactions Option C methods are appropriate for projects whose measures have a high degree of interaction that would be difficult to predict, when overall energy savings are very large, or when dedicated utility meters are available for retrofitted equipment or systems.

Option D – Calibrated Simulation

Option D is primarily a whole-building method but can be used at the component level. Savings are based on the results of a calibrated computer simulation model. Estimated savings may vary over the CONTRACT term if real weather data is used.

Option D uses calibrated computer simulation models of component or whole-building energy consumption to determine energy savings. Linking simulation inputs to baseline and post-installation conditions completes the calibration and may involve metering performance and operating factors before and after the retrofit. Specialized software packages, such as DOE-2 or e-Quest, are used in Option D and the development of accurate building models requires substantial time and expertise.

Option D methods are appropriate for complex projects where complex system interactions need to be tracked. Due to the expense of properly conducting Option D, suitable projects should have substantial cost savings or major building renovations such as window replacements and building insulation.

Non-Measured

The Non-Measured option is appropriate on measures where no utility and/or operational savings are proposed, or when variables that are known and agreed upon by the Agency and the Contractor in advance, that are used in a calculation or simulated analysis that will pre-determine the outcome. Based on the established analytical methodology the savings will be achieved upon completion of installation and commissioning of the measure and no further measurements or calculations will need to be performed.

M&V PLAN SUMMARY

Measure No.	Measure Name	M&V Option
1.00	LED Lighting	Option A – Retrofit Isolation
2.00	Renewable Energy	Option B – Retrofit Isolation
3.00	Water Conservation	Option A – Retrofit Isolation
4.00	Building Envelope	Option A – Retrofit Isolation
5.00	HE Transformers	Option A – Retrofit Isolation
6.00	Utility Management	Non-Measured (No Savings Proposed)
7.00	GCCC Solar Carport Repairs	Option B – Retrofit Isolation
8.00	Roof Replacement	Non-Measured (No Savings Proposed)

SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

Item	Time of Submission	Agency's Review and Acceptance Period
Post-Installation M&V Report	60 to 90 Days After Acceptance	30 Days
Annual M&V Report	60 to 90 Days After Annual Performance Period	30 Days

MEASURE SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS

Refer to Appendix D – Investment Grade Audit (IGA) Report for a measure specific measurement and verification (M&V) plan.

Refer to Appendix D – Investment Grade Audit (IGA) Report for measure specific Savings Calculation Methods.

C.2 Post-Retrofit M&V Plan.

A Post-Installation M&V Report that aligns with industry best practices will be provided following project acceptance per the table above, and will include the following:

- Proposed Annual Savings Overview
- Expected Savings Overview for First Performance Year
- Impact to Energy Cost Savings from Changes between Final Proposal and As-Built Conditions per Measure

- Expected Year 1 Savings per Measure

C.3 Annual M&V Reporting Requirements

An Annual M&V Report that aligns with industry best practices will be provided at the end of each performance period per the table above, and will include the following:

- Annual Report Overview
- Proposed Annual Savings Overview
- Verified Savings Overview for Performance Year
- Verified Savings for Performance Period to Date
- Verified Annual Savings per measure for Performance Year

Schedule D. Operations and Maintenance (O&M) Savings

Refer to Appendix D – Investment Grade Audit (IGA) Report for measure specific Operations and Maintenance (O&M) Savings.

Schedule E. (NOT USED)
Schedule F. (NOT USED)
Schedule G. (NOT USED)

Payments Schedules

Schedule H. Final Project Cost & Project Cash Flow Analysis

PROJECT COST SUMMARY

FIM No.	FIM Name	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Year 1 Total Annual Savings	Labor, Equip & Material Costs	Estimated Utility Rebate	Net Cost
1.00	LED Lighting	$217,056	$21,761	$238,818	$2,222,158	$192,032	$2,030,126
2.00	Renewable Energy	$473,609	$0	$473,609	$7,167,913	$0	$7,167,913
3.00	Water Conservation	$14,404	$1,135	$15,539	$173,807	$21,450	$152,357
4.00	Building Envelope	$10,477	$1,572	$12,048	$206,170	$0	$206,170
5.00	HE Transformers	$9,567	$1,435	$11,002	$199,171	$7,766	$191,405
6.00	Utility Management	$1,821	$0	$1,821	$0	$1,516	($1,516)
7.00	GCCC Solar Carport Repairs	$25,204	$0	$25,204	$155,730	$7,628	$148,102
8.00	Roof Replacement	$0	$1,740	$1,740	$199,918	$0	$199,918
Total		$752,137	$27,643	$779,780	$10,324,867	$230,392	$10,094,474
Investment Grade Audit							$104,650
Pre-Construction Cost							$800,876
Construction Cost (Includes FIM Labor, Equipment and Materials Cost)							$11,655,884
Profit							$1,256,141
Contingency							$282,632
Total Funded Amount (Before Taxes and State Fees)							$14,100,183
Gross Receipts Tax							$141,002
State Review Fee							$1,201,600
Total Funded Amount							$15,442,785

PROJECT CASH FLOW ANALYSIS

This preliminary cash flow is for reference only. A final cash flow will be provided by the lender or Agency's Municipal Advisor.

	Total Annual Savings Less Costs	Interest	Principal	Total Payment	Ending Balance	Annual Cash Flow
Year 1	$666,797	($321,308)	($345,490)	($666,796)	$13,934,857	$1
Year 2	$692,461	($313,534)	($378,927)	($692,460)	$13,555,930	$1
Year 3	$719,065	($305,008)	($414,057)	($719,064)	$13,141,873	$1
Year 4	$820,553	($295,692)	($524,861)	($820,552)	$12,617,012	$1
Year 5	$850,990	($283,883)	($567,107)	($850,989)	$12,049,905	$1
Year 6	$882,520	($271,123)	($611,397)	($882,519)	$11,438,508	$1
Year 7	$915,182	($257,366)	($657,816)	($915,181)	$10,780,692	$1
Year 8	$949,017	($242,566)	($706,452)	($949,016)	$10,074,240	$1
Year 9	$984,068	($226,670)	($757,397)	($984,067)	$9,316,843	$1
Year 10	$1,020,377	($209,629)	($810,748)	($1,020,376)	$8,506,095	$1
Year 11	$1,057,991	($191,387)	($866,604)	($1,057,990)	$7,639,491	$1
Year 12	$1,096,956	($171,889)	($925,067)	($1,096,955)	$6,714,424	$1
Year 13	$1,137,320	($151,075)	($986,246)	($1,137,319)	$5,728,178	$1
Year 14	$1,179,135	($128,884)	($1,050,251)	($1,179,134)	$4,677,927	$1
Year 15	$1,222,452	($105,253)	($1,117,198)	($1,222,451)	$3,560,729	$1
Year 16	$1,267,324	($80,116)	($1,187,208)	($1,267,323)	$2,373,520	$1
Year 17	$1,313,809	($53,404)	($1,260,405)	($1,313,808)	$1,113,115	$1
Year 18	$1,361,965	($25,045)	($1,113,115)	($1,138,159)	$0	$223,805
Year 19	$1,411,850	$0	$0	$0	$0	$1,411,850
Year 20	$1,463,527	$0	$0	$0	$0	$1,463,527
Year 21	$1,517,062	$0	$0	$0	$0	$1,517,062
Year 22	$1,572,519	$0	$0	$0	$0	$1,572,519
Year 23	$1,629,970	$0	$0	$0	$0	$1,629,970
Year 24	$1,689,485	$0	$0	$0	$0	$1,689,485
Year 25	$1,751,139	$0	$0	$0	$0	$1,751,139
Total	$29,173,536	($3,633,833)	($14,280,347)	($17,914,162)	----------	$11,259,374

Schedule I. Financing Agreement and Payment Schedule

FINANCING AGREEMENT

Due to federal regulations, the terms of the final financing agreement are negotiated directly between the Agency and their financial advisor and/or financial lending Agency. The Contractor is excluded from participation in these negotiations.

PROPOSED BILLING SCHEDULE

The following Proposed Billing Schedule demonstrates the billing schedule anticipated for the project based on project milestones and completion targets for installation of the Work as defined in this Contract. Payment terms are net 30 days from receipt of invoice. This billing schedule is based on timeline milestones, and the actual billing schedule may differ based on individual measures' commencement and completion dates.

The following Proposed Billing Schedule is based on an anticipated Contract award by January 29, 2021.

PROPOSED BILLING SCHEDULE

FIM No.	FIM Name	Contract Amount	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep
1.00	LED Lighting	$2,222,158		$44,443	$44,443	$888,863	$166,662	$166,662	$166,662	$16
2.00	Renewable Energy	$7,167,913		$143,358	$143,358	$3,583,956	$358,396	$358,396	$358,396	$35
3.00	Water Conservation	$173,807				$28,968	$28,968	$28,968	$28,968	$2
4.00	Building Envelope	$206,170				$34,362	$34,362	$34,362	$34,362	$3
5.00	HE Transformers	$199,171				$66,390	$66,390	$66,390		
6.00	Utility Management	$0								
7.00	GCCC Solar Carport Repairs	$155,730				$77,865	$77,865			
8.00	Roof Replacement	$199,918				$99,959	$99,959			
Investment Grade Audit (IGA)										
Investment Grade Audit (IGA) Cost		$104,650	$104,650							
Pre-Construction Costs										
Design and Other Engineering		$279,734	$195,814	$55,947	$27,973					
Pre-Construction Services		$329,737	$109,912	$109,912	$109,912					
Other Pre-Construction Costs		$191,405	$63,802	$63,802	$63,802					
Construction Costs										
Construction Management		$346,196				$28,850	$28,850	$28,850	$28,850	$2
Project Engineering		$93,582				$7,799	$7,799	$7,799	$7,799	$
General Conditions		$238,266				$19,856	$19,856	$19,856	$19,856	$1
Construction Completion		$175,283								
Other Construction Costs		$477,690				$39,807	$39,807	$39,807	$39,807	$3
Profit | Contingency										
Profit		$1,256,141	$47,418	$41,746	$38,949	$487,667	$92,891	$75,109	$68,470	$6
Contingency		$282,632	$10,669	$10,669	$9,393	$8,764	$109,725	$20,901	$16,899	$1
Other Project Cost										
State Review Fees		$141,002	$141,002							
Gross Receipts Tax		$1,201,600	$56,807	$39,538	$36,889	$461,874	$87,978	$71,136	$64,848	$6
Total Billing		$15,442,785	$730,073	$508,140	$474,090	$5,935,942	$1,130,682	$914,233	$833,422	$83

Schedule J. Compensation to Contractor for Annual Services

MEASUREMENT AND VERIFICATION FEE

The Year-1 M&V Fee is $68,632. The M&V Fee will be billed quarterly and will escalate at a rate of 2.500% annually for the duration of the project as depicted in the table below. The Agency shall be responsible for payment of the annual M&V Fee, as these ongoing costs are considered annual fees, and cannot be financed up front.

ANNUAL M&V FEE SUMMARY

Year	M&V Fee	Year	M&V Fee
1	$68,632	10	$85,712
2	$70,348	11	$87,855
3	$72,106	12	$90,051
4	$73,909	13	$92,302
5	$75,757	14	$94,610
6	$77,651	15	$96,975
7	$79,592	16	$99,400
8	$81,582	17	$101,885
9	$83,621	18	$104,432

Failure by the Agency to issue payment to the Contractor for annual M&V Services within the parameters detailed herein will result in the termination of the Guarantee and annual M&V reporting requirements for the remainder of the performance period. Refer to the **APPENDIX E - Sample Annual M&V Agreement**.

Schedule K. Rebates, Incentives and Grants

UTILITY REBATES

Contractor shall coordinate with utility providers and submit required documentation during the implementation period. Utility rebates are estimated and subject to availability and final award by the utility provider. Rebates are not guaranteed by the Contractor, as these programs are at the discretion of the utility company. All awarded rebates will be paid directly to the Agency by the utility provider.

Refer to **Appendix D – Investment Grade Audit (IGA) Report** for estimated utility rebates per measure.

Schedule L. (NOT USED)
Schedule M. (NOT USED)
Schedule N. (NOT USED)
Schedule O. (NOT USED)
Schedule P. (NOT USED)

Design, Audit and Construction Phase Schedules

Schedule Q. Description of Project Site(s)

Refer to **Appendix D – Investment Grade Audit (IGA) Report** for a description of the project site(s) and existing equipment.

Schedule R. Equipment to be Installed by Contractor

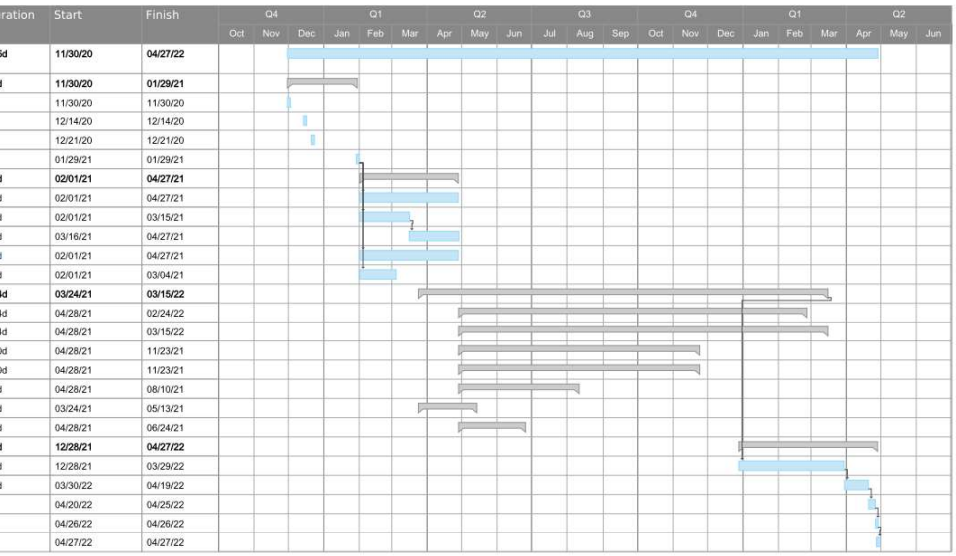
Refer to **Appendix D – Investment Grade Audit (IGA) Report** for a measure specific scope of work and description of equipment to be installed.

Schedule S. Construction and Installation Schedule

Contractor anticipates a 15-Month overall construction period from the time of Contract. A detailed construction schedule will be co-developed with the Agency following the Contract award.

COSF Preliminary Construction Schedule

Task Name	Duration	Start	Finish
City of Santa Fe	**295d**	**11/30/20**	**04/27/22**
Contract | Approvals	**36d**	**11/30/20**	**01/29/21**
Finance Committee Approval	1d	11/30/20	11/30/20
Public Works | Public Utilities Committee Approval	1d	12/14/20	12/14/20
City Council Approval	1d	12/21/20	12/21/20
Contract Awarded | PO Issued	1d	01/29/21	01/29/21
Pre-Construction	**50d**	**02/01/21**	**04/27/21**
Design | Engineering	50d	02/01/21	04/27/21
Submittals	25d	02/01/21	03/15/21
Procure Equipment & Materials	25d	03/16/21	04/27/21
Safety Planning	50d	02/01/21	04/27/21
Subcontractor Award(s)	20d	02/01/21	03/04/21
Construction	**204d**	**03/24/21**	**03/15/22**
FIM 1.00 LED Lighting	174d	04/28/21	02/24/22
FIM 2.00 Renewable Energy	184d	04/28/21	03/15/22
FIM 3.00 Water Conservation	120d	04/28/21	11/23/21
FIM 4.00 Building Envelope	120d	04/28/21	11/23/21
FIM 5.00 HE Transformeers	60d	04/28/21	08/10/21
FIM 7.00 GCCC Solar Repairs	30d	03/24/21	05/13/21
FIM 8.00 Roof Replacements	34d	04/28/21	06/24/21
Project Closeout	**70d**	**12/28/21**	**04/27/22**
Commissioning	53d	12/28/21	03/29/22
Punchlist	12d	03/30/22	04/19/22
Training	3d	04/20/22	04/25/22
Prepare Project Closeout Documentation	1d	04/26/22	04/26/22
Notice of Final Completion	1d	04/27/22	04/27/22



Schedule T. Systems Start-up and Commissioning of Equipment; Operating Parameters of Installed Equipment

A preliminary commissioning plan per measures is provided in **Appendix D – Investment Grade Audit Report** and is intended to serve as the outline from which the final commissioning plan will be developed during the pre-construction / design phase. The final commissioning plan will be primarily focused on validating the proposed equipment and implemented strategies in accordance with the savings methodology associated with each measure.

- Develop and issue construction phase commissioning plan
- Review equipment submittals to validate the specified performance criteria is in alignment with the proposed savings methodology
- Review sequences of operation and controls strategies to validate alignment with proposed savings methodology
- Review manufacturer's startup documentation
- Develop equipment Prefunctional Checklists (PFCs)
- Develop and conduct Functional Performance Testing (FPT) procedures on equipment and sequences of operation to ensure proper operation
- Create and maintain a commissioning issues log
- Establish trends as required to validate system operation
- Coordinate Owner participation as required during commissioning and equipment startup efforts
- Participate in staff training activities

Schedule U. Standards of Comfort

GENERAL

While optimizing energy consumption and costs are central to the project's success, maintaining an acceptable level of building occupant comfort is equally important. The following standards of comfort are therefore established to ensure comfortable indoor space conditions are maintained post-retrofit.

INTERIOR LIGHTING

Interior light levels shall comply with the current recommendations, at the time the Contract becomes effective, by the Illuminating Engineering Society of North America (IESNA)

SPACE HEATING AND COOLING

The proposed design shall comply with the current editions, at the time the Contract becomes effective, of ASHRAE Standards 55, 62 and 90.1.

SPACE TEMPERATURE SET POINTS:

The Agency agrees to maintain the following indoor space temperature set points:

Classroom and Office Areas

- Cooling Occupied Set Point: 74 °F (+/- 1 °F)
- Cooling Unoccupied Set Point: 82 °F
- Heating Occupied Set Point: 70 °F (+/- 1 °F)
- Heating Unoccupied Set Point: 62 °F

Unoccupied periods include, but are not limited to:

- Scheduled shutdowns
- Holidays
- All time outside of normal business hours

Cooling standards of comfort do not apply to areas that have evaporative or no cooling.

If 5% or more of the conditioned space area deviates from the above proposed space temperature set points, the Contractor shall calculate the impact to the guaranteed savings and apply adjustments accordingly. Data logging devices may be used to confirm actual space temperatures in place of trended data from the building automation system.

VENTILATION

Minimum ventilation rates shall comply with ASHRAE 62.1 guidelines that are current when the Contract takes effect.

DOMESTIC HOT WATER (DHW)

The Agency agrees to maintain the following domestic hot water supply temperature set points:

- Domestic Fixtures Set Point: 120 °F

Swimming Pool

The Agency agrees to maintain the following domestic hot water supply temperature set points:

- Water Temperature Set Point: 82 °F
- Space temperature setpoint 80 °F

Schedule V. Contractor's Training Responsibilities

Contractor shall co-develop a training plan with the Agency that is tailored to the needs and skill-level of the trainees. Contractor shall record training sessions and provide in electronic format to the Agency for future reference. The final agreed upon training agenda may include topics such as:

- Equipment start-up, proper operation, shutdown, power failure, etc.
- Sequences of operation
- Operations and maintenance (O&M) manuals

- Diagnosing and troubleshooting common equipment issues
- Preventative maintenance and required documentation
- Health & safety considerations
- Warranty information
- Identified system deficiencies

Schedule W. (NOT USED)
Schedule X. (NOT USED)
Schedule Y. (NOT USED)
Schedule Z. (NOT USED)
Schedule AA. (NOT USED)

Post-Construction Schedules

Schedule BB. Contractor's Maintenance Responsibilities

Contractor shall provide warranty services for an industry standard one-year period. This warranty is specific to defects to original quality and/or workmanship. Contractor hereby also provides warranty services for a one-year period covering defects in installation services provided by Contractor. Any material warranties that extend beyond the standard one-year period will be transferred to the Agency upon project closeout.

Schedule CC. Agency's Maintenance Responsibilities

1. Agency shall be responsible for annual operations and maintenance of installed solar photovoltaic systems to ensure proper operation.
2. Agency shall maintain all equipment per manufacturer's & Contractor's recommendations.
3. Maintain active and updated maintenance logs for all equipment. Logs shall be kept for a minimum of the warranty period and must be provided to the Contractor upon request in either electronic or hard copy format.
4. During the first-year construction warranty period, the Agency shall promptly notify the Contractor of any equipment which fails to operate as intended. Subsequent to the first year, the Agency shall coordinate repair of any failed equipment with the equipment manufacturer or other qualified entity to address equipment failures in a timely manner.
5. Maintain all sequence of operations and performance criteria related to installed systems as proposed and designed. This shall include, but not be limited to, adjusting occupancy schedules based upon operational calendars, considering holidays, regular breaks, etc. The Agency shall maintain schedules to minimize equipment operation.
6. Upon request of Contractor, provide Contractor with copies of actual monthly utility billing information on a quarterly basis for the duration of the ongoing service period. This includes utility bills from all providers. For this project, the ongoing service period shall be for the term of the contract. Utility information shall include all meters providing direct or indirect service to all building(s) included in this project.

7. Provide Contractor continuous full remote access to the Building Automation System (BAS) for the purpose of collecting and trending data over time as required for performance verification.
8. The Agency shall notify Contractor in writing with regard to any changes or alterations to buildings that will affect energy usage. This notification must be provided within 30 days of the change. This includes changes to utilization, occupancy, internal or external loads, facility operation, scheduling, and sequences of operation.
9. In addition to the maintenance responsibilities described above, the Agency shall maintain a log of all maintenance activities as described in the maintenance checklist provided with O&M manuals.

Schedule DD. Facility Maintenance Checklists

Facility maintenance checklists will be provided as a part of the Operation and Maintenance (O&M) Manuals delivered at project completion. All on-going facility maintenance shall be completed by Agency staff in accordance with manufacturer's and Contractor's recommendations and specifications.

Schedule EE. (NOT USED)
Schedule FF. (NOT USED)
Schedule GG. (NOT USED)
Schedule HH. (NOT USED)
Schedule II. (NOT USED)

Administration Schedules

Schedule JJ. Alternative Dispute Resolution

Mediation

Contractor and Agency shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Santa Fe, New Mexico, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Contractor and Agency do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section of this Contract
[X] Litigation in a court of competent jurisdiction
[ ] Other (Specify)

Schedule KK. (NOT USED)
Schedule LL. (NOT USED)
Schedule MM. (NOT USED)
Schedule NN. (NOT USED)
Schedule OO. (NOT USED)

Exhibits

Exhibit I. Performance Bond/Construction Bond

To be provided following Contract execution.

Exhibit II. Labor and Material Payment Bond

To be provided following Contract execution.

Exhibit III. NM-GSD Certification of Contractor as Qualified Provider

GSD/PD (Rev. 01/11)

State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendor
0000141975
Yearout Energy Services Co., LLC
8501 Washington St NE
Albuquerque, NM 87113

Telephone No. (505) 883-0915

Contract Number: **90-000-18-00017AH**

Payment Terms: **See Contract**

F.O.B.: **See Contract**

Delivery: **See Contract**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As requested.

Procurement Specialist: **Michael Saavedra**

Telephone No.: **(505) 827-0610**

Email: **Michael.Saavedra@state.nm.us**

Title: **Qualified Providers of Energy Performance Contracting Services, ESCO**

Term: **June 13, 2019 – June 12, 2023**

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 07/08/2019

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
MS

Exhibit IV. NM-EMNRD & NM-OSE Certification of Guaranteed Savings

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Secretary

Louise N. Martinez, Director
Energy Conservation and Management Division

September 12, 2020

BY EMAIL: mayor@santafenm.gov

Mayor Alan Webber
City of Santa Fe
200 Lincoln Ave
Santa Fe, NM 87504

SUBJECT: **Certification of Guaranteed Energy Savings under the Public Facility Energy Efficiency and Water Conservation Act (NMSA 1978, Section 6-23-5) – City of Santa Fe**

Dear Mayor Webber:

The Investment Grade Energy Audit submitted by the City of Santa Fe to implement energy efficiency and renewable measures in city facilities has been reviewed and is hereby approved. The Investment Grade Energy Audit was performed by Yearout Energy Services Co. (YESCO).

The Energy Conservation and Management Division (ECMD) of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) has certification responsibilities and provides technical assistance to governmental entities under the Public Facility Energy Efficiency and Water Conservation Act (Act). The two certifications needed from EMNRD for each energy performance contracting project under the Act are:

- Vendor is a Qualified Provider and meets EMNRD experience requirements; and
- Guaranteed energy savings appear to be accurately estimated and reasonable.

EMNRD reviewed the Investment Grade Energy Audit. EMNRD now issues the following certification:

- Qualifications were provided on December 1, 2017 approving YESCO as a qualified entity under EMNRD's experience criteria.

- EMNRD certifies that the guaranteed energy savings from the proposed efficiency measures appear to be accurately estimated and reasonable.

The City of Santa Fe Investment Grade Audit is hereby certified with these Special Conditions:

- Certification is contingent upon implementation of the measures as outlined in the investment grade energy audit. No significant changes in scope are to be considered unless submitted for review and approval by EMNRD.

- Section 6-23-4 Requires that the savings be guaranteed by the provider. Measurement and Verification of the savings is essential to determine if the savings are being met. A copy of the Annual Measurement and

1220 South St. Francis Drive • Santa Fe, New Mexico 87505
Phone (505) 476-3315 • Fax (505) 476-3322 • www.CleanEnergyNM.org

Verification Report shall be provided to EMNRD every year the contract is in place by January 31st of the following year. These reports are essential to meet legislative reporting requirements.

- The 3-rd party reviewer costs of 1.0% percent of the total project cost are to be included and accounted for in the project contract to reimburse EMNRD.

Pursuant to NMSA 1978, Section 6-23-5 of the Act, EMNRD has performed its certification duties. It is recommended that The City of Santa Fe implement its approval requirements to comply with NMSA 1978, 6-23-8 of the Act. Please contact me at Harold.Trujillo@state.nm.us, 505-490-7912 or Louise.N.Martinez@state.nm.us , 505-476-3315 if there are any questions.

Sincerely,

Harold J Trujillo

Harold Trujillo, PE
Bureau Chief
ECMD Energy Technology & Engineering

cc: Regina Wheeler, Public Works Director rawheeler@santafenm.gov
Caryn Grosse, Project Administrator clgrosse@santafenm.gov
Louise Martinez, Director ECMD
David Griego, Engineer ECMD
Alex Montano, YESCO

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
CONCHA ORTIZ Y PINO BUILDING, 130 SOUTH CAPITOL, SANTA FE, NM 87501
TELEPHONE: (505) 827-6091 FAX: (505) 827-3806

JOHN R. D'ANTONIO JR., P.E.
STATE ENGINEER

August 28, 2020

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102

VIA EMAIL

Mr. Alex Montano
Yearout Energy Services Company
8501 Washington St. NE
Albuquerque, NM 87113

Re: City of Santa Fe - Investment Grade Audit Report

Dear Mr. Montano:

The Water Use & Conservation Bureau (WUCB) of the Office of the State Engineer (OSE) has reviewed various submittals from Yearout Energy Services Company for the above-referenced project including the **City of Santa Fe-Investment Grade Audit (IGA) Report** dated August 21, 2020. The review of the final IGA was completed in accordance with NMSA 1978, Section 6-23-5.B(3) of the Public Facility Energy Efficiency and Water Conservation Act (Act).

The proposal submitted is for the installation of approximately 760 fixture upgrades at 15 City facilities. NMSA 1978 Section 72-14-3.2D.(e) recognizes "water-efficient fixtures and appliances" as a water conservation measure. Consequently, the fixture retrofits proposed were considered for guaranteed water savings.

The OSE has certification responsibilities and provides technical assistance to governmental entities under the Act. The Act conditions any water conservation guaranteed utility savings contract approval on two certifications from the OSE. The OSE is required to certify that:

- "…the qualified provider of water conservation measures meets the experience requirements set by that office", and
- "….the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable."

Pursuant to NMSA 1978, Section 6-23-5.B(3) of the Act, the WUCB reviewed the proposal. The OSE provides the following certifications:

- For the purposes of this proposed project, based upon documents submitted to this office, the OSE certifies that the project team of Yearout Energy Services Company meets the experience requirements and shall be considered a "qualified provider."

- Based on the documents and information provided, the OSE certifies that the guaranteed water savings from water conservation measures appear to be accurately estimated and reasonable.

If you have any questions, please call Chuck Lawler at 505-827-6664.

Sincerely,

Julie Valdez

Julie Valdez
Acting Bureau Chief, Water Use and Conservation Bureau

Exhibit V. Certificate of Acceptance - Measure

CERTIFICATE OF ACCEPTANCE - MEASURE

Date: _____

Measure Description: _____

City of Santa Fe, NM accepts the installed equipment for the measure noted above and establishes a warranty period commencement date as _____.

Authorized Representative

_____

Name (Printed)

_____

Title

_____

Signature

_____

Date

Once executed, this form shall signify final acceptance of the installed equipment for the noted measure.

Exhibit VI. Certificate of Project Substantial Completion

CERTIFICATE OF PROJECT SUBSTANTIAL COMPLETION

Date: _____

City of Santa Fe, NM accepts the project as substantially complete and establishes a performance period commencement date as _____.

Authorized Representative

_____

Name (Printed)

_____

Title

_____

Signature

_____

Date

Once executed, this form shall signify final project acceptance and substantial completion of the proposed work. This will also signal commencement of the Year 1 Performance Period.

Exhibit VII. Equipment Warranties

An industry standard 1-Year materials and workmanship warranty is provided by Contractor as part of the project. Any material warranties that extend beyond the standard 1-Year period will be transferred to the Agency upon project closeout.

Appendices

Appendix A. Contractor Solicitation (Selection Phase)

The Contractor was selected from the NM-GSD Statewide Price agreement. Appendix is not used.

Appendix B. Contractor Proposal (Pre-Qualification Phase)

The Contractor was selected from the NM-GSD Statewide Price agreement. Appendix is not used.

Appendix C. Investment Grade Audit and Project Proposal Contract

The Investment Grade Audit (IGA) and Project Proposal Contract have been published under separate cover and are incorporated herein by this reference.

Appendix D. Investment Grade Audit Report

The Investment Grade Audit (IGA) Report has been published under separate cover and is incorporated herein by this reference.

Appendix E. Sample Annual M&V Agreement

Measurement and Verification (M&V) is the process of quantifying the annual utility consumption savings resulting from the measures implemented as part of the Guaranteed Energy Savings Performance Contract (GESPC) project. M&V activities include ongoing site surveys, metering of energy and other independent variables, review of operations and maintenance documentation, engineering calculations, and reporting. The annual cost for M&V services is outlined in Schedule J and shall be billed quarterly during each performance year. The Agency shall be responsible for payment of the annual M&V Fee, as these ongoing costs are considered annual fees, and cannot be financed up front. This section provides a sample of the annual agreement for reference.

2021-01-19 Yearout Energy_EPC_COSF

Final Audit Report 2021-01-19

Created:	2021-01-19
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQtj0WhonDU04JNvZiOIEfrW9mZpmhAci

"2021-01-19 Yearout Energy_EPC_COSF" History

Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)
2021-01-19 - 6:23:52 PM GMT- IP address: 63.232.20.2

Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature
2021-01-19 - 6:24:30 PM GMT

Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)
2021-01-19 - 6:55:31 PM GMT- IP address: 104.47.65.254

Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)
Signature Date: 2021-01-19 - 6:55:59 PM GMT - Time Source: server- IP address: 107.77.228.66

Agreement completed.
2021-01-19 - 6:55:59 PM GMT

ITEM # 20-0118

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:

Deliverable item:	Price
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+NMGRT

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 NMGRT** 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 NMGRT $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: 3/2/2020

CONTRACTOR:

COLBY GEER, PRESIDENT
Yearout Energy Services Company, LLC

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

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK
CCmtg 2/24/20

CITY ATTORNEY'S OFFICE:

1/30/20
SENIOR ASSISTANT CITY ATTORNEY

APPROVED:

3/2/20
MARY MCCOY, FINANCE DIRECTOR

Munis Contract: 3200884, Project Code: FA183200S, Org: 3209980, Object: ~~572960~~ 572960 ~~430210~~

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 (New Facility, Solar Only)	TBD	Santa Fe	NM	TBD	--------
Totals					

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

YEAROUT
ENERGY

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 + NMGRT
Adjusted IGA Contract Amount	**$283,146.31 + NMGRT**

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 + NMGRT 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: 3/3/2020

8501 WASHINGTON STREET NE
ALBUQUERQUE, NEW MEXICO 87113

P | 505.883.0915
YEAROUTENERGY.COM

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 prelminary 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 <u>each year</u> during the contract period. Savings must be able to be achieved <u>each year</u> (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 <u>total</u> 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:

for M. McCoy 08.02.19
MARY MCCOY, FINANCE DIRECTOR KM

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 (New Facility, Solar Only)	TBD	Santa Fe	NM	TBD	--------
Totals	---	---	---	---	598,000
IGA Fee ($0.175/$ft^2$)					$104,650
NMGRT (8.4375%)					$8,830
Total IGA Fee + NMGRT					$113,480

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

Date: **January 27, 2021**

To: **Buckman Direct Diversion Board**

From: **Rick Carpenter, BDD Facilities Manager**

Via: **Monique Maes, BDD Contracts Administrator**

Subject: **TLC Company, Inc.**

ITEM:

Request for approval of contract with TLC Company Inc. in the amount of $59,118.89 plus applicable tax.

BACKGROUND:

On August 12, 2020 a request to ratify an emergency procurement with TLC Company Inc. to remove and install a new chiller was approved in the Amount of $199,455.95. TLC Company Inc. has a current NM State price agreement which was used to quote the requested services.

Additional to the emergency request, a 15 Ton Air Handler and Condenser replacement is needed for the AC Unit located at Booster Station 4A/5A. The prospective lead time is about 6-8 weeks.

The current cumulative total of business procured to TLC Company Inc. for FY 20-21 is $213,620.52.

This request also includes approval of a Budget Amendment Resolution (BAR) to authorize funds from the Major Repair and Replacement Fund. This request will make funds available to cover the cost of the project which meets the criteria as established in the Major repair and Replacement Fund policy

ACTION REQUESTED:

Staff recommends approval of quoted services in the amount of $59,118.89 plus applicable tax and approval of the Budget Amendment Resolution.

Approved by BDDB February 4th 2021

_____

Councilor JoAnne Vigil Coppler, BDD Chair

BUCKMAN DIRECT DIVERSION BOARD
SERVICES AGREEMENT
WITH
TLC COMPANY, INC.

THIS AGREEMENT is made and entered into by and between the Buckman Direct Diversion Board ("BDDB") and TLC Plumbing and Utility ("Contractor"). The effective date of this Agreement shall be the date when it is executed by the BDDB.

1. SCOPE OF SERVICES

Contractor shall provide services for the BDDB described as follows:

A. Disconnect and Removal: disconnect and remove electrical units and piping as detailed in Exhibit A, attached hereto.

B. Supplied and Installed: supply and install items as described within Exhibit A.

C. Equipment Details: [1] Coleman NSC00DWCAA2 15 Ton Indoor Air Handler, [1] Coleman YH-15 C00AWBLB4 15 Ton Outdoor Condenser.

D. Provide permits and licenses and bond.

2. STANDARD OF PERFORMANCE; LICENSES

A. Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the Scope of Services described in this Agreement. Contractor shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent consulting firms in effect at the time Contractor's services are rendered.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. Compensation under this Agreement shall be the sum of Fifty-Nine Thousand, One hundred and Eighteen Dollars and 89/100 ($59,118.89) plus applicable gross receipts tax.

B. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the BDDB of detailed statements containing a report of services completed. Compensation shall be paid only for services performed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the BDDB for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the BDDB to Contractor. The BDDB's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the BDDB and terminate June 30, 2021.

6. TERMINATION

A. This Agreement may be terminated by the BDDB upon 30 days written notice to Contractor. In the event of such termination:

(1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the BDDB original copies of all work product, research or papers prepared under this Agreement.

(2) If payment has not already been made, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such

termination. If full payment has been made, Contractor agrees to prorate to the date of termination and refund all amounts received for any months after the termination date.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent contractors performing professional services for the BDDB and are not employees of the BDDB. Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of BDDB vehicles, or any other benefits afforded to employees of the BDDB as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor shall comply with the City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the BDDB. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the BDDB.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their officers, officials and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, Contractor shall remain obligated to complete the Scope of Services and other obligations of this Agreement. Contractor agrees not to purport to bind the BDDB to any obligation not assumed herein by the BDDB unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall not begin the services required under this Agreement until it has: (i) obtained, and upon the BDDB's request provided to the BDDB, insurance certificates reflecting evidence of all insurance required herein; however, the BDDB reserves the right to request, and Contractor shall submit, copies of any policy upon reasonable request by the BDDB; (ii) obtained BDDB approval of each company or companies as required below; and (iii) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a

(3) **Workers' Compensation.** For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

Bodily Injury by Accident	$500,000	Each Accident
Bodily Injury by Disease	$500,000	Each Employee
Bodily Injury by Disease	$500,000	Policy Limit

Contractor shall provide an endorsement that the insurer waives the right of subrogation against the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.

D. **Cancellation**. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the BDDB is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies as evidence by an endorsement to the policies which shall be attached to the certificates of insurance. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event Contractor's insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the BDDB within four working days of Contractor's receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

E. **Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the BDDB. The BDDB will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. **Deductibles.** All deductibles or co-payments on any policy shall be the responsibility of Contractor.

G. **Specific Provisions Required.**

(1) Each policy shall expressly provide, and an endorsement shall be submitted to the BDDB, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives.

(2) All policies required herein are primary and non-contributory to any insurance that may be carried by the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BDDB.

(a) Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the BDDB's exposure to loss.

(b) Before performing any services, Contractor shall provide the BDDB with all Certificates of Insurance accompanied with all endorsements.

(c) The BDDB reserves the right, from time to time, to review Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the BDDB. The BDDB will reimburse Contractor for the cost of the additional premium for any coverage requested by the BDDB in excess of that required by this Agreement without overhead, profit, or any other markup.

(d) Contractor may obtain additional insurance not required by this Agreement.

13. INDEMNIFICATION

General Indemnification. To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and defend the BDDB, City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and The Club at Las Campanas; their respective elected officials, officers, employees, agents, volunteers and representatives from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors performance or non-performance under this Agreement as well as the performance or non-performance of Contractor's employees, agents, representatives and subcontractors or any tier.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the BDDB in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. The BDDB and their "public employees" as defined in the New Mexico Tort Claims

Act, do not waive sovereign immunity, do not waive any defense and do no 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.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the BDDB and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

16. RECORDS, DOCUMENT CONTROL AND AUDIT

A. Contractor shall conform with and participate in the Document Control policies of the BDDB or City of Santa Fe. Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement.

B. Detailed records that indicate the date, time and nature of services rendered shall also be retained for a period of three years after the term of this agreement expires. These records shall be subject to inspection by City of Santa Fe, the Department of Finance and Administration, the State Auditor. The BDDB and City of Santa Fe shall have the right to audit the billing both before and after payment to Contractor. Payment under this Agreement shall not foreclose the right of the BDDB or City of Santa Fe to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the BDDB. In any action, suit or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Any

action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices, requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to Seller or Buyer at the following addresses:

BDDB:
Rick Carpenter, Facilities Manager
Buckman Direct Diversion
341 Caja Del Rio Road
Santa Fe, NM 87506
Email: rrcarpenter@santafenm.gov

With a copy to:
Nancy R. Long, Esq.
BDDB Independent Counsel
Long, Komer & Associates, P.A.
2200 Brothers Road
Santa Fe, NM 87502-5098
Email: nancy@longkomer.com

CONTRACTOR:
TLC Plumbing & Utility.
5000 Edith Blvd. NE
Albuquerque, NM 87107
Attn:
Email: hmcguire@tlcplimbing.com

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the email stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving

notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

BUCKMAN DIRECT DIVERSION BOARD

By: _____
JoAnne Vigil Coppler, BDDB Chair

Date: _____

APPROVED AS TO FORM

_____
Nancy R. Long, BDDB Counsel

APPROVED

_____
Mary T. McCoy, COSF Finance Director

ATTEST

_____
Kristine Bustos-Mihelcic, City Clerk

File Date: _____

CONTRACTOR:

TLC Plumbing and Utility

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NM Taxation & Revenue
CRS # 02-226090-000

City of Santa Fe Business
Registration # 222153

EXHIBIT A

Total Cost: $59,118.89 Plus Tax.

Permit:	Rental:	Consumable:	Labor:	Material:	Electrical:
$70.00	$350.00	$168.00	$14,082.58	$22,540.00	$5,460.00
Bond:	**Concrete:**	**Re-Pipe:**	**Insulation:**	**PRE-TAX**	**$59,118.89**
$1,203.71	$2,520.00	$9,574.60	$3,150.00	**TAX**	$4,988.16
				ESTIMATED TAX INCLUDED	**$64,107.04**

SCOPE OF WORK:

Disconnect and Removal:

- Disconnect outdoor unit electrical.
- Disconnect outdoor unit controls.
- Disconnect outdoor unit mounting brackets.
- Recover refrigerant from entire refrigerant circuit.
- Disconnect refrigerant piping.
- Remove (1) existing Carrier 38ARD016---601LA outdoor unit from pad.
- Disconnect indoor unit electrical.
- Disconnect indoor unit controls.
- Disconnect outdoor unit mounting brackets.
- Disconnect and remove refrigerant piping.
- Disconnect and remove existing thermostat.
- Disconnect and remove (2) light and hangers that are under existing indoor unit.
- Disconnect and remove exiting (1) Carrier 40RM-016—B611GC 15 Ton Air Handler.
- Disconnect and remove all refrigerant piping on (1) existing air handler.

Supplied and Installed:

- Provide anchors, dowels, concrete, epoxy, and concrete stain to extend the pad to accompany new unit size.
- (After Concrete had Cured) Supply and install (1) Coleman YH-15C00AWBLB4 15 Ton Outdoor 2 Stage Condenser. (Cooling Only)
- Bolt down new condenser to newly extended concrete pad.
- Supply and install all new 1-5/8" Suction Line and 7/8" Liquid Line, connect to both indoor and outdoor unit.
- Farwest insulation will insulate outdoor piping with aluminum jacket to protect it from the weather.

Supplied and Install Continued....

- Supply and install all new piping insulation to indoor units.
- Supply and install hangers and mount brackets for indoor unit.
- Supply and install (1) new Coleman NS-15C00DWCAA2 15 Ton Indoor Air Handler.
- Supply and install approx. 10' of ductwork on to the supply side of the air handler with two dropped diffusers to move the air away from the return of the new unit. (This will mitigate the short cycling of the new equipment.)
- Supply and install (1) new Honeywell thermostat on the wall below the new unit.
- Supply and install new condensate piping connections.
- Supply and install new electrical connections for indoor and outdoor units.

Log # *{Finance use only}*:	
Batch # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
PUD/Buckman Direct Diversion	2/4/2021

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
EXPENDITURES				*{enter as positive #}*	*{enter as negative #}*
Equipment & Machinery	8000825	570500	BDD5001	64,108	
Interfund transfer out to 800	8010815	755800		64,108	
REVENUES				*{enter as negative #}*	*{enter as positive #}*
Interfund transfer in from 801	8000825	655801	BDD5001	(64,108)	
				$ 64,108	$ -

JUSTIFICATION: *(use additional page if needed)*
--Attach supporting documentation/memo

To authorize funds from the BDD Major Repair & Replacement Fund.

To cover cost to replace chiller unit at Booster Station 4A/5A.

BDDB Approved 2/04/2021

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
801	64,108
TOTAL:	**64,108**

Mackie Romero 2/4/2021
Prepared By *{print name}* Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Budget Officer Date

Division Director Signature *{optional}* Date

Finance Director *{≤ $5,000}* Date

Department Director Signature Date

City Manager *{≤ $60,000}* Date

Buckman Direct Diversion Board

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **3202507**

Contractor: **TLC COMPANY INC.**

Description: **To replace chillers at Booster Station 4A &5A**

Contract (●) Agreement ( ) Lease / Rent ( ) Amendment ( )

Term Start Date: **02/04/2021** Term End Date: **06/30/2021**

☑ Approved by BDDB or ☐ Approved by BDD Facilities Manager Date: **02/04/2021**

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # **3202507**

Increase/(Decrease) Amount $ $59,118.89 plus tax

Extend Termination Date to: _____

☐ Approved by BDDB or ☐ Approved by BDD Facilities Manager Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)
$59,118.89 for new chillers at BS 4A&5A plus tax not to exceed $64,107.05

3. **Procurement History:** **State Price Agreement 90-000-18-00073**

Purchasing Officer Review: Date:

Comment & Exceptions:

4. **Funding Source:** **570500** **Org / Object:** **8000801**

Budget Officer Approval: Date:

Comment & Exceptions:

Staff Contact who completed this form: **Monique Maes** Phone # **505-955-450**

Email: **mmmaes@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: TLC Company INC.

Procurement Title: BS 4A & 5A Chiller Replacement

Procurement Method: State Price Agreement ☒ *Cooperative* ☐ *Sole Source* ☐ *Other* ☐ _____

Exempt ☐ *Request For Proposal (*RFP) ☐ *Invitation To Bid (ITB)* ☐ *Contract under 60K* ☐ *Contract over 60K* ☐

Department Requesting Buckman Direct Diversion Staff Name Monique Maes

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	
☒	☐	Approved Procurement Checklist (by Purchasing)
☒	☐	Memo addressed to BDD Facilities Manager/BDD Board (over 60K)
☒	☐	State Price Agreement
☐	☒	RFP
☐	☒	Evaluation Committee Report
☐	☒	ITB
☐	☒	Bib Tab
☐	☒	Quotes (3 valid current quotes)
☐	☒	Cooperative Agreement
☐	☒	Sole Source Request and Determination Form
☐	☒	Contractors Exempt Letter
☐	☒	Purchasing Officers approval for exempt procurement
☒	☐	BAR
☐	☒	FIR
☒	☐	Executed Contract, Agreement or Amendment
☒	☐	Current Business Registration and CRS numbers on contract or agreement
☒	☐	Summary of Contracts and Agreements form
☒	☐	Certificate of Insurance
☒	☐	All documentation presented to Committees
☐	☐	Other: _____

Monique Maes BDD Contracts Administrator 01/26/2021
Department Rep Printed Name (attesting that all information included) Title Date

Purchasing Officer (attesting that all information is reviewed) Title Date

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

*

GSD/PD (Rev. 04/19)

State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor:
23 Vendors

Email:
Telephone No.: _____

Price Agreement Number**: 90-000-18-00073**

Price Agreement Amendment No**.: Two**

Term**: June 20, 2019 to June 19, 2021**

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

Procurement Specialist**: Mark Lujan**

Telephone No**.: (505) 827- 0564**

Email: **Mark.Lujan@state.nm.us**

Title**: HVAC and Plumbing Services - Statewide**

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from June 20, 2020 to June 19, 2021 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Valerie Pauek for
_____

Mark Hayden, New Mexico State Purchasing Agent

Date: 06/17/2020

Log # *{Finance use only}*:	
Batch # *{Finance use only}*:	

City of Santa Fe, New Mexico
BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME	DATE
PUD/Buckman Direct Diversion	2/4/2021

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
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BDDB Approved 2/04/2021

{Complete section below if BAR results in a net change to ANY Fund}

Fund(s) Affected	Fund Balance Increase/(Decrease)
801	64,108
TOTAL:	**64,108**

Mackie Romero 2/4/2021
Prepared By *{print name}* Date

{Use this form for Finance Committee/ City Council agenda items ONLY}

CITY COUNCIL APPROVAL

City Council Approval Date

Agenda Item #:

Budget Officer Date

Division Director Signature *{optional}* Date

Finance Director *{≤ $5,000}* Date

Department Director Signature Date

City Manager *{≤ $60,000}* Date

Memorandum

Buckman Direct Diversion

Date: January 22, 2021

To: Buckman Direct Diversion Board

From: Rick Carpenter, BDD Facilities Manager

Kyle Harwood, BDD Legal Counsel

Subject: BDD Board support for NEPA permit changes consistent with the Proposed SJC Return Flow Pipeline

BACKGROUND AND SUMMARY:

The NEPA permits for the BDD Project requested and received coverage for up to 8,730 acre-feet per year of combined diversion of San Juan Chama Project water and 'native' pre-1907 Rio Grande water. Those NEPA permits are held and managed by the BDD Board to support the diversion of water rights under OSE permits that are held and managed directly by the Project Partners.

The Proposed SJC Return Flow Pipeline contemplates increased San Juan Chama Project water diversions only with no changes to the BDD Project intake, BDD Project rights of way and easements, or Water Treatment Plant. In order to make the BDD Project's NEPA permit changes consistent with the Proposed SJC Return Flow Pipeline the City will make application to the relevant federal agencies and a scoping process with stakeholder input will be conducted.

RECOMMENDATION:

Board staff, counsel and consultants recommend the BDD Board support the requested changes to the BDD Project NEPA permits consistent with the Proposed SJC Return Flow Pipeline.

City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

Alan Webber, Mayor

Councilors:
Signe I. Lindell, Mayor Pro Tem, District 1
Renee Villarreal, District 1
Michael J. Garcia, District 2
Carol Romero-Wirth, District 2
Roman "Tiger" Abeyta, District 3
Chris Rivera, District 3
Jamie Cassutt-Sanchez, District 4
JoAnne Vigil Coppler, District 4

MEMO

Date: **December 15, 2020**

To: **Public Works & Public Utilities Committee** **January 11, 2021**

Finance Committee **January 19, 2021**

Governing Body **January 27, 2021**

Via: Shannon Jones, Public Utilities Department Director Shannon Jones (Dec 16, 2020 09:27 MST)

From: Jesse Roach, Water Division Director, Public Utilities Department JR

ITEM

BDD Shared Pool Agreement

BACKGROUND

The Buckman Direct Diversion (BDD) Shared Pool Agreement (Shared Pool) is a proposed agreement between the City and County to allow for multi-year accounting of water use by each entity at BDD. The Shared Pool makes the County's water resource portfolio more resilient with potential operational and water resources advantages to the City.

Water resources used at Buckman Direct Diversion

The City of Santa Fe (City) and Santa Fe County (County) are co-owners of the BDD. The water resource used by the City at BDD is "imported" San Juan – Chama (SJC) water, and the City has the ability to store that water in Heron and Abiquiu Reservoirs for use on demand. While the County also has SJC water, the majority of the water resource used by the County at BDD is "native" Rio Grande water without associated storage.

Advantages to the City of Sharing Water Resources

Generally SJC water with storage offers more operational flexibility than native water without storage, but there are some advantages to the City in being able to utilize native water from the County when it is available in excess of County demand, in exchange for the County utilizing City SJC water when the native water is not available. There are two advantages to the City:

1. Operational flexibility and discretionary BDD shutdowns. The City is the Project Manager of the BDD, and in certain years may choose to reduce costs and cross train operators from BDD at Canyon Road Water Treatment Plant (CRWTP) during annual scheduled shutdowns of BDD.
2. SJC water can get locked in storage during Abiquiu flood control operations. Among other purposes, Abiquiu Dam is operated to prevent downstream river flows along the Chama from exceeding approximately 1800 cubic feet per second (cfs). Currently, when native water is stored for flood control purposes, it must be evacuated as quickly as possible, meaning that when Abiquiu has stored flood waters there is no room in the 1800 cfs "pipe" to move SJC water down to BDD. When this occurs, there is more native water in the system than the County can use and it is advantageous to the City to be able to use it also.

Advantages to the County of Sharing Water Resources

It is very advantageous to the County to be able to "loan" native water to the City at BDD when available and be repaid when the native water is not available. This provides the County with a mechanism to (indirectly) store native water and with this firm up and extend the existing native supply portfolio.

1. Indirect native water storage. The county effectively stores water by loaning it when available and getting it back later. The Annual Operating Plan at BDD already incorporates "Optimized Annual Water Resources Accounting", which allows this exchange to occur when BDD is operational within a given calendar year. The BDD Shared Pool extends this ability to "storage" of native water across years and "repayment" when BDD is offline.
2. Additional backup water supply. In the Water Resources Agreement between the City and the County, the City promises to provide up to 1350 acre feet per year (AFY) of backup water supply (for context, total City Demand is about 8000 AFY). The BDD Shared Pool, could extend this backup by between 500 and 1000 AFY depending on the extent to which the City would need to rely on wells to meet County demand.

General Terms of the BDD Shared Pool Agreement

Deposits to BDD Shared Pool. When County native water is diverted at BDD and used by the City, 90% of that diversion will be credited to the shared pool to a total maximum of 1100 AF. The lost 10% is consistent with typical City losses between production and metered delivery known as "unaccounted water".

Withdrawals from the BDD Shared Pool. When BDD is off, the Shared Pool will be drawn down as the City delivers water to the County from one of the City's other 3 sources of water. The rate of drawdown and the cost to the County will vary depending on why BDD is shutdown.

> Discretionary Shutdown: When BDD is shut down by the City for reasons of cost savings or operational efficiencies, the County will receive 1 unit of water for every 1 unit of Shared Pool drawdown and will pay the City a rate equivalent to the marginal cost of water production at BDD and no wheeling fee. The intent is that under this case the County be financially unaffected by the shutdown.
>
> Non-discretionary Shutdown: When BDD is off for an unplanned reason such as low river flows, high sediment in the river, or equipment failure, the County will receive 1 unit of water for 1.1 units of Shared Pool drawdown (the lost 10% representative of a one-time 10% loss the City pays for the ability to store SJC water in Abiquiu), and will pay the City a rate equivalent to the marginal cost of water production at BDD and an additional fee for the "wheeling" of water through the City pipes.

BDD Shared Pool Losses and Limits: The County cannot build up more than 1100 AF of credit in the Shared Pool, and loses 10% per year from the pool (representative of the approximate rate of loss of SJC water stored in Abiquiu to evaporation). During an extended unplanned shutdown the City may limit the deliveries of Shared Pool water to a rate of 1 million gallons per day and an annual volume of 500 AFY. The volume limit is invoked if the City's groundwater pumping will be more than 6000 AFY (a volume that hasn't been pumped by the City since 2006, but was pumped 15 of 18 years between 1989 and 2006). The agreement can be cancelled by either party with 60 days written notice.

Potential Disadvantages to the City of the BDD Shared Pool

The BDD Shared Pool allows the County to "store" native water when they have a surplus and call on that water when BDD is down. If BDD goes down and local surface water is limited, the City will need to rely on wells for 1) City use, 2) County use of built up Shared Pool water, and 3) backup water guaranteed to the County. The Shared Pool extends "added" County backup demand from 1350 AFY to 1850 AFY in a year with limited local surface water. I believe this is acceptable within the context of current supply and demand, but will need to be periodically revisited.

Potential Near-term Advantage to the City of the BDD Shared Pool

Currently the County owns native water rights in the Rio Grande in excess of County demand. The Shared Pool allows the County to take advantage of this surplus up to a cap of 1100 AF. Once the Shared Pool has been built up, the County may choose to continue to allow City use of Native water at BDD beyond just what is necessary to "top off" the Shared Pool each year. The County has no obligation to do so, but if the water cannot be used for another purpose, and City and County relations at the Utility level continue to be productive it is possible that the County would continue to make this water available for City use. By maximizing native water use at BDD, the City could stretch our SJC water further, leaving us in a better position to be the backup water source for the County.

EXAMPLE

The BDD Shared Pool can be a confusing concept. This table below is provided for illustrative purposes.

	No Shared Pool	*With Shared Pool*
City SJC water in storage Jan 1 (AF)	*10,000*	*10,000*
City total use at BDD (AF)	*4,000*	*4,000*
SJC (AF)	*4,000*	***3,000***
Native (AF)	*0*	*1,000*
Shared Pool Balance due to SFC (AF)	*0*	***900***
SJC Storage Losses (AF)	*100*	*100*
City SJC water in storage Dec 31 (AF)	*5,900*	***6,900***

Use of the Shared Pool results in more City SJC water in storage but a water debt for eventual payback to the County.

REQUEST

Request that the City enter into the BDD Shared Pool Agreement with signature of the attached agreement. The agreement can be cancelled at any time with 60 days written notice. The agreement was approved by the Board of County Commissioners on Tuesday November 10, 2020.

15Dec2020 BDDSharedPoolMemo

Final Audit Report 2020-12-16

Created:	2020-12-15
By:	Jesse Roach (jdroach@santafenm.gov)
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Transaction ID:	CBJCHBCAABAAI_wsHgPWt5nHUNW6EQvZET-XdAATGfCf

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BUCKMAN DIRECT DIVERSION ("BDD")
SHARED POOL AGREEMENT

This BDD Shared Pool Agreement ("Agreement") is between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a New Mexico home-rule municipality (together the "Parties").

Recitals

A. The County and the City are partners in the BDD pursuant to a Joint Powers Agreement ("JPA") executed on March 7, 2005.

B. The County and City also executed a Water Resources Agreement on January 11, 2005, and an Amended and Restated Water Resources Agreement on December 14, 2016, ("WRA") to address utility-to-utility issues.

C. The purpose of this Agreement is to make more efficient use of the Parties' respective available resources by making currently excess County native water rights available to the City and by making additional City system capacity and water sources available to the County through creation of a BDD Shared Pool. By creation of the BDD Shared Pool, the City will gain access to additional native supply, the County will gain additional back-up and sources of supply when the BDD is not in operation, and both parties will achieve greater flexibility in BDD operations.

Agreement

1. Establishment of the BDD Shared Pool. The BDD Shared Pool is hereby created as an accounting pool of water within the BDD that will allow the City, through its Water Division Director, to use additional County native water rights and allow the County, through its Utilities Division Director, to deposit and bank water for later use at times when BDD production is restricted or shut down either for unplanned or uncontrollable reasons, or because of discretionary operational shutdowns of the BDD, as described in Paragraph 3 below. The maximum quantity balance of water credited at any time in the BDD Shared Pool is limited to 1,100 acre-feet (AF), unless the Parties agree in writing to a larger amount. Operation of the BDD Shared Pool is separate from and does not affect the Parties' current practice of joint use of native and San Juan-Chama Project water pursuant to Optimized Annual Water Rights Accounting as described in the BDD Annual Operating Plan.

2. Deposits into the BDD Shared Pool. On or before December 1 of each year, the County will advise the City and the BDD of the quantity of additional County native water rights that will be available the coming year for diversion by the BDD for delivery to the City. Each year the BDD will divert for delivery to the City a minimum of 167 AF of County native water, subject to the following conditions and limitations:

a. To account for typical unaccounted water losses, 90% of the amount of water diverted will be credited to the County and deposited in the BDD Shared Pool. For example, diversion of 167 AF will result in a deposit of 150 AF.
b. The quantity diverted may not exceed the quantity made available by the County for that year.
c. Once the BDD Shared Pool is at its limit of 1,100 AF, no additional deposits may be credited without written approval by the Parties through their respective Division Directors.
d. When hydrological conditions reasonably preclude diversion of the minimum of 167 AF during a given year, the quantity diverted and the corresponding amount deposited will be based on the actual amount diverted that year.

3. Withdrawals and Deliveries from the BDD Shared Pool. The County may withdraw water credits from the BDD Shared Pool and the City shall deliver water from the City's Independent Water System, as defined in the WRA, to the County's requested Points of Delivery, as described in Paragraph 9 of the WRA, under the following terms and conditions:

a. Discretionary Shutdowns. When the City as BDD operator chooses to temporarily shut down the BDD for a discretionary reason, such as for operational efficiency or for system-wide cost savings, the rate of exchange of BDD Shared Pool water credits withdrawn to the quantity of water delivered from the City to the County shall be 1.0 to 1.0, meaning that for every AF delivered by the City to the County, the County's credit balance will be reduced by one AF. Discretionary shutdowns are characterized by a fully functional BDD that could be diverting and treating water throughout. The City may implement a discretionary shutdown of the BDD with a minimum of 3 day's written notice to the County. Discretionary shutdowns shall not result in a debit to the BDD Shared Pool in excess of 150 AF per year, shall not result in a negative balance to the BDD Shared Pool, and must be timed and made at a sufficient flow rate so that all County demand otherwise supplied by the BDD will be met by the City from other City sources.
b. Non-Discretionary Shutdowns. When BDD production is restricted or shut down completely for any other reason, the rate of exchange of BDD Shared Pool water credits withdrawn to the quantity of water delivered by the City to the County shall be 1.1 to 1.0. In other words, for every AF of water that the City delivers to the County, the County's credit balance will be reduced by 1.1 AF. The Parties acknowledge that this exchange rate appropriately reflects that the City's water stored in Abiquiu Reservoir is a component of City back-up supply and is subject to a one-time reduction of 10% of the amount stored for rights to such storage. In any calendar year, the City may limit withdrawal from the BDD Shared Pool to 550 AF and the associated delivery of City water to the County to 500 AF if delivery greater than that would result in more than 6,000 AF of groundwater use by the City. The City will exercise reasonable due diligence to make deliveries to the County at the greatest rate practicable, but the rate may be limited to no more than 1 million gallons per day during a Non-Discretionary shutdown.

4. Accounting of Credit Balance. The Parties shall calculate and maintain a running balance of the quantity of County water credits in the BDD Shared Pool. The County's water credit balance shall be increased by the quantity of additional deposits to and reduced by the amount of new withdrawals from the BDD Shared Pool. The County's water credit balance will be reduced at the end of each calendar year by 10% of the December 31st value to reflect evaporative losses of City water in the Abiquiu Reservoir. Upon request by the County, the City at its sole discretion may approve a temporary negative balance. Deposits made to the BDD Shared Pool not used within a calendar year shall be carried over to the next year and credited to the County's running balance. The Parties will direct BDD staff to administer the BDD Shared Pool based on monthly diversion and use accounting of BDD water. The initial amount of water deposited into the BDD Shared Pool and credited to the County may include, with written approval of both Parties through their respective Division Directors, any prior remaining balance of the County native water diverted by the BDD pursuant to Optimized Annual Water Rights Accounting.

5. Cost Accounting and Billing.

a. City Costs. The City will pay all costs associated with diversion, pumping and treatment of County native water delivered by the BDD to the City under this Agreement.

b. County Costs. For water the County receives from the City under this Agreement, the County will pay the City at a rate equal to the variable cost of BDD water paid by the County during the same fiscal year in which the BDD Shared Pool water is delivered. For example, during fiscal year 2018-2019, the County paid $402,354 in variable operating costs (electricity, chemicals, and solids) at BDD for 1,393 AF of treated water, representing a variable cost of $288.89 per AF. This rate would have been charged for any BDD Shared Pool water delivered that year. Because that rate will not be available until after final BDD invoicing for the fiscal year, the City can bill during the fiscal year using the variable cost of BDD water to the County during the previous fiscal year, with final reconciliation occurring after final BDD invoicing. In addition, for water delivered by the City to the County during Non-Discretionary shutdowns, the County will pay the City for wheeling the water through the City system based on the rate specified in the WRA. The County will not pay a wheeling fee for water delivered by the City during Discretionary shutdowns. If during a Non-Discretionary BDD shutdown the County expends all water credits and reaches a zero balance in the BDD Shared Pool and the City does not approve a temporary negative balance as described in Paragraph 4, any additional County use of City water will be billed at the then-current agreed upon wholesale and wheeling rates.

6. WRA Unaffected. This Agreement does not amend or affect the terms and conditions of the WRA. In particular, delivery by the City of water to the County from the BDD Shared Pool is separate from and does not affect the County's right to Wholesale Water Delivery from the City under Paragraph 3 of the WRA.

7. Term.

a. This Agreement shall be effective on the date of the latest signature below and shall continue thereafter unless terminated pursuant to Paragraph 7(b) below.

b. Either Party may terminate this Agreement for any reason by giving 60 day's written notice of termination to the other Party. If terminated, the BDD Shared Pool balance if any, will be continue to be available for use by the County during BDD shutdowns, consistent with the terms and conditions of this Agreement, until the balance has been fully utilized.

8. Amendment. This Agreement may be modified only by a written amendment signed by the Parties.

9. Dispute Resolution. The City and County agree to mediate disputes consistent with the Mediation Procedures Act, NMSA 1978, Section 44-7B-1 through 44-7B-6, prior to initiating any litigation, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall be first discussed by representatives of each party. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 60 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the aggrieved party intends to litigate the dispute. Any dispute requiring notice shall be reported to the next meeting of the respective City and County governing bodies.

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

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

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

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

To the City:

Water Division Director
City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: 955-4309
Fax: 955-4352

With a copy to:

City Manager City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: (505) 955-6509
Fax: (505) 955-6683

City Attorney City of Santa Fe
PO Box 909
Santa Fe, NM 87501
Phone: (505) 955-6511
Fax: (505) 955-6748

To the County:

Utilities Division Director
Santa Fe County
PO Box 276
Santa Fe, N.M. 87504-0276
Phone: (505) 992-9870
Fax: (505) 992-3028

With a copy to:

County Manager
Santa Fe County
PO Box 276
Santa Fe, N.M. 87504-0276
Phone: (505) 986-6200
Fax: (505) 986-2740

County Attorney
Santa Fe County
PO Box 276
Santa Fe, NM 87504-0276
Phone: (505) 986-6279
Fax: (505) 986-6362

a. Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

b. A Party may change the persons to whom or addresses or fax numbers at which notice shall be given by giving all other Parties and the Authority notice of the change in accordance with this Article.

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

CITY OF SANTA FE

_____ _____
Alan M. Webber, Mayor Date

Attestation:

_____ _____
City Clerk Date

City Attorney's Office:

Marcos Martinez
Marcos Martinez (Jan 5, 2021 11:11 MST)

Jan 5, 2021

_____ _____
Senior Assistant City Attorney Date

Approved as to Finance:

_____ _____
Mary McCoy, Finance Director Date

SANTA FE COUNTY

_____ _____
Katherine Miller Date
Santa Fe County Manager

Approved as to form:

_____ _____
Gregory S. Shaffer Date
Santa Fe County Attorney

Finance Division:

_____ _____
Yvonne S. Herrera Date
Finance Director

BUCKMAN DIRECT DIVERSION BOARD

Agreement Acknowledged by the
Buckman Direct Diversion Board

By:_____ _____
Date

2021 0079 PW AG - BDD Shared Pool Agreement.12.18.2020

Final Audit Report 2021-01-05

Created:	2021-01-05
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Agreement completed.
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City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # **N/A**

Contractor: **City of Santa Fe/ Santa Fe County**

Description: **Buckman Direct Diversion Shared Poll Agreement. No procurement associated with the agreement. Cost Accounting and Billing will vary and term is continuous until terminated by one of the parties**

Contract ☐ Agreement ☐ Lease / Rent ☐ Amendment ☐

Term Start Date: **When signed** Term End Date: **when terminated by**

☑ Approved by Council Date: **pending**

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

Amendment is for:

2. **HISTORY** of Contract, Amendments & Lease / Rent - **Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. **Procurement History:** **There is no procurement for this "Shared Pool Agreement"**

Fran Dunaway (Jan 6, 2021 17:06 MST)

Purchasing Officer Review: Date:

Comment & Exceptions: _____

4. **Funding Source:** **Water Enterprise Fund** **Org / Object:** **5050381.565010**

Alexis Lotero (Jan 6, 2021 16:54 MST)

Budget Officer Approval: Date:

Comment & Exceptions: _____

Staff Contact who completed this form: **Maya Martinez** Phone # **4271**

Email: **mfmartinez@santafenm.gov**

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

The County's going to do this. What is Eldorado going to do? It's all about the County. The County is providing water. But I'm okay with it, Mr. Chair. Just putting it out for the record, because in ten years when we figure this out. But thank you, Mr. Chair, for the opportunity. I appreciate all my colleagues as well.

CHAIR ROYBAL: Thank you, Commissioner Garcia. Any other comments or questions? Okay, I'm going to go to a roll call vote on this item.

The motion passed by unanimous [5-0] roll call vote.

3. E. Request Authorization for the County Manager to Finalize and Execute on Behalf of Santa Fe County the BDD Shared Pool Agreement Between Santa Fe County and City of Santa Fe

MR. DUPUIS: Thank you, Mr. Chair. I appreciate the opportunity to provide a detailed review of the contents and background relative to the BDD shared pool agreement. Since 2018 the City of Santa Fe and the County have collaborated to manage water with the shared goal of using native water, native surface water to the greatest extent possible when it's available at the Buckman Direct Diversion, and preserving other sources for when it is not. This effort is terms the optimized annual water rights accounting and it's included in our Buckman Direct Diversion annual operating plan. It was the result of an extremely dry year in 2018 and the realistic fear that the BDD would be curtailed or even shut down due to low flows in the Rio Grande.

In implementing this arrangement both parties identified excess resources that can't be used independently. The County has excess native rights and cannot currently stored them in-basin. The City has excess storage capacity in multiple places, one of them being Abiquiu Reservoir that it's not fully utilizing. Through optimized accounting the City has been able to divert excess native water earlier in the year and the County in turn diverts an equal amount of stored City SJC water later in the year when native rights may not be available. This has been working incredibly well. It is limited through by a requirement to balance these diversions annually. The City has been limited in diverting County water by how much City the County can reasonably use later in the year.

This BDD shared pool agreement continues to optimize the accounting but removes the annual account balance requirement, therefore creating effectively a credit pool where the County can account for native water to the City's immediate use and then call on that credit in future years when the BDD is shut down or deliveries are curtailed otherwise.

This effectively increases the supply of backup water to the County, the primary goal of the Utilities Division from our most recent strategic planning process. This agreement it is important to mention as being temporary in nature and will only remain in place so long as both parties see benefit in it continuing. It sets reasonable limits on the amount of water the County can place in the pool, and the amount of credit water that can be called on in a given year. These are physical limitations relative to infrastructure capacity and concerns that were brought up, and depending upon the reason for shutdown, that's another element that adjusts how the terms apply and how the credit is used.

SFC CLERK RECORDED 12/10/2020

It also then leaves open the opportunity to negotiate more if mutually beneficial. It also accounts for any conveyance, diversion, or storage losses that may occur. The agreement also allows the City as operator of the BDD to shut down for any reason as long as the County is given three days notice and is not required to use more than 150 acre-feet of its credit water to account for the shutdown. This allows the City to act more nimbly based on its own needs and the County would pay the City for pool water at a rate equal to the variable costs of BDD water paid by the County during the same fiscal year in which the pool water was delivered.

In addition, during any unplanned shutdown the County would pay a wheeling fee for water wheeled through the City system in addition to the variable costs paid to BDD that year. In sum, the BDD shared pool agreement maximizes the use of our native surface water, providing the County with an additional relatively cheap backup supply of water in the event of a BCC shutdown. With that I stand for any questions.

CHAIR ROYBAL: Okay. Thank you, Mr. Dupuis. Do we have any questions from the Commission?

COMMISSIONER GARCIA: Mr. Chair, my colleagues that are actually on the BDD Board, could you guys – do you guys have comments on this stuff? Is this the best thing for the County or the community to do?

COMMISSIONER HANSEN: Mr. Chair.

CHAIR ROYBAL: Go ahead, Commissioner Hansen. And then I'm going to go to Commissioner Hamilton if you have additional remarks.

COMMISSIONER HANSEN: So I personally think that this is a very good deal for the County. I actually think it is a better deal for the County than it is for the City. But I think that being able to use our native water rights and making sure that we have a backup supply down the road is a good thing. Backup supply is one of the more important things that we need and BDD is a City-County ownership. It is not owned by the City; it is not owned by the County. It is owned by both of us and so I think this is also in the best interest of the BDD to move forward with this agreement and I will let Commissioner Hamilton also speak to this.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you, Mr. Chair. I guess I would personally characterize this as a very good mutual agreement. I think there are benefits on both sides. I think it's very valuable for the County and the City to move forward with this for the reasons Commissioner Hansen stated. There's frankly not that much to expand upon but this definitely feeds into our abilities to manage water more efficiently, to make good use of our abilities to conserve and store water and still have it available, and to do conjunctive management.

The things that we've been looking to do, this is kind of a rare opportunity to within the existing system and without having to do something additional, like building reservoirs or buying more water rights, or other things that may not even be available or feasible to really expand what we have to use and how we can use it. So I agree with Commissioner Hansen. This is a very valuable thing for us to do.

COMMISSIONER GARCIA: Mr. Chair.

CHAIR ROYBAL: I just want to first of all say thank you for sitting on this board. We really appreciate you representing the County on this important board, the

SFC CLERK RECORDED 12/10/2020

BDD Board. I sat on this board a couple of years or a few years so I really appreciate all the feedback and I appreciate that Commissioner Garcia asked for feedback from our respective peers that sit on this board and I think you guys are doing a great job. So Commissioner Garcia, I'm going to go you, sir.

COMMISSIONER GARCIA: Mr. Chair, great comments. Thank you, for sitting on these boards that we all sit on. It's hard being a policymaker. You all understand. But yes, thank you for sitting on that and one thing us policymakers, you all sit on the board. You go to the meetings and you realize that most citizens don't realize when they turn on that tap and how it works and how it needs to work and why the springs are not – why we don't get it. So I just want to say – there's no question. I'd just like to make a motion for approval, and Mr. Chair, thank you once again to my fellow Commissioners for sitting on the board.

COMMISSIONER HAMILTON: Second.

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: Thank you, Commissioner Garcia. I'm going to look like a second from both of our Commissioners that sit on that board. So we have a second from Commissioner Hamilton and Commissioner Hansen. Commissioner Hansen, did you have something under comment?

COMMISSIONER HANSEN: No. I do agree with Commissioner Hamilton that this is a good mutual agreement for both the City and the County.

CHAIR ROYBAL: Thank you. And thank you once again for sitting on this board. Commissioner Hughes, did you have anything under comments, sir?

COMMISSIONER HUGHES: Thank you, Mr. Chair. No, no comments really, but thanks to everybody who worked on this. It certainly sounds like a very good arrangement.

CHAIR ROYBAL: Thank you, sir. I'm going to go to Attorney Shaffer. He's got his hand up. Sir, would you like to go ahead?

MR. SHAFFER: I would just want to state for the record that the actual action item, what I understand the motion to be would be to authorize the County Manager to finalize and execute this agreement, as was the case with the previous agreement. The agreement that is in front of you this evening is fully formed. In other words, there aren't details that we anticipate at this point trying to work out, but we ask for that authority so that if there are non-significant changes that come about as it goes through the City approval process we have the flexibility to implement those things. So I did want to clarify that for the record. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you, Attorney Shaffer. Those are very important items because small issues like that can hang things up. So I'm going to go to each Commissioner and make sure that they're okay with that. Commissioner Hansen.

COMMISSIONER HANSEN: Yes, I understand that this is a request for authorization for the County Manager to finalize and execute this agreement. Thank you.

CHAIR ROYBAL: Thank you. Commissioner Hamilton.

COMMISSIONER HAMILTON: Yes. I understood that as well. Thank you.

CHAIR ROYBAL: Commissioner Garcia.

COMMISSIONER GARCIA: Yes, sir. Thank you, Mr. Chair.

SFC CLERK RECORDED 12/10/2020

CHAIR ROYBAL: Commissioner Hughes.

COMMISSIONER HUGHES: Yes. That's the understanding and it sounds good.

CHAIR ROYBAL: And a yes from Commissioner Roybal. I understand that. I think there is going to be minor details that come up that our Manager is more than capable of handling. So I'm going to go to a roll call vote.

The motion passed by unanimous [5-0] roll call vote.

3. F. Request Approval of Letter of Support for Joint City of Santa Fe and Santa Fe County Return Flow Pipeline

MR. DUPUIS: Thank you, Mr. Chair. This last item expresses the County's support to continue to explore a joint venture with the City of Santa Fe of a return flow pipeline project. The details of any such joint venture would have to be worked out as the letter makes very clear. The County's partnership is predicated on a thorough environmental impact study, a comparison of alternative strategies and garnering of public support. These all three are very critical and that includes working with the City to study the environmental impacts of the lower Santa Fe River and to conduct a public process to understand the community concern, and then develop any potential solutions together.

This includes a commitment to evaluating science-based target flows on the lower Santa Fe River to help mitigate the objective impacts at the heart of many community concerns. As it currently stands the return flow pipeline could provide the County with up to 300 acre-feet of additional supply. This supply, when utilized appropriately is drought resistant and could be used to supply the Eldorado Area Water and Sanitation District under the replacement water delivery agreement. And as previously indicated, supplying substantial amounts of water to the Eldorado Area Water and Sanitation District for its own use has the potential to recharge the aquifer beneath Eldorado and surrounding aquifers via high transmissivity pathways.

With that I stand for any questions.

COMMISSIONER GARCIA: Mr. Chair.

CHAIR ROYBAL: Do we have any questions from the Commission?

COMMISSIONER GARCIA: Mr. Chair, I have a quick question is I may.

CHAIR ROYBAL: Go ahead, Commissioner Garcia, and I'm looking for a show of hands if any other Commissioners have questions. Okay, I'm going to go to Commissioner Hughes next.

COMMISSIONER GARCIA: Awesome, Mr. Chair, John. So once again you did talk to Carl Dickens as the president of the La Cienega Valley Association and he's okay with us, me, voting for this letter as into exploring – not approving, exploring – what the pipeline can or may do. Correct?

MR. DUPUIS: Mr. Chair, Commissioner Garcia, that is correct. I spent a little over an hour today walking Mr. Dickens through the intent and as Manager Miller wisely guided us to include all three as a package so it's clear, or helps make clear the regional and bigger picture approach that we're trying to accomplish. So to answer your

SFC CLERK RECORDED 12/10/2020

GB BDD City-County Shared Pool Agreement

Final Audit Report 2021-01-07

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"GB BDD City-County Shared Pool Agreement" History

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Signature Date: 2021-01-07 - 0:06:31 AM GMT - Time Source: server- IP address: 63.232.20.2

Agreement completed.
2021-01-07 - 0:06:31 AM GMT

Date: **February 4, 2021**

To: **Buckman Direct Diversion Board**

From: **Nancy R. Long**

Subject: **Election of Chair and Vice Chair**

ITEM AND ISSUE:

Election of Chair and Vice Chair to the Buckman Direct Diversion Board ("Board").

BACKGROUND AND SUMMARY:

The Joint Powers Agreement between the City and the County establishing the Buckman Direct Diversion Board provides that the Board shall annually elect a Chairperson and a Chairperson Pro-Tempore (Vice Chair).

The Rules of Order for the Board regarding the election of the Chair and Vice Chair provide as follows:

> During the February meeting of each year, or as soon thereafter as possible a Chair and Vice-Chair of the Board shall be elected. The Chair position shall rotate between a City and County member each year. The Vice-Chair shall be elected from the opposite entity. Elections shall also be held when required to fill any vacancy that occurs in the Chair or Vice-Chair position.

Since the Chair elected at the last election was a City Councilor, the Chair to be elected at this meeting, shall be a County Commissioner and the Vice-Chair shall be a City Councilor.

ACTION REQUESTED:

It is recommended that the Board elect its officers for the next term.