



# AGENDA

**BUCKMAN DIRECT DIVERSION BOARD**  
**MARCH 23, 2021 AT 5:00 PM**  
**ATTEND VIRTUALLY**



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## **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 in excess of those permitted in the current Public Health Order, the Buckma Direct Diversion Board meeting will be conducted virtually.

**Viewing:** Members of the public may 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://santafenmgov.zoom.us/j/91023070113?pwd=QTJrQjI3M2c3TFpCRjVaRkJYZU53UT09>.

**Passcode: 141109**

Attendees should use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.

**Phone:** To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 910 2307 0113 - Passcode: 141109**

Phone attendees should press \*9 to use the “Raise Hand” function to be recognized by the Chair to speak at the appropriate time.

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **MATTERS FROM THE PUBLIC:**
5. **ACTION ITEMS: DISCUSSION AND ACTION**



# AGENDA

**BUCKMAN DIRECT DIVERSION BOARD**  
**MARCH 23, 2021 AT 5:00 PM**  
**ATTEND VIRTUALLY**



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- a. Request for Approval of an Agreement between the City and the Buckman Direct Diversion (BDD) Board Allowing for the Installation of Energy Efficient Equipment and Improvements at the BDD Project and Providing for the Transfer of such Equipment and Improvements to the BDD Board.(Nancy R. Long, BDD Legal Counsel, [nancy@longkomer.com](mailto:nancy@longkomer.com), 982-8405)
  - b. Request for Limited Approval of a Cost Sharing Agreement for the Lease-Purchase of Energy Efficiency Measures to Reduce the Energy Use of the Buckman Direct Diversion Project.(Nancy R. Long, BDD Legal Counsel, [nancy@longkomer.com](mailto:nancy@longkomer.com), 982-8405)
6. **MATTERS FROM STAFF**
  7. **MATTERS FROM THE BOARD**
  8. **NEXT MEETING: Thursday, April 1, 2021 at 4:00 PM**
  9. **ADJOURN**
  10. **EXECUTIVE SESSION**

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



**Date:** March 23, 2021  
**To:** Buckman Direct Diversion Board  
**From:** Nancy R. Long  
**Subject:** Energy Efficient Equipment Project Agreements

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### **ITEM AND ISSUE:**

Request for the Approval of the Agreement between the City of Santa Fe and the Buckman Direct Diversion Board (“BDDDB”) for the installation of energy performance savings improvements at the Buckman Direct Diversion Project; and

Request for Limited Approval of a Cost Sharing Agreement among the City of Santa Fe, Santa Fe County, Las Campanas Water and Sewer Cooperative and the Club at Las Campanas for the Lease-Purchase of Energy Efficiency Measures to Reduce the Energy Use of the Buckman Direct Diversion Project.

### **BACKGROUND AND SUMMARY:**

The City performed an Investment-Grade Energy Audit (IGA) performed by Yearout Energy Services Company to assess possible energy savings measures at certain City facilities. The IGA also addressed potential energy savings projects at the Buckman Direct Diversion Facility.

The IGA recommended LED lighting facility improvement measures at four BDD facilities: BDD Main, BDD Booster Station #1A, BDD Booster Station #2A and at the BDD Lift Station. The IGA also recommended two solar renewable energy facility improvement measures at BDD Booster Station #1A and at the BDD Lift Station (“BDD Energy Projects”).

The City of Santa Fe will enter into a Lease-Purchase Agreement effective March 29, 2021 with Sterling National Bank to cover the costs of the construction, installation and maintenance of the energy savings projects. The cost for the BDD Energy Projects is contained within the total of the Lease-Purchase Agreement. The savings realized from the Energy Projects will be paid by the BDD partners, to the City toward the loan repayment through regular billing from the BDDDB. The term of the loan is 18 years. The LED lighting and solar arrays will be conveyed to the BDDDB at the time of completion of the projects, subject to all rights of the lender. The lighting and solar arrays will be owned, as with the rest of the BDD Facility, by the City and County, equally.

There are two agreements requiring approval by the BDDDB to effectuate the BDD Energy Projects:

1. Cost Sharing Agreement for the Lease-Purchase of Energy Efficiency Equipment and Improvements to Reduce the Energy Use of the Buckman Direct Diversion Project.



The BDDDB is not a party to the Cost Sharing Agreement but is providing approval for the limited purpose of acknowledging BDD Project staff's obligations as to billing and accounting matters under the Agreement.

2. Energy Efficient Equipment Project at the Buckman Direct Diversion Facility: Agreement Between the City of Santa Fe and the Buckman Direct Diversion Board.

The Energy Efficient Equipment Project Agreement is between the City and the BDDDB to provide for: permission from the BDDDB to install the Energy Projects at the BDD Project; and the transfer of the projects to the BDDDB, subject to the rights of the lender and with all warranties and guarantees as contained in the Energy Performance Contract with the City.

BDD staff, City staff and County staff have worked diligently together and with the Las Campanas entity partners to finalize the agreements over the last several months. The City Council approved the agreements, subject to revisions made by the parties consistent with the intent of the agreements, on March 10, 2021 and the Board of County Commissioners approved the agreements yesterday, March 22, 2021. The Las Campanas entities have also indicated their endorsement.

**ACTION REQUESTED:**

It is recommended that the BDDDB approve both the Cost Sharing Agreement and the Energy Efficient Equipment Agreement with the City; and to allow for any revisions consistent with the terms and intent of the agreements as the agreements are finalized by all parties.



**ENERGY EFFICIENT EQUIPMENT PROJECT  
AT THE BUCKMAN DIRECT DIVERSION FACILITY**

**AGREEMENT BETWEEN THE CITY OF SANTA FE  
AND THE BUCKMAN DIRECT DIVERSION BOARD**

This Agreement (“Agreement”) between the City of Santa Fe (“City”) and the Buckman Direct Diversion Board (“BDDDB”) shall be effective as of the date of the full execution of this Agreement.

**RECITALS**

A. The City procured an Investment-Grade Energy Audit (“IGA”) performed by Yearout Energy Services Company to evaluate the Buckman Direct Diversion Facility (“BDD Facility”) along with its City facilities for energy savings improvements. The IGA recommended interior LED lighting retrofits and solar projects (“BDD Energy Projects”) at BDD Facility locations as returning energy savings within the timeframe parameters of the IGA.

B. The BDD Energy Projects include LED Lighting at BDD Main, Booster Station #1A, Booster Station #2A and the Buckman Lift Station (“LED Lighting”); installation of two (2) solar arrays: a 739.2 kW ground mount solar array at Booster Station #1A and a 278.08 kW ground mount solar array at the Buckman Lift Station (“Solar Projects”) all as described in the IGA.

C. The City and Sterling National Bank (“Lessor”) will enter into that certain Lease-Purchase Agreement dated March 29, 2021 (“Lease-Purchase Agreement”) to finance the design, acquisition, construction, permitting, and installation of the energy conservation measures recommended by the IGA. The Lease-Purchase Agreement will cover the installation of the BDD Energy Projects and the City, as borrower and lessee under the Lease-Purchase Agreement, is the sole obligor under the Lease-Purchase Agreement. The City, Santa Fe County (“County”), Las Campanas Water and Sewer Cooperative (“Cooperative”) and/or the Club at Las Campanas (“Club”) have entered, or will enter, into a separate cost sharing agreement to pay for the cost of the BDD Energy Projects out of utility cost savings.

D. Under the Lease-Purchase Agreement, the City will take title to the BDD Energy Projects upon installation. The City and BDDDB wish to transfer title of the BDD Energy Projects to the BDDDB once the Energy Projects are installed, subject to the conditions specified in this Agreement.

E. The City will also enter into that certain Professional Services Contract for Energy Performance Contracting (“EPC”) with Yearout Energy Services Company (“EPC Contractor”) for construction, installation, and other services related to the BDD Energy Projects and other projects at City facilities.

F. The City and the County each own an undivided 50% interest in the facilities comprising the Buckman Direct Diversion Project (“BDD Project”), (excluding Las Campanas Separate Facilities), as described in the *Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion* (“JPA”), as amended, and the

*Facility Operations and Procedures Agreement for the Buckman Direct Diversion Project*, as amended. In accordance with the JPA, the BDD Energy Projects will be appurtenant to and a part of the BDD Facility, which the City and County jointly own.

G. The permits (rights-of-way) for the BDD Facility are held by the BDDDB with the United States Forest Service (“USFS”) and with the Bureau of Land Management. The Solar Projects will require new permits to be issued by the USFS with the BDDDB’s consent and cooperation.

H. The parties wish to establish the terms and conditions under which the BDDDB will agree to allow for the installation of the BDD Energy Projects at the BDD Facility and for the transfer of the BDD Energy Projects to the BDDDB.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The forgoing Recitals are incorporated into and made a part of this Agreement by reference.

2. Consent to Install BDDDB Energy Projects. The BDDDB agrees to allow the City and the EPC Contractor to install the BDDDB Energy Projects at the BDD Facility and to obtain the necessary Special Use Permits (“SUPs”) from the USFS for the installation of the Solar Projects at the BDD Facility. The SUPs shall be issued in the BDDDB’s name. The BDDDB shall cooperate as requested or required in obtaining the SUPs.

3. Solar Projects. The Solar Projects to be installed at the BDD Facility are a 739.2 KWdc Utility-Interactive Photovoltaic System at Booster Station #1A and a 278.08 kWdc Utility-Interactive Photovoltaic System at the Buckman Lift Station as depicted and described on the Site Plans for each, attached as Exhibit A-1 (Booster Station #1A) and Exhibit A-2 (Buckman Lift Station).

4. Transfer of Title and Maintenance of Energy Projects. Upon the vesting of title in the City to each Energy Project, the City agrees to transfer title to the Energy Project to the BDDDB subject to Lessor’s security interest and all rights and remedies of Lessor included in the Lease-Purchase Agreement. The City and the BDDDB agree to execute any and all necessary documents to effectuate the transfer subject to Lessor’s rights and interests. To the extent possible, the City shall transfer all warranties and guarantees of the Energy Project, other than the Savings Guarantee, which shall remain with the City, as fiscal agent for the BDD Facility. The EPC Contractor (or its subcontractor) shall perform all services as described in the EPC for the BDD Energy Projects, regardless of the transfer of title.

5. Good Faith. The parties shall cooperate in good faith to assure that the Agreement objectives are obtained.

6. Effective Date. This Agreement shall be effective on the date it has been fully executed by each party or the contingency in Section 7 is met, whichever is later.

7. Cost Sharing Agreement Contingency. This Agreement is contingent upon the BDD Partners executing a Cost Sharing Agreement establishing, at a minimum, the following with respect to the BDD Energy Projects: (1) operation, maintenance, repair, and replacement responsibilities (OMR&R); (2) cost sharing of OMR&R; and (3) cost sharing of the financing of the BDD Energy Projects.

8. Miscellaneous

A. No Waiver. Neither the City nor the BDDDB waive any limitation of liability that may apply under state law, including but not necessarily limited to the Bateman Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 and the Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. Article IX, Sections 10 and 14, and NMSA 1978, Section 37-1-23.

B. Scope of Agreement. This Agreement constitutes the entire agreement and understanding between the City and the BDDDB and supersedes any and all prior agreements, and understandings, oral or written, relating to the subject matter hereof.

C. Continuing Cooperation Between the Parties. The City and the BDDDB shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents required for the installation and operation of the Energy Projects as, described in this Agreement and shall otherwise cooperate with one another as is required to effectuate the purposes of this Agreement.

D. No Third-Party Beneficiaries. The parties do not intend by this Agreement to confer any benefit on any person or entity that is not a party to this Agreement. Only the City and BDDDB may enforce this Agreement.

E. Neutral Construction. Both parties fairly and fully negotiated the terms of this Agreement and both were represented by counsel. If a court deems any provision of this Agreement ambiguous, such ambiguity shall not be construed against either party and shall be construed neutrally so as to carry out the intent of the parties.

F. Assignment. This Agreement is not assignable by either party.

G. Captions. Section headings in this Agreement are used solely for convenience and shall be disregarded in the construction of this Agreement.

H. Amendment. This Agreement shall not be amended except by an instrument in writing executed by the parties.

I. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of New Mexico. If a conflict arises between the parties concerning this Agreement, the First Judicial State Court District, Santa Fe County, shall be the exclusive venue.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth below.

**CITY OF SANTA FE**

\_\_\_\_\_  
Alan Webber, Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Kristine Bustos-Mihelcic,  
City of Santa Fe Clerk

\_\_\_\_\_  
Date

**APPROVED:**

\_\_\_\_\_  
Mary McCoy, City Finance Director

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Erin K. McSherry, City Attorney

\_\_\_\_\_  
Date

**BUCKMAN DIRECT DIVERSION BOARD**

\_\_\_\_\_  
Anna Hansen, BDDDB Chair

\_\_\_\_\_  
Date

**ATTEST**

\_\_\_\_\_  
Katherine E. Clark, County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

\_\_\_\_\_  
Nancy R. Long, BDDDB Counsel

\_\_\_\_\_  
Date

**BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY'S APPROVAL OF ENCUMBRANCE OF BDD ASSETS PURSUANT TO PARAGRAPH 8 OF THE JOINT POWERS AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE COUNTY OF SANTA FE GOVERNING THE BUCKMAN DIRECT DIVERSION PROJECT**

\_\_\_\_\_  
Henry P. Roybal, Chair

\_\_\_\_\_  
Date

**ATTEST:**

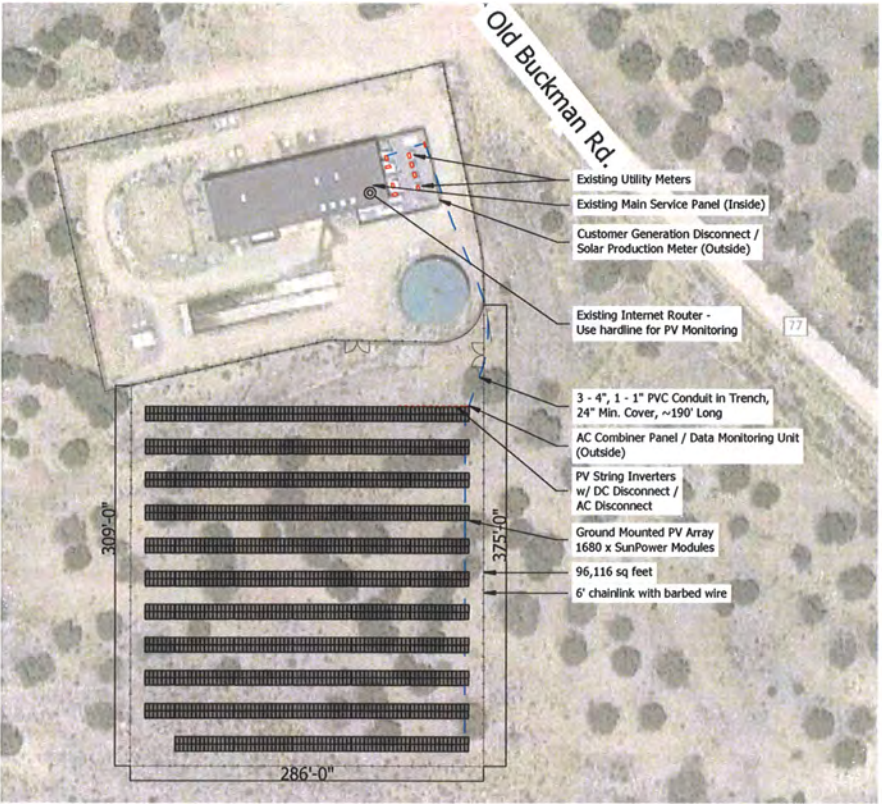
\_\_\_\_\_  
Katherine E. Clark, County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

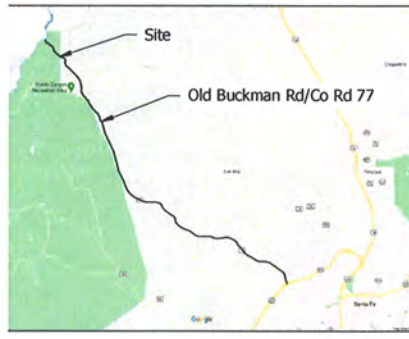
1 Site Plan  
1" = 75'



- 1 Special Access Instructions: NO ACCESS ISSUES
- 2 Exact location of equipment and conduit is subject to minor variations during installation.
- 3 Estimated annual energy production is based on existing site conditions and this array layout. Annual variations in weather and module degradation will affect production.
- 4 Maximum PV Array Height: ~9'-0" A.F.G.

Inverters AC Capacity: 11 x 62500 W = 687.50 kWac  
 Array STC Watts: 1680 x 440 W = 739.20 kWdc  
 Combined Fault Current: 4840 Apk, 803 Arms; 26 ms

2 Vicinity Map  
Scale: CUSTOM



3209 Richards Lane  
 Santa Fe, NM 87507  
 (505) 424-1112  
 NM Electrical Contractor's License #82573

Job 4232

**Booster Station 1A**  
 Utility-Interactive Photovoltaic System  
 System Size = 739.2 kWdc  
 Buckman Road  
 Santa Fe NM 87501

DESIGN SUMMARY

Number of Modules	1,680
Module Tilt Angle	30°
Module Azimuth	180°
Average Annual Shading	2.00%
Year 1 Production Estimate	1432902 kWh

DESIGN APPROVAL  
 I approve of this design showing all equipment and locations, and estimated production. Any change to this design may result in delays and additional costs.

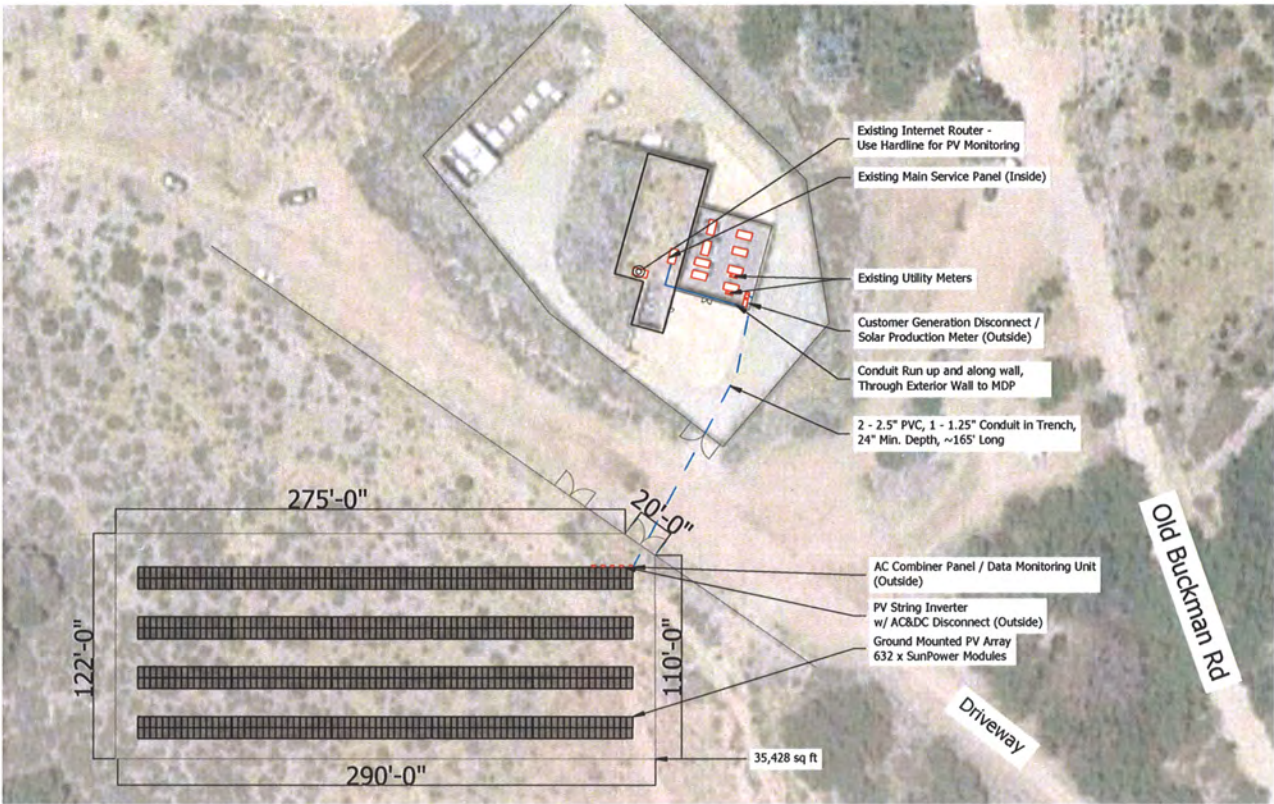
Signature:  
 Date:

DESIGNER:  
 David Dashiells

REV	DESCRIPTION	DATE
0	Initial Release	5/20/20

**SITE PLAN  
 PV100**

1 Site Plan  
1" = 50'



- 1 Special Access Instructions: NO ACCESS ISSUES
- 2 Exact location of equipment and conduit is subject to minor variations during installation.
- 3 Estimated annual energy production is based on existing site conditions and this array layout. Annual variations in weather and module degradation will affect production.
- 4 Maximum PV Array Height: ~9'-0" A.F.G

Inverters AC Capacity: 4 x 62500 W = 250.00 kWac  
 Array STC Watts: 632 x 440 W = 278.08 kWdc  
 Combined Fault Current: 1760 Apk, 292 Arms; 26 ms



3209 Richards Lane  
 Santa Fe, NM 87507  
 (505) 424-1112  
 NM Electrical Contractor's License #82573

Job 4233

**Buckman Lift Station**  
 Utility-Interactive Photovoltaic System  
 System Size = 278.08kWdc  
 Buckman Road  
 Santa Fe NM 87501

DESIGN SUMMARY

Number of Modules	632
Module Tilt Angle	30°
Module Azimuth	180°
Average Annual Shading	2.25%
Year 1 Production Estimate	537899 kWh

DESIGN APPROVAL

I approve of this design showing all equipment and locations, and estimated production. Any change to this design may result in delays and additional costs.

Signature:

Date:

DESIGNER:  
 David Dashiells

REV	DESCRIPTION	DATE
0	Initial Release	5/15/20

**SITE PLAN  
 PV100**

**COST SHARING AGREEMENT FOR THE LEASE-PURCHASE OF ENERGY  
EFFICIENT EQUIPMENT AND IMPROVEMENTS TO REDUCE THE ENERGY USE  
OF THE BUCKMAN DIRECT DIVERSION PROJECT**

This Cost Sharing Agreement (“Cost Sharing Agreement” or “Agreement”) is entered into by and between the City of Santa Fe (“City”), Santa Fe County (“County”), Las Campanas Water and Sewer Cooperative (“Cooperative”), and the Club at Las Campanas (“Club”) (each a “Party” and, collectively, the “Parties”), effective as of March 29, 2021. The Buckman Direct Diversion Board (BDD Board) is a signatory to this Agreement solely to acknowledge its and BDD Project staff’s obligations under this Agreement.

**RECITALS**

- A. This Agreement is the Cost Sharing Agreement authorized by County Resolution No. 2021-022 (the “Resolution”).
- B. Terms defined in the Resolution have the same meaning in this Agreement.
- C. The City and Sterling National Bank are scheduled to enter into the Lease-Purchase Agreement, effective as of March 29, 2021.
- D. The purposes of this Agreement are to establish the terms and conditions under which the Parties will share benefits and expenses associated with the BDD Energy Conservation Measures. Specifically, among other things, this Agreement establishes responsibilities for the lease payments under the Lease-Purchase Agreement, operation, maintenance, replacement, and repair (OMR&R), and verification of the BDD Utility Cost Savings.
- E. Subject to the right to prepay, the Lease-Purchase Agreement requires the principal amount financed to be repaid over 18 years in amortized, monthly lease payments of principal plus interest at the rate of 2.145% per year on the outstanding principal amount. The cost for the BDD Energy Conservation Measures is contained within the total of the City’s Lease-Purchase Agreement in the amount of \$17,244,894.
- F. The estimated lease repayment schedule under the Lease-Purchase Agreement attributable to the Solar FIMs and LED FIMs is attached to this Agreement as Schedule 1.
- G. In accordance with the Lease-Purchase Agreement, title to the BDD Energy Conservation Measures will vest in the City upon completion of the installation of each BDD Conservation Measure and the City will immediately convey the BDD Energy Conservation Measures to the BDD Board, subject to the security interest, rights and remedies of Sterling National Bank under the Lease-Purchase Agreement, and the Parties have agreed that the BDD Energy Conservation Measures will be a part of the BDD Project that the City and County jointly own.
- H. The Parties reserve all rights with regard to the allocation of future capital costs for the BDD Project.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. Incorporation of Recitals; Updates to Schedule 1.

1. The forgoing Recitals and those set forth in the Resolution are incorporated into and made a part of this Agreement by reference.
2. Each time title to a BDD Energy Conservation Measure is transferred by the City to the BDD Board, the Parties agree to update Schedule 1 so that it only reflects lease payments due under the Lease Purchase Agreement attributable to BDD Energy Conservation Measures beginning after title has been transferred to the BDD Board.

B. Sharing of Benefits, Monthly Invoicing, OMR&R Responsibilities, and Lease Payments for BDD FIMs During the Term of the Lease-Purchase Agreement.

1. After the transfer of title to the BDD Energy Conservation Measures to the BDD Board and for the remaining term of the Lease-Purchase Agreement, the Parties shall share all benefits (e.g., purchase of renewable energy credits, the sale of excess generation of electricity, and reduced energy purchases) and costs (e.g., unused facilities charges) from PNM attributable to the BDD Energy Conservation Measures at a specific facility in the billing period based upon their proportionate water usage at the facility in the billing period.

2. To the extent funds are available in the BDD Special Revenue Fund, BDD is responsible to remit, by November 1 and May 1 of each year, to the City one half of the corresponding year's annual lease payment for the BDD Energy Efficient Equipment according to Schedule 1.

3. Beginning with the month after title to a BDD Energy Conservation Measure has been transferred by the City to the BDD Board and each month thereafter until such time as the BDD Special Revenue Fund has on deposit sufficient funds to make all remaining lease payments due under the Lease-Purchase Agreement attributable to the BDD Energy Conservation Measures title to which has been transferred to the BDD Board, each Party shall be invoiced by BDD Project Staff for a portion of the annual lease payment proportional to their water usage according to the following formula:  $1/12$  of the annual lease payment according to Schedule 1 multiplied by the percentage of water used in the period. Parties will also be invoiced for the portion of the actual utility costs proportional to their water use in the facility for the period.

4. Within thirty (30) days of receiving the invoice for the month, the City, County, Club, and Cooperative shall remit to the BDD their payments due (if any).

5. The BDD Board shall cause to be created the BDD Special Revenue Fund. All funds received for lease purchase payments under the Lease-Purchase Agreement shall be credited to the BDD Special Revenue Fund and disbursements to the City for lease payments under the Lease-Purchase Agreement shall be made solely from the BDD Special Revenue Fund. BDD staff shall separately account for each Party's contributions to the BDD Special Revenue Fund.

6. After title is transferred to the BDD Board and during the term of the Lease-Purchase Agreement, the BDD Board shall be responsible for the OMR&R of the BDD Energy Conservation Measures, the costs of which shall be allocated among the Parties as follows:

a. OMR&R costs for the LED FIMs shall be allocated among the Parties pursuant to the Major Repair and Replacement Fund Policy and FOPA.

b. OMR&R for the Solar FIMs will be allocated among the Parties based upon their water usage; provided, however, that, in order to accumulate funds for major repairs and replacements and ensure that the costs of major repairs and replacements are apportioned in accordance with average water usage rather than water usage in a single year, the BDD Board shall establish a Major Repair and Replacement Fund and Policy for the Solar FIMs into which the Parties shall, if required by the policy, contribute each fiscal year based upon their proportionate water usage.

7. The City shall be solely responsible for timely making the payments due under the Lease-Purchase Agreement and EPC. Except for payments to the BDD Special Revenue Fund as provided in this Agreement, the County, Club, and Cooperative shall have no obligation to reimburse the City for amounts due under the Lease-Purchase Agreement or EPC.

C. Annual Measurement and Verification and True Up to BDD Utility Cost Savings; Limitation on Contributions from Club and Cooperative; and Reimbursement of City for Lease Purchase Payments Made from Other Funds.

1. On the anniversary from the date of substantial completion of the EPC project, the Contractor shall prepare an Annual Measurement and Verification (M&V) report that substantiates the performance of the implemented BDD Energy Conservation Measures. The Parties shall conduct a true-up based on the results of this annual M&V report in accordance with this section.

a. The Contractor, in accordance with the Measurement and Verification provisions in the IGA (Exhibit C) and the EPC (Exhibit D), will calculate the BDD Utility Cost Savings attributable to the implemented BDD Energy Conservation Measures during the true-up period. If the BDD Utility Cost Savings attributable to the implemented BDD Energy Conservation Measures was greater than or equal to that projected in Schedule 1, then no true up is required.

b. If the BDD Utility Cost Savings attributable to the implemented BDD Energy Conservation Measures was less than projected in Schedule 1, then the Contractor, in accordance with terms of the EPC, will determine the cause of the reduction of savings. If, according to the terms of the EPC, the cause is not exempted and requires a guaranteed payment from the Contractor, then the City shall remit that guaranteed payment to the BDDB for credit to the BDD Special Revenue Fund. If the cause is exempted, according to the terms of the EPC, due to an adjustment to the baseline use, weather, or other exempted cause, then the City and the Contractor will owe no true-up payment to the BDD.

c. If the BDD Utility Cost Savings attributable to the implemented BDD Energy Conservation Measures was less than the contributions made by the Parties to the BDD Special Revenue Fund during the true-up period, the following terms shall apply. Each Party's subsequent payments to the BDD Special Revenue Fund pursuant to Section B(3) of this Agreement shall be reduced by their proportionate share of the shortfall during the true-up period;

provided, however, that each Party may, in its sole and absolute discretion, make contributions to the BDD Special Revenue Fund from funds other than BDD Utility Cost Savings legally available for such payments.

d. If the BDD Utility Cost Savings attributable to the implemented BDD Energy Conservation Measures was greater than the contributions made by the Parties to the BDD Special Revenue Fund during the true-up period, BDD Staff shall invoice the Parties for the excess BDD Utility Cost Savings during the true-up period based upon their proportionate water usage during the true-up period. Within thirty (30) days of receiving the invoice for the month, the City, County, Club, and Cooperative shall remit to the BDD their payments due (if any).

2. The maximum amount payable by the Cooperative and the Club shall cumulatively be limited to ten percent (10%) of the net present value of all the lease payments due under the Lease-Purchase Agreement, using the arbitrage yield applicable to the Lease-Purchase Agreement for the purposes of I.R.S Form 8038-G as the discount rate in determining the net present value (the "Private Payment Ceiling"). Any amounts in excess of the Private Payment Ceiling from the Cooperative and the Club shall not be payable or collectible hereunder, and the BDD Utility Cost Savings attributable to such excess amounts shall not be allocated to the Cooperative or the Club, but shall instead be allocated to the City and the County in proportion to the respective cumulative amounts paid by the City and the County hereunder, to the date on which the Cooperative and Club's portion of the Lease Payments would exceed Private Payment Ceiling, but for the provisions of this paragraph.

3. Should there be insufficient funds in the BDD Special Revenue Fund to remit to the City a payment under Paragraph B(2) in full when due (a "Short Payment") and should the City nonetheless make the corresponding lease payment due under the Lease-Purchase Agreement, the City shall be entitled to be reimbursed the difference between the amount due and the Short Payment from future excess BDD Utility Cost Savings (if any) remitted by the Parties to the BDD Special Revenue Fund pursuant to Paragraph C(1)(d).

D. Additional Credits to the BDD Special Revenue Fund. The following additional amounts shall be credited to the BDD Special Revenue Fund for lease payments under the Lease-Purchase Agreement, with Party contributions based upon a rough estimate of each Parties' average annual water use.

1. Subject to the availability of sufficient and specific appropriations for that purpose, the County shall contribute \$10,000 to the BDD Special Revenue Fund by June 30, 2021.

2. Subject to the availability of sufficient and specific appropriations for that purpose, the City shall contribute \$30,833 to the BDD Special Revenue Fund by June 30, 2021.

3. The Club shall contribute \$1,666 to the BDD Special Revenue Fund by June 30 2021.

4. Rebates received from PNM attributable to the LED FIMs, which shall be used in full to make payments to the City pursuant to Paragraph B(2) before any contributions from the Parties are used for such payments.

E. Parties Obligations After Expiration of the Lease-Purchase Agreement. After expiration of the Lease-Purchase Agreement, the BDD Board shall be responsible for the OMR&R of all BDD Energy Conservation Measures and net utility charges and OMR&R costs for all BDD Energy Conservation Measures shall be allocated among the Parties according to Paragraph B(6);

provided, however, that any moneys the City receives during the remaining term of the Performance Guarantee Period under the EPC attributable to the BDD Energy Conservation Measures shall be remitted to the BDD Board.

F. Special Limited Obligation. Notwithstanding any other provision of this Agreement to the contrary and in accordance with Section 8 of the Resolution, the County's, Club's, and Cooperative's obligations to make contributions to the BDD Special Revenue Fund under this Agreement are limited to their share of BDD Utility Cost Savings calculated in accordance with this Agreement.

G. Good Faith. The Parties shall work with BDD Project staff in good faith to assure that all calculations are completed properly and timely in accordance with this Agreement.

H. Effective Date. This Agreement shall be effective as of March 29, 2021.

I. Miscellaneous.

1. No Waiver. Neither the City nor the County waive any limitation of liability that may apply under state law, including but not necessarily limited to the Bateman Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 and the Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. Article IX, Sections 10 and 14, and NMSA 1978, Section 37-1-23.

2. Scope of Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any and all prior agreements, and understandings, oral or written, relating to the subject matter hereof.

3. No Third-Party Beneficiaries. The Parties do not intend this Agreement to confer any benefit on any person or entity that is not a party to this Agreement. Only the Parties may enforce this Agreement.

4. Neutral Construction. The Parties fairly and fully negotiated the terms of this Agreement and all were represented by counsel. If a court deems any provision of this Agreement ambiguous, such ambiguity shall not be construed against either Party but, instead, shall be construed neutrally so as to carry out the intent of the Parties.

5. Assignment. This Agreement is not assignable by any Party other than as part of a conveyance of a portion of a Party's capacity to another Party pursuant to Paragraph 7 of the FOPA.

6. Captions. Section headings in this Agreement are used solely for convenience and shall be disregarded in the construction of this Agreement.

7. Amendment. This Agreement shall not be amended except by an instrument in writing executed by the Parties.

8. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of New Mexico. If a conflict arises between the Parties concerning this Agreement, the First

Judicial State Court District, Santa Fe County, shall be the exclusive venue. Prior to the institute of a lawsuit, the Parties agree to attempt to mediate the dispute using a mutually acceptable mediator.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set forth below.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,  
SIGNATURE PAGES FOLLOW]**

**CITY OF SANTA FE**

\_\_\_\_\_  
Alan Webber, Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Kristine Bustos-Mihelcic,  
City of Santa Fe Clerk

\_\_\_\_\_  
Date

**APPROVED:**

\_\_\_\_\_  
Mary McCoy, City Finance Director

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Erin K. McSherry, City Attorney

\_\_\_\_\_  
Date

DRAFT

**SANTA FE COUNTY**

\_\_\_\_\_  
Katherine Miller, County Manager

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Katherine E. Clark, County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

\_\_\_\_\_  
Date

**FINANCE DIVISION APPROVAL**

\_\_\_\_\_  
Yvonne S. Herrera, Finance Director

\_\_\_\_\_  
Date

DRAFT

**BUCKMAN DIRECT DIVERSION BOARD**

\_\_\_\_\_  
Anna Hansen, BDDDB Chair

\_\_\_\_\_  
Date

**ATTEST**

\_\_\_\_\_  
Katherine E. Clark, County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

\_\_\_\_\_  
Nancy R. Long, BDDDB Counsel

\_\_\_\_\_  
Date

**LAS CAMPANAS WATER AND SEWER COOPERATIVE**

\_\_\_\_\_  
[Name of Authorized Signatory]

\_\_\_\_\_  
Date

**THE CLUB AT LAS CAMPANAS**

\_\_\_\_\_  
[Name of Authorized Signatory]

\_\_\_\_\_  
Date

DRAFT

# Estimated BDD Cash Flow for Energy Improvements

City of Santa Fe

February 10, 2021

## Estimated Cash Flow

Period	Estimated Net Savings	Annual Lease-Purchase Payment	Estimated Savings in Excess of Lease-Purchase Payments	Estimated Cumulative Savings in Excess of Lease-Purchase Payments
Year 1	\$183,414	(\$180,214)	\$3,200	\$3,200
Year 2	\$190,597	(\$187,150)	\$3,447	\$6,647
Year 3	\$198,044	(\$194,340)	\$3,704	\$10,351
Year 4	\$224,070	(\$221,769)	\$2,301	\$12,652
Year 5	\$232,531	(\$229,995)	\$2,536	\$15,188
Year 6	\$241,299	(\$238,516)	\$2,782	\$17,971
Year 7	\$250,383	(\$247,344)	\$3,039	\$21,009
Year 8	\$259,794	(\$256,489)	\$3,306	\$24,315
Year 9	\$269,545	(\$265,962)	\$3,584	\$27,899
Year 10	\$279,649	(\$275,775)	\$3,874	\$31,772
Year 11	\$290,116	(\$285,941)	\$4,176	\$35,948
Year 12	\$300,962	(\$296,472)	\$4,490	\$40,438
Year 13	\$312,199	(\$307,381)	\$4,818	\$45,256
Year 14	\$323,841	(\$318,682)	\$5,159	\$50,415
Year 15	\$335,904	(\$330,389)	\$5,515	\$55,930
Year 16	\$348,402	(\$342,517)	\$5,885	\$61,815
Year 17	\$361,350	(\$355,080)	\$6,270	\$68,086
Year 18	\$374,767	(\$202,633)	\$172,133	\$240,219
Year 19	\$388,667	\$0	\$388,667	\$628,886
Year 20	\$403,069	\$0	\$403,069	\$1,031,954
Total	\$5,768,601	(\$4,736,647)	\$1,031,954	-----

Total payment of \$4,736,647 pays \$892,722 in interest and \$3,843,925 in principal

According to the Cost Sharing Agreement, BDD partners will make proportional lease payments based on actual water use in each period.