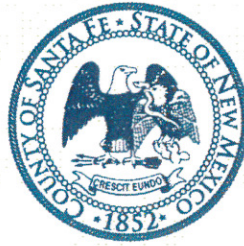


Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *November 28, 2012*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager* *KL 12.4.12*

ITEM AND ISSUE: *BCC Meeting December 11, 2012*

REQUEST APPROVAL OF AMENDMENT NO. 1 TO A BUILDING LEASE AGREEMENT BETWEEN SANTA FE COUNTY AND BURRO ALLEY, LLC FOR OFFICE SPACE LOCATED AT 142 WEST PALACE AVENUE, SANTA FE, NEW MEXICO TO EXTEND THE TERM FOR AN ADDITIONAL 12 MONTHS AND TO INCLUDE JANITORIAL SERVICES IN THE AMOUNT OF \$252,321. (PUBLIC WORKS)

BACKGROUND AND SUMMARY:

Santa Fe County entered into an agreement with Bokum Burro Alley to lease 13,474 square feet of office space located at 142 West Palace Avenue, Santa Fe, NM, in February of 2011. The office space is occupied by the Finance Department, the Procurement Division, the Information Technology Division, and the Teen Court Program. The current monthly lease payment is \$18,526.75 per month. The lease allows for 2 – 1 year extensions. On December 13, 2011, the Board of County Commissioners approved the first of the two 1-year extensions which extended the lease through February of 2013. Amendment No. 1 will extend the agreement from March 1, 2013 through February 28, 2014.

Amendment No. 1 also includes janitorial services that are currently being provided by the Building Services staff. The Building Services Department currently provides cleaning services and supplies for 259,884 square feet of all jurisdictional facilities at a cost of \$3.02 per square foot.

ACTION REQUESTED:

The Public Works Department is requesting approval of Amendment No. 1 to the building lease agreement between Bokum Burro Alley, LLC and Santa Fe County for a total increase of \$222,321 for March 1, 2013 through February 28, 2014 for the lease of the space and \$30,000 for janitorial services during that period for a total cost of \$252,321.

**AMENDMENT NO. 1
TO LEASE AGREEMENT
BETWEEN SANTA FE COUNTY AND
BOKUM BURRO ALLEY, LLC**

THIS AMENDMENT is made and entered into as of this _____ day of _____, 2012, by and between **Santa Fe County**, a political subdivision of the State of New Mexico, hereinafter referred to as the "Lessee," and **Bokum Burro Alley, LLC**, a New Mexico limited liability company, located at 142 West Palace Avenue, Suite 300, Santa Fe, New Mexico, hereinafter referred to as the "Lessor."

WHEREAS, Lease Agreement No. 2011-0190-CSD/PL was made and entered into on February 15, 2011;

WHEREAS, pursuant to Paragraph 4 of the Agreement the initial term of the Lease Agreement was one (1) year subject to extension in one year increments;

WHEREAS, by letter of notice dated December 13, 2011, the Lessee notified the Lessor of the Lessee's election to extend the term of the Lease Agreement to February 28, 2013;

WHEREAS, pursuant to Paragraph 4 of the Lease Agreement, the County wishes to exercise its second option to extend the term of the Lease Agreement and amend certain provisions of the Lease as stated herein;

WHEREAS, this Amendment No. 1 will serve as the County's notice to the Lessor of the second option to extend the term of the Lease Agreement to February 28, 2014 and to amend certain provisions of the Lease Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Article 1, **Conditions of Lease**, is amended by deleting subparagraph "d." in its entirety and replace it with:

d. Lessor shall provide janitorial services for the lease property as more specifically provided in Paragraph 6.b herein (Condition of Property, Maintenance and Repairs).

2. Article 2, **Compensation**, is amended by adding a subparagraph "A" that reads as follows:

A. Pursuant to the Lessee's exercise of its second extension option and certain amendments to this Lease Agreement as stated herein, Lessee agrees to pay Lessor annual rent in the amount of \$16.50 per square foot per month, and \$2,500 per month for janitorial services. Lessee's total monthly rent from March 1, 2013 to February 28, 2014 shall be \$21,026.75 due and payable on the first day of each month.

3. Article 6, **Condition of Property, Maintenance and Repairs**, is amended by inserting a new subparagraph “b” (re-letter subsequent subparagraph). New subparagraph “b” is to read as follows:

b. Lessor shall provide janitorial and maintenance services for the lease property as follows:

1. Clean all floors of the facility (1st, 2nd and 3rd floors) nightly including weekends and holidays.
2. Vacuum and clean the floors nightly, weekends and holidays.
3. Clean and mop all restrooms.
4. Dispose of all trash.
5. Clean all interior windows.
6. Dust offices.
7. Clean and mop the elevator.
8. Clean interior and exterior glass doors to the facility.
9. Sweep sidewalks outside surrounding the facility
10. Ensure that the facility is secured and locked.
11. Clean air ducts as needed.
12. In the winter months, sweep and remove snow from the sidewalks surrounding the facility.
13. In the winter months, remove snow and apply salt to all sidewalks surrounding the facility.
14. Maintain and ensure that the parking spaces provided for in Article 1.c of this Lease Agreement are available for Lessee’s use, including keeping all mechanical access controls in working condition, clearing the parking spaces of debris and weeds, and snow removal during the winter months.

4. Article 6, **Condition of Property, Maintenance and Repairs**, is amended by deleting the original subparagraph “6.c.” regarding snow removal as it is now provided for in Article 6.b.12 and 13 above.

5. All other provisions of Lease Agreement No. 2011-0190-CSD/PL not specifically amended by this Amendment No. 1 remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY

Liz Stefanics, Chairperson
Board of County Commissioners

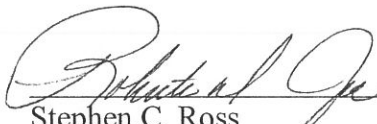
Date

ATTEST:

Valerie Espinoza
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

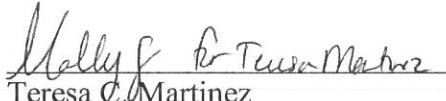


Stephen C. Ross
Santa Fe County Attorney

November 28, 2012

Date

FINANCE DEPARTMENT APPROVAL:



Teresa C. Martinez
Santa Fe County Finance Director

11-28-12

Date

BOKUM BURRO ALLEY, LLC:



Richard Montoya, President

11-28-12

Date

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *December 3, 2012*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director* *KL 12/3/12*

VIA: *Katherine Miller, County Manager* *KM 12/4/12*

ITEM AND ISSUE: *BCC Meeting December 11, 2012*

APPROVAL OF AGREEMENT BETWEEN SANTA FE COUNTY AND THE TURQUOISE TRAIL MASTER ASSOCIATION (TTMA) A NEW MEXICO NON-PROFIT CORPORATION, PROVIDING FOR SANTA FE COUNTY'S ACCEPTANCE FO TTMA'S CONVEYANCE OF A LIFT STATION AND WASTEWATER INFRASTRUCTURE.

The Turquoise Trail Master Association (TTMA) is a non-profit corporation that, among other things, owns, operates, and maintains a wastewater collection system that serves the properties within its service area. Its service area is located around the junction of I-25, NM-14, and NM-599, as shown on Attachment A. The TTMA service area is outside the presumptive City limits as defined by the 2008 Settlement Agreement and Mutual Release of Claims, also known as the Annexation Agreement of 2008.

Currently, TTMA collects the wastewater from its service area and carries it to a TTMA-owned lift station. This lift station in turn pumps the wastewater to the City wastewater treatment plant on Airport Road. TTMA pays the City for wastewater treatment at City rates under the terms of an agreement signed in 2004 between the City and TTMA.

TTMA has long desired to pass ownership and operation of its wastewater system to the County to "get out of the wastewater business," so to speak, and first approached the County in 2008. In 2010, a draft agreement between TTMA and the County was created, but initially, TTMA wanted to sell the system to the County. Over the intervening two years, the two parties negotiated, resulting in the attached agreement in which the system is donated to the County at no cost. The agreement also states that the County will lead the effort to terminate the 2004 City-TTMA agreement mentioned above.

Assuming ownership of the system makes sense for the County for several reasons. First, it creates the opportunity for the County Utilities to generate revenue from the new TTMA customers.

Second, it provides a foundation to service other customers in the area, such as Bisbee Court and the Santa Fe Brewing Company, which are currently not within TTMA's service area. The two potential customers are both very interested in joining the County wastewater utility. The County will also have opportunities for revenue generated from selling the increased volume of treated effluent.

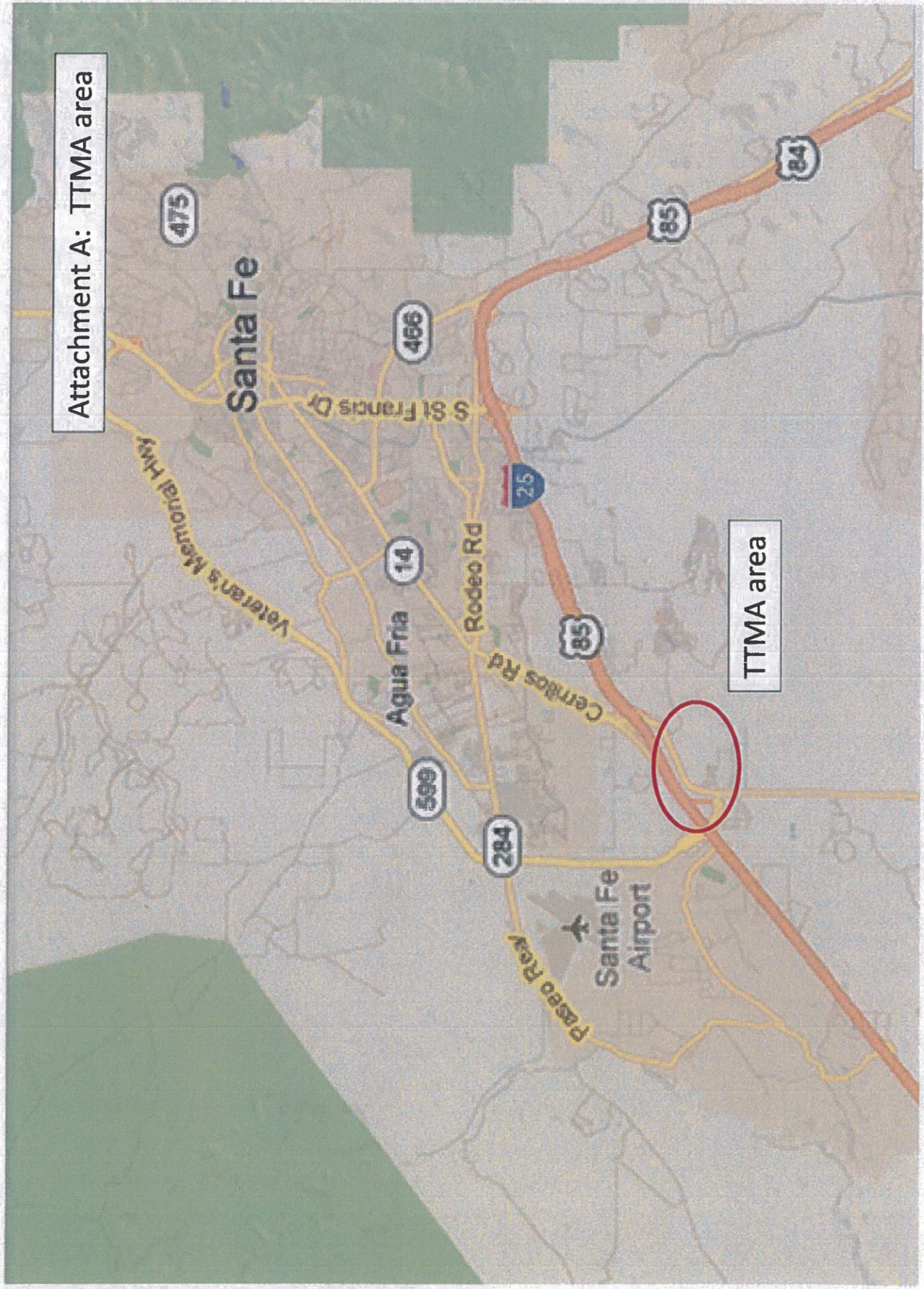
In order to fully exploit the opportunity provided by the TTMA wastewater system, the County must perform two additional steps. First, it must interface with the City to terminate the 2004 City-TTMA wastewater agreement. This process has already begun; discussions with City staff reveal no issue with termination of the agreement. Second, the County must build a short section of pressurized sewer line between the TTMA lift station and the current furthest extent of the County's wastewater system in Valle Vista. This project is already designed and funding is available; execution should take approximately 180 days.

REQUESTED ACTION:

The Board of County Commissioners approve the agreement.

Attachment:
TTMA Area

Attachment A: TTMA area



TTMA area

**AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE TURQUOISE TRAIL MASTER ASSOCIATION
FOR ACCEPTANCE AND CONVEYANCE OF
A WASTEWATER SYSTEM**

THIS AGREEMENT for the conveyance and acquisition of a wastewater system dated this ____ day of _____, 2012, is made and entered into by and between **Santa Fe County**, a political subdivision of the State of New Mexico (hereinafter "County") and the **Turquoise Trail Master Association** (hereinafter "TTMA"), a New Mexico non-profit corporation.

RECITALS

A. WHEREAS, TTMA currently owns, operates, and maintains wastewater infrastructure, including a wastewater lift station, located within Santa Fe County that serves residents of Santa Fe County (hereinafter the "System"). The System is described on Exhibit A, attached hereto and incorporated herein;

B. WHEREAS, TTMA desires to irrevocably and permanently convey the System to the County and the County wishes to acquire the System and continue to operate, maintain and improve the System;

C. WHEREAS, the County has determined that the acceptance of ownership and maintenance of the System is in the public interest, and the acquisition and ownership would allow the County to expand its wastewater collection services to a larger area of County residents as more accurately indicated in Exhibit B, attached hereto and incorporated herein;

D. WHEREAS, the System is outside the City of Santa Fe Presumptive City Limits, as that term is defined in a Settlement Agreement and Mutual Release of Claims between the County and the City of Santa Fe dated May 19, 2008;

E. WHEREAS, pursuant to Final Orders issued in PUC Cases Nos. 2428 and 2588, the City of Santa Fe (hereinafter the "City") is required to provide water and sanitary sewer services to TTMA's customer the Thornburg Amended Master Plan Area, under certain terms and conditions set forth in those orders and stipulations and an Annexation Agreement dated November 4, 2003;

F. WHEREAS, the Thornburg Amended Master Plan Area currently receives water from the City and TTMA's System disposes of wastewater from the Thornburg property to the City's Sewer Treatment Plant, as set forth in the agreement between the City and TTMA dated September 9, 2004 and is pursuant to the September 15, 2003 agreement with the City and requires the City's consent to terminate;

Agreement No. 2011-0102-UT/VO

G. WHEREAS, upon TTMA's conveyance to the County and the County's acceptance of the System, the City will continue to provide water to the Thornburg Master Plan Area until the County is able to provide water, and the County will receive wastewater from the Thornburg Amended Master Plan Area for disposal at the County's wastewater treatment facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the County and TTMA agree as follows:

AGREEMENT

Section I

The System

- A. TTMA owns, operates and maintains the System. The System is comprised of approximately 4,528 feet of 8" and 10" diameter gravity flow mains and 4" service connections; a wastewater lift station equipped with pumps capable of conveying 417 GPM at 178 foot TDH; approximately 9,224 feet of 8" diameter PVC (C-900) wastewater force main; and all appurtenant easements all of which are described on Exhibit A attached hereto.
- B. The current and proposed extended service area of the System is described on Exhibit B attached hereto.

Section II

Acceptance and Conveyance of the System

- A. Conditions precedent to the County's acceptance of the System.

The County shall accept ownership and title to the System and assume the duties set forth in this Agreement upon completion of all the following conditions:

- (i) County shall obtain the consent of the City to terminate the Agreement between the City and TTMA as described in "Exhibit B" to the Third Amended and Restated Declaration of Covenants and Restrictions for the Thornburg Amended Master Plan Area (Lift Station Only) (hereinafter the "Declaration") recorded June 5, 2009 wherein the parties provided for the maintenance and operation of the System, established a Reserve Fund for maintenance of the System, and provided for the City's provision of emergency repairs to the System.
- (ii) The termination of the Agreement referred to in paragraph (i) above shall provide for the release of the Reserve Fund to TTMA.
- (iii) Under the terms of the Declaration TTMA shall duly record its termination.

Agreement No. 2011-0102-UT/VO

- (iv) Completion of a written agreement on terms acceptable to the County between the County and City confirming the City's continuing commitment to provide water and wastewater services to the Thornburg Master Plan Area until such time that the County completes the necessary construction of infrastructure to begin transferring wastewater to the County's wastewater treatment facility.
- (v) Within 120 days of the execution of this Agreement, the County shall complete a field inspection of all components of the System including the lift station to account for any deficiencies that may exist and completion of any items on a punch list. Once the County has completed the punch list, and it is acknowledged by both parties, it is at the County's discretion to decide whether or not to accept the System as is, which decision to accept shall not be unreasonably withheld, and which must be conveyed in writing to TTMA within 60 days following completion of the punch list. The County shall provide the punch list to TTMA. TTMA has the option, but not the obligation to cure such deficiencies to the satisfaction of the County. Within 60 days of the County's decision to accept the System under this Paragraph, the parties shall formally close this transaction by the giving of a Special Warranty Deed and a general bill of sale for any personal property.

B. TTMA's Conveyance of the System.

In consideration of the County's agreement to accept, own, operate, and maintain the System to provide wastewater services to all current and future customers in the County's service area, TTMA agrees to irrevocably and permanently convey the following to the County, provided that such items are in TTMA's possession or can be reasonably obtained:

- (i) The System including all components and related infrastructure and all current customers who are connected to the System and to whom wastewater services are provided by the System;
- (ii) All existing easements for the System and associated pipes and infrastructure which constitute the System, including easements for installation, replacement, repair and maintenance of gravity feed flow lines and other elements of the System;
- (iii) All records and documentation related to the operation, maintenance and repair of the System;
- (iv) All plats, easement descriptions, and other pertinent records related to real property affected by this Agreement;
- (v) Any and all record drawings ("as built"), certified by a New Mexico licensed engineer and any existing test results related to the installation of all

Agreement No. 2011-0102-UT/VO

components of the System, including any televised inspections of the lines and associated logs, pressure test results, and soil compaction test results; and

- (vi) All billing records for current customers connected to the System including names and addresses with indication of the status of the accounts.

- C. TTMA agrees to provide the County with any and all written agreements between TTMA and the City as well as any and all written agreements between TTMA and owners of real property abutting the service area of TTMA's customers currently being served by the System.

- D. Prior to the conveyance of the System to the County, TTMA agrees to provide the County personnel with a minimum three-hour training session and site visit which shall be guided by knowledgeable and experienced individuals who are operating and maintaining the System for TTMA.

Section III
Guarantee of Availability and Capacity

The County agrees to guarantee the availability of the wastewater capacities specified in the September 9, 2004 and September 15, 2003 agreements with the City to all landowners in the Amended Thornburg Master Development Plan area which is defined as "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A" recorded as Instrument #1362150 on January 10, 2005, at Book 577 Page 36-42, and any boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.

Section IV
Bisbee Court

- A. Service to Bisbee Court.

The development area known as Bisbee Court is currently shown to be within the potential service area indicated in Exhibit B. Residents of Bisbee Court are currently served by a private wastewater collection and treatment system that is not connected to the TTMA System. In the future, water customers in Bisbee Court will be eligible to connect to the System once the System is owned and operated by the County, however the cost associated with such connection shall be borne solely by the Bisbee Court's Homeowners' Association, and the County shall not assume any financial obligation associated with installing the connection to Bisbee Court. Once a design to connect Bisbee Court's wastewater infrastructure to the System is completed to the satisfaction of the County, the existing and new gravity sanitary

Agreement No. 2011-0102-UT/VO

sewers shall also be conveyed to the County upon the County's acceptance of ownership, operation and maintenance.

Section V
Representations and Warranties

- A. TTMA hereby represents and warrants to the County that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for County's acceptance and performance of the County's obligations under this Agreement:
- (i) TTMA is legally authorized to enter into, and to take or cause to be taken the actions and activities contemplated pursuant to this Agreement, including, without limitation: (a) causing the System to be constructed and operated on the property described on Exhibit A, (b) conveying to the County clear title in fee to the System, (c) granting easements, as described herein, and (d) providing the surety to the County as described herein.
 - (ii) TTMA is the owner in fee of the System, and there are no liens or mortgages against the System including its associated infrastructure and components and TTMA is conveying fee title without encumbrance or liens to the County.
 - (iii) The signatory to this Agreement is an officer of TTMA and is duly authorized to execute this Agreement and bind TTMA to its terms.
 - (iv) This Agreement has been authorized by all necessary action on the part of TTMA.
 - (v) There are no outstanding debts, obligations, liabilities or liens on or related to the System or related to any aspect of the System.
 - (vi) TTMA is not in breach or violation of any of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents or other agreements to which it is a party.
 - (vii) TTMA's execution, delivery and performance of duties and obligations under this Agreement will not result in a breach or violation of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents, or other agreements to which it is a party or otherwise bound, nor does TTMA's execution of this Agreement constitute a violation of any law, rule or any court order or decree applicable to TTMA, or result in the acceleration of any lien or encumbrance upon the System or the System's components or equipment.

Agreement No. 2011-0102-UT/VO

- (viii) This Agreement is the legal, valid and binding obligation of TTMA, enforceable against TTMA in accordance with its terms and conditions.
 - (ix) There is no action, claim, litigation, proceeding or governmental investigation pending against TTMA or the System, or to TTMA's best knowledge, threatened against TTMA or the System, which might directly or indirectly have a material adverse effect upon any of the matters contemplated by this Agreement. As part of a mortgage foreclosure case against Longford, now known as Galway Construction, the Association has filed counterclaims and cross claims to enforce its lien for Association dues against Longford. However, there are no claims against the System in this case.
 - (x) TTMA has received no written or oral notice of any proposed or contemplated condemnation of the System or any part thereof, and TTMA has received no written or oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the System or any part thereof.
 - (xi) To TTMA's actual knowledge: (a) the sites on which the System and its infrastructure are located have not at any time been used for the purpose of storing (except for the proper storage of diesel fuel for generator operation), manufacturing, releasing or dumping Hazardous Materials and there are no Hazardous Materials located at, on or under the real property on which the System and its infrastructure are located, except for normal quantities of Hazardous Materials utilized in connection with the normal maintenance and operation of the System in compliance with all Environmental Laws and so-called household hazardous materials utilized by residences; and (b) no underground storage tanks, pipelines or clarifiers are located on the System or its infrastructure, other than the lift station's wet well. As used herein, "Hazardous Materials" is defined as any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under Environmental Law, including without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used herein "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.
- B. The County hereby represents and warrants to TTMA that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for the performance of TTMA's

Agreement No. 2011-0102-UT/VO

obligations under this Agreement:

- (i) The County is a political subdivision of the State of New Mexico, and its Board of County Commissioners has authorized the County to enter into and perform its obligations under this Agreement.
- (ii) The execution and delivery of this Agreement and performance of the actions contemplated by this Agreement will not conflict with any agreement to which the County is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the County.

Section VI
Indemnification of County by TTMA

- A. TTMA shall indemnify and hold the County harmless from any obligation, cost, expense, liability or claim by any third party against the County arising from or in any way connected with TTMA acts or omissions in statements made above in connection with the System. The indemnity period commences with formal closing of this transaction and ends two (2) years later.
- B. In connection with Hazardous Materials, as defined herein, TTMA shall indemnify and hold harmless the County, its employees, agents and representatives from and against any and all loss, damage, claim or damage, liability or expense, including costs and all attorneys' fees actually incurred, arising out of or in connection with any injury or damage or claim of injury, including death, or damage of any kind whatsoever, to persons or property (unless and only to the extent caused by the County, its employees or agents), fines, penalties, sanctions or costs occasioned in or about the System, existing on the System site or arising out of the use of the System site on or before date of this Agreement, whether known or unknown to TTMA or the County, to the extent that such losses arise from the existence of Hazardous Materials on the System site.

Section VII
Miscellaneous

- A. Notices. All notices, certificates or other communications made pursuant to this Agreement shall be made as follows:

- (i) To the County:

Santa Fe County
Attention: County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

(ii) To TTMA:

President
Turquoise Trail Master Association, Inc.
Post Office Box 4156
Santa Fe, New Mexico 87502

B. Assignment. This Agreement shall not be assigned without the express written consent of the non-assigning party.

C. Integrated Agreement. This Agreement constitutes the entire agreement of the County and TTMA with respect to the subject matter of this Agreement and supersedes all prior oral and written communications with respect to such subject matter.

D. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, and venue shall be in Santa Fe County, New Mexico.

E. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

SANTA FE COUNTY

Liz Stefanics, Chair
Santa Fe County Board of County Commissioners

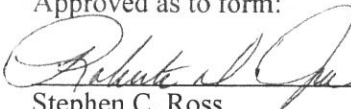
Date: _____

Attest:

Valerie Espinoza, County Clerk

Date: _____

Approved as to form:


Stephen C. Ross
Santa Fe County Attorney

Date: 11/7/12

Santa Fe County Finance Department

Agreement No. 2011-0102-UT/VO

Teresa C. Martinez
Teresa C. Martinez, Finance Director

Date: 11/15/2012

TURQUOISE TRAIL MASTER ASSOCIATION

A New Mexico nonprofit corporation

By _____
Bruce Golden, President

Date: _____

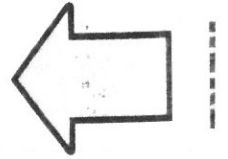
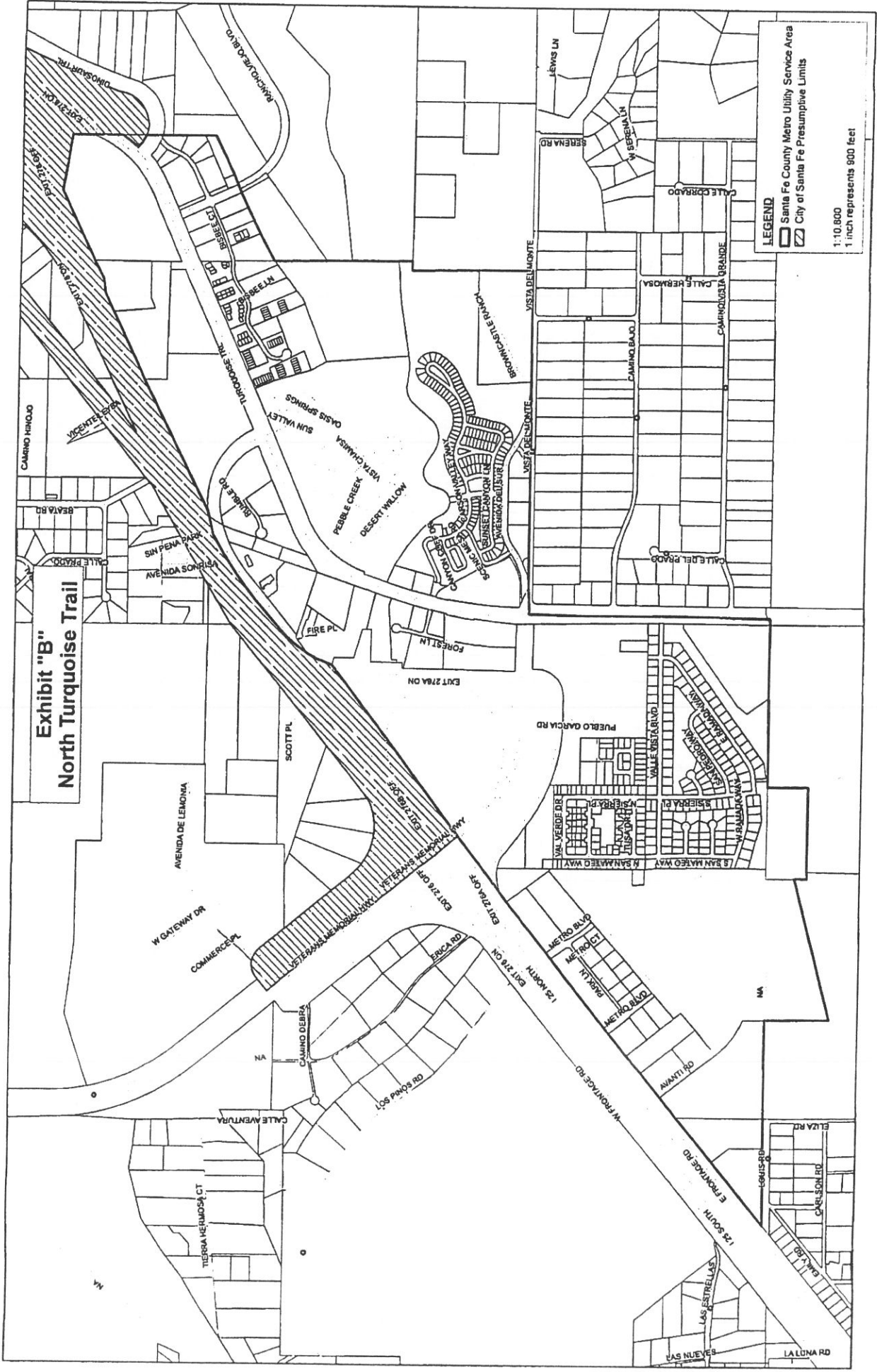


Exhibit "A" – System Description*



1. Lift Station: Lift station includes two FLYGT CP3201 SH 423 Submersible pumps, with cast iron discharge connection, a 50 hp motor, 460vac/3/60, 1760 RPM, and 50' electrical cable. Each pump is capable of delivering 412 GPM at 171ft TDH. Lift station pump controls, Mechanical, Power distribution, Soft stop, Overload heaters, Control transformers, Level Controls, Alarm system, and Emergency generator. The lift station is 24' x 12' and is enclosed with a 6' x 8" stacked block wall, that is also enclosed by a 30' x 57' Steel fence.
2. 10" PVC Sanitary Sewer (12' – 16' Deep) – 676 LF
3. 10" PVC Sanitary Sewer in 22" Casing – 170 LF
4. 8" PVC Sanitary Sewer (8' – 12' Deep) – 1,818 LF
5. 8" PVC Sanitary Sewer (12' – 16' Deep) – 1,618 LF
6. 8" PVC Sanitary Sewer (16' – 20' Deep) – 319 LF
7. 4' Diameter Manhole (0' – 8') – 19 EA
8. 20" Bore and Case (8" Gravity Sanitary Sewer) – 234 LF
9. 8" PVC Sanitary Sewer in 20" Casing – 234 LF
10. 8" Force Main PVC, C-900 – 9,224 LF
11. 3" Air Release Valve – 4 EA
12. 8" Valve on Force Main with No Cleanouts – 1 EA
13. 8" Valve on Force Main with 2 Cleanouts – 5 EA
14. Easements: 2 easements

* All linear footages are approximate.

Exhibit "B" North Turquoise Trail



LEGEND

-  Santa Fe County Metro Utility Service Area
-  City of Santa Fe Presumptive Limits

1:10,800
1 inch represents 900 feet

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



XI
B.C
3
MEMORANDUM

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: December 3, 2012
TO: Board of County Commissioners
FROM: Adam Leigland, Public Works Department Director *A 12/3/12*
VIA: Katherine Miller, County Manager *KMM 12.4.12*

ITEM AND ISSUE: *BCC Meeting December 11, 2012*
RESOLUTION 2012-___ A RESOLUTION RESCINDING RESOLUTION 2012-58 AND ADOPTING THE RURAL WATER SYSTEM ACQUISITION AND INTEGRATION POLICIES OF SANTA FE COUNTY, INCLUDING THE CONDITIONS AND PROCEDURES TO BE FOLLOWED BY ALL APPLICANTS, AS WELL AS SANTA FE COUNTY STAFF, IN THE PROCESS OF ACQUIRING AND INTEGRATING EXISTING RURAL WATER SYSTEMS INTO THE SANTA FE COUNTY UTILITIES SERVICE AREA.

At the April 24th, 2012, BCC, the Commission adopted Resolution 2012-58, a Resolution articulating County policy regarding funding requests from private, quasi-public, or public water and wastewater systems for capital improvements. The resolution stated that rural water systems seeking capital assistance from the County must become incorporated into the County Utility service area in order to receive the funding. The policy did not describe a process or procedure for its implementation and so at the September 25th, 2012, BCC, an amended resolution was presented that created such processes and procedures.

The September 25th proposal generated substantial discussion among the commissioners and was tabled. Staff was asked to bring forward another proposal that eliminated the all-or-nothing aspect of the original policy by incorporating funding thresholds and a performance-based review process, and that still addressed the County's financial interest. That updated proposal is attached.

The attached policy includes the same general process that was presented on September 25th, but with four key changes.

1. It contains the clause that, if the County takes over a water system, it will also assume the debt of that system.

2. It includes a water system evaluation process that awards points based on ten criteria. The criteria were adopted from State criteria that were developed in response to House Joint Memorial 86 and have to do with system viability and compliance.
3. A series of funding thresholds were created, based on the point system described in Item 2 above. If a water system scores points above a certain level (the level depending on the funding amount being requested), it can receive County capital funds without having to be taken over.
4. For any water system that receives funds but is not taken over, the attached proposal requires these water systems to pass a percentage of their gross revenues to the County. The percentage size is determined by the share of ownership the County will have in the system after the funding request is met.

REQUESTED ACTION:

The Board of County Commissioners approve the resolution.

SANTA FE COUNTY

RESOLUTION No. 2012-__

**RESOLUTION 2012-__ RESCINDING RESOLUTION 2012-58
AND ADOPTING THE RURAL WATER SYSTEM
ACQUISITION AND INTEGRATION POLICIES OF SANTA FE
COUNTY, INCLUDING THE CONDITIONS AND
PROCEDURES TO BE FOLLOWED BY ALL APPLICANTS, AS
WELL AS SANTA FE COUNTY STAFF, IN THE PROCESS OF
ACQUIRING AND INTEGRATING EXISTING RURAL WATER
SYSTEMS INTO THE SANTA FE COUNTY UTILITIES
SERVICE AREA.**

WHEREAS, the County is undertaking a performance-based capital budgeting system; and

WHEREAS, the County Commission has always taken and will continue to take the responsibility for the management of the County's water resources as one of its highest priorities; and

WHEREAS, the County shares the State's intent to have viable, well-functioning, and compliant water systems that sustainably provide safe drinking water to its customers, as articulated in House Joint Memorial 86 (2005); and

WHEREAS, the County is periodically approached to provide capital funding to or otherwise assist private, quasi-public, or public water and" wastewater systems located throughout the County, such as those operated by homeowner associations, mutual domestic water consumer associations, or water and wastewater special districts; and

WHEREAS, it is generally in the County's interest to own, operate, and maintain water and wastewater systems in which it has capital investment or at least have a financial interest in systems in which it has ownership interest; and

WHEREAS, the County Utility has begun an orderly expansion with the ultimate goal of achieving financial autonomy and of serving as many residents of Santa Fe County as possible

and economically feasible while fully exploiting the County’s investment in the Buckman Direct Diversion project; and

WHEREAS, the County Commission adopted Resolution 2012-58 on April 24th, 2012, which articulated a policy concerning capital requests from water systems but which did not contain scoring criteria nor describe a procedure for implementing the policy;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS:

1. Resolution 2012-58 is hereby rescinded.
2. Santa Fe County will entertain requests from private, quasi-public, and public water and wastewater systems, such as those operated by homeowner associations, mutual domestic water consumer associations, or water and wastewater special districts, for funding for capital improvements under a point system. Water systems shall be evaluated against ten objective criteria and earn points according to their ability to meet the criteria. The number of points earned, in turn, will be used to determine funding amount thresholds.

3. Funding Requests Thresholds

Points Earned	Dollar Threshold
80-100 points	\$100,000
50-79 points	\$20,000
0-49 points	\$0

4. Criteria and Points

Line Item Number	Criterion	Max Points
1	System has a certified operator appropriate for the system	10
2	System meters customers and has a rate structure based on metered use (unless the purpose of the capital is to provide meters).	10
3	System has written and approved operating procedures and preventive maintenance plan	10
4	System has written job descriptions for all staff and contractors	10
5	System has a financial policy which includes internal controls and a 5-year plan	10
6	System has an enforced policy for delinquent accounts	10
7	System has audited financial statements (one year minimum)	10
8	System has an operational budget approved by its governing body	10
9	System has documented water rights adequate to service current	10

	customer base	
10	System is compliant with Sanitary Projects Act, if applicable, or else has a documented governing body.	10

5. If the fund request is in below the threshold listed in the Paragraph 3 for the amount of points the system receives based on the criteria listed in Paragraph 4, to receive the funding, the system must agree to pass to the County a share of the water system gross revenue equal to the percentage of ownership in the system that the capital funding request will convey to the County.
6. If the fund request is in excess of the threshold listed in the Paragraph 3 for the amount of points the system receives based on the criteria listed in Paragraph 4, to receive the funding the system must comply with one of the following requirements:
 - a. The County takes control of the water source(s), a master meter is installed at the point(s) of supply, and the private, quasi-public, or public water and wastewater system becomes a wholesale customer of the County; or
 - b. The County Water Service Area boundaries shall expand to fully include the boundaries of the private, quasi-public, and public water and wastewater system, the County takes control of the entire water supply and distribution system capital assets, and the customers of the private, quasi-public, or public water and wastewater system become retail customers of the County.
7. The County shall make the final determination of points awarded for the criteria.
8. The County will not entertain capital funding requests from private, quasi-public, or public water and wastewater systems for which the foregoing conditions cannot be met.
9. The foregoing process will not apply in situations in which the capital funding requests have already been approved and/or executed as of the date of approval, nor will it apply if the County is merely acting as fiscal agent for funds received from another entity such as the State or Federal government.
10. If a system voluntarily chooses to meet the requirements in Paragraph 6, the evaluation process is not required.
11. If a system must or chooses to comply with the requirements of Paragraph 6, the processes and procedures for doing so are described below.
 - a. A system may file an application seeking to integrate the system and its customers into the County systems. Alternatively, a request to integrate may be made by the Board, in which case no application shall be necessary.

b. If an application is required, it will contain all of the following:

1. A copy of a resolution adopted by the Board of Directors of the system requesting integration;
2. Financial information concerning the system for the current and previous fiscal years that includes income, expenditures (including capital expenditures), outstanding indebtedness, accounts receivable, and a copy of an audited financial statement, if available;
3. Records of local, state and federal grants obtained;
4. Technical information concerning the system itself, including information about the infrastructure (water source, pumps, distribution and transmission lines) including, but not limited to, maintenance history, condition, capacity, limitations;
5. A complete inventory of capital assets, including equipment, infrastructure, wells, pump stations, reservoirs, distribution and transmission lines, easements, real property, and water rights;
6. A complete inventory of non-capital assets such as cash, accounts or contracts, with copies of all statements and other documents pertinent to those resources;
7. A complete list of obligations of the water system, including contracts, and collective bargaining agreements;
8. A complete list of customers, both active and inactive, including up-to-date reference information including names, service addresses, billing addresses, meter sizes and meter serial numbers in meter reading route sequence, records of hook-up fees, and the status on each account;
9. A complete list of extant contracts with vendors and consultants, including the status of each account;
10. Detailed information and documents concerning compliance with relevant state and federal environmental laws, including any relevant correspondence, test results, notices or complaints; and
11. A complete list of claims pending against the water system, and details concerning the water system's insurance coverage.

c. County staff shall review the application and accompanying material and shall make a determination whether adequate information exists to make an informed decision concerning

the application. If the information is adequate, staff will prepare a technical, legal and fiscal analysis of the proposed integration, and forward that analysis to the Board and the County Manager. If no application is submitted, County staff shall gather all the information specified above and analyze same.

d. The Board shall decide whether the application is to be accepted. If the application is denied, no further action will be taken.

e. If the application is accepted, a purchase agreement shall be prepared by and between the system and the County, in which all assets, including equipment, infrastructure, wells, pump stations, reservoirs, distribution and transmission lines, easements, real property, water rights, and appropriate liabilities shall be transferred to the County.

f. The purchase agreement shall:

1. Clearly state which debts or liabilities of the water system the County will accept;

2. Require title insurance of all real property transferred to the County;

3. Specify that all water tanks, water distribution towers, water lines, pumping stations, pumps, water lines, water mains, service lines, distribution facilities, meters, curb boxes, curb stops, services lines, public fire hydrants, valves, fittings, and all appurtenances along with other tangible personal property be transferred to the County;

4. Specify that all equipment, machinery, vehicles, tools, motors, spare parts, materials, supplies, fixtures and improvements, construction in progress, jigs, molds, patterns, gauges, production fixtures, office equipment, computer systems, telephone systems and other tangible personal property related to the operation of the system be transferred to the County;

5. Clearly specify which contracts, obligations accounts receivables, general indebtedness shall be assumed by the County, and in what manner;

6. Clearly specify which state or federal grants or obligations thereunder shall be assumed by the County;

7. In the case of a utility that is a regulated public utility and regulated by the Public Regulation Commission, specify that the agreement is contingent on approval of the Public Regulation Commission of the transaction;

8. Transfer, to the extent transferable, all rights under any written or oral contract, agreement, lease, plan, instrument, registration, license, sub-license (including any railroad crossing license or sub-license), permit, certificate, document, commitment, arrangement, undertaking, practice, authorization or approval of any nature relating to the system

and entered into in the ordinary course of business consistent with past practice, but specifically excluding excluded contracts;

9. Transfer, to the extent transferable, all of the systems' water rights;

10. Transfer, to the extent transferrable, all of the system's rights under any permit, franchise, license, sub-license, approval, authorization, order, registration, certificate, or variance;

11. Transfer all information, books, records, ledgers, files, documents, correspondence, data, plans, models, system maps, engineering records, mylars, planning, studies, architectural plans, drawings and specifications, customer records and data, supplier lists, records of operations, quality control records and procedures, equipment maintenance records, manual and warranty information, laboratory books, intellectual property and goodwill (including, to the extent transferable, any licenses and sub-licenses granted or obtained with respect thereto) and inspection processes relating to the system;

12. Transfer all accumulated cash and securities;

13. Clearly specify which contractual rights, duties, liabilities and obligations of the system with respect to transferable contracts, agreements and commitments relating to the system are to be assumed by the County, which shall be specifically identified and scheduled, except that (i) the County shall not assume any liabilities or obligations for any breach or default by, or payment obligations of, the system under such assumed contracts occurring or arising on or prior to the closing date; and, (ii) the County shall not assume any liabilities or obligations for any contracts, agreements or commitments that are listed ("excluded contracts");

14. Clearly specify that the County shall and agree to pay or discharge only the liabilities and obligations of the water systems that are listed in the purchase agreement, including, but not limited to, (i) all rights, duties, liabilities and obligations of FC under the assumed contracts not required to be performed prior to the closing date; (ii) any change orders on projects in progress that were entered into between the date hereof and the closing date and that were requested by the County and approved by system before the closing date; and, (iii) any change orders that are approved or requested by the County after the closing date ("assumed liabilities");

15. Clearly specify that the system shall retain and discharge: (i) all rights, duties, liabilities and obligations required to be performed under the excluded contracts; (ii) all rights, duties, liabilities and obligations of the system under the Assumed Contracts required to be performed prior to the closing date; (iii) any change orders on projects in progress that were approved by the system but were not requested by the County before the closing date; and, (iv) all the liabilities and obligations arising out of the ownership, operation or use of the assets or system prior to the closing date, excepting only the assumed liabilities; and

16. Clearly specify that, in the event that capital improvement projects and/or studies are still in progress at the time of the closing date, that the system shall place into an escrow account for each project the balance of the contracted project costs including retainage held and including any change orders approved by the system up to the closing date, and payments on the contracts will be made from the escrow account after the closing date. Prior to Closing, FC shall be required to approve any and all change orders that are known to be necessary at that time in order to complete the scope of each capital improvement project in progress at or prior to Closing.

17. Clearly specify the employees of the system, if any, that will become employees of the County and, as of the closing date, the conditions of such employment such as wages, benefits and classifications and whether the employees will credit for term of service while employed by the system;

f. The County may, at the request of the system, assist in the winding down of the affairs of the system after integration by the County. The details of any assistance shall be set forth in the purchase agreement.

g. Following execution of the purchase agreement, the County shall perform due diligence and investigations as specified in the purchase agreement. The system shall cooperate fully with the diligence and investigations.

h. If the due diligence period specified in the purchase agreement is successful, the transaction will close as specified in the purchase agreement.

i. Once the transaction closes, the customers of the water system shall become customers of the County utility. Each customer shall pay the applicable service connection, meter fee, and meter installation fee for the connection to the County utility; provided, however, if the water system's water meters are compatible with the meter standard established by the County, no meter installation fee will be levied.

j. Once the closing has taken place as specified in the previous paragraph, the water system must wind down its affairs and file documents to terminate its existence. Assistance may be provided with this process.

k. After acquisition, include in rate base or, if the acquired system is nonperforming, an acquisition adjustment may be assessed from the former customers of the water system.

ADOPTED this ____ day of December, 2012.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Liz Stefanics, Chair

Date

ATTEST:

Valerie Espinoza, County Clerk

Date

Approved as to form:



Stephen C. Ross, County Attorney

12-3-12
Date