

**SUPPLEMENTAL WATER DELIVERY AGREEMENT  
FOR NEW MEXICO DEPARTMENT OF GAME AND FISH**

This Supplemental Water Delivery Agreement ("Agreement") is made by and between Santa Fe County ("County"), acting through its Utility Division ("Utility"), and the New Mexico Department of Game and Fish ("Department"), a political subdivision of the state of New Mexico (referred to individually as "Party" and collectively as "Parties").

**RECITALS**

- A. On December 4, 2015, the Parties executed a Water Line Extension and Water Service Agreement, under which the County agreed to provide the Allowable Water Use of 0.3 acre foot per year ("AFY") to the Department at its facility located at One Wildlife Way, Santa Fe, New Mexico ("Facility").
- B. The Parties recently determined that the Facility used more than the Allowable Water Use of 0.3 AFY in 2018, and expects to use more than the Allowable Water Use 0.3AFY in the following years.
- C. To accommodate the Department's increased use of water at the Facility, the Department requests that the County provide an additional Allowable Water Use of 1.042 AFY resulting in a total Allowable Water Use of 1.342 AFY for the Facility.
- D. The Utility's Customer Service Policies adopted by County Resolution No. 2012-88 ("Utility Policies"), as may be amended, superseded, or replaced from time to time, are incorporated by reference into this Agreement, and shall be applicable to the Department.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. WATER BUDGET AND WATER RIGHTS**

- 1.1. Water Budget. The additional Water Budget for the Facility is 1.25 AFY, which is the Development's additional Allowable Water Use of 1.042 AFY, plus twenty (20) percent. The Facility's water use shall not exceed the total Approved Allowable Water Use of 1.342 AFY unless: (i) the Facility's increased water use complies with the Utility Policies and County ordinances and resolutions; (ii) the Department agrees either to provide additional water rights in an amount and of a nature acceptable to the Utility, or to pay a fee in lieu of water rights; (iii) the

SFC CLERK RECORDED 06/26/2019

Utility approves the increased use; and (iv) this Agreement is amended to reflect such approval.

- 1.2. Fee in Lieu of Water Rights. In lieu of the purchase and transfer of water rights to the County, the Department shall pay a fee in lieu of water rights at a rate of \$16,000 AFY prorated to serve the Facility. The prorated fee for 1.25 AFY will be twenty thousand dollars (\$20,000) and will be paid no later than ten (10) business days after the Effective Date of this Agreement
- 1.3. Wells. The Department represents and warrants that there are no water wells located at or serving the Facility, other than an existing water well that is used to provide water to an on-site pond forming part of the naturalistic landscaping at the Facility. The Department shall not drill any additional water wells to serve the Facility.
- 1.4. Schedule. After execution of this Agreement, the Utility shall recommend to the Board that the additional 1.25 AFY be scheduled and approved for delivery to the Department. Water service provided before the Board's approval of the schedule, if any, shall be considered temporary and shall not convey any right to continued or additional delivery of water.
- 1.5. Water Service Account. The Department has established a water service account for the Facility, and shall continue to pay the applicable fees and charges for that account in accordance with the Utility Policies.

## 2. **TERMINATION**

- 2.1. Mutual Agreement. The Parties may terminate this Agreement by mutual agreement in writing.
- 2.2. Material Breach of Agreement. A Party may give notice to the other Party that it has failed to perform an obligation under this Agreement. The Party alleged to be in default shall have ten (10) days to cure the failure to perform, or may ask for an extension of time, which shall not be unreasonably withheld, and which shall be confirmed in writing. If the Party alleged to be in default does not cure the failure to perform within the specified time, the notifying Party may terminate this Agreement by providing notice to the Party alleged to be in breach, and may seek damages or specific performance of the obligation, perform or cause to be performed the obligation and seek reimbursement for the costs of performance from the Party alleged to be in breach, or any other available remedy or combination of remedies provided under this Agreement.
- 2.3. Obligation to Provide Water Service. Upon the termination of this Agreement, the Utility shall have no obligation to provide water service to the Facility.

3. **NOTICE.** Any notice required or allowed by this Agreement shall be given to the other Party in writing by certified first class and electronic mail to the following persons:

**COUNTY**

John Dupuis  
Utilities Division Director  
Public Works Department  
Physical: 424 NM SR 599  
Mailing: P.O. Box 276  
Santa Fe, New Mexico 87504  
[JDupuis@SantaFeCountyNM.gov](mailto:JDupuis@SantaFeCountyNM.gov)

**NEW MEXICO DEPARTMENT OF GAME AND FISH**

Michael B. Sloane  
Director  
New Mexico Department of Game and Fish  
One Wildlife Way  
Santa Fe, New Mexico 87507  
[Michael.Sloane@State.NM.us](mailto:Michael.Sloane@State.NM.us)

4. **WAIVER.** A Party's failure or delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude another or further exercise thereof.
5. **ASSIGNMENT.** This Agreement shall not be assigned without the prior written approval of the County.
6. **INTEGRATION.** This Agreement and the documents referenced herein set out the complete agreement between the Parties regarding County's provision of increased water service to the Department's facility, and all prior agreements and understandings regarding increased water service to the Department's facility, whether written or oral, are incorporated into or superseded by this Agreement, provided however that this Agreement shall not affect any obligation of the Parties under the Water Line Extension and Water Service Agreement.
7. **RECITALS.** The Recitals set out above are incorporated by reference into and made part of this Agreement.
8. **AMENDMENT.** This Agreement shall not be amended except in a writing executed by both Parties.

9. **BUDGETING.** The County's obligation to expend money under this Agreement, if any, is contingent upon sufficient appropriations being made by the Board of County Commissioners, and the County is not committed to expend any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.
10. **STATUS OF PARTIES.** The Parties shall each retain any defenses or immunities available at law. Nothing herein shall be deemed or construed to minimize, limit or waive any defense available to either Party in the event of a lawsuit or claim by third parties or otherwise.
11. **LIABILITY.** The Parties' potential liability under this Agreement is limited by state law, including the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 et seq., the Anti-Donation Clause of the New Mexico Constitution, N.M. Const. article 9, section 14, and NMSA 1978, Section 37-1-23.
12. **COUNTY DEBT.** Nothing in this Agreement requires or shall be construed to require the County to incur any debt in violation of state law, including the Bateman Act, NMSA 1978, Section 6-6-11 et seq.
13. **BINDING EFFECT.** This Agreement shall be binding on and inure to the benefit of any subsequent owner of the Department's facility and any successor or assignee of the County.
14. **THIRD PARTY BENEFICIARIES.** This Agreement shall be relied upon and enforced only by the Parties. There are no third-party beneficiaries to this Agreement.
15. **VENUE.** In the event of any dispute between the Parties regarding this Agreement, the exclusive venue shall be New Mexico State District Court, First Judicial District, Santa Fe County, New Mexico.
16. **APPLICABLE LAW.** In the event of any dispute between the Parties, the laws of the state of New Mexico shall apply to this Agreement.
17. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.
18. **EFFECTIVE DATE.** This Agreement is effective on the date of the last signature below.

NEW MEXICO DEPARTMENT OF GAME AND FISH

Michael B. Sloane  
Michael B. Sloane, Director

Date: 6/3/19

SANTA FE BOARD OF COUNTY COMMISSIONERS

Anna T. Hamilton  
Anna T. Hamilton, Chair

Date: 6/25/19

Attest:

Geraldine Salazar  
Geraldine Salazar, County Clerk

Date: 6-25-2019



Approved as to Form:

R. Bruce Frederick  
R. Bruce Frederick, County Attorney

Date: 6/19/19

Approved:

Gary L.J. Giron  
Gary L.J. Giron, Finance Director

Date: 06/19/19

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

WATER AGREEMENT (NC)  
PAGES: 6

I Hereby Certify That This Instrument Was Filed for  
Record On The 26TH Day Of June, 2019 at 10:17:26 AM  
And Was Duly Recorded as Instrument # 1889719  
Of The Records Of Santa Fe County



Deputy Estrella Martinez Witness My Hand And Seal Of Office  
Geraldine Salazar  
County Clerk, Santa Fe, NM

SEC CLERK RECORDED 06/26/2019

**ACKNOWLEDGEMENT**

STATE OF NEW MEXICO  
COUNTY OF SANTA FE

This Supplemental Water Delivery Agreement was acknowledged before me on this 3<sup>rd</sup> day of June, 2019, by Michael B. Sloan, for and on behalf of the New Mexico Department of Game and Fish.

Notary Public

Sandra C. DuCharme

My commission expires:

9/22/22

