

**SECOND AMENDMENT TO THE JOINT POWERS AGREEMENT
BETWEEN SANTA FE COUNTY AND THE GREATER CHIMAYO MUTUAL
DOMESTIC WATER CONSUMERS ASSOCIATION
("SECOND AMENDMENT")**

This Second Amendment, effective as of the date it is approved by the New Mexico Department of Finance and Administration ("DFA"), is made by and between Santa Fe County ("the County"), New Mexico, and the Greater Chimayo Mutual Domestic Water Consumers Association ("the Association").

RECITALS

- A.** The Association owns and operates a community water system that serves the Greater Chimayo area.
- B.** On April 29, 2008, the County and the Association entered into that certain Joint Powers Agreement ... Concerning Joint Efforts to Provide Regional Water Transmission Facilities to Service the Community of Chimayo" ("JPA" or "Agreement").
- C.** Among other things, the JPA provided that the County would "purchase an undivided interest in the Regional Water Transmission Line," as described in Exhibits B and C to the JPA, for \$500,000.00. The Regional Water Transmission Line is part of the community water system operated by the Association.
- D.** In May 2009, the County and the Association executed a First Amendment to the JPA ("First Amendment"). Under the First Amendment, the parties agreed that the County would increase its payment contribution under the JPA to \$1,000,000.00.
- E.** In accordance with the JPA, as amended by the First Amendment, the County has contributed \$1,000,000.00 to the construction of the Regional Water Transmission Line. Therefore, pursuant to paragraph 3.2 of the JPA, the County owns an undivided interest in the Regional Water Transmission Line in proportion to the parties' total contributions.
- F.** The County has since agreed to provide additional funding to the Association up to \$625,000.00 to further the purposes of the JPA in providing safe and reliable drinking water to the residents of the Greater Chimayo area. This funding will be provided pursuant to a separate Memorandum of Agreement between the County and the Association.
- G.** The County's commitment to provide assistance funding to support the Greater Chimayo community water system pre-dates by several years County Resolution No. 2012-58. Resolution No. 2012-58 provides that County will no longer help fund community water systems unless the County also acquires all or part of the system, including water rights, and the residents served by the system, or the system owner, agree to become County water customers.

H. The Association does not desire at this time to transfer to the County any part of the Greater Chimayo water system, and the County desires to honor its prior commitments to help fund the Greater Chimayo water system.

I. The County has determined that County ownership of an undivided interest in any portion of the Greater Chimayo community water system is unnecessary, and that such ownership creates uncertainty regarding the extent of the County's responsibility for and authority over the System (if any).

J. The County has determined that donation of its undivided interest in the Regional Water Transmission Line to the Association is in the interest of the public and the County.

K. NMSA 1978, Section 13-6-2 authorizes local public bodies such as the County to "dispose of real and tangible person property belonging to the ... local public body" The Regional Water Transmission Line is appurtenant to land or interests in land and thus should be considered real property.

L. Under Section 13-6-2(B), the County "may ... dispose of real property ... (2) by ... donation to other ... local bodies" The Association was formed under the Sanitary Projects Act, NMSA 1978, Sections 3-29-1 through 3-29-21. Under Section 3-29-3 of the Act, the Association is a "political subdivision of the state," and thus a local public body, and it may "receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good."

M. Section 13-6-2(D) provides that the "disposition of real or tangible property having a current resale value of more than ... \$5,000 ... may be made by a ... local public body ... if the ... disposition has been approved by the ... local government division of [DFA]"

N. The purpose of this Second Amendment is to amend the JPA to provide for: (1) the County's donation of its undivided interest in the Regional Water Transmission Line to the Association, (2) the appropriate DFA approval of such donation, and (3) the termination of the JPA upon the County's quitclaim deed on its interest to the Association.

NOW, THEREFORE, THE COUNTY AND THE ASSOCIATION AGREE to amend the JPA as follows:

1. Section 5.0 of the JPA, which had been reserved, shall provide:

5.0 DONATION.

5.1 Notwithstanding any other provision of this Agreement, the County may in its sole discretion divest itself of any and all right, title and interest it has in the Regional Water Transmission Line under the JPA by donating such right, title and interest to the Association in the form of a quitclaim deed.

5.2 Before the County quitclaims its right, title and interest in the Regional Water Transmission Line to the Association, the terms and conditions applicable to any further County funding of the Greater Chimayo community water system shall be set out in a separate memorandum of agreement ("MOA") between the County and the Association.

2. The following new subsection 18.5 shall be added to Section 18 of the JPA:

18.5 Notwithstanding any other provision herein, this Agreement shall terminate automatically upon the effective date of the County's quitclaim deed, donating all of the County's right title and interest in the Regional Water Transmission Line to the Association, under Section 5.0.

3. Except as expressly amended by this Second Amendment and the First Amendment, the JPA as originally executed shall remain in full force and effect.

4. This Second Amendment may be executed in counterparts.

SANTA FE COUNTY

By: Miguel M. Chavez
Miguel M. Chavez
Chair, Board of County Commissioners

Date: 6/14/16

ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

Date: 6-14-2016

APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer, Santa Fe County Attorney

Date: 5/11/2016

GREATER CHIMAYO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION

By: Paul J. Martinez
Paul J. Martinez, Board President

Date: 5/3/16


ATTEST:


Charlie Vigil, Board Member/Treasurer

Date: 5/3/16



APPROVED AS TO FORM:


Ted J. Trujillo
Attorney for the Association

Date: 5-3-16

**APPROVED BY NEW MEXICO DEPARTMENT OF FINANCE AND
ADMINISTRATION:**

By: 
Rick Lopez (Name)
DIRECTOR (Title)

Date: 7-20-16

LOCAL GOVERNMENT NEWSZON

APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION:

Duffy Rodriguez

DFA Cabinet Secretary

27 July 2016

Date