

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF SANTA FE AND THE CHUPADERO WATER –
SEWAGE CORPORATION**

THIS MEMORANDUM OF AGREEMENT ("the Agreement") is entered into by and between the **County of Santa Fe** ("the County"), a political subdivision of the State, and the **Chupadero Water – Sewage Corporation** ("the Association"), a political subdivision of the State of New Mexico organized under the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 through 3-29-21.

WHEREAS, the Association was organized to respond to the needs of the community of Chupadero for a safe and reliable domestic water supply; and

WHEREAS, the need to support small community water systems is identified as a key issue in Chapter 11 of the County's Sustainable Growth Management Plan ("SGMP"), and providing assistance to community water systems is Policy 41.8 in the SGMP; and

WHEREAS, on September 25, 2012, the Board of County Commissioners ("Board") approved Resolution No. 2012-131 regarding the County's acquisition of the Association's water system; and

WHEREAS, prior to acquisition, the County desires to fund certain capital improvements to the Association's water system; and

WHEREAS, the Association contracted with an engineering firm, Martin/Martin, Inc., to develop a Final Preliminary Engineering Report (PER) to evaluate feasible and cost-effective water system improvements, which was completed in April 2018; and

WHEREAS, the County Public Works Department has a complete and accurate copy of the PER on file; and

WHEREAS, the County is prepared to provide and the Association is prepared to use funding provided by the County to complete the capital improvements to the Association's water system described in this Agreement; and

WHEREAS, it is in the interest of the public health, safety, and welfare for the parties to cooperate as set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. THE COUNTY AGREES:

A. To set aside and provide up to \$382,000 ("Capital Fund") to reimburse the Association for the planning, design, construction, and ancillary professional services for the Groundwater Supply Wells Project, Disinfection/Treatment Project and Storage Tanks Project ("Capital Improvements"), as described in the PER.

B. To process requests for reimbursement from the Association in a timely manner and to follow the reimbursement process described on Exhibit A of this Agreement.

2. THE ASSOCIATION AGREES:

A. To use funds provided under this Agreement exclusively as reimbursement for the actual costs of planning, design, construction, and ancillary professional services for the Capital Improvements.

B. To assure that the Capital Improvements are designed, constructed, installed, operated, and maintained in accordance with all applicable laws and codes.

C. To submit draft design plans to the County for review and comment and to timely respond to the County's comments (if any); *provided*, however, that the County shall have no duty to conduct such review; and *provided further* that the Association shall remain solely responsible for assuring that the Capital Improvements are designed, constructed, installed, operated and maintained in accordance with all applicable laws and codes.

D. To commence the Capital Improvements project as soon as possible after the effective date of this Agreement.

E. To submit to the County requests for reimbursement in a timely manner, to provide the necessary supporting documentation as requested by the County, and to follow the reimbursement process described at Exhibit A.

F. Upon completion of the Capital Improvement project, provide a written certification of such completion to the County.

3. EFFECTIVE DATE: The effective date of this Agreement is the last date written below.

4. LIABILITY:

A. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, or creates any right of indemnity.

B. There are no third-party beneficiaries to this Agreement. Without limiting the generality of the foregoing, no action to enforce the terms of this Agreement or for damages for breach of this Agreement may be brought against either party by any person who is not a party to this Agreement.

5. AMENDMENT: This Agreement may not be altered, changed, or amended except by a written agreement executed by the parties.

6. APPLICABLE LAW AND VENUE: New Mexico law shall apply to this Agreement. Any litigation regarding this Agreement shall be brought exclusively in New Mexico State District Court, First Judicial District, Santa Fe, New Mexico.

7. INTEGRATION: This Agreement sets forth the entire agreement between the parties and any prior agreements and understandings between the parties, whether written or oral, regarding the subject matter of this Agreement are fully integrated into this Agreement.

8. INSURANCE: Prior to commencement of construction of the Capital Improvements, the Association shall obtain and continue to maintain during the term of this Agreement a commercial general liability insurance policy that, at a minimum, covers bodily injury and property damage arising out of or relating to the capital improvements constructed with funding under this Agreement. The policy shall have a liability limit in the amount of not less than \$1,000,000 per occurrence and name the County as an additional insured. The Association shall provide proof of such general liability insurance acceptable to the County. The Association may satisfy the Section by requiring the contractor to obtain comparable insurance, naming the County as an additional insured.

9. TERMINATION AND SURVIVAL:

A. The County may terminate this Agreement by:

(1) Providing written notice of a material breach to the Association. If the Association does not cure the breach to the County's satisfaction within 90 days of such notice, this Agreement shall terminate automatically at the end of the 90th day.

(2) Providing written notice that the Board has not appropriated sufficient funds; provided, however, that valid requests for reimbursement submitted prior to such notice shall be paid, subject to Section 10.

B. The Association may terminate this Agreement by providing written notice of termination to the County.

C. Unless terminated earlier as provided above, this Agreement shall terminate automatically upon the first occurrence of:

(1) The Association fails to make a valid request for reimbursement within one year after the effective date of this Agreement.

(2) The Capital Improvements are completed.


(3) The Capital Fund is exhausted.

D. The Association's duty to maintain insurance under Section 8 shall survive one year after termination of this Agreement.

10. SUBJECT TO APPROPRIATIONS: This Agreement shall be subject to appropriations by the Board to, in its sole discretion, establish the Capital Fund. This Agreement is further subject to the New Mexico Bateman Act, NMSA 1978, Section 6-6-11 (1953).

11. DUPLICATE ORIGINALS: This Agreement shall be executed in duplicate originals

SANTA FE COUNTY

By: 
Anna Hansen
Chair, Board of County Commissioners

Date: June 12 2018

ATTEST:


Geraldine Salazar
County Clerk

Date: 6/12/2018

Approved as to form:


R. Bruce Frederick
County Attorney


Date: 5/15/2018

Finance Department Approval:


Stephanie Schardin Clarke
County Finance Director

Date: 5/16/18

CHUPADERO WATER-SEWAGE CORPORATION:


Rende Roybal, President of the Board

Date: 6/11/18

ATTEST:


Board Member

Date: 6/11/18

Exhibit A

Reimbursement Process

In accordance with Paragraph 1.B of the Memorandum of Agreement (“Agreement”) between the County of Santa Fe and the Chupadero Water-Sewage Corp, the following reimbursement process will be followed.

1. All contracts and procurements related to the Capital Improvements identified in the Agreement shall be managed by the Chupadero Water-Sewage Corp (“the Association”), and the Association shall receive and pay all invoices from all vendors related thereto.
2. Upon receipt of an invoice as described above, the Association shall review and certify for sufficiency.
3. Within 5 work days of invoice receipt, the Association shall submit to Santa Fe County (“the County”) a pay application that shall consist of the following:
 - a. A cover memo that describes the purpose and summarizes the pay application.
 - b. A copy of the invoice(s) and all supporting documentation submitted by the contractor/vendor to the Association that justify payment.

For convenience, the Association may submit multiple invoices in one pay application, as long as the cover memo clearly describes the invoices contained in the pay application.

4. The County shall review the pay application and, upon satisfaction that the pay application is complete and sufficient, shall confirm the adequacy of the pay application and certify that it meets County standards for payment within 5 calendar days or return to the Association for correction. The County will issue the funds necessary to pay the invoices contained in the certified pay application. The funds will be issued in the form of a check to the Association, and shall be issued within 12 calendar days of certification of the pay application. The County will not be responsible for payment of late fees.
5. Upon receipt of funds, the Association will pay all invoices and submit copies of the corresponding cancelled checks to the County prior to or simultaneous to submitting further applications for payment.
6. Pay applications and copies of cancelled checks shall be directed in duplicate to:

Erik Aaboe, Business Finance Manager
Public Works
Santa Fe County
PO Box 276
Santa Fe, NM 87504

And

Samuel L Montoya, Capital and Grants Manager
Finance Division
Santa Fe County
PO Box 276
Santa Fe, NM 87504

7. Funds to the Association shall be directed to:

Ana Berry, Accounts Manager
Chupadero Water-Sewage Corp
PO Box 24051
Santa Fe, NM 87502

