

**SANTA FE COUNTY
SERVICE AGREEMENT WITH
LCW&SC WATER & SEWER COOPERATIVE**

THIS AGREEMENT is made and entered into this 23rd day of JULY, 2015 by and between Santa Fe County, hereinafter referred to as the "County," and Las Campanas Water & Sewer Cooperative, a non-profit water utility cooperative with a principal address of 366 Las Campanas Drive, Santa Fe, New Mexico 87506, hereinafter referred to as "LCW&SC."

WHEREAS, LCW&SC is a cooperative association formed pursuant to the Cooperative Association Act, NMSA 1978, Section 54-4-1 et seq.; and

WHEREAS, LCW&SC is a wholesale bulk water customer of the County Water Utility Division. The County invoices LCW&SC monthly for water and LCW&SC resells water to its customers who are members of the LCW&SC. LCW&SC has been paying the County amounts that included NM gross receipts tax (hereafter "NM grt"); and

WHEREAS, LCW&SC has recently obtained a Non-Taxable Transaction Certificate (NTTC), Type 2 exemption, from the NM Department of Taxation and Revenue which determines certain purchases made by LCW&SC to be exempt from NM grt; and

WHEREAS, LCW&SC and Moss Adams, LLP, have entered into a Moss Adams Master Services Agreement whereby Moss Adams, LLP, provides tax consultant services to LCW&SC. Through an Addendum to that Master Services Agreement, Moss Adams proposes to analyze LCW&SC's records to determine the amount of NM grt LCW&SC paid to the County and file a refund application for the County to obtain funds which LCW&SC may be entitled to as a result of the NTTC certificate. The Moss Adams' Addendum includes the County as a party because the County invoiced LCW&SC for water, received payments for water from LCW&SC, and paid NM grt subject to deductions, to the Department of Taxation and Revenue. Moss Adams cannot perform the services described in the Addendum without the County's participation in the form of analyzing County's records, filing CRS-1 amended returns and consenting to Moss Adams' filing a refund application on behalf of the County; and

WHEREAS, LCW&SC, Moss Adams, LLP, and the County have agreed to the terms and conditions of an Addendum whereby the County consents to Moss Adams' filing of an application for a governmental NM grt refund for the County; and

WHEREAS, as part of LCW&SC's effort to determine the amount of any NM grt paid to the County and for Moss Adams, LLC, to file a refund claim for the County, LCW&SC and Moss Adams, LLC, wish to engage the services of the County to analyze County records pertaining to payments received from LCW&SC, file CRS-1 amended returns with the NM Department of Taxation and Revenue, and pay to LCW&SC any funds refunded to the County that represent NM grt received from LCW&SC for the prior three (3) years when LCW&SC did not have the NTTC certificate; and

WHEREAS, the County is willing to assist LCW&SC and render such services on the condition that the County is reimbursed for the cost of administrative time spent by the County in verifying transactions with LCW&SC and filing amended returns; and

WHEREAS, LCW&SC requires the County's assistance and the County is willing to provide the services on the terms and conditions stated in this Agreement, and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

The County shall:

- (1) Receive information from LCW&SC relating to LCW&SC's payment for water for 2012, 2013 and 2014 and January 2015.
- (2) Analyze County records to determine which monthly CRS-1 returns warrant amendment and e-file CRS-1 amended returns with the NM Department of Taxation and Revenue.
- (3) Inform LCW&SC of the date that each CRS-1 amended return is filed with the NM Department of Taxation and Revenue.
- (4) If the County receives a refund from the NM Department of Taxation and Revenue of any amounts that represent NM grt paid by LCW&SC for 2012, 2013 and 2014 and January 2015, submit the amount refunded to LCW&SC within thirty (30) days of the County's receipt of such refund.
- (5) Invoice LCW&SC for the costs incurred by the County in performing the above described services.

LCW&SC shall:

- (1) Provide the County with records or information pertaining to LCW&SC's payments for water to the County that included NM grt.
- (2) Pay invoices received from the County pursuant to 1 (5) above within thirty (30) days of receipt of an invoice.

2. COMPENSATION

In consideration of its obligations under this Agreement the County shall be compensated for the time incurred by the County in identifying the pertinent records and transactions and

e-filing the CRS-1 amended returns.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate six (6) months from such date unless County gives LCW&SC thirty days (30) written notice to terminate or, unless earlier terminated pursuant to Section 4 (Termination), of this Agreement.

4. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (30) days from LCW&SC's receipt of the notice. LCW&SC shall pay the County for services performed before the effective date of termination but shall not be liable for payment of any services performed after the effective date of termination.

5. NO AGENCY

- A. The County is providing services to LCW&SC under this Agreement. LCW&SC is not an agent of the County. Accordingly, LCW&SC, its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use the County vehicles, or participate in any other benefits afforded to employees of the County. LCW&SC has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.
- B. LCW&SC represents that it has, or will secure at its own expense, all services to be provided by LCW&SC and Moss Adams, LLC. Personnel and employees of LCW&SC and Moss Adams, LLC, shall not be employees of nor have any contractual relationship with the County except for

6. INDEMNITY

- A. LCW&SC indemnify and hold harmless the County and its Elected Officials, agents, and

employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the County's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

- B. LCW&SC agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and LCW&SC in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- C. LCW&SC's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

7. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any contract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement, LCW&SC agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

8. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

9. RELEASE

Upon its receipt or confirmation of the County's e-filing of all CRS-1 amended returns that

may be made filed under this Agreement, and upon LCW&SC's receipt from the County of any amounts of NM grt refunded to the County, LCW&SC releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

10. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. LCW&SC specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, Scope of Services, of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

11. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

12. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

13. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligation hereunder, the parties shall comply with all applicable laws, ordinances, and obligations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. LCW&SC and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

14. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

15. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

16. LIMITATION OF LIABILITY

The County's liability to LCW&SC for any breach of this Agreement by the County shall not exceed the maximum amount of potential compensation specified in Section 2, Compensation, of this Agreement. In no event shall the County be liable to LCW&SC for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

17. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

18. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (postage paid) to:

The County: Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87504

with a copy to: Carole H. Jaramillo
Finance Director
Santa Fe County Finance Department
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

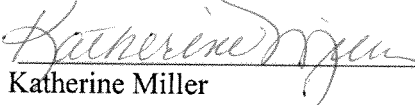
To LCW&SC: Kim Visser-Weinmann
General Manager
Las Campanas Water & Sewer Cooperative
366 Las Campanas Drive
Santa Fe, New Mexico 87506

19. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, SURVIVAL.


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

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager


7-23-15
Date

Approved as to form


Gregory S. Shaffer
Santa Fe County Attorney

7-17-15
Date

Finance Department


Carole H. Jaramillo
Finance Director

7/20/15
Date

LAS CAMPANAS WATER & SEWER COOPERATIVE


(signature and title)

7/16/15
Date