

SAN JUAN-CHAMA PROJECT WATER PURCHASE CONTRACT

BETWEEN THE INCORPORATED COUNTY OF LOS ALAMOS

AND

RIO DE CHAMA ACÉQUIA ASSOCIATION, INC

This bulk water purchase contract ("Contract") is made and entered into this _____ day of _____, 2022, by and between the Incorporated County of Los Alamos, New Mexico, hereinafter referred to as the "County" and the Rio de Chama Acequia Association, Inc, through its fiscal agent the Abeyta-Trujillo Acequia Association, hereinafter referred to as the "RCAA". The parties are individually a "Party", and are collectively, the "Parties."

WHEREAS, the Colorado River Storage Project was authorized by the Act of April 11, 1956 (70 Stat. 105), as amended and supplemented by, among other statutes, the Act of June 13, 1962 (76 Stat. 96), which authorized the San Juan-Chama Project ("SJCP") as a participating project in the Colorado River Storage Project as set out in 43 U.S.C. §615 *et seq.*; and

WHEREAS, the SJCP is approved for furnishing water for municipal, domestic, and industrial uses and for beneficial purposes; and

WHEREAS, by Contract No. 05-WC-40-560, dated September 27, 2006, ("Repayment Contract"), the United States of America acting through the Secretary of Interior, and the Bureau of Reclamation (Reclamation), and the County contracted to obtain a municipal water supply, and wherein the County is paying for such water during the term of the Contract by paying an agreed share of the reimbursable costs of the construction and, operation and maintenance of the initial stage of the SJCP allocated to municipal uses; and

WHEREAS, the County has the exclusive right under the Replacement Contract to use and dispose of a portion of its SJCP water supply available and allocated to the County, subject to the terms and conditions of the Replacement Contract; and

WHEREAS, from time to time the SJCP suffers from shortages, in those inflows to Heron Reservoir, in a calendar year, are insufficient to produce a full firm yield of 96,200 AF, causing a proportionate reduction in each contractor's allocated supply for that year; and

WHEREAS, the County has SJCP water planned to be beneficially used to meet its projected municipal water uses as submitted in the County's 40 Year Water Use Plan to the State's Office of State Engineer ("OSE"); and

WHEREAS, the County has available in Heron Reservoir water in excess of its current municipal and Los Alamos National Laboratory ("LANL") water use requirements which can be made available to the RCAA for beneficial use under terms and conditions further described herein; and

WHEREAS, the County has previously leased its current SJCP contract water to the U.S. Bureau of Reclamation for beneficial use by the Middle Rio Grande Conservancy District to maintain and operate its irrigation and drainage systems to allow native Rio Grande water to remain in the river un-diverted for habitat needs of the Rio Grande silvery minnow; and

WHEREAS, the RCAA is desirous of an irrigation supply in calendar year 2022 and also desires a renewable Contract wherein the RCAA may obtain such supply from the County in future years (2023-2025) upon reaching acceptable annual renewal terms with the County with approval by Reclamation; and

WHEREAS, the RCAA received capital funding from the State of New Mexico and intends such funds to be used for the purchase of a portion of the County's allocated SJCP water, in this present year and in future years (2023-2025) where capital funds are received, for use by the twenty-one-member RCAA.

NOW WHEREFORE, for good and valuable consideration received and acknowledged, the Parties hereby agree as follows:

1. General. The RCAA will, in calendar year 2022 as provided below, purchase up to One Thousand Two Hundred (1,200) acre-feet (AF), or the final shortage allocation of the County's SJCP allocation. In CY 2022, the RCAA will initially bulk-purchase One Thousand Eighty and 83/100 (1080.83) AF at a price of Sixty Dollars and No Cents (\$60 US) per acre-foot for a total cost of Sixty-Four Thousand Eight Hundred Fifty Dollars and No Cents (\$64,850 US). This Contract is limited to the RCAA's bulk-purchase of an allocation of water in any year and does not convey any right, title or interest in or to the County's Repayment Contract. Any prepaid amount as found in Paragraph 1 above is refundable, in a pro-rated amount per acre feet, if the pre-paid purchased acre feet is not available for release as determined by the Department of Interior.
2. Term. This Contract shall be for SJCP allocations in calendar year 2022. The County does not warrant, agree, or guarantee that it will sell future SJCP County water allocations to the RCAA.
3. Additional Water Purchase. The RCAA may purchase up-to 1,200 AF of the County's SJCP allocation in accordance with the terms of this Contract.
4. Notice of Additional Water Purchase. The RCAA must notify the County by October 15, 2022, if it elects to purchase any additional quantity of the County's 2022 SJCP allocation up to a maximum of 1,200 AF.
5. Price. The price for any subsequent renewal, if granted by County, shall be based upon Reclamation's third-party pricing as computed on an annual basis. , however the County shall have the sole right to determine any future year purchase pricing.
6. Compliance. The RCAA, as recipient of the County's designated amounts of SJCP water,

warrants and agrees it will comply with all federal, state, and local laws, ordinances, statutes, rules, regulations, or policies.

7. Calls for Water. The RCAA will request in writing, at least 14 days before needed, a specific quantity of water to be released to the County. County will forward RCAA's request to Reclamation. Reclamation, following the request of the Parties, will provide a copy of Reclamation's Summary of Release to the County. Reclamation's Summary of Release will be used by the Parties to determine the final quantity or quantities of SJCP water released for use by the RCAA.
8. Possession. The Parties agree, subject to SJCP Project Shortage constraints and agreements, that the RCAA shall take possession of the authorized purchased water amounts at the discharge point at Heron Dam ("Point of Possession"). The RCAA shall be solely responsible for any loss or evaporation of water after the Point of Possession. The Parties understand that in a shortage year the SJCP may fail to yield sufficient quantity to allow the County to provide the full annual quantity to the RCAA.
9. Water Quality. The County makes no warranty or representation regarding, and the RCAA assumes all responsibility for, the quality of water released by the County to the RCAA hereunder.
10. Water Rights Protection. No party hereto shall assert that any activity under this Contract shall affect the validity of any existing water rights or rights to water held by any other Party.
11. Licenses. The RCAA and its employees and agents shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Contract. The RCAA shall require and shall assure that all of the RCAA's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.
12. Beneficial Use. The RCAA agrees that it shall, at all times, put the purchased water to beneficial use and shall defend the County upon any challenge that such is not being put to a beneficial use during the Term of this Contract.
13. Notice to Reclamation. The County and the RCAA shall make every effort to notify the Reclamation of the amount of water they intend to purchase no later than April 30th during each year of this Contract.
14. Notices. All notices and submittals required pursuant to this Contract shall be provided as follows:
 - a. Mail and Email. The Parties agree that any required notices pursuant to this Contract can be provided via Email and regular Mail. For email notices, a hard copy shall be provided within three (3) calendar days from email date.

- b. The Parties agree that email signatures are permitted herein as authorized by NMSA 1978, § 14-15-1 *et seq.*
 - c. Any Notice to County shall be made to:
Mr. Philo Shelton, Utilities Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544
Email: philo.shelton@lacnm.us
 - d. Any notice to the RCAA shall be made to:

Darel Madrid, President
Rio Chama Acequia Association
P.O. Box 1163
Española, NM 87532
Email: darelmadrid@gmail.com
With a copy to: srf@santafelawgroup.com
 - e. Each Party shall notify the other of any change to their designated contact within fifteen (15) calendar days of change. Notices sent to the incorrect party shall not be effective.
15. Payments. Within fifteen days of the execution of this Contract, , the County shall send an invoice for the amount owed to the New Mexico Interstate Stream Commission (“NMISC”). Within fifteen (15) days of the release of funds from the NMISC to the RCAA, the RCAA shall pay the invoiced amount to the County. After fifteen (15) days from receipt of funding from the NMISC, any unpaid amount by the RCAA shall be subject to a monthly late fee of one and a half percent (1½ %) on any unpaid amount, including prior assessed late fees.
16. Indemnification. The RCAA shall, to the extent permitted by law, indemnify, hold harmless, and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys’ fees, of any kind or nature, arising from the RCAA purchase of water hereunder or breach hereof and the performance of the RCAA’s employees, agents, representatives and subcontractors.
17. Insurance. The RCAA shall maintain all required federal, state, and local required insurance coverages during the Term of this Contract.
18. Prohibited Interests. The RCAA agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the Purchase of the County’s SJCP water rights and allocations except as provided herein. The RCAA further agrees that it shall not employ any County employee or official, or shall

solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

19. Force Majeure. Neither County nor the RCAA shall be liable for any delay in the performance of this Contract, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.
20. Non-Assignment. The RCAA may not assign this Purchase Contract or any privileges or obligations herein without the prior written consent of County.
21. Records. The RCAA shall maintain, throughout the term of this Contract and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request. The County is subject to the Inspection of Public Records Act, NMSA 1978, 14-4-1 *et seq.* ("IPRA"). The RCAA agrees to provide any and all information requested by the County as related to this Contract within five (5) business days of a request by County. The RCAA is solely responsible for identifying any IPRA protected information and shall be responsible for timely obtaining an injunction or instituting other legal remedies to prevent the County from releasing the requested record(s).
22. Applicable Law. In any lawsuit or legal dispute arising from the operation of this Contract, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.
23. Non-Discrimination. During the Term of this Contract, the RCAA shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of the RCAA under this Contract, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.
24. Agency. The RCAA is not an agent or employee of County and shall not be considered an employee of County for any purpose. The RCAA, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither the RCAA nor any employee of RCAA shall be entitled to any benefits or compensation other than the compensation specified herein. The RCAA shall have no authority to bind County to any agreement, contract, duty or obligation. The RCAA shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. The RCAA shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that the RCAA shall at all times during the term of this Contract maintain the ability to perform the obligations in a professional, timely and reliable manner. The RCAA agrees to indemnify, defend and hold harmless, as

may be allowed by law, County for any and all claims that may arise from the RCAA's relationship to its employees and subcontractors.

25. Waiver. Waiver of any breach of this Contract by any Party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Contract.

26. Termination.

- a. Generally. County may terminate this Contract with or without cause upon ten (10) days prior written notice to the RCAA. Upon such termination, County shall return any pro-rated amount of payment, less actual administrative costs, to the RCAA. RCAA shall provide a final report of the SJCP water used and shall turn over to County originals of all materials required pursuant to this Contract.
- b. Funding. This Contract shall terminate without further action by County on the first day of any County fiscal year for which funds to manage the purchase hereunder are not appropriated by the County Council. The County shall make reasonable efforts to give the RCAA at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.
 - i. The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and available to the NMISC for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature and available to the NMISC, the Abeyta-Trujillo Acequia Association, as fiscal agent for the RCAA, may immediately terminate this Contract by giving County written notice of such termination. The Abeyta-Trujillo Acequia Association's, as fiscal agent for the RCAA, decision as to whether sufficient appropriations are available shall be accepted by the County and shall be final. The County hereby waives any rights to assert an impairment of contract claim against the Abeyta-Trujillo Acequia Association, or the RCAA, or the NMISC, or the State of New Mexico in the event of immediate or early termination of this Contract by the Abeyta-Trujillo Acequia Association, as fiscal agent for the RCAA, or the NMISC.
 - ii. This Contract is funded in whole or in part by funds made available under NMISC Acequia Capital Appropriation Project Grant Contract. Should the NMISC terminate the grant Contract, the Abeyta-Trujillo Acequia Association, as fiscal agent for the RCAA, may early terminate this Contract by providing the County written notice of such termination. In the event of termination pursuant to this paragraph, the Abeyta-Trujillo Acequia Association's, as fiscal agent for the RCAA, only liability shall be to pay the County for acceptable goods delivered and services rendered before the termination date.

27. Invalidity of Prior Agreements. This Contract supersedes all prior contracts or agreements, either oral or written, that may exist between the Parties with reference to the purchase of water described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and the RCAA.
28. Counterparts. This Contract may be executed through the use of separate signature pages or in any number of counterparts, and the counterparts collectively shall constitute a single agreement binding on all of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Contract on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

INC. COUNTY OF LOS ALAMOS

RIO DE CHAMA ACÉQUIA
ASSOCIATION

By:

Philo Shelton, Utilities Manager

By:

ABEYTA-TRUJILLO ACEQUIA
ASSOCIATION,
As fiscal agent for the RCAA

ATTEST

UNITED STATES OF AMERICA

Regional Solicitor

Regional Director
Bureau of Reclamation
Interior Region 7 – Upper Colorado Basin