

**ENERGY EFFICIENT EQUIPMENT PROJECT
AT THE BUCKMAN DIRECT DIVERSION FACILITY**

**AGREEMENT BETWEEN THE CITY OF SANTA FE
AND THE BUCKMAN DIRECT DIVERSION BOARD**

This Agreement (“Agreement”) between the City of Santa Fe (“City”) and the Buckman Direct Diversion Board (“BDDDB”) shall be effective as of the date of the full execution of this Agreement.

RECITALS

A. The City procured an Investment-Grade Energy Audit (“IGA”) performed by Yearout Energy Services Company to evaluate the Buckman Direct Diversion Facility (“BDD Facility”) along with its City facilities for energy savings improvements. The IGA recommended interior LED lighting retrofits and solar projects (“BDD Energy Projects”) at BDD Facility locations as returning energy savings within the timeframe parameters of the IGA.

B. The BDD Energy Projects include LED Lighting at BDD Main, Booster Station #1A, Booster Station #2A and the Buckman Lift Station (“LED Lighting”); installation of two (2) solar arrays: a 739.2 kW ground mount solar array at Booster Station #1A and a 278.08 kW ground mount solar array at the Buckman Lift Station (“Solar Projects”) all as described in the IGA.

C. The City and Sterling National Bank (“Lessor”) will enter into that certain Lease-Purchase Agreement dated March 29, 2021 (“Lease-Purchase Agreement”) to finance the design, acquisition, construction, permitting, and installation of the energy conservation measures recommended by the IGA. The Lease-Purchase Agreement will cover the installation of the BDD Energy Projects and the City, as borrower and lessee under the Lease-Purchase Agreement, is the sole obligor under the Lease-Purchase Agreement. The City, Santa Fe County (“County”), Las Campanas Water and Sewer Cooperative (“Cooperative”) and/or the Club at Las Campanas (“Club”) have entered, or will enter, into a separate cost sharing agreement to pay for the cost of the BDD Energy Projects out of utility cost savings.

D. Under the Lease-Purchase Agreement, the City will take title to the BDD Energy Projects upon installation. The City and BDDDB wish to transfer title of the BDD Energy Projects to the BDDDB once the Energy Projects are installed, subject to the conditions specified in this Agreement.

E. The City will also enter into that certain Professional Services Contract for Energy Performance Contracting (“EPC”) with Yearout Energy Services Company (“EPC Contractor”) for construction, installation, and other services related to the BDD Energy Projects and other projects at City facilities.

F. The City and the County each own an undivided 50% interest in the facilities comprising the Buckman Direct Diversion Project (“BDD Project”), (excluding Las Campanas Separate Facilities), as described in the *Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion* (“JPA”), as amended, and the

Facility Operations and Procedures Agreement for the Buckman Direct Diversion Project, as amended. In accordance with the JPA, the BDD Energy Projects will be appurtenant to and a part of the BDD Facility, which the City and County jointly own.

G. The permits (rights-of-way) for the BDD Facility are held by the BDDDB with the United States Forest Service (“USFS”) and with the Bureau of Land Management. The Solar Projects will require new permits to be issued by the USFS with the BDDDB’s consent and cooperation.

H. The parties wish to establish the terms and conditions under which the BDDDB will agree to allow for the installation of the BDD Energy Projects at the BDD Facility and for the transfer of the BDD Energy Projects to the BDDDB.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The forgoing Recitals are incorporated into and made a part of this Agreement by reference.

2. Consent to Install BDDDB Energy Projects. The BDDDB agrees to allow the City and the EPC Contractor to install the BDDDB Energy Projects at the BDD Facility and to obtain the necessary Special Use Permits (“SUPs”) from the USFS for the installation of the Solar Projects at the BDD Facility. The SUPs shall be issued in the BDDDB’s name. The BDDDB shall cooperate as requested or required in obtaining the SUPs.

3. Solar Projects. The Solar Projects to be installed at the BDD Facility are a 739.2 KWdc Utility-Interactive Photovoltaic System at Booster Station #1A and a 278.08 kWdc Utility-Interactive Photovoltaic System at the Buckman Lift Station as depicted and described on the Site Plans for each, attached as Exhibit A-1 (Booster Station #1A) and Exhibit A-2 (Buckman Lift Station).

4. Transfer of Title and Maintenance of Energy Projects. Upon the vesting of title in the City to each Energy Project, the City agrees to transfer title to the Energy Project to the BDDDB subject to Lessor’s security interest and all rights and remedies of Lessor included in the Lease-Purchase Agreement. The City and the BDDDB agree to execute any and all necessary documents to effectuate the transfer subject to Lessor’s rights and interests. To the extent possible, the City shall transfer all warranties and guarantees of the Energy Project, other than the Savings Guarantee, which shall remain with the City, as fiscal agent for the BDD Facility. The EPC Contractor (or its subcontractor) shall perform all services as described in the EPC for the BDD Energy Projects, regardless of the transfer of title.

5. Good Faith. The parties shall cooperate in good faith to assure that the Agreement objectives are obtained.

6. Effective Date. This Agreement shall be effective on the date it has been fully executed by each party.

7. Miscellaneous

A. No Waiver. Neither the City nor the BDDDB waive any limitation of liability that may apply under state law, including but not necessarily limited to the Bateman Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 and the Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. Article IX, Sections 10 and 14, and NMSA 1978, Section 37-1-23.

B. Scope of Agreement. This Agreement constitutes the entire agreement and understanding between the City and the BDDDB and supersedes any and all prior agreements, and understandings, oral or written, relating to the subject matter hereof.

C. Continuing Cooperation Between the Parties. The City and the BDDDB shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents required for the installation and operation of the Energy Projects as, described in this Agreement and shall otherwise cooperate with one another as is required to effectuate the purposes of this Agreement.

D. No Third-Party Beneficiaries. The parties do not intend by this Agreement to confer any benefit on any person or entity that is not a party to this Agreement. Only the City and BDDDB may enforce this Agreement.

E. Neutral Construction. Both parties fairly and fully negotiated the terms of this Agreement and both were represented by counsel. If a court deems any provision of this Agreement ambiguous, such ambiguity shall not be construed against either party and shall be construed neutrally so as to carry out the intent of the parties.

F. Assignment. This Agreement is not assignable by either party.

G. Captions. Section headings in this Agreement are used solely for convenience and shall be disregarded in the construction of this Agreement.

H. Amendment. This Agreement shall not be amended except by an instrument in writing executed by the parties.

I. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of New Mexico. If a conflict arises between the parties concerning this Agreement, the First Judicial State Court District, Santa Fe County, shall be the exclusive venue.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

CITY OF SANTA FE

Alan Webber, Mayor

Date

ATTEST:

Kristine Bustos-Mihelcic,
City of Santa Fe Clerk

Date

APPROVED FOR FINANCES:

Mary McCoy, City Finance Director

Date

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Feb 24, 2021 10:35 MST)

Senior Assistant City Attorney

Feb 24, 2021

Date

BUCKMAN DIRECT DIVERSION BOARD

Anna Hansen, BDDDB Chair

Date

ATTEST

Katherine E. Clark, County Clerk

Date

APPROVED AS TO FORM

Nancy R. Long, BDDDB Counsel

Date

**BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY'S APPROVAL OF
ENCUMBRANCE OF BDD ASSETS PURSUANT TO PARAGRAPH 8 OF THE JOINT
POWERS AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE COUNTY OF
SANTA FE GOVERNING THE BUCKMAN DIRECT DIVERSION PROJECT**

Henry P. Roybal, Chair

Date

ATTEST:

Katherine E. Clark, County Clerk

Date

APPROVED AS TO FORM

Gregory S. Shaffer, County Attorney



