

JOINT POWERS AGREEMENT

- 1. Authorization:** This is an amendment to the December 8, 2006 agreement entered into between the Board of County Commissioners of Grant County, the City of Bayard, the Town of Hurley, the Town of Silver City, and the Village of Santa Clara pursuant to the Joint Powers Agreement Act, Section 11-1-1 et seq., NMSA 1978, as amended. The aforementioned members (“Members”) have been granted authority by a majority vote of their respective governing bodies to amend the December 8, 2006 agreement.

- 2. GRANT COUNTY WATER COMMISSION**
 - A. There is hereby created Grant County Water Commission (hereinafter, “Commission”) under the authority of NMSA 1978, Section 11-1-5 composed of five (5) members. Each governmental unit (village, town, and county) shall appoint one member and one alternate member to the Commission in a manner consistent with the policy and ordinances of each respective party. At the Commission’s first meeting, a Chairperson shall be elected and provisions for the employment or appointment of a secretary shall occur for, at least, the keeping of minutes of that first meeting. Thereafter, other officers may be elected as determined necessary by the Commission.
 1. The Commission shall consist of one representative from the Town of Silver City, one from the Town of Hurley, one from the Village of Santa Clara, one from the City of Bayard, and one from the County of Grant. All members shall be residents of Grant County.
 2. Terms of Office: Each commissioner shall serve for two years but may be removed for cause under the rules of internal governance adopted by the Commission. A renewal of a Commissioner shall not infringe upon the right of representation by the constituent parties, and no meeting shall occur until a replacement Commissioner is appointed by the represented entity.
 3. Each member shall have one vote. Written and signed proxies shall be permitted.
 4. Meetings of the Commission shall occur as often as deemed necessary but shall occur at least quarterly.
 5. Alternate members shall be permitted to attend Commission meetings and to participate in discussions but shall have no vote unless the primary Commissioner is absent.
 6. No member of the Commission shall act in such a way as to frustrate the purpose described herein, including but not limited to the failure to attend a meeting or to address the business of the Commission. If the Commission shall determine that the member(s) appointed by a signatory have failed to attend regular or special meetings of the Commission the Commission shall give written notice to the signatory demanding the replacement of the members and setting for the reasons, therefore. The affected signatory shall appoint a new member, within 30 days of the service of such notice appoint a new member. If the affected signatory fails to make such an appointment, said signatory will be disenfranchised from any voting or other activities of the Commission.
 - B. The Commission shall adopt bylaws for the internal governance of the Commission, except that the Commission shall be subject to the State of New Mexico’s Open Meetings Act and Inspection

of Public Records Act. A secretary to the Commission shall keep minutes of public meetings and act as the repository of public documents.

- C. A quorum to conduct business shall be a majority of the voting members of the Commission.
- D. A super-majority vote should be required for the execution of any contracts, the purchase or lease of water, to amend this Agreement, or for the use of funds to create projects or to recharge watersheds, provide conservation education, or to construct wells and distribution system for the benefit of the constituent parties for the Joint Powers Agreement, EXCEPT that nothing in the Joint Powers Agreement or the Commission formed hereby shall restrict those parties from individually, or in concert with other, from seeking and obtaining sources of water on their own, individual behalf, or from doing any other act which could have been done by the Commission as a whole.
- E. Without further action by the constituent Members of the joint Powers Agreement, no party to this agreement shall be individually obligated financially for any project costs for the development of reservoirs, diversion project, distribution systems, treatment facilities, pumping facilities, ditches, and canals, or any other construction associated with the securing, retaining, or distribution of water obtained under this Agreement. The parties intend that all funds expended, and all obligations assumed by this Commission shall be predicated on the availability of federal or state funds.
- F. Additional Members: This Joint Powers Agreement may be expanded to include additional Members upon a unanimous vote of the original signatories.

3. PURPOSES:

- a. The purpose of this Joint Powers Agreement is to establish and empower an independent water entity to provide municipal water utility services to present and future development within a designated service area and the unincorporated territory of Grant County as stated in the service area and depicted on map Exhibit "A" attached. Water Service Area ("Service Area"): The service area includes areas within the unincorporated territory of Grant County as depicted on map Exhibit "A" attached hereto and excludes the service area within the incorporated Town of Hurley, Village of Santa Clara, the City of Bayard, and Town of Silver City limits.
- b. The Commission will accomplish the following:
 - 1. Negotiate the purchase, lease, or acceptance of water by contract or other agreement including those agreements necessary to obtain funding therefore between said commission and any other entity including the United States, the Secretary of Interior, the New Mexico Interstate Stream Commission, the State of New Mexico, any other Federal or State agency or entity, and any other entity whether public or private;
 - 2. Improve water conservation practices;
 - 3. Finance the construction, operation, and maintenance of water distribution infrastructure;
 - 4. Cooperate with other water entities for public benefit.

5. Do all things necessary to carry out the aforesaid purposes, PROVIDED that any contract, lease, or acceptance made under this Agreement shall be subject to the ratification of each of the constituent parties herein, and FURTHER, that any purchase, lease, or acceptance or agreement for funding shall be subject to the limitations described herein.

4. POWERS OF THE COMMISSION

The Commission is the administrating agency authorized to exercise all powers common to each of the parties in the designated service area concerning water systems and facilities within the designated areas but not limited to the following:

The Commission shall be empowered to:

- A. Investigate all reasonable options for securing additional water supplies for the constituent parties of this Agreement; and
- B. Investigate all reasonable options regarding watershed restoration, water conservation, and similar projects; and
- C. Conduct public meetings for the discussion of options; and
- D. Recommend fiscally sound methods of additional funding for infrastructure, including the possibilities of issuing bonds and other evidence of indebtedness; and
- E. Recommend a fair and equitable system of taxation should it be determined prudent to do so; and
- F. Recommend specific tax districts; and
- G. Recommend a specific manner for allocation of resources obtained under this Agreement; and
- H. Represent the constituent parties in all and any negotiations with any party regarding New Mexico's entitlement to Central Arizona Project water or funds associated therewith, and the use thereof for the benefit of the public of Southwest New Mexico and more specifically, the people of Grant County; and
- I. Recommend to the constituent parties of the Joint Powers Agreement such amendments to the Agreement which are deemed necessary and proper to accomplishing the goals described therein; and
- J. Hire or employ such managers, consultants, and employees, as determined to be necessary; and
- K. Prepare and adopt an Annual Operating Budget for the allocation and disbursement of funds; and
- L. Establish permanent and temporary committees which shall report to the Commission; and
- M. Execute contracts providing for the lease, purchase, or acceptance of water from any party, including the United States Secretary of Interior and any other federal or state authority; and
- N. Allocate water and costs for specific projects to the respective Members of the Joint Powers Agreement and negotiate and execute the Water Supply Contract or the acquisition of additional funds for projects based on said allocation and cost determinations; and
- O. To make and enter contracts; and

- P. To apply for and accept grants and contributions; and
- Q. To incur debts, liabilities, and obligations to further the purpose of this JPA
- R. To employ or contract for the services of employees, consultants, professionals, and such other persons or entities as it deems necessary, including but not necessarily limited to contract operators for all or any portion of the water facilities or all or any portion of the functions and under such terms and conditions established by the Commission Board; and
- S. To obtain in its name all appropriate governmental permits, licenses, entitlements, opinions, and rulings; and
- T. To adopt, implement and enforce all policy and procedure necessary for the accomplishment of its purposes herein; and
- U. To acquire, maintain and operate buildings, facilities, and equipment necessary for the proper operation of the water facilities; and
- V. To acquire and dispose of real property; and
- W. To acquire and dispose of equipment; and
- X. To sue and be sued in its name; and
- Y. To incur debt sufficient to maintain its operations subject to the limitations of this JPA; and
- Z. To set reasonable rates which are at least sufficient to pay all operations, maintenance, debt and administrative expenses, financial and operational reserve funding, debt service reserve, and all other costs and expenses necessarily incurred by the Commission; and
- AA. To bill and collect fees and other charges based on usage and the rates set by the Commission for connection to and use of the water facilities; and
- BB. To create policies to provide services to associations, unserved, and underserved areas.
- CC. To impose conditions on the use of its facilities; and
- DD. To adopt resolutions and ordinances necessary to carry out the purposes of this JPA;
- EE. To issue revenue bonds and to pledge the net revenue from the operation of the Joint Authority's water system to the payment of the revenue bonds; and
- FF. To obtain necessary public liability and property insurance coverage; and
- GG. Consistent with the New Mexico Tort Claims Act, to indemnify, hold harmless, and defend the parties involved from any claim for personal injury or property damage resulting from the willful acts or negligence of the Joint Authority, any of its agents, employees, contractors, representatives, officers, and directors under this JPA. However, such indemnification shall be paid solely from a special fund created from the water revenues generated by the Joint Authority utility operations with no indemnification to be sought from or paid from the Joint authority's general treasury; and
- HH. To undertake the planning, development, and implementation of a forty (40) year water plan to acquire and hold unused water rights under such plan and exercise such other powers granted by NMSA 1978, 72-1-9 (2008) or as amended; and
- II. To perform any other lawful power or action reasonably necessary to execute the foregoing expressed powers.

The Commission shall be restricted from:

- A. Condemning property of rights.
- B. Imposing taxes, levies, or assessments without the express approval of the governing bodies of the constituent parties whose residents would be directly affected

- C. Allocating water or funds for projects to constituent parties of this Joint Powers Agreement in any manner not fair and equitable

5. BATEMAN ACT

Nothing herein contained shall be construed to create an indebtedness beyond the current fiscal year of any member political subdivision in violation of the Bateman Act, nor shall this Agreement or anything herein contained be construed to create an obligation on the parties which constitutes the general obligation or indebtedness with the meaning of Article IX, Section 12 and 13 of the Constitution of the State of New Mexico and shall never constitute a charge against the general credit or taxing power of a constituent party to the Joint Powers Agreement.

6. OPERATION AND MAINTENANCE

The Commission shall provide for the operation and maintenance of its water system. The JPA shall either hire or contract for the operations and/or maintenance of its water systems. Any contract with a private operator shall be entered into under and consistent with the New Mexico State Procurement Code and Regulations.

7. USE AND DISPOSITION OF WATER UTILITY REVENUES

During the existence and continued operations of the Commission, income derived from the operation of the Commission water utility shall be used in the following priority:

- A. To maintain Commission's utility in good repair and to pay legitimate expenses of operations; and
- B. To pay principal and interest on revenue bonds assumed or issued by the Commission for the purpose of acquiring, repairing, improving, or enlarging the water utility services, which expenses include but are not limited to debt obligations; and
- C. To create a sinking fund for future capital expenses and a reasonable reserve fund to make payments on the indebtedness of the Commission as required by the ordinance(s) authorizing the revenue bonds and the laws governing their issuance; and
- D. To pay the cost of improving and extending the Commission water utility and the redemption of revenue bonds before their maturity if permitted by the ordinance(s) authorizing their issuance; and
- E. Any other purposes determined by the Commission Board as reasonably necessary for operations; and
- F. Any surplus revenues not expended shall remain in a Commission utility fund for future water utility expansion or other water utility uses at the discretion of the Board.

8. FINANCIAL OPERATIONS

- A. The Commission shall be responsible for all financial operations of the Commission water operations, but not limited to providing strict accountability of all receipts and disbursements, establishing a uniform system of accounts, paying all obligations and expenses, investing operating and excess funds not required for current operations and maintaining financial records by generally accepted accounting principles (GAAP).

- B. The Commission may employ a general manager to perform the functions necessary for the JPA.
- C. The Joint Powers Agency may employ any additional staff or contract for services by consultants, professionals, or such other persons or entities it deems necessary to accomplish the JPA's purposes. Any contract with a private party including but not limited to consultants and professionals shall be entirely into pursuant-to and consistent with the New Mexico State Procurement Code and Regulations.

9. ACCOUNTS AND RECORDS

- A. The JPA shall maintain strict accountability of all funds and reports.
- B. The JPA shall either hire or contract with a Certified Public Accountant.
- C. The JPA shall prepare and submit unaudited quarterly, and audited annual financial reports, including but not limited to a profit & loss statement, balance sheet, and statement of cash flows to the member entities. The financial reports shall be prepared by generally accepted accounting principles (GAAP).
- D. The JPA shall file its annual budget to the Department of Finance and Administration.
- E. The JPA shall prepare and submit to its Members quarterly and annual status reports on the JPA's major projects, both planned and in progress, including cost projections.

10. DEBT

The debts, liabilities, and obligations of this JPA shall be the debts, liabilities, and obligations of the JPA alone and shall not constitute any debts, liabilities, or obligations of any of the parties making up this JPA.

11. ALLOCATION OF JPA COSTS

A. Payment Allocation:

The allocation of the Operating Expenses shall be prorated based on the number of connections by each member entity. The allocation of payment will be established at the beginning of the fiscal year and member entities shall make their payments within 45 days of receipt of the payment request.

B. Payment Obligations

The JPA Board shall assess annually the projected costs which may include the operating budget and a reasonable cash reserve for the fiscal year. The payment obligations will be set forth by the annual budget and shall be consistent with the projected cash flow needs of the JPA.

Each party shall be responsible for paying its respective share of the JPA's cost and any budgeted cash reserve assessed. If the revenues are insufficient to satisfy the JPA's operating costs, then the JPA Board may assess such deficiencies in the same manner as the annual assessment or amend the annual budget to reduce costs. If collected assessments exceed the JPA's actual costs and budgeted cash reserves, they shall be considered excess revenues and applied to the next fiscal year's costs to reduce each party's respective share of next year's costs.

If a Party fails to pay its assessed share of the JPA's costs, the JPA may exercise any available remedy to enforce payment by the defaulting Party, including expulsion from the JPA according to the Bylaws procedures.

12. WITHDRAWAL, EXPULSION, TERMINATION, OR DISSOLUTION

In the event of dissolution of the Commission for any reason(s), or termination of this Joint Powers Agreement, the individual parties shall have the right to continue under independent or cooperative water supply contract as successors-in-interest to the Commission or otherwise.

Further, upon the completion of this Agreement's purpose or the dissolution of the Commission, surplus money on hand shall be returned to each member entity in proportion to the contributions made by those Members pursuant to NMSA 1978, Section 11-1-5(F). Additionally, to the extent any member entity contributes real property, structures or facilities located thereon, or other unique contributions, they shall be returned to the contributing member.

13. SEVERABILITY

The sections, subsections, or paragraphs and sentences are severable, and if any phrase, clause, sentence, section, or subsection of this Agreement be declared unconstitutional, illegal, or unenforceable by a court of competent jurisdiction, such unconstitutionality, illegality or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs and sentences of the Agreement since the same would have been entered into by the parties without such invalid portion.

14. EFFECTIVE DATE

This amendment to the Agreement shall become effective when executed in the manner provided by the laws of the respective signatories granted by a majority vote of their respective governing bodies, and subject to any approval of the New Mexico Department of Finance and Administration, if necessary, pursuant to NMSA 1987 Section 11-3-1.

15. VENUE

Venue for any suit shall be brought pursuant to this Agreement shall be the Sixth Judicial District Court, Grant County, New Mexico.

16. AMENDMENTS

This Agreement, and any amendments thereto, may be amended as deemed necessary by unanimous agreement of the Members as determined by majority vote of the governing bodies of the respective Members.

DATED this _____ day of _____, 2023.

For and on behalf of the Town of Hurley

Date: _____

For and on behalf of the Village of Santa Clara

Date: _____

For and on behalf of the City of Bayard

Date: _____

For and on behalf of the Town of Silver City

Date: _____

For and on behalf of the County of Grant

Date: _____

Approved by New Mexico Department of Finance and Administration:

By _____

Date: _____