

**JOINT POWERS AGREEMENT
UTE RESERVOIR WATER COMMISSION**

This Joint Powers Agreement (herein the “Agreement”) creating the Ute Reservoir Water Commission (herein the “Commission”) is made and entered into to be effective on the date hereinafter stated by and between the communities of Clovis, Tucumcari, Portales, San Jon, Logan, Texico, Melrose, Elida, and Grady; the County of Curry, Roosevelt and Quay; (herein referred to individually by name or collectively as the “Parties”), all of such entities being political subdivisions or public agencies as defined in the Joint Powers Agreements Act and located in either Quay, Roosevelt, or Curry County, New Mexico and empowered to enter into a Joint Powers Agreement under the laws of the State of New Mexico.

RECITALS

WHEREAS, all of the parties are interested in the acquisition and distribution of water from Ute Reservoir; Quay County, New Mexico; and,

WHEREAS, the parties have a common interest in entering into a contract with the New Mexico Interstate Stream Commission, the object of said agreement being to reserve 24,000 acre feet of water per year from Ute Reservoir; and

WHEREAS, the parties agree that water from Ute Reservoir should be held for the benefit of all of the parties to this Agreement; and,

WHEREAS, the Ute Reservoir Water Commission has served as a viable organization for the planning, development, and acquisition of water from Ute Reservoir, and provides a unified means for the acquisition of water from Ute Reservoir for the benefit of those parties to this Agreement; and,

WHEREAS, the parties desire to continue the Commission, first organized on November 19, 1987, and continued by Joint Powers Agreement effective June 30, 1989, July 1, 1991, and December 1, 1995 as amended on March 9, 2006 and,

WHEREAS, it is the desire that the Commission have the power to carry out the purposes and functions as set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

I.

AUTHORIZING STATUTES

This Agreement is entered into pursuant to the Joint Powers Agreement Act [§§11-1-1 to 11-1-7, N.M.S.A. 1978, as amended].

II.

PURPOSES

The purposes of this Agreement are to:

A. Protect and utilize future and existing water rights and water resources of the parties which are to be allocated herein.

B. Provide mechanisms, through the adoption of future joint powers agreements, for the parties to plan, develop acquire and finance a water supply and distribution system or systems to furnish, supply, and provide water for the use of the parties from sources in, upon, along, and tributary to the Canadian River and the Ute Reservoir Project and groundwater within the State of New Mexico, including the financing of water storage, conveyance and water treatment projects.

III.

CREATION OF THE UTE RESERVOIR WATER COMMISSION

A. There is hereby created a Commission pursuant to the authority granted by Section 11-1-5, N.M.S.A. 1978, composed of twelve (12) members. Any member with a water allocation, as detailed in Article IV.A. below will be a voting member and any member without a water allocation, as detailed in Article IV.A, below, will be a non-voting member. At signing of this Agreement there are nine (9) voting members and three (3) non-voting members to be appointed by the parties to this Agreement in the manner selected by each party for the appointment of its representative member as follows:

- | | |
|-------------------------|-----------------------|
| 1. City of Clovis | One Voting Member |
| 2. City of Tucumcari | One Voting Member |
| 3. City of Portales | One Voting Member |
| 4. Village of San Jon | One Voting Member |
| 5. City of Texico | One Voting Member |
| 6. Village of Melrose | One Non-Voting Member |
| 7. Village of Grady | One Voting Member |
| 8. Town of Elida | One Voting Member |
| 9. County of Curry | One Non-Voting Member |
| 10. County of Roosevelt | One Non-Voting Member |
| 11. County of Quay | One Voting Member |
| 12. Village of Logan | One Voting Member |

B. The United State of America, by and for the benefit of Cannon Air Force Base, shall be a non-voting ex-officio member, unless specified otherwise, when the terms “party” and “member” are referred to in this Agreement, they shall not include the United States of America.

C. Each member to the Agreement shall, in addition to the appointment of a member, appoint at least one alternate member to the Commission, who shall act in the absence or incapacity of the regular member.

The alternate member shall have all the powers, duties, and responsibilities of the regular member then serving as a member of the Commission. Alternate voting members may attend all meetings of the Commission and may participate in discussions of the Commission but may vote only in the absence or incapacity of the regular voting member. Non-voting members and non-voting alternate members may attend all meetings of the Commission and may participate in discussions of the Commission but may not vote.

D. Each voting member or alternate voting member serving in the absence of a regular voting member shall be entitled to one vote. Neither non-voting members nor their alternate are entitled to a vote.

E. A voting member may not frustrate conduct of the business of the Commission by failing or refusing to attend the meetings or to address the business of the Commission. If the Commission shall determine that the voting member appointed by a party has failed to attend regular meetings of the Commission, the Commission shall give written notice to the party affected by personal service or by certified mail, return receipt required, requesting the replacement of either the regular voting member, the alternate voting member or both such voting members, and setting forth the reasons for such request. The affected party shall, within thirty (30) days of the service of such notice upon the affected party appoint a new voting member and/or alternate voting member pursuant to the request contained in such notice. If the affected party fails or refuses to appoint another voting member and/or alternate within such thirty (30) days, the Commission shall appoint a voting member and/or alternate voting member for such affected party who shall serve until such time as the affected party may bring an action in the District Court of Quay, Roosevelt, or Curry County, New Mexico, contesting the decision of the Commission to replace a member or members.

F. The voting members of the Commission shall select a chairman and other officers who shall serve for one (1) year or until their successors are duly elected and qualified.

G. The Commission shall meet in compliance with the Open Meetings Act of the State of New Mexico.

H. The Commission shall not conduct business unless a majority of the voting members or the alternates of the voting members are present.

I. Except as otherwise provided by this Agreement, a vote by a majority of the voting members of the Commission shall be required for conduct of all business before the Commission.

J. The Commission's authority shall be limited to the execution of an agreement with the Interstate Stream Commission for the reservation of 24,000 acre feet of water and the reallocation of water reserved in those circumstances where a party has withdrawn from the agreement or the party desires to reduce its allocation. The Commission shall also have the authority to make recommendations for future joint powers agreements that would involve the acquisition and holding of water rights, right to water, facilities for storage, treatment and distribution of water and the planning, developing and financing of the storage, distribution and treatment of water for the benefit of all parties to this Agreement.

IV.

AGREEMENT OF THE PARTIES

A. **WATER ALLOCATION.** The estimated annual yield of Ute Reservoir is approximately 24,000 acre feet. This amount may be varied under the terms and conditions of the Reservation Contract between the New Mexico Interstate Stream Commission and the Ute Reservoir Water Commission. The parties agree to the following allocation of water available in the following amounts:

<u>City</u>	<u>Acre Feet</u>
Clovis	12,532
Melrose	0
Texico	250
Grady	35
Curry County	0
Elida	50
Portales	3,583
Roosevelt County	0
San Jon	150
Tucumcari	6,000
Quay County	1,000
Logan	400
	<u>24,000</u>

B. Any diminishment of or increase in the 24,000 acre feet of water shall result in a proportional decrease or increase based upon the percentage of the base of 24,000 acre feet of water as allocated above. No party's allocation as set forth above can be increased or decreased without the consent of that party.

C. **RESERVATION OPTION.** The parties agree, effective January 1, 1996 to share the cost incurred by reservation contract with the Interstate Stream Commission for the reservation of water from Ute Reservoir in the proportions set forth below. The cost of the option for reservation of

water shall be based upon the water reservation contract between the New Mexico Interstate Stream Commission and the Ute Water Commission.

	Percentage	Cost
Clovis	52.21%	\$18,798.00
Melrose	0.00%	\$0.00
Texico	1.04%	\$375.00
Grady	0.15%	\$52.50
Curry County	0.00%	\$0.00
Elida	0.21%	\$75.00
Portales	14.92%	\$5,374.50
Roosevelt County	0.00%	\$0.00
San Jon	0.63%	\$225.00
Tucumcari	25.00%	\$9,000.00
Quay County	4.17%	\$1,500.00
Logan	<u>1.67%</u>	<u>\$600.00</u>
	100.00%	\$36,000.00

D. Reservation option payments to be made under Paragraph “C” of this Article shall be due and payable within (90) ninety days of invoice. Any member that does not pay option payments within the time specified, shall not be entitled to vote on any matter before the Commission until all delinquent option payments have been paid in full. Any jurisdiction with continued delinquency in paying reservation or other costs for a full year will result in the automatic forfeiture of all reservation and purchase rights under this Agreement. In the case of such forfeiture, all reservation and purchase rights under this Agreement of the forfeiting member shall be reallocated among the remaining members on a pro rata basis based upon each member’s then current water allocation as detailed in Article IV.A. above.

E. **PLANNING AND DEVELOPMENT.** Parties to this Agreement recognize the importance of maintaining efforts in the planning of Ute Water Development Project. Any and all costs to be incurred in the future for planning and development shall be contained in future joint powers agreements.

V.

TITLE OF ASSETS HELD BY COMMISSION

Rights to purchase Ute Reservoir water shall be retained for the benefit of all of the parties herein, until such time as the option to receive water is exercised, or until such time as a subsequent agreement with the New Mexico Interstate Stream Commission shall be negotiated. Rights to purchase water, or property which is taken in the name of the Commission shall be held in trust by the Commission for the benefit of the parties. In the event the Agreement is terminated, the Commission shall transfer title to all of the assets acquired by official action prior to the dissolution according to the terms of this Agreement. Should the Commission fail to make such a transfer of title prior to dissolution, any of the parties to this Agreement may apply to the District Court in

either Quay, Roosevelt or Curry County requesting the appointment of a Special Master to transfer title to the assets of the Commission in accordance with this Agreement. The parties expressly agree to be bound by such Court ordered transfer whether or not the party is a Co-Plaintiff in the District Court action.

VI.

BOOKS AND RECORDS

A. Detailed records of all transactions of the Commission shall be kept and maintained by the Commission and shall be open for inspection and audit at all reasonable times by any member of the Commission or for inspection and audit by any person designed by the governing body of any party who may be appointed to conduct such inspection of audit.

B. Books and records of the Commission shall be subject to inspection pursuant to applicable statutes.

VII.

MUTUAL AGREEMENTS OF THE PARTIES

A. Nothing herein contained shall be construed to prohibit any party from exercising its power or right to condemn, purchase or otherwise acquire water or water right on its own behalf, nor shall this Agreement be construed as a limitation on the right of the parties to deal with water or water rights which it presently owns; any member or group of members is authorized to exercise their option to purchase their proportionate share of the annual yield, subject to terms and conditions of the New Mexcio Interstate Stream Commission contract.

B. Any party to this Agreement may transfer any portion, but not the entirety, of their water allocation as detailed in Article IV.A. above, to any other party; however, if any party to this Agreement desires to transfer the entirety of their water allocation, that party's water allocation shall be reallocated among the remaining members on a pro rata basis based upon each member's then current water allocation as detailed in Article IV.A. above.

C. Parties agree that the allocation of water and the distribution of costs set out in Article IV above represent a fair and equitable distribution and are accepted by the parties.

VIII.

TERMINATION AND DISTRIBUTION OF ASSETS

A. This Agreement and the Commission created hereby shall continue indefinitely so long as any options to purchase water or the purchase of water pursuant to that contract between the New Mexico Interstate Stream Commission and the Ute Reservoir Water Commission, Dated March 1, 1997, continues in effect, as the same may be amended or extended in the future. In the event of dissolution of the Commission for any reason, or termination of this Agreement, the parties shall

have the absolute right to continue under independent or cooperative agreements for the purchase of water allocated to each party under Article IV. The assets of the Commission, including any water rights or rights to water acquired by the Commission shall be distributed to the parties under the same formula.

B. In the event of dissolution, termination, or withdrawal, parties shall not be entitled to a refund of amounts paid.

IX.

SEVERABILITY

It is hereby declared to be intention of the parties that the articles, sections, subsections, paragraphs, sentences, clauses, and phrases of the Agreement are severable, and if any phrase, clause, sentence, paragraph, section, or article of this Agreement shall be declared unconstitutional by the valid judgement or decree of any Court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, and articles of the Agreement, since the same would have been entered into by the parties without such invalid portion.

X.

EFFECTIVE DATE

This Agreement shall be effective as of September 8, 2020, when executed by the parties pursuant to official authorization by the parties; provided that this Agreement must be submitted to and approved by the New Mexico Department of Finance and Administration, pursuant to Section 11-1-3, N.M.S.A. 1978, before it is legally binding and effective.

XI.

AMENDMENT

This Agreement may be amended with the consent of all voting members as evidenced by written approval of each party.

XII.

VENUE AND GOVERNING LAW

This Agreement shall be interpreted under the law of the State of New Mexico. Venue for any suit brought upon this Agreement shall lie in the District Court of Curry, Roosevelt, or Quay County, New Mexico.

IN WITNESS WHEREOF the parties hereunto have set their hands and seal by their duly authorized officers, agents, or representatives named below.

DATED this ____ day of _____, 2020.

CITY OF CLOVIS
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

CITY OF TUCUMCARI
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

CITY OF PORTALES
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

VILLAGE OF SAN JON
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

VILLAGE OF LOGAN
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

CITY OF TEXICO
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

VILLAGE OF MELROSE
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

TOWN OF ELIDA
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

VILLAGE OF GRADY
A municipal corporation

Attest:

City Clerk

BY: _____
Mayor

COUNTY OF CURRY

Attest:

County Clerk

BY: _____
Commission Chairperson

COUNTY OF QUAY

Attest:

County Clerk

BY: _____
Commission Chairperson

COUNTY OF ROOSEVELT

Attest:

County Clerk

BY: _____
Commission Chairperson

APPROVED BY:

**DEPARTMENT OF FINANCE AND
ADMINISTRATION**

BY: _____
DATE: _____