

**PROFESSIONAL SERVICES AGREEMENT WITH CUSTOM STORAGE INC.  
TO PROVIDE PLANNING AND IMPLEMENTATION SERVICES FOR THE  
COUNTY'S NET APP CONTROLLER HARDWARE**

THIS AGREEMENT is made and entered into as of this 3rd day of may, 2013, by and between Santa Fe County, hereinafter referred to as "County", a political subdivision of the State of New Mexico and Custom Storage Inc. a corporation registered to do business in the State with a principal address located at 7975 N. Hayden Rd. Suite A-105, Scottsdale, Arizona 85258, hereinafter referred to as "Contractor".

**RECITALS**

**WHEREAS**, Santa Fe County's Administrative Services Department, Information Technology Division requires planning, analysis, configuration, integration and implementation services to upgrade the County's Net App Controller hardware;

**WHEREAS**, pursuant to NMSA 1978, Section 13-1-125 (Small purchases), the County procured services having a value of less than \$50,000.00;

**WHEREAS**, pursuant to Santa Fe County Resolution No. 2006-60, Section 40. SMALL PURCHASE OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES, the County's Information Technology Division, solicited three (3) written quotations from qualified vendors;

**WHEREAS**, based on the criteria required for the procurement of small purchases an award was made to the Contractor who offered the lowest acceptable quote;

**WHEREAS**, the County desires to engage the Contractor to render planning, analysis, configuration, integration and implementation services to upgrade the County's Net App Controller hardware as described in the scope of work for this agreement, and the Contractor is willing to render such services;

**WHEREAS**, the County requires these services and the Contractor is qualified and willing to provide these services and both parties wish to enter into this Agreement; and,

**NOW WHEREAS**, in consideration of the premises and mutual obligation herein, the parties do mutually agree as follows:

**AGREEMENT**

**I. SCOPE OF WORK**

The Contractor shall:

- A. Verify the planned upgraded system and will support the legacy disk shelves and any other legacy hardware that will migrate to the new configuration.

- B. Obtain Internet Protocol (IP) addresses, mailhost addresses, and other information for the Service Processor/Storage Processor/ Remote LAN Module (SPs/RLMs) on the legacy system.
- C. Verify supportability of current and upgraded Data ONTAP (Operating System Software) versions, drive firmware versions. Contractor will review the Data ONTAP Upgrade and Revert/Downgrade Guide.
- D. Back up the Net App configuration before any implementation is completed.
- E. Document all site-specific customizations.
- F. Verify size of the FlexVol root volume on the legacy system to ensure it supports the new system controllers.
- G. Upgrade the root volume if necessary.
- H. Document adapter and port locations on the legacy system.
- I. Upgrade DOT following the instructions in the Data ONTAP Software Setup Guide for 7-Mode.
- J. Verify the controllers are in an HA pair prior to replacement.
- K. Install the new controllers and any associated disk shelves as described in the appropriate Installation and Setup Guide.
- L. Assign disks to the appropriate controller.
- M. Verify ports are assigned correctly.
- N. Modify the Redundant Array of Independent Disks (RAID) groups and volumes as needed.
- O. Verify the High Availability (HA) pair is set up correctly.
- P. Configure the SPs/RLMs on both controllers.
- Q. Ensure complete performance of all planning, analysis, configuration, integration and implementation services to upgrade the County's Net App Controller hardware, for all required tasks and deliverables as set forth in this scope of work. Complete performance by the Contractor is contingent upon validation by the County's authorized Information Technology Division staff.

## 2. COMPENSATION, INVOICING, AND SET-OFF

- A. In consideration of its obligations under this Agreement, County shall pay Contractor as follows:
1. The total amount payable to the Contractor under this Agreement shall not exceed Seven Thousand Four Hundred Dollars (\$7,400.00) exclusive of New Mexico gross receipts tax. Any gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
  2. This amount is a maximum and not a guarantee that the work and services assigned to be performed by the Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County shall notify the Contractor when the total compensation amount under this Agreement is reached.
- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- C. In the event Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

## 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 one (1) year later unless earlier terminated pursuant to Section 4. **TERMINATION** or 5. **APPROPRIATIONS AND AUTHORIZATIONS** of this Agreement. The County reserves the option of renewing this contract for one (1) year for a term of two (2) years total. The renewal is dependent on the Contractor's performance of services. In no case will the contract, including any and all renewals thereof, exceed a total of two (2) years in duration from the date of the initial Agreement.

The County will exercise this option by submitting a written notice to the Contractor at least sixty (60) days prior to the expiration of the initial term 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 with 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 County. County may, in its discretion terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from Contractor's receipt of the notice. County shall pay Contractor for acceptable work, determined in accordance with the requirements set forth in this Agreement, performed before the effective date of the termination but shall not be liable for any work performed after the effective date of termination.

#### 5. APPROPRIATIONS AND AUTHORIZATIONS

The County is expressly not committed to expenditures of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. 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 Contractor in any way or forum, including a lawsuit.

#### 6. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors and are not employees or agents of County. Accordingly, Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

#### 7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written

approval of the County. Any attempted assignment or transfer without County's advance written approval shall be null and void and without any legal effect.

#### **8. SUBCONTRACTING**

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

#### **9. PERSONNEL**

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

#### **10. RELEASE**

Upon its receipt of all payments due under this Agreement, Contractor releases County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

#### **11. CONFIDENTIALITY**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior approval from the County.

#### **12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS**

- A. County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other county, County shall own any such copyright.

**13. CONFLICT OF INTEREST**

Contractor represents that it has no and shall not require any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**14. 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. Contractor specifically acknowledges and agrees that County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**15. 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.

**16. NOTICE OF PENALTIES**

The Procurement Code, Section 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes felony penalties for bribes, gratuities, and kickbacks.

**17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

- A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

**18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

- A. In performing its obligations hereunder, Contractor shall comply with all applicable laws, ordinances, and regulations.

- 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.

## 19. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of six (6) years from the date of final payment under this Agreement; (ii) allow 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").
- B. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement 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 the subcontract; (ii) to allow county or its designee to audit such books and records at reasonable times and upon reasonable not notice; and (iii) to keep such books and records in with GAAP.

## 20. INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless 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 Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to Contractor's breach of any representation or warranty made herein.
- B. County shall have the right to approve any counsel retained by Contractor to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Contractor agrees (i) that 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 (ii) that such suit will not be settled without County's consent, such consent not to be unreasonably withheld. If in County's judgment, a conflict exists between the interests of County and Contractor such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Contractor.
- C. Contractor's obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

**21. 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.

**22. NOTICES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County:                      Santa Fe County  
   Office of the County Attorney  
   102 Grant Avenue  
   Santa Fe, New Mexico 87501

To the Contractor:                Custom Storage Inc.  
   7975 N. Hayden Rd. Suite A-105  
   Scottsdale, Arizona 85258

**23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

- A. It is corporation duly organized and in good standing under the laws of the state of Arizona.
- B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.
- C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

**24. LIMITATION OF LIABILITY**

County's liability to Contractor for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING", of this Agreement. In no event shall County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

**25. NO THIRD-PARTY BENEFICIARIES**

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

## 26. INSURANCE

- A. General Conditions. Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico
- B. General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Santa Fe shall be named additional insured on the policy.
- C. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' compensation Act.
- D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), Contractor shall increase the maximum limits of any insurance required herein.

## 27. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

## 28. FACSIMILE SIGNATURES

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

## 29. NEW MEXICO TORT CLAIMS ACT

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

## 30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous and execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**31. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY

Katherine Miller 5-3-13  
Katherine Miller, Manager Date

APPROVED AS TO FORM

Stephen C. Ross 4/17/13  
Stephen C. Ross Date  
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez 4/21/13  
Teresa C. Martinez Date  
Santa Fe County Finance Director

CONTRACTOR

Custom Storage Inc.  
William C. Hill 4/30/2013  
Date