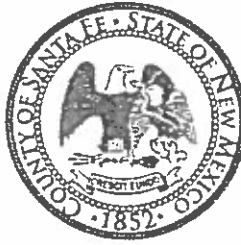


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: March 4, 2016

To: Santa Fe Board of County Commissioners

From: Robert Griego, Planning Manager *RG*
Rosemary Bailey, Housing Specialist *RB*

Via: Penny Ellis-Green, Growth Management Director *PEG*
Katherine Miller, County Manager *KM*

Re: **REQUEST AUTHORIZATION TO ENTER INTO SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT WITH CIELO COLORADO LAND
COMPANY, LLC FOR CIELO COLORADO ESTATES**

SUMMARY:

Santa Fe County Affordable Housing Agreement for Cielo Colorado Estates between Cielo Colorado Land Company, LLC a New Mexico limited liability corporation and Santa Fe County.

BACKGROUND:

On February 24, 2015, the Board of County Commissioners entered an Order in Case No. S12-5452 (the "Order") conditionally approving the Final Plat and Development Plan for Phase 1 (Lots 11-16) of the Project. The Affordable Housing Agreement must be reviewed; and approved by the Board of County Commissioners in satisfaction of Paragraph 7(c) of the order prior to Plat Recordation of Phase 1, see attached Exhibit 1. The proposed agreement is attached as Exhibit 2. Staff has met with developer and the County Attorney's Office to draft the agreement. The main provisions of the Agreement are summarized herein.

- Cielo Colorado Estates Affordable Housing obligation, (8%) which is applied to twenty-four (24) lots in project resulting in two (2) Affordable Units. Applicant agrees to cause to be built and sold one (1) Affordable Unit for Income Range 2 and one (1) Affordable Unit for Income Range 3. The Affordable Unit shall be sold to Eligible Buyers, who shall pay no more than the Maximum Target Housing Prices in accordance with the Regulations.
- Periodic Adjustment of Maximum Target Housing Prices. The Maximum Target Housing Prices set forth in the Regulations may be adjusted annually and the Applicant agrees to be subject to the adjusted prices.
- Adjustment of Maximum Target Housing Prices Due to Homeowners Association ('HOA') fees. In the event that the HOA fees applicable to an Affordable Unit

exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price for each Affordable Unit shall be reduced by the Applicant so that the buyer's monthly mortgage payment is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose all applicable HOA fees to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.

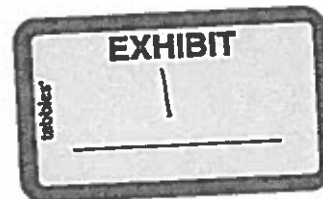
- **Development Schedule.** Phase 1 of the Project consists of six (6) units and shall not include any Affordable Units. Phase 2 shall consist of four (4) lots and shall include at least one (1) Affordable unit. The second Affordable Unit shall be constructed in Phase 3.

Staff Recommendation:

Staff recommends that approval of the Santa Fe County Affordable Housing Agreement for Cielo Colorado Estates.

Attachments:

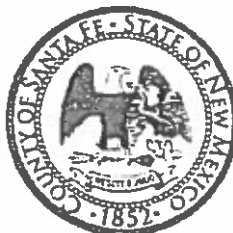
- Exhibit 1: Final Order for Case No. S 12-5452 Cielo Colorado Estates Final Plat and Development Plan for Phase 1
- Exhibit 2: Santa Fe County Affordable Housing Agreement for Cielo Colorado Estates



Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. S 12-5452
CIELO COLORADO ESTATES FINAL PLAT AND DEVELOPMENT PLAN
FOR PHASE 1
CIELO COLORADO LLC, APPLICANT
JAMES W. SIEBERT, AGENT

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on December 9, 2014, on the Application of Cielo Colorado LLC, (Applicant) and James W. Siebert (Agent) for Final Plat and Development Plan Approval for Phase 1 of the Cielo Colorado Estates Residential Subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision consisting of 246.30 acres, together with a request for approval to vacate and relocate 2 portions of the Camino Acote fifty (50) foot ingress/egress and utility easement that is located within proposed Lot 1, vacate the portion of Camino Acote which runs through Lots 10, 16, 17, 18 and 19, and vacate the old ingress/egress and utility easement that runs through proposed Lot 1, which is no longer in use. The BCC, having reviewed the Application, supplemental materials and staff reports, and having conducted a public hearing, finds that the Application is well-taken and should be granted subject to certain conditions, and makes the following findings of fact and conclusions of law:

1. On June 13, 1995, the BCC granted a Master Plan for Cielo Colorado consisting of 91 lots on 344.58 acres of which 25 of the 91 lots being platted as Phase 1 and recorded in the office of the County Clerk as Instrument No. 909-938.

2. In 2000, the BCC approved a Master Plan Amendment to Cielo Colorado eliminating 4 lots totaling 12.5 acres.

3. In 2002, the Cielo Colorado Master Plan was vacated to allow platting of larger lots at the east end of Tract 15 A-2, which included the remainder of property that had not been platted.

4. On September 10, 2013, the BCC approved a Master Plan of a portion of the property previously subject to the Cielo Colorado Master Plan, to create a 24-lot residential subdivision on 246.30 acres, which was to be developed in four phases.

5. On April 8, 2014, the BCC approved a Preliminary Plat and Development Plan for the 24-lots on 246.30 acres within Tract 15 A-2 of the Eldorado at Santa Fe Subdivision in conformance with the approved Master Plan. The Application also included a variance of Ordinance No. 2008-10 (Flood Damage Prevention and Stormwater Management) to allow access through a 100 year floodplain without an all-weather crossing.

6. The Applicant, through the current Application, seeks Final Plat and Development Plan approval for Phase 1 consisting of six lots (Lots 11-16) of the Cielo Colorado Estates 24-lot residential subdivision on Tract 15 A-2 of the Eldorado Subdivision consisting of 246.30 acres under Article V, Section 5.4 of the Land development Code. The Applicant also seeks approval to vacate and relocate 2 portions of the Camino Acote 50 foot ingress/egress and utility easement that is located within proposed Lot 1, to vacate the portion of Camino Acote that runs through Lots 10, 16, 17, 18 and 19 and to vacate the old ingress/egress and utility easement that runs

through proposed Lot 1, which is no longer in use, under Article V, Sections 7.1 through 7.4 of the Land Development Code.

7. Staff recommended approval of the application subject to the following conditions:

- a. The Final Plat and Development Plan must be recorded with the County Clerk's office;
- b. The Applicant shall submit a financial guarantee, in sufficient amount to assure completion of all required improvements prior to Final Plat recordation as per Article V, Section 9.9 of the Land Development Code.
- c. The Affordable Housing Agreement must be reviewed and approved by the BCC prior to Plat Recordation of Phase 1.

8. The property is located on the east side of U.S. 285, off Camino Acote, within Sections 20, 21, and 22, Township 15 North, Range 10 East.

9. In support of the Application, the Applicant's Agent submitted a letter of request, a development plan report including proof of legal lot of record and proof of ownership, a development plan set of drawings, and survey plat. The Applicant authorized James W. Siebert and Associates to act on behalf of Cielo Colorado, LLC in making application for the Cielo Colorado Estates residential subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision consisting of 246.30 acres, as evidenced by a copy of that written authorization contained in the record.

10. The project lies within the Basin Fringe Hydrologic Zone. The minimum lot size in the Basin Fringe is 50 acres per dwelling. The density can be reduced to 12.5 acres per dwelling unit with .25 acre foot per year per dwelling water restriction. Lot size can be further

reduced to 2.5 acres per dwelling unit if water availability is proven to support increased density. The development complies with the density requirements of the Code in that there is no more than one home per 2.5 acres. The 2.5 acre minimum density is allowed because the property will use water from the Eldorado Area Water and Sanitation District.

11. The Applicant provided an archaeological report which was submitted to the State Historic Preservation Division (SHPO) for review. SHPO confirmed that there were no concerns pertaining to archaeological sites implicated by this development.

12. An Affordable Housing Agreement was completed by Applicant and conforms to the Affordable Housing requirements set forth in the Code and must be approved by the BCC prior to plat recordation.

13. Multiple fire stations are in the vicinity of this development, including a fire sub-station which is approximately 1,000 feet from the entrance to the proposed development. The Eldorado Area Water and Sanitation District (EAWSD) commits to provide water service to the proposed development. EAWSD is ready, willing and able to provide water service to the entire Project or phases of the project.

14. Each lot will have a conventional on-site septic system as approved by the New Mexico Environment Department.

15. Lot owners will contract with a licensed solid waste hauler or haul their solid waste to a transfer station, as indicated on the disclosure statement which shall be utilized by the developer when selling lots.

16. The project conforms to terrain management requirements regarding slope disturbance and the submissions indicated existing topography, natural drainage and contained a

proposed grading and drainage plan. There will be two detention ponds, one in Phase I and a second in Phase II of the development.

17. 14.21 acres have been set aside for open space for the benefit of the owners of lots within the subdivision and that open space will be owned by the Cielo Colorado Estates Homeowners Association.

18. The subdivision will be completed in four phases over eight years, with the first phasing to begin in 2014 and the final phase to be completed in the year 2022.

19. Based on the foregoing findings, the Application is in compliance with Article V, Section 5.4.1 (Final Plat Procedures-Introduction and Description) of the Land Development Code which states: "Final plats shall be submitted for Type-I, Type-II, Type-III, except Type-III subdivisions that are subject to review under summary procedure as set forth in Subsection 5.5, and Type-IV subdivisions. Following approval or conditional approval of a preliminary plat, and before the expiration of the plat, the subdivider may prepare a final plat in substantial conformity with the approved or conditionally approved preliminary plat. Final plats for subdivisions proposed to be phased shall be submitted as indicated on the phasing schedule submitted with the master plan."

20. Article V, Section 5.7.1 (Vacation of Plats-Cause) states; "any final plat filed in the Office of the County Clerk may be vacated or a portion of the final plat may be vacated if:

a. The owners of the land proposed to be vacated sign an acknowledgement statement, declaring the final plat or a portion of the final plat to be vacated, and the statement is approved by the Board; or

b. The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County."

21. Article V, Section 5.7.2 (Action) states: "Action shall be taken at a public meeting. In approving the vacation of all or part of a Final Plat, the Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a Final Plat, the Board may require that roads dedicated to the County in the Final Plat continue to be dedicated to the County."

22. Article V, Section 5.7.3 (Filing) states; "The approved statement declaring the vacation of a portion or all of a Final Plat shall be filed in the Office of the County Clerk."

23. Article V, Section 5.7.4 (Utilities) states: "The rights of any utility existing before the total or partial vacation of any Final Plat are not affected by the vacation of a Final Plat."

24. A portion of Camino Acote was built slightly outside the easement so the Applicant is relocating that portion that is not consistent with the easement. The portion that is being vacated was when the original Master Plan for the property consisted of 91 lots and the easement was created to loop the road back to Camino Acote. The Applicant states; We're proposing to eliminate the portion because of the substantial reduction of the number of lots", which now is 24 lots. Finally, the original ingress/egress and utility easement that runs through proposed Lot 1, is no longer in use.

25. The Application submitted together with the plat which will be recorded suffice to meet the Code requirement of an acknowledgement statement, declaring the final plat or a portion of the final plat to be vacated, and by virtue of this Order, the statement is approved by the BCC.

26. Based on the reduced number of lots, and the absence of reliance on the easement by property owners outside of the subdivision, the vacation will not adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated.

27. Under the circumstances and given the evidence and testimony submitted during the public hearing, the Application should be approved subject to the conditions proposed by staff.

WHEREFORE, THE BCC HEREBY APPROVES subject to the conditions set forth in paragraph 7 above, the Application for Final Plat and Development Plan Approval for Phase 1 (Lots 11-16) of the Cielo Colorado Estates residential subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision consisting of 246.30 acres and the vacation and relocation of 2 portions of the Camino Acote 50 foot ingress/egress and utility easement that is located within proposed Lot 1, the vacation of the portion of Camino Acote which runs through Lots 10, 16, 17, 18 and 19 and the vacation of the old ingress/egress and utility easement which runs through proposed Lot 1 which is no longer in use. The motion to approve passed by a 4-0 vote, with Commissioners Anaya, Chavez, Holian and Stefanics all voting in favor of the motion. Commissioner Mayfield was not present.

IT IS SO ORDERED:

This Order was approved by the Board of County Commissioners on this 24 day of February, 2015.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____

Robert A. Anaya, Chair

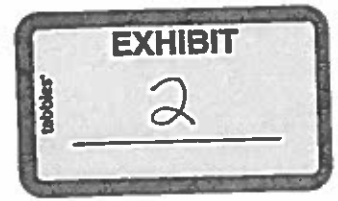
0 2-24-2015

Gregory S. Shaffer, County Attorney



Deputy Marcella Salazar Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

**SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT
CIELO COLORADO ESTATES**



This Affordable Housing Agreement (the "Agreement") for Cielo Colorado Estates subdivision (the "Project"), effective as of the last signature date below, is entered into by and between Cielo Colorado Land Company, LLC ("Applicant"), a New Mexico limited liability company located at _____, and Santa Fe County ("County"), a political subdivision of the state located at 102 Grant Avenue, Santa Fe, New Mexico 87501.

RECITALS:

WHEREAS, on February 24, 2015, the BCC entered an Order in Case No. S 12-5452 (the "Order") conditionally approving the Final Plat and Development Plan for Phase 1 (Lots 11-16) of the Project. The parties enter into this Agreement in satisfaction of the following condition set in Paragraph 7(c) of the Order:

The Affordable Housing Agreement must be reviewed and approved by the BCC prior to Plat Recordation of Phase 1.

WHEREAS, County Ordinance No. 2006-02 and Ordinance No. 2012-1 ("Ordinances"), which have been incorporated into the County's Sustainable Land Development Code ("SLDC") under County Ordinance 2015-11, require the Applicant to provide Affordable Housing Units ("Affordable Units") within the Project and/or comply with the Ordinances through alternative means pursuant to Section 13.7 of the SLDC; and

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to further implement the Ordinances pursuant to Section 13.3 of the SLDC; and

WHEREAS, pursuant to the Ordinances and Regulations, Applicant submitted an Affordable Housing Plan, attached hereto as Exhibit A, which was approved by the Affordable Housing Administrator ("Administrator"); and

WHEREAS, the Project is classified as a Minor Project and the Ordinances establish the affordable housing requirement for a Minor Project at eight percent (8%); and

WHEREAS, the Applicant desires to meet its affordable housing obligations by constructing and selling Affordable Housing Units in conformance with the Ordinances, Regulations, the Affordable Housing Plan, and this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. **Definitions.** All capitalized terms herein have the same meanings given them in the Ordinances and the Regulations.
2. **Controlling Affordable Housing Ordinance and Regulations.** The Ordinances and the Regulations shall apply to this Project and shall govern the Applicant's performance of all obligations under this Agreement, unless otherwise stated herein. The applicable affordable housing percentage for the Project is eight percent (8%).
3. **Required Affordable Housing Units and Lots; Maximum Target Housing Price; Contract Price.** The eight percent (8%) affordable housing requirement is applied to the twenty four (24) lots in the Project, resulting in a requirement of two (2) Affordable Units. Applicant agrees to cause to be built and sold one (1) Affordable Unit for Income Range 2 and one (1) Affordable Unit for Income Range 3. The Affordable Units shall be sold to Eligible Buyers, who shall pay no more than the Maximum Target Housing Prices in accordance with in the Regulations. The Maximum Target Housing Prices represent the maximum amount to be paid by the Eligible Buyer after applying the amount subject to the County Affordability Mortgage or Lien (collectively, "Affordability Lien"). However, the contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units shall be set at ninety five percent (95%) of the unit's appraised market value. The Affordable Units required under this Agreement shall be three-bedroom, two-bath homes located on lots four (4) and five (5) of the Project and shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, energy efficiency requirements and other requirements set forth in the Ordinances and the Regulations, unless otherwise stated herein.
4. **Periodic Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices set forth in the Regulations may be adjusted annually and the Applicant agrees to be subject to the adjusted prices.
5. **Adjustment of Maximum Target Housing Prices Due to Homeowner's Association ("HOA") Fees.** In the event that the HOA fees applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price for each Affordable Unit shall be reduced by the Applicant so that the buyer's monthly mortgage payment is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose all applicable HOA fees to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.
6. **Alternate Means of Compliance in Lieu of Construction.** The Applicant has not proposed and the County has not accepted any Alternative Means of Compliance under Section 13.7 of the SLDC.
7. **Development Schedule.** Phase 1 of the Project consists of six (6) units and shall not include any Affordable Units. Phase 2 shall consist of four (4) lots and shall include at

least one (1) Affordable Unit. The second Affordable Unit shall be constructed in Phase 3.

8. **Integration of Affordable Units and Affordable Lots in the Project.** Lot numbers 4 and 5 of the Project are the lots upon which Affordable Units shall be designed and built in conformance with the Ordinances, Regulations, Affordable Housing Plan and this Agreement. Architectural and landscaping features of the Affordable Units and market rate units shall be similar in appearance.
9. **Final Plat; Recordation Requirements.** This Agreement shall be filed in the property records of the County Clerk before the Final Plat for Phase 1 is filed and recorded. The Final Plat shall not identify the Affordable Lots but shall reference this recorded Agreement by Instrument Number, Book and Page. The Agreement shall apply to all phases of the Project. Recordation of the Final Plat prior to recordation of this Agreement shall constitute a breach of this Agreement and a violation of the Order.
10. **Marketing Plan.** Applicant agrees to market the Affordable Units through print advertising, fliers and other promotional media, notice to the County, notice to affordable housing agencies whose mission it is to promote affordable housing and first time homebuyers, and notice to real estate brokers.
11. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible Buyer (s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible Buyer; and (iii) has been prepared within the previous six (6) months.

B. Affordability Lien. The Ordinances' goals of having Affordable Units owner-occupied by Eligible Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage or Lien pursuant to Section 13.9 of the SLDC, which "shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County." As provided

in Section 13.9 of the SLDC, the Affordability Lien shall also include a right of first refusal as set forth in the Ordinances and the Regulations. At least two (2) business days prior to the date of the scheduled closing on an Affordable Unit, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer), the Affordability Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

A. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

B. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

12. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinances, County has agreed to provide the following incentives to Applicant:

- A. **Density Bonus.** County agrees to grant Applicant a density bonus of zero (0) units for the provision of the Affordable Units identified in Section 3 hereof.
- B. **Relief from Development Fees.** County agrees to waive all development fees for each Affordable Unit to be provided by Applicant hereunder.

13. **Assignment.**

A. Applicant shall not assign this Agreement, in whole or in part, except upon the express written consent of the Administrator, which consent shall not be unreasonably withheld. Applicant shall submit a written request to assign this Agreement to the Administrator at least ten (10) days prior to the proposed closing date, including the name and address of the proposed assignee and a copy of the instrument assigning this Agreement. The assignment shall acknowledge this Agreement, affirmatively state that the assignee shall be bound by this Agreement to the same extent as the Applicant, and include such other terms as the Administrator may reasonably require to assure performance of this Agreement.

B. The sale of all Affordable Lots in a single transaction shall constitute an assignment of this entire Agreement requiring the Administrator's prior consent pursuant to Paragraph A above. The sale of less than all Affordable Lots to a person other than an Eligible Buyer in a Qualified Transaction shall constitute a partial assignment requiring the Administrator's prior consent pursuant to Paragraph A above.

C. The sale of a single Affordable Housing Unit to an Eligible Buyer in a Qualified Transaction pursuant to this Agreement shall not constitute an assignment of this Agreement.

14. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of Applicant's heirs, successors and assigns, including all purchasers of Affordable Lots other than an Eligible Buyer who purchases an Affordable Housing Unit in a Qualified Transaction.
15. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the final plat for the Project. Applicant further acknowledges and agrees: (i) that because the Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers, or for Applicant to not provide the required number of Affordable Units in the Project, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees that were waived for each house on an Affordable Lot. Accordingly, County shall be entitled to the following remedies for the indicated breaches by Applicant of this Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

In the event Applicant does not sell Affordable Units to Eligible Buyers in the amount required in Section 3 and Section 7 within seven (7) years, which time shall be extended three (3) years by the County if a proportional number of market rate units also remains unsold, and has not paid the County fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of the Project;
- C. Collect all development fees that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or;
- D. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit A;
- E. Receive fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.

16. **Termination.** This Agreement shall terminate upon the County issuing a certificate of compliance with the Agreement in accordance with Section 7.5 of the Regulations. The County may terminate this Agreement and impose all Section 15 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Applicant.

17. Miscellaneous Provisions.

- A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.
- B. This Agreement shall be construed and enforced in accordance with the laws of the State of New Mexico. In the event of a dispute between the parties concerning this Agreement, the exclusive venue shall be the First Judicial District State Court, Santa Fe County, New Mexico.
- C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.
- D. 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.
- E. At the request of the County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Agreement, subjecting Applicant to the per unit payment provisions of Section 15 above, multiplied by the number of Affordable Units for which information has been requested.
- F. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.
- G. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.

H. The parties do not intend to create any third-party beneficiaries to this Agreement, which may only be enforced by the parties hereto.

I. This Agreement shall be filed and recorded.

APPLICANT:

CIELO COLORADO LAND COMPANY, LLC
A New Mexico Limited Liability Company

By: [Signature] (Signature)
FRANCISCO (Name)
MANAGING MEMBER (Title)

SANTA FE COUNTY

By: _____
Miguel M. Chavez, Chair
Board of County Commissioners

Date: _____

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

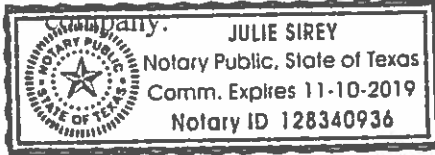
[Signature]
for Gregory S. Shaffer, Santa Fe County Attorney

Date: 3/4/2016

APPLICANT'S ACKNOWLEDGEMENT

Texas
STATE OF ~~NEW MEXICO~~)
Harris) ss
COUNTY OF ~~SANTA FE~~)

The foregoing was acknowledged before me this 1 day of March, 2014, by Edward de Zavallos (name), Managing Member (title) of Cielo Colorado Land Company, LLC, a New Mexico limited liability company, on behalf of said



[Signature]
Notary Public

My commission expires:

11/10/19

**SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT
CIELO COLORADO ESTATES**

This Affordable Housing Agreement (the "Agreement") for Cielo Colorado Estates subdivision (the "Project"), effective as of the last signature date below, is entered into by and between Cielo Colorado Land Company, LLC ("Applicant"), a New Mexico limited liability company located at _____, and Santa Fe County ("County"), a political subdivision of the state located at 102 Grant Avenue, Santa Fe, New Mexico 87501.

RECITALS:

WHEREAS, on February 24, 2015, the BCC entered an Order in Case No. S 12-5452 (the "Order") conditionally approving the Final Plat and Development Plan for Phase 1 (Lots 11-16) of the Project. The parties enter into this Agreement in satisfaction of the following condition set in Paragraph 7(c) of the Order:

The Affordable Housing Agreement must be reviewed and approved by the BCC prior to Plat Recordation of Phase 1.

WHEREAS, County Ordinance No. 2006-02 and Ordinance No. 2012-1 ("Ordinances"), which have been incorporated into the County's Sustainable Land Development Code ("SLDC") under County Ordinance 2015-11, require the Applicant to provide Affordable Housing Units ("Affordable Units") within the Project and/or comply with the Ordinances through alternative means pursuant to Section 13.7 of the SLDC; and

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to further implement the Ordinances pursuant to Section 13.3 of the SLDC; and

WHEREAS, pursuant to the Ordinances and Regulations, Applicant submitted an Affordable Housing Plan, attached hereto as Exhibit A, which was approved by the Affordable Housing Administrator ("Administrator"); and

WHEREAS, the Project is classified as a Minor Project and the Ordinances establish the affordable housing requirement for a Minor Project at eight percent (8%); and

WHEREAS, the Applicant desires to meet its affordable housing obligations by constructing and selling Affordable Housing Units in conformance with the Ordinances, Regulations, the Affordable Housing Plan, and this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. **Definitions.** All capitalized terms herein have the same meanings given them in the Ordinances and the Regulations.
2. **Controlling Affordable Housing Ordinance and Regulations.** The Ordinances and the Regulations shall apply to this Project and shall govern the Applicant's performance of all obligations under this Agreement, unless otherwise stated herein. The applicable affordable housing percentage for the Project is eight percent (8%).
3. **Required Affordable Housing Units and Lots; Maximum Target Housing Price; Contract Price.** The eight percent (8%) affordable housing requirement is applied to the twenty four (24) lots in the Project, resulting in a requirement of two (2) Affordable Units. Applicant agrees to cause to be built and sold one (1) Affordable Unit for Income Range 2 and one (1) Affordable Unit for Income Range 3. The Affordable Units shall be sold to Eligible Buyers, who shall pay no more than the Maximum Target Housing Prices in accordance with in the Regulations. The Maximum Target Housing Prices represent the maximum amount to be paid by the Eligible Buyer after applying the amount subject to the County Affordability Mortgage or Lien (collectively, "Affordability Lien"). However, the contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units shall be set at ninety five percent (95%) of the unit's appraised market value. The Affordable Units required under this Agreement shall be three-bedroom, two-bath homes located on lots four (4) and five (5) of the Project and shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, energy efficiency requirements and other requirements set forth in the Ordinances and the Regulations, unless otherwise stated herein.
4. **Periodic Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices set forth in the Regulations may be adjusted annually and the Applicant agrees to be subject to the adjusted prices.
5. **Adjustment of Maximum Target Housing Prices Due to Homeowner's Association ("HOA") Fees.** In the event that the HOA fees applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price for each Affordable Unit shall be reduced by the Applicant so that the buyer's monthly mortgage payment is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose all applicable HOA fees to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.
6. **Alternate Means of Compliance in Lieu of Construction.** The Applicant has not proposed and the County has not accepted any Alternative Means of Compliance under Section 13.7 of the SLDC.
7. **Development Schedule.** Phase 1 of the Project consists of six (6) units and shall not include any Affordable Units. Phase 2 shall consist of four (4) lots and shall include at

least one (1) Affordable Unit. The second Affordable Unit shall be constructed in Phase 3.

8. **Integration of Affordable Units and Affordable Lots in the Project.** Lot numbers 4 and 5 of the Project are the lots upon which Affordable Units shall be designed and built in conformance with the Ordinances, Regulations, Affordable Housing Plan and this Agreement. Architectural and landscaping features of the Affordable Units and market rate units shall be similar in appearance.
9. **Final Plat; Recordation Requirements.** This Agreement shall be filed in the property records of the County Clerk before the Final Plat for Phase 1 is filed and recorded. The Final Plat shall not identify the Affordable Lots but shall reference this recorded Agreement by Instrument Number, Book and Page. The Agreement shall apply to all phases of the Project. Recordation of the Final Plat prior to recordation of this Agreement shall constitute a breach of this Agreement and a violation of the Order.
10. **Marketing Plan.** Applicant agrees to market the Affordable Units through print advertising, fliers and other promotional media, notice to the County, notice to affordable housing agencies whose mission it is to promote affordable housing and first time homebuyers, and notice to real estate brokers.
11. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing: Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible Buyer (s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible Buyer; and (iii) has been prepared within the previous six (6) months.

B. Affordability Lien. The Ordinances' goals of having Affordable Units owner-occupied by Eligible Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage or Lien pursuant to Section 13.9 of the SLDC, which "shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County." As provided

in Section 13.9 of the SLDC, the Affordability Lien shall also include a right of first refusal as set forth in the Ordinances and the Regulations. At least two (2) business days prior to the date of the scheduled closing on an Affordable Unit, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer), the Affordability Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

A. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

B. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

12. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinances, County has agreed to provide the following incentives to Applicant:

- A. **Density Bonus.** County agrees to grant Applicant a density bonus of zero (0) units for the provision of the Affordable Units identified in Section 3 hereof.
- B. **Relief from Development Fees.** County agrees to waive all development fees for each Affordable Unit to be provided by Applicant hereunder.

13. **Assignment.**

A. Applicant shall not assign this Agreement, in whole or in part, except upon the express written consent of the Administrator, which consent shall not be unreasonably withheld. Applicant shall submit a written request to assign this Agreement to the Administrator at least ten (10) days prior to the proposed closing date, including the name and address of the proposed assignee and a copy of the instrument assigning this Agreement. The assignment shall acknowledge this Agreement, affirmatively state that the assignee shall be bound by this Agreement to the same extent as the Applicant, and include such other terms as the Administrator may reasonably require to assure performance of this Agreement.

B. The sale of all Affordable Lots in a single transaction shall constitute an assignment of this entire Agreement requiring the Administrator's prior consent pursuant to Paragraph A above. The sale of less than all Affordable Lots to a person other than an Eligible Buyer in a Qualified Transaction shall constitute a partial assignment requiring the Administrator's prior consent pursuant to Paragraph A above.

C. The sale of a single Affordable Housing Unit to an Eligible Buyer in a Qualified Transaction pursuant to this Agreement shall not constitute an assignment of this Agreement.

14. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of Applicant's heirs, successors and assigns, including all purchasers of Affordable Lots other than an Eligible Buyer who purchases an Affordable Housing Unit in a Qualified Transaction.
15. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the final plat for the Project. Applicant further acknowledges and agrees: (i) that because the Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers, or for Applicant to not provide the required number of Affordable Units in the Project, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees that were waived for each house on an Affordable Lot. Accordingly, County shall be entitled to the following remedies for the indicated breaches by Applicant of this Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

In the event Applicant does not sell Affordable Units to Eligible Buyers in the amount required in Section 3 and Section 7 within seven (7) years, which time shall be extended three (3) years by the County if a proportional number of market rate units also remains unsold, and has not paid the County fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of the Project;
- C. Collect all development fees that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or;
- D. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit A;
- E. Receive fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.

16. **Termination.** This Agreement shall terminate upon the County issuing a certificate of compliance with the Agreement in accordance with Section 7.5 of the Regulations. The County may terminate this Agreement and impose all Section 15 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Applicant.

17. Miscellaneous Provisions.

- A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.
- B. This Agreement shall be construed and enforced in accordance with the laws of the State of New Mexico. In the event of a dispute between the parties concerning this Agreement, the exclusive venue shall be the First Judicial District State Court, Santa Fe County, New Mexico.
- C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.
- D. 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.
- E. At the request of the County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Agreement, subjecting Applicant to the per unit payment provisions of Section 15 above, multiplied by the number of Affordable Units for which information has been requested.
- F. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.
- G. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.

H. The parties do not intend to create any third-party beneficiaries to this Agreement, which may only be enforced by the parties hereto.

I. This Agreement shall be filed and recorded.

APPLICANT:

CIELO COLORADO LAND COMPANY, LLC
A New Mexico Limited Liability Company

By: [Signature] (Signature)
ED PEREZ (Name)
MANAGING MEMBER (Title)

SANTA FE COUNTY

By: _____
Miguel M. Chavez, Chair
Board of County Commissioners

Date: _____

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

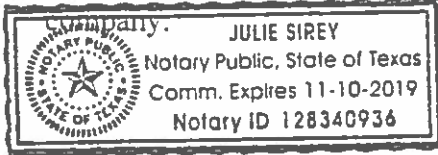
[Signature]
62 Gregory S. Shaffer, Santa Fe County Attorney

Date: 3/4/2016

APPLICANT'S ACKNOWLEDGEMENT

Texas
STATE OF ~~NEW MEXICO~~)
Harris) ss
COUNTY OF ~~SANTA FE~~)

6 The foregoing was acknowledged before me this 1 day of March, 2014, by Edward de Zekillos (name), Managing Member (title) of Cielo Colorado Land Company, LLC, a New Mexico limited liability company, on behalf of said




Notary Public

My commission expires:

11/10/19

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: *March 11, 2016*

To: *Board of County Commissioners*

From: *Bill Taylor, Procurement Manager* *BT*

Via: *Katherine Miller, County Manager* *km*
Jeffery Trujillo, ASD Director
Michael Kelley, Public Works Director

ITEM AND ISSUE: BCC Meeting March 29, 2016

APPROVAL OF COMMISSIONING SERVICES AGREEMENT NO. 2016-0174-PW/RM BETWEEN SANTA FE COUNTY AND ENGINEERING ECONOMICS, INC. FOR THE COMMISSIONING OF THE NEW COUNTY ADMINISTRATION BUILDING AT 100 CATRON ST., AND THE RENOVATION OF THE OLD ADMINISTRATION BUILDING AT 102 GRANT AVE. IN THE AMOUNT OF \$268,130.00, EXCLUDING NMGR, AND GRANTING SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER FOR THE AGREEMENT. (Purchasing Division, Bill Taylor/Projects Division Director, Mark Hogan)

SUMMARY:

In December 2015, the County Purchasing Division, together with the Public Works, Projects Division issued a Request for Proposals (RFP) No. 2016-0174-PW/RM for Building Commissioning Services for the New County Administration building and the existing County Administration Building. On January 12, 2016 the County received five (5) proposals from the following Commissioning Firms:

Bath Commissioning, Albuquerque, NM
Engineering Economics, Albuquerque, NM
Noresco, Albuquerque, NM
TMCx Solutions, Las Vegas, NV
Working Buildings, Atlanta, GA

The Selection Committee shortlisted three Firms; **Noresco, Engineering Economics and Bath Commissioning** to provide oral presentations to the Selection Committee. The Committee selected **Engineering Economics, Inc.** as the most qualified firm to provide Commissioning Services for the new County Administration Building and existing Administration Building.

BACKGROUND:

The purpose for a Professional Commissioning Service is to review proposed plans and specifications from the Architect and Engineer of Record as well as the installation of Building Elements and Systems, and make recommendations for improved deliverables as well as to report to the County all recommendations and findings. Commissioning Services are to insure that the Design and the Construction Deliverables meet the Owner's Project Requirements. These Services will encompass all phases of the project from planning

through project closeout as well as testing the efficiencies of the mechanical, electrical and plumbing systems for 1-year after occupancy begins.

Based on a 2009 study conducted by Evan Mills of Lawrence Berkeley National Laboratory and sponsored by the California Energy Commission, commissioning is “arguably the single most cost effective strategy for reducing energy consumption, costs and greenhouse –gas emissions in buildings today”. The study found that new building commissioning typically reduces energy usage by 13%, pays for itself in 4.2 years (excluding non-energy savings) and generates a 23% cash-on-cash return on investment. Significant non-energy benefits substantially reduce this payback period to between 1 and 2 years and subsequently increase the return on investment. Building commissioning maximizes the operational efficiency of facility systems. The commissioning process:

- Ensures fully-operational critical building systems
- Lowers operating & maintenance costs
- Increases system energy efficiency
- Improves indoor air quality
- Reduces the risk of “sick building” syndrome
- Decreases occupant complaints and enhances productivity
- Provides better environmental control
- Reduces maintenance/troubleshooting issues
- Ensures well-trained facility personnel
- Provides benchmarks for future performance evaluations
- Reduces life-cycle costs of the facility
- Improves owner return on investment

ACTION REQUESTED:

Approval of Commissioning Services Agreement No. 2016-0174-PW/RM Between Santa Fe County and Engineering Economics, Inc. for the Commissioning of the New County Administration Building at 100 Catron St., and the Renovation of the Old Administration Building at 102 Grant Ave. in the Amount of \$268,130.00, Excluding NMGR, and Granting Signature Authority to the County Manager to Execute the Purchase Order for the Agreement.

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
ENGINEERING ECONOMICS**

THIS AGREEMENT is made and entered into this _____ day of _____ 2016, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **ENGINEERING ECONOMICS, INC.** whose principal address is **11930 Menaul NE, #224C, Albuquerque, NM 87112** hereinafter referred to as the "Contractor".

WHEREAS, the County requires professional commissioning services for construction of the new County Administration Building and for the renovation of the existing Administration Building to consult and verify, as a third party agent, that the design and preparation of the Architectural/Engineering plans and specifications, and the execution by the construction contractor will be performed in accordance with best practices and requirements; and

WHEREAS, the Contractor's proposal was the most highly rated proposal and clearly demonstrated their ability and qualifications to perform the required services for this project; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive sealed proposals were solicited through Request for Proposals No. 2016-0174-PW-RM to obtain these needed services to consult and verify construction for the above stated project; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The contractor shall furnish all expertise, labor and resources, in accordance with generally accepted commissioning industry practices, to provide complete services necessary during the Contract Term. The following generally summarizes the systems that the contractor may be required to commission.

The areas of expertise required to perform commissioning services may include, but are not limited to the following:

- Planning through construction document review and recommendations
- Building envelope commissioning
- LEED commissioning
- Measurement and verification
- All equipment of the heating, ventilating and air conditioning systems
- Refrigeration systems
- Lighting controls (occupancy sensors and daylight dimming)
- Hot water system (boilers, hot water pumps, valves, piping)

- Renewable energy systems (wind, solar)
- Emergency power generators and automatic transfer switching
- Data and communication
- Paging systems
- Security system
- Fire alarm system
- Irrigation
- Plumbing
- Vertical transportation
- Construction Phase meetings and site observations.
- Other special systems
- Conduct 11-month Warranty Review.

2. **DELIVERABLES (See attached EXHIBIT A)**

3. **ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 4 (Compensation, Invoicing and Set-Off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

4. **COMPENSATION, INVOICING AND SET-OFF**

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed. Contractor will submit two separate pay requests / invoices to the County monthly for services performed on a) new construction and b) renovation. Invoices shall include a monthly detailed status report for all activities performed and percentage completed in relation to the project tasks and phases described in **Exhibit A** attached hereto.
- 2) The total amount payable to the Contractor for services performed under this Agreement shall not exceed **two hundred sixty-eight thousand one hundred thirty dollars (\$268,130.00) exclusive** of New Mexico gross receipts tax.

- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by 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 will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **Brad Isaacson, Project Manager II, Public Works Department**, or such other individual as may be designated in the absence of the office representative.
- 2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.
- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the 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 the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the 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 the County to recover excessive or illegal payment.

5. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above. **Santa Fe County intends on awarding a contract with a term of one year with the option to renew for three additional one-year terms, not to exceed a total of four years in duration**, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County may exercise this option by submitting a written notice to the Contractor that the term of this Agreement will be extended another year. The notice must be submitted to the Contractor at least 60 days prior to expiration of the term.

6. 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 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 within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 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 the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

7. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The 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 the Contractor in any way or forum, including a lawsuit.

8. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the 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 the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

9. 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 the County's advance written approval shall be null and void and without any legal effect.

10. SUBCONTRACTING

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

11. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The 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 the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

12. RELEASE

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

13. 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 the prior written approval of the County.

14. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The 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. The 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 country, the County shall own any such copyright.

15. CONFLICT OF INTEREST

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

16. 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. The Contractor specifically acknowledges and agrees that the 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.

17. 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.

18. NOTICE OF PENALTIES

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

19. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the 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. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

20. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

21. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its 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 the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the 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 its books and records relate to (i) its 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, the 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 years from the date of final payment under the subcontract; (ii) to allow the 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 GAAP.

22. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the 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 the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the 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 that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

23. 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.

24. 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: **Engineering Economics, Inc.
11930 Menaul NE, #224C
Albuquerque, New Mexico 87112**

25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so. and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

26. FACSIMILE SIGNATURES

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

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

A. General Conditions. The 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. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the 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. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.

E. 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), the Contractor shall increase the maximum limits of any insurance required herein.

29. 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.

30. 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.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints (**NOT APPLICABLE**) as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

33. 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 duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

Date

Approved as to Form

Gregory S. Shaffer
Santa Fe County Attorney

Date

Finance Department Approval

Carole H. Jaramillo
Finance Director

Date

CONTRACTOR:

(Signature)

Date

(Print Name)

Exhibit A



Engineering Economics, Inc.

11930 Menaul NE, #224C
Albuquerque, New Mexico 87112

Telephone: 505.830.6069

March 9, 2016

Rose Moya
Procurement Specialist Senior
Santa Fe County Purchasing Division
142 W. Palace Ave.
Santa Fe, NM 87501

**Re: New Santa Fe County Administration Building Project RFP# 2016-0174-PW/RM
LEED® Commissioning Services
Proposal No. 10-16006**

Dear Ms. Moya:

We are pleased to present this fee proposal for LEED® commissioning services for the New Santa Fe County Administration Building Project. This proposal is to provide commissioning services in compliance with LEED V4 Certification requirements as described below. It is understood that the new building will include approximately 70,000 square feet and the renovation of 102 Grant is approximately 37,000 square feet.

We are requesting by this Fee Proposal to sub contract to Avocet Design and Consulting the Envelope Commissioning portion of the scope of work.

SCOPE OF WORK

- Planning through construction document review and recommendations.
- Building Envelope Commissioning – Sub-consultant is Avocet Design and Consulting
- LEED Commissioning Includes the following:

Fundamental Building Systems Commissioning services will be provided in compliance with LEED Certification requirements as listed below.

1. Serve as the Commissioning Authority on behalf of the Owner to ensure that the project intent is achieved for the systems to be commissioned.
2. Assist in developing the Owner's Project Requirements. Review and comment on the Basis of Design as provided by the design team.
3. Develop a Commissioning Plan and use it to guide the commissioning process.
4. Confirm incorporation of commissioning requirements into the construction documents.
5. Conduct a review of contractor submittals for systems to be commissioned, focusing on controls.
6. Verify inclusion of Systems Manual requirements in construction documents.
7. Verify inclusion of operator and occupant training requirements in constructions documents.
8. Perform Design reviews of the construction documents at each phase of design as agreed upon.
9. Develop construction checklists to verify proper installation and startup of systems to be commissioned.
10. Develop functional test procedures, customized for building systems and equipment.

11. Perform on-site functional testing of equipment and systems to verify intended performance.
12. Provide ongoing documentation of the commissioning process, including letters with review comments, Project Communication Reports and an Issues Log to track issues to resolution.
13. Verify systems Manual Updates and Delivery.
14. Verify operator and occupant training delivery and effectiveness.
15. Prepare Current Facilities Requirements and Operations and Maintenance Plan.
16. Provide a Final Commissioning Report to document the entire commissioning process.
17. Verify seasonal testing
18. Perform an on-site, post-occupancy/warranty review of system operation and performance, within approximately ten (10) months of substantial completion.
19. Develop an on-going commissioning plan.

Systems and equipment to be LEED commissioned will include the following as appropriate:

1. Building heating, ventilation and air conditioning systems
 2. Building automation system
 3. Domestic water heating system, pumps and controls
 4. Electrical service, distribution, lighting and lighting controls (interior and exterior)
 5. Renewable energy systems
- Measurement & Verification (only on New Administration Building) – Comply with IPMVP Option D. We will verify that the requirements are included in the design documents, create the M&V Plan, assist with information needed to calibrate the model at the end of construction and monitor the energy use and report to the county per M&V Plan.
 - All equipment of the heating, ventilation and air conditioning systems (Included in LEED Cx Scope)
 - Refrigeration systems – NOT APPLICABLE
 - Lighting Controls (Occupancy sensors and daylight dimming) (Included in LEED Cx Scope)
 - Hot water systems (boilers, hot water pumps, valves, piping) (Included in LEED Cx Scope)
 - Renewable energy systems (wind, solar) (Included in LEED Cx Scope)
 - Emergency power generators and automatic transfer switching. Only in new admin building, scope for design reviews, construction installation observations, observing factory testing per specifications.
 - Data and communications – review specs, review installation, observe and verify specified testing is completed.
 - Paging Systems – NOT APPLICABLE
 - Security Systems. Review specs, review installation, observe and verify specified testing is completed, independent testing as necessary to confirm functionality.
 - Fire Alarm System – NOT APPLICABLE
 - Irrigation. Review specs, review installation, observe and verify specified testing and training is completed.
 - Plumbing. Review specs, review installation, observe and verify pressure testing.
 - Vertical transportation. Review specs, review installation, observe testing and training.
 - Construction Phase meetings and site observations.
 - Other special systems – NOT APPLICABLE
 - Conduct 11- month Warranty review

This Scope of Work includes multiple construction site visits for a commissioning scoping/kickoff meeting with the commissioning team (Owner's representative, designers and contractors), installation reviews and startup verification. Commissioning meetings during functional testing are also included in the scope.

Rose Moya
March 9, 2016

FEE

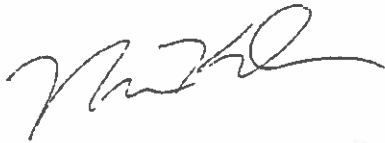
Our fee to complete the described Scope of Work will be on a Lump Sum Fixed Fee Basis, inclusive of labor, travel and miscellaneous expenses. A breakdown of this fee is attached in the form of the pay request.

Additional services beyond the described Scope of Work will be billed at our standard hourly rates per the attached schedule.

We look forward to working with you and to a successful project.

Sincerely,

Engineering Economics, Inc.



Matthew H. Davis, PE, LEED® AP

Attachments:

- EEI Standard Rate Schedule
- Pay App New Admin
- Pay App 102 Grant Remodel
- Avocet Design and Consulting Proposal

ENGINEERING ECONOMICS, INC.
NEW MEXICO

CONSULTING RATE SCHEDULE
JANUARY 2016

	<u>Up To</u>
Matt Davis, Sr. Project Manager	\$145/Hour
Carl Peterson, Sr. Project Engineer	\$120/Hour
Steve Foxe, Sr. Technician	\$120/Hour
Administrative Support	\$65/Hour

CONSULTANTS (Avocet Design & Consulting)

110% of invoice received

REIMBURSABLE EXPENSES

Mileage: Personal Car..... at IRS rates

These are current rates and are subject to review and revision annually.

ARCHITECT/ENGINEER PAY REQUEST

Santa Fe County Purchasing Division
142 W. Palace Ave. Santa Fe NM 87501

Project Manager Brad Isaacson
Project Name & Number: Santa Fe County Administration Building
Architect/Engineer
Engineering Economics, Inc., 780 Simms St. Suite 210, Golden, CO 80401

Date
Project No.:
Contract #:
Pay Request No: 1

	Contract Sum	Percentage Completed	Completed to Date	Less Prev. Request	Current Request	Revision (PWD)
Basic Services						
Programming Phase	\$4,240.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Schematic Phase	\$6,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Design Development Phase	\$7,040.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Construction Doc Phase	\$6,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Bidding & Neg Phase	\$2,400.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Const. Phase	\$25,360.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Project Close Out Phase	\$37,280.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx 11 Month Inspection Phase	\$5,400.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Monitor Based	\$17,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Measure & Verify Design Phase	\$5,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Measure & Verify Const. Phase	\$7,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Measure & Verify Verify Phase	\$8,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx Prog Phase	\$1,100.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx DD/CD Phase	\$8,800.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx Const. Phase	\$38,060.00	0.00%	\$0.00	\$0.00	\$0.00	
Subtotal	\$178,680.00	0.00%	\$0.00	\$0.00	\$0.00	
Gross Receipts Tax	\$12,842.63	7.1875%	\$0.00		\$0.00	
TOTAL CONTRACT	\$191,522.63					
TOTAL AMOUNT DUE	\$0.00					

CERTIFICATION:

I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount Due, as shown above, has been received.

SIGNATURE _____ DATE: _____

ARCHITECT/ENGINEER PAY REQUEST

Santa Fe County Purchasing Division
142 W. Palace Ave. Santa Fe NM 87501

Project Manager: Brad Isaacson
Project Name & Number: Santa Fe County 102 Grant Remodel

Date:
Project No.:
Contract #:
Pay Request No: 1

Architect/Engineer
Engineering Economics, Inc., 780 Simms St. Suite 210, Golden, CO 80401

	Contract Sum	Percentage Completed	Completed to Date	Less Prev. Request	Current Request	Revision (PWD)
Basic Services						
Programming Phase	\$2,450.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Schematic Phase	\$3,500.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Design Development Phase	\$2,500.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Construction Doc Phase	\$3,500.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Bidding & Neg Phase	\$2,600.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Const. Phase	\$9,800.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Project Closeout Phase	\$26,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx 11 Month Inspection Phase	\$3,200.00	0.00%	\$0.00	\$0.00	\$0.00	
Cx Monitor Based	\$17,000.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx Program Phase	\$1,100.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx DD/CD Phase	\$4,400.00	0.00%	\$0.00	\$0.00	\$0.00	
Envelope Cx Const. Phase	\$13,860.00	0.00%	\$0.00	\$0.00	\$0.00	
Subtotal	\$89,910.00	0.00%	\$0.00	\$0.00	\$0.00	
Gross Receipts Tax	\$6,462.28	7.1875%	\$0.00		\$0.00	
TOTAL CONTRACT	\$96,372.28					
TOTAL AMOUNT DUE	\$0.00					

CERTIFICATION:

I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount Due, as shown above, has been received.

SIGNATURE _____ DATE: _____

BECx BUILDING ENVELOPE COMMISSIONING

The building envelope is *"all materials, components, systems & assemblies intended to provide shelter and environmental separation between interior and exterior."* ASTM E 2813

Building Envelope Commissioning (BECx) enhances project delivery & durability by providing additional oversight of the envelope components of the building from design through construction.

BECx may be driven by LEED V4 compliance or other mandated standards. While LEED V4 provides a starting point for the commissioning process, we base our approach on more comprehensive standards including ASHRAE Guideline 0-2005, NIBS Guideline 3-2012 and ASTM E2813. The latter provides detailed requirements for Fundamental and Enhanced Commissioning.

* * *

Below is a basic outline of envelope commissioning activities. Scope and specific commissioning plan, schedule, deliverables, required tests, etc. are customized in coordination with project goals, budget, schedule, delivery method and construction type. While ASTM E2813 outlines specific requirements to achieve Fundamental and Enhanced Commissioning, we believe it is in the best interest of each Owner and specific project to develop a unique plan that considers the Owner's requirements, construction type and cost considerations.

The most critical components are the design review, construction observation of building envelope activities and field testing of these assemblies.

DESIGN REVIEW

The review of construction documents considers compatibility of materials, reviews critical intersections and material sequencing, encourages greater coordination between trades and highlights critical areas for contractor. We recommend two design reviews at a minimum, one during Design Development or beginning of Construction Document Phase, and second at 95% CDs. However, design review participation may begin as early as Schematic Design providing assistance with envelope assembly selection.

CONSTRUCTION OBSERVATIONS

Construction observation brings additional eyes to the installation of complex assemblies. Hidden construction defects can have big impacts down the road. Additional oversight of trades allows confirms that materials and application practices are held to construction documents, approved submittals and manufacturer's installation recommendations. This process results not only in the correction of construction defects but also documents correct installations. Scope of required field observations would be determined based on design and on selection of the General Contractor.

FIELD TESTING

Field testing of constructed assemblies allows physical verification that intersections and assemblies have been properly detailed and installed. We recommend testing of any relevant mock-ups and at initial installation of critical assemblies such as windows as well as at completion for certain assemblies. Testing of horizontal waterproofing is typically recommended by the manufacturer, and we would provide observation of these types of tests and document results. The full scope of field tests would be determined based on Owner's requirements and costs.

102 GRANT

The full scope of services is geared toward new construction. For existing buildings, such as 102 Grant, the scope would be outlined with the Owner and Architect to determine which activities would best assist the design and construction process. If new windows are installed, we would recommend field testing. Replacement of the roof would benefit from construction observations and possibly field testing. Infrared imaging could be useful in evaluating current insulation, or other existing issues of concern such as air leakage through the envelope.

DESIGN & CONSULTING, LLC

714 Roma Avenue NW Albuquerque NM 87102 505.242.7627 sararain@icloud.com

BECx Activities

Pre-design

- Review of & assistance with development of OPR for performance & durability goals.
- Development of commissioning scope, budget, plan & schedule (on-going).

Deliverables / activities may include: Participation in charrettes & design meetings, review components to be addressed in OPR with design team & project stakeholders

Design Phases

- Review envelope design & detailing for constructability, continuity and compatibility, review of specifications for inclusion of commissioning requirements, coordination with drawings
- Development of performance matrix & testing plan
- Verify consistency of design documentation with Owner's Project Requirements & Basis of Design
- Build engagement and cooperation among project team members

Deliverables may include: Detailed comments and questions, drawing mark-ups, in-person discussion of review or design assistance, Performance Matrix and Testing Plan

Pre-Construction Phase

- Bid Assistance
- Value Engineering Decision Assistance (as regards integrity of building envelope)

Construction Phase

- Development of Construction Phase Commissioning Plan; *includes required activities, outline of BECx Agent, GC & subcontractor responsibilities, schedule of Construction Observations and Testing*
- Mock-up Recommendations and Review
- Participation in relevant pre-construction conferences and review of relevant shop drawings & submittals; *below grade waterproofing, roofing, windows & exterior skin assemblies at a minimum*
- Development of construction observation checklists; *to be utilized during Construction Observations by BECx agent; or may be implemented by General Contractor Quality Assurance and verified by BECx agent.*
- Perform Construction Observations at; *mock-ups, first installations, pre-determined milestones & as determined necessary. Recommend (3) per week during relevant activities, (1) at a minimum.*
- Laboratory testing may be required for specific materials and / or assemblies (performed by independent testing agencies)
- Field testing verification & observation (per relevant ASTM & manufacturer's protocol). Scope as determined appropriate by team during design phases. Tests may include:
 - Water testing: Hose test (fenestration or air barrier)
 - Water leakage with air pressure difference test (fenestration or air barrier)
 - Electronic Leak Detection of waterproofing membranes
 - Horizontal waterproofing flood tests
 - Pull tests of EIFS assembly, Pull-off strength testing of coatings, Strength of concrete & masonry anchors
 - Infrared thermal and moisture evaluation of insulation
 - Elastomeric sealant adhesion and pull testing
 - Envelope air leakage testing (mock-up, partial assembly or full envelope for Enhanced)

Deliverables: Commissioning Plan, Construction Observation Field reports, Issue resolution log, Testing observation & reports

Post-construction

- Final commissioning report & documentation
- Maintenance manuals & envelope preventative maintenance and routine evaluation guide
- Warranty review – 10 month walk

DESIGN & CONSULTING, LLC

714 Roma Avenue NW Albuquerque NM 87102 505.242.7627 sararain@icloud.com

BECx BUILDING ENVELOPE COMMISSIONING

PROPOSED SCOPE OF SERVICES

March 9, 2016

Proposed Scope of Services - New Construction 100 Catron	Frequency	Unit Cost	Total
Design Commissioning Coordination Meeting & Plan Development (Programming)	1	\$1,000	\$1,000
Design Review (Design Development / Construction Documents)	2	\$4,000	\$8,000
Construction Phase Commissioning Meeting and Plan (Construction Phase)	1	\$1,000	\$1,000
Pre-Construction Conference Participation & Submittal Review (Construction)	4	\$600	\$2,400
Building Envelope Construction Observations (Construction Phase) (Critical trades incl. below grade vapor barrier, air / weather barrier & exterior skin, insulation, windows, roofing. Critical site visit times: at initial installation, weekly during, and at completion)	40	\$440	\$17,600
Air & Water Infiltration Testing (recommend 10% of windows, 2-3 per elevation) (Construction Phase)	4	\$2,000	\$8,000
Infrared Thermal Analysis (based on square footage of building envelope) (Construction Phase)	1	\$0.08 sq.ft.	\$5,600
Additional Services to be billed at hourly rate of \$110 for design review, etc., field observations at \$80 per hour.			
Estimated Total (not including GRT as applicable)			\$43,600

Proposed Scope of Services - Renovation 102 Grant	Frequency	Unit Cost	Total
Pre-Design Meeting & Envelope Design Assistance (Programming)	1	\$1,000	\$1,000
Design Review (Design Development / Construction Documents)	2	\$2,000	\$4,000
Construction Phase Commissioning Meeting and Plan (Construction Phase)	1	\$1,000	\$1,000
Pre-Construction Conference Participation & Submittal Review (Construction Phase)	2	\$600	\$1,200
Building Envelope Construction Observations (Construction Phase) (Critical trades incl. stucco and windows. Critical site visit times: at initial installation, weekly during, and at completion)	10	\$440	\$4,400
Air & Water Infiltration Testing (recommend 10% of windows, 2-3 per elevation) (Construction Phase)	3	\$2,000	\$6,000
Additional Services to be billed at hourly rate of \$110 for design review, etc., field observations at \$80 per hour.			
Estimated Total (not including GRT as applicable)			\$17,600

DESIGN & CONSULTING, LLC

714 Roma Avenue NW Albuquerque NM 87102 505.242.7627 sararain@icloud.com

OUR TEAM

avocet design and consulting, LLC is a woman-owned consulting firm formed in 2010 with the goal of improving the quality of construction, reducing construction defects and call-backs, and analyzing existing building energy-efficiency improvements. Raised and educated in New Mexico, Sara Stewart, registered architect, applies her architectural background and building science training to provide superior evaluations and service.

Our strategic approach is informed by combined background in architecture and Quality Assurance. Our work with General Contractors and Owners to provide a more durable building envelope through quality assurance inspections and performance testing in the field gives us a unique vantage and an intimate understanding the process. We possess, collectively and individually, significant experience with the finesse required to work with General Contractors and Subcontractors, managing the concerns of both Building and Owner.

As part of the Owner's Team, from inception through completion, we will work closely with the Owner's Representative and the Project Team, advocating in the Owner's interest for the best designed and built envelope within the Owner's budget.

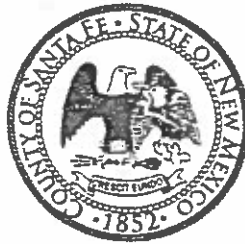
DESIGN & CONSULTING, LLC

714 Roma Avenue NW Albuquerque NM 87102 505 242.7627 sararain@icloud.com

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: March 16, 2016

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager

VIA: Katherine Miller, County Manager
Jeffrey Trujillo, ASD Director

ITEM AND ISSUE: BCC Meeting March 29, 2016

APPROVAL OF AMENDMENT NO. 3 TO AGREEMENT 2012-0145-PW/PL WITH IRON MOUNTAIN INFORMATION MANAGEMENT, LLC FOR RECORDS MANAGEMENT AND STORAGE SERVICES INCREASING THE COMPENSATION BY AN ADDITIONAL \$60,000 AND EXTENDING THE TERM FOR ONE ADDITIONAL YEAR FOR A TOTAL AGREEMENT AMOUNT OF \$270,000. (Bill Taylor, Purchasing Division)

SUMMARY:

The County stores over 5,000 cartons containing documents and records that total approximately 8,000 cubic feet. The County continues to generate records and documents that are required to be maintained in a secure and manageable system that incorporates efficient and accurate records indexing and document retrieval to meet all Federal and State Record Retention requirements.

In April 2013, Santa Fe County entered into Agreement 2012-0156-PW/PL with Iron Mountain Information Management, LLC to provide Records Management and Storage services. The Agreement was procured through the Request for Proposals procurement method.

ISSUES:

Administrative Services Depart/Records Management Division is requesting a one year extension and a \$60,000 increase to the compensation of Agreement 2012-0145-PW/PL bringing the total contract amount to \$270,000, requiring BCC approval.

The initial compensation to the agreement was \$100,000. Amendment No. 1 increased the compensation an additional \$100,000 and extended the term of the Agreement an additional year. Amendment No. 2 increased the compensation an additional \$100,000 and extended the term of the Agreement an additional year.

Amendment No. 3 to the Agreement will be the final amendment and will complete the four (4) year term of the Agreement.

RECOMMENDATION:

Request approval of Amendment No. 3 to Agreement 2012-0145-PW/PL with Iron Mountain Information Management, LLC for records management and storage services increasing the compensation by an additional \$60,000 and extending the term for one additional year for a total Agreement amount of \$270,000.

**SANTA FE COUNTY
AMENDMENT NO. 3
TO THE AGREEMENT WITH IRON MOUNTAIN, LLC
TO PROVIDE RECORDS MANAGEMENT AND STORAGE SERVICES**

THIS AMENDMENT is made and entered into this _____ day of _____ 2016, by and between **SANTA FE COUNTY**, (hereinafter referred to as "County"), and **IRON MOUNTAIN INFORMATION MANAGEMENT, LLC**, (hereafter referred to as the "Contractor").

WHEREAS, pursuant to the Procurement Code, the County procured Agreement No. 2012-0145-PW/PL dated April 2, 2013, with Contractor (the "Agreement") for the provision of record management and storage services; and

WHEREAS, Article 15 (No Oral Modifications; Written Amendments Required) of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties; and

WHEREAS, Article 3 (Effective Date and Term) of the Agreement allows the County to extend the term of the Agreement for a year and with a term extension the Contractor may increase its rates by an amount not to exceed two percent (2%); and

WHEREAS, Amendment No. 1 extended the term of the Agreement to April 2, 2015, and replaced the Contractor's rate schedule with a new "Renewal Schedule" that reflects the Contractor's rate increase; and

WHEREAS, Amendment No. 2 extended the term of the Agreement to April 2, 2016; increased the Contractor's compensation by ten thousand dollars, and replaced Exhibit A Schedule with a new Schedule A: Program Pricing Schedule dated April 1, 2015 that reflects the Contractor's rate increase for the term extension; and

WHEREAS, with this Amendment No. 3, the parties wish to extend the term to April 2, 2017; increase the Contractor's compensation by \$60,000; and replace the Exhibit A of the Agreement with the Contractor's new rate increase titled "Renewal Schedule A-1: Program Pricing Schedule" dated April 1, 2016, attached hereto; and

WHEREAS, both parties desire to enter into this Amendment No. 3.

NOW THEREFORE, it is mutually agreed between the parties that the Agreement is amended as follows:

1. **ARTICLE 2.A.1) (Compensation, Invoicing and Set-Off)** is amended by replacing the Renewal Schedule A: Program Pricing referenced in 2.A.1) as "Exhibit A" with Contractor's new rate schedule attached hereto and titled "Renewal Schedule A-1: Program Pricing Schedule" dated April 1, 2016.

2. ARTICLE 2.A is amended by inserting the following sentence at the end of paragraph A.1): The rates in Exhibit A, the Renewal Schedule A-1: Program Pricing Schedule shall be Contractor's pricing for the term of April 2, 2016 to April 2, 2017.
3. ARTICLE 2.A.2) is amended by inserting a new subparagraph "c" to read as follows:
 - c. By Amendment No. 3, the total amount payable to the Contractor under this Agreement, for the term of April 2, 2016 to April 2, 2017 shall be increased by sixty thousand dollars (\$60,000.00). The compensation payable to the Contractor for the term of this Agreement shall not exceed two hundred seventy thousand dollars (\$270,000.00), exclusive of gross receipts tax.
4. ARTICLE 3. "EFFECTIVE DATE AND TERM" is amended by inserting a subparagraph "c" to read as follows:
 - c. Pursuant to Amendment No. 3, the term of this Agreement is extended from April 2, 2016 to April 2, 2017, upon the same terms and conditions as the original Agreement 2012-0145-PW/PL, subject to increased rates as indicated in Exhibit A, the Renewal Schedule A-1: Program Pricing Schedule dated April 1, 2016.
5. All other provisions of the Agreement not specifically amended or modified by Amendment Nos. 1, 2 and this Amendment No. 3 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 3 to Agreement No. 2012-0145-PW/PL as of the date first written above.

SANTA FE COUNTY:

Miguel M. Chavez, Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Approved as to form



Gregory S. Shaffer
Santa Fe County Attorney

3/17/16

Date

Finance Department



Carole H. Jaramillo
Finance Department Director

3/17/16
Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)

Renewal Schedule A:- 1

PROGRAM PRICING SCHEDULE

Records Management

This Records Management Pricing Schedule is incorporated into and made part of the Customer Agreement ("Agreement") between Iron Mountain Information Management, LLC., (the "Company" or "Iron Mountain") and SANTA FE COUNTY, (the "Customer").

Please see our Customer Information Center at cic.ironmountain.com for a Glossary with definitions of the terms used in this Pricing Schedule and more detail regarding our services, standard processes, and billing practices. In addition, restrictions apply to volume and/or stated timeframes for some service transaction types and these may be found in the Glossary under each service type.

This Records Management Pricing Schedule supersedes and terminates any prior Records Management Pricing Schedule and/or Schedule A existing between Iron Mountain and the Customer for the accounts noted below. All other Records Management services not specifically listed on this Schedule A will be charged at Iron Mountain's then current rates.

SANTA FE COUNTY

District Name/Number: New Mexico / NM | N065M

Effective Date: April 1, 2016

Pricing for Core Services

STANDARD STORAGE AND SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)		
Carton Storage	\$0.311	Cubic Foot
Receiving and Entry - Carton	\$1.97	Cubic Foot
Regular Retrieval - Carton	\$2.55	Cubic Foot
Regular Retrieval - File from Carton	\$5.98	File
Regular Refile - Carton	\$2.55	Cubic Foot
Regular Refile - File to Carton	\$5.98	File
Archival Destruction - Carton	\$3.08	CF plus Regular Retrieval Charge
Open Shelf Storage	\$1.082	Linear Foot
Open Shelf Storage - X-Ray	\$1.623	Linear Foot
Receiving and Entry - Open Shelf File	\$6.51	Linear Foot
Regular Retrieval - File from Open Shelf	\$3.49	File
Regular Refile - File to Open Shelf	\$3.49	File
Archival Destruction - Open Shelf	\$3.33	File plus Regular Retrieval Charge
Next Day Delivery	\$24.16	Visit plus Handling Charge
Regular Pickup	\$24.16	Visit plus Handling Charge
Handling Charge	\$2.23	Cubic Foot

PREMIUM STORAGE & SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)		
Rush Retrieval - Carton	\$6.34	Cubic Foot
Rush Retrieval - File from Carton	\$8.84	File
Regular Interfile - Carton	\$8.12	Each
Half Day Delivery	\$58.73	Visit plus Handling Charge
Rush Delivery - Business Day	\$116.53	Visit plus Handling Charge
Rush Delivery - Weekends/Holidays/After Hours	\$234.09	Visit plus Handling Charge
Rush Pickup - Business Day	\$116.53	Visit plus Handling Charge
Archival Destruction - File from Carton	\$5.10	File plus Regular Retrieval Charge
Rush Retrieval - File from Open Shelf	\$7.03	File
Regular Interfile - Open Shelf	\$5.41	Each
Miscellaneous Services - Labor	\$60.34	Hour
Re-Boxing Charge	\$5.87	Labor plus New Carton Cost

TBD: To be determined, call for quote

OTHER PROGRAM FEES (see <http://cic.ironmountain.com/records/glossary> for service definitions)

Administrative Fee (Summary Billing)	\$25.65	Account ID per Month
Administrative Fee (Detailed Billing)	\$64.10	Account ID per Month
Fuel Surcharge		* Transportation Visit

*A Fuel Surcharge is applied monthly based upon changes in the price of diesel fuel as published by the US Department of Energy. This charge is calculated monthly and included as a percentage of transportation related service charges. The current monthly Fuel Surcharge information can be found at <http://cic.ironmountain.com/FuelSurcharge>.

Custom Pricing

CUSTOM STORAGE & SERVICES (see <http://cic.ironmountain.com/records/glossary> for service definitions)

Individual Listing	\$0.66	File
Open Shelf Individual Listing	\$0.67	File
Storage Minimum	\$155.04	Month
Minimum Service Order Charge	\$13.53	Order
Permanent Withdrawal - Carton	\$3.84	CF plus Regular Retrieval Charge
Permanent Withdrawal - File from Carton	\$3.84	File plus Regular Retrieval Charge
Permanent Withdrawal - Open Shelf	\$3.52	File plus Regular Retrieval Charge

Additional Services beyond those listed in this Pricing Schedule are available. For service descriptions, please go to Additional Services at cic.ironmountain.com/additionalservices.

TBD: To be determined, call for quote

**SANTA FE COUNTY
AMENDMENT NO. 2
TO THE AGREEMENT WITH IRON MOUNTAIN, LLC
TO PROVIDE RECORDS MANAGEMENT AND STORAGE SERVICES**

THIS AMENDMENT is made and entered into this 2nd day of April 2015, by and between SANTA FE COUNTY, (hereinafter referred to as "County"), and IRON MOUNTAIN INFORMATION MANAGEMENT, LLC, (hereafter referred to as the "Contractor").

WHEREAS, pursuant to the Procurement Code, the County procured an agreement dated April 2, 2013 with Contractor (the "Agreement") for the provision of record management and storage services; and

WHEREAS, Article 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties hereto; and

WHEREAS, Article 3, "EFFECTIVE DATE AND TERM" of the Agreement allows the County to extend the term of the Agreement for an additional year with a rate increase not to exceed two percent (2%); and

WHEREAS, Amendment No. 1 extended the term to April 2, 2015 and replaced the rate schedule described in "Exhibit A" with a new "Renewal Schedule" that reflected the rate increase; and

WHEREAS, by this Amendment No. 2, the County wishes to extend the term of the Agreement to April 2, 2016, increase compensation by ten thousand dollars (\$10,000.00), and replace "Exhibit A" with a new "Schedule A: Program Pricing Schedule" dated April 1, 2015 that reflects the Contractor's rate increases for 2016; and

WHEREAS, both parties desire to enter into this Amendment No. 2.

NOW THEREFORE, it is mutually agreed between the parties that Agreement No. 2013-0145-PW/PL be amended as follows:

1. ARTICLE 2.A.1) (Compensation, Invoicing and Set-Off) is amended by replacing the Renewal Schedule A: Program Pricing referenced as "Exhibit A" with the new rate schedule attached hereto and titled "Schedule A: Program Pricing Schedule (Pricing for Core Services)" dated April 1, 2015.
2. ARTICLE 2.A is amended by inserting the following sentence at the end of paragraph A.1): The rates in the Schedule A: Program Pricing Schedule (Pricing for Core Services) dated April 1, 2015, shall be Contractor's pricing for the term of April 2, 2015 to April 2, 2016.

3. ARTICLE 2.A.2) is amended by inserting a new subparagraph "b" to read as follows:
 - b. By Amendment No. 2, the total amount payable to the Contractor under this Agreement, for the term of April 2, 2015 to April 2, 2016 shall be increased by ten thousand dollars (\$10,000.00). The compensation payable to the Contractor for the term of this Agreement shall not exceed two hundred ten thousand dollars (\$210,000.00), exclusive of gross receipts tax.
4. ARTICLE 3. "EFFECTIVE DATE AND TERM" is amended by inserting a subparagraph "b" to read as follows:
 - b. Pursuant to Amendment No. 2, the term of this Agreement is extended from April 2, 2015 to April 2, 2016 upon the same terms and conditions as the original Agreement 2012-0145-PW/PL, subject to increased rates as indicated in Exhibit A (Schedule A: Program Pricing Schedule (Pricing for Core Services)) dated April 1, 2015.
5. All other provisions of Agreement No. 2012-0145-PW/PL not specifically amended or modified by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 to Agreement No. 2012-0145-PW/PL as of the date first written above.

SANTA FE COUNTY:

Katherine Miller
Katherine Miller
Santa Fe County Manager

3/31/15
Date

Approved as to form

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

3/30/15
Date

Finance Department Approval

Carole H. Jaramillo
Carole H. Jaramillo
Finance Department Director

3/31/15
Date

CONTRACTOR:

(Signature)

Derrick Wolfe

(Print Name)

(Print Title)

4/2/15
Date

SCHEDULE A: PROGRAM PRICING SCHEDULE



RECORDS MANAGEMENT

This Records Management Pricing Schedule is incorporated into and made part of the Customer Agreement ("Agreement") between Iron Mountain Information Management, LLC (the "Company" or "Iron Mountain") and County of Santa Fe (the "Customer").

Please see our Customer Information Center at cic.ironmountain.com for a Glossary with definitions of the terms used in this Pricing Schedule and more detail regarding our services, standard processes, and billing practices. In addition, restrictions apply to volume and/or stated timeframes for some service transaction types and these may be found in the Glossary under each service type.

This Records Management Pricing Schedule supersedes and terminates any prior Records Management Pricing Schedule and/or Schedule A existing between Iron Mountain and the Customer for the accounts noted below. All other Records Management services not specifically listed on the Schedule A will be charged at Iron Mountain's then current rates.

Notwithstanding anything to the contrary in the Agreement, the pricing set forth in this Schedule or the Agreement will be effective on the later of (i) the date on which the Agreement is signed by both parties; (ii) the Agreement Effective Date or (iii) the Effective Date of this Schedule. In accordance with Iron Mountain's standard billing practices, Iron Mountain shall invoice Customer at the rates and charges set forth in this Schedule beginning on the first day of the monthly Billing Cycle in which such date falls, or the following Billing Cycle if the date falls at the end of the month.

COUNTY OF SANTA FE

District Name/Number: Albuquerque - 01341 | N065M

Effective Date: April 1, 2015

IRON MOUNTAIN RECORDS MANAGEMENT

PRICING FOR CORE SERVICES (AS OF MARCH 13, 2015)

Standard Storage and Services (SEE: http://cic.ironmountain.com/records/glossary/ FOR SERVICE DEFINITIONS)		
Description	Effective Price	Per
Carton Storage	\$0.305	Cubic Foot
Carton Storage, New	\$0.305	Cubic Foot
Receiving and Entering - Carton	\$1.935	Cubic Foot
Regular Retrieval - Carton	\$2.497	Cubic Foot
Regular Retrieval - File from Carton	\$5.865	File
Regular Refile - Carton	\$2.497	Cubic Foot
Regular Refile - File to Carton	\$5.865	File
Archival Destruction - Carton	\$3.017	CF plus Regular Retrieval Charge
Next Day Delivery	\$23.689	Visit plus Handling Charge
Regular Pickup	\$23.689	Visit plus Handling Charge
Handling Charge	\$2.185	Cubic Foot

Premium Storage and Services (SEE: http://cic.ironmountain.com/records/glossary/ FOR SERVICE DEFINITIONS)		
Description	Effective Price	Per
Archival Destruction - File from Carton	\$4.998	File plus Regular Retrieval Charge
Permanent Withdrawal - File from Carton	\$3.767	File plus Regular Retrieval Charge
Permanent Withdrawal - Carton	\$3.767	CF plus Regular Retrieval Charge
Rush Retrieval - Carton	\$6.211	Cubic Foot
Rush Retrieval - File from Carton	\$8.670	File
Regular Interfile - Carton	\$7.956	Each
Half Day Delivery	\$57.579	Visit plus Handling Charge
Rush Delivery - Business Day	\$114.240	Visit plus Handling Charge
Rush Pickup - Business Day	\$114.240	Visit plus Handling Charge
Rush Delivery - Weekends/Holidays/After Hours	\$229.500	Visit plus Handling Charge
Miscellaneous Services - Labor	\$59.160	Hour
Re-boxing Charge	\$5.750	Labor Plus New Carton

Other Program Fees (SEE: http://cic.ironmountain.com/records/glossary/ FOR SERVICE DEFINITIONS)		
Description	Effective Price	Per
Administrative Fee (Summary Billing)	\$25.120	Account ID per Month

Order by 10:00 AM for delivery same Business Day; or Order by 3:00 PM for delivery next Business Day by 12:00 PM

Delivery within 3 hours of placement of Order (for Orders received not later than 2:00 PM) on a Business Day.

Delivery within 4 hours of placement of Order.

Pickup orders placed before 4:00 PM on a Business Day will be picked up within the following two Business Days

Pickup orders placed before 4:00 pm on a Business Day will be picked up on the following Business Day.

Additional Services beyond those listed in this Pricing Schedule are available. For service descriptions, please go to Additional Services at cic.ironmountain.com/additionalservices.

[illegible]

This pricing included in this schedule applies specifically to the conversion on (stored) business records. Due to the complexity inherent to document conversion, additional document types may be subject to additional and/or specific pricing.

Document Conversion using Image on Demand (IOD):

- The IOD scan rate includes up to 8-minutes of total labor for each file requested for IOD conversion, covering document preparation, scanning, quality control, standard indexing, scanning non-letter legal documents and reassembly.
- Conversion work that exceeds 8-minutes per file will be charged an hourly rate in 15-minute increments (per order).
- Flatbed Scanning may be required and will be invoiced at the current photocopy rate
- Standard Image on Demand Services are only available as a next day service. Rush or half day services are considered Custom Image on Demand Services that require a separate statement of work and subject to geographical availability.

- Digital images and indexing data will be made available through a hyperlink delivered to the requestor via email.
- Activation of IOD service is required before an order can be placed.
- All pages contained in the file will be scanned.
- Digital images will be scanned at 300 DPI, in black and white as a PDF multi-page image
- If the customer's requirements differ from those described in this Schedule A or the description contained in "Image on Demand – Overview" within the glossary of the Customer Information Center (<http://cic.ironmountain.com>), then those requirements are considered Custom Image on Demand Services and must be described in a separate, agreed upon statement of work.

Damaged, illegible and/or odd sized documents will be scanned using a flatbed scanner, a fee will be charged for every image generated at Iron Mountain's current photocopy rate.

Rates defined above do not include charges for retrieval, refile, disposition, or physical delivery of source documentation. Rates for these services are based on customer's existing rates. All other services, not specifically listed herein or quoted on a separate Schedule A, will be charged at Iron Mountain's then current rates.

**SANTA FE COUNTY
AMENDMENT NO. 1
TO THE AGREEMENT WITH IRON MOUNTAIN, LLC
TO PROVIDE RECORDS MANAGEMENT AND STORAGE SERVICES**

THIS AMENDMENT is made and entered into this 9th day of April 2014, by and between SANTA FE COUNTY, (hereinafter referred to as "County"), and IRON MOUNTAIN INFORMATION MANAGEMENT, LLC, (hereafter referred to as "the Contractor").

WHEREAS, pursuant to the Procurement Code, the County procured an agreement dated April 2, 2013 with Contractor (the "Agreement") for the provision of record management and storage services;

WHEREAS, Article 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties hereto;

WHEREAS, Article 3, "EFFECTIVE DATE AND TERM" of the Agreement allows the County to extend the term of the Agreement for an additional year and with the term extension the Contractor may increase rates by an amount not to exceed two percent (2%);

WHEREAS, Santa Fe County wishes to extend the term of the Agreement to 2015, increase compensation by one hundred thousand dollars (\$100,000), and replace the rate schedule "Exhibit A" with a new "Renewal Schedule A: Program Pricing Schedule" that reflects the Contractor's rate increase;

WHEREAS, both parties desire to enter into this Amendment No. 1.

NOW THEREFORE, it is mutually agreed between the parties that Agreement No. 2013-0145-PW/PL be amended as follows:

1. ARTICLE 2.A (Compensation, Invoicing and Set-Off) is amended by replacing the rate schedule referenced in A.1) as "Exhibit A" with the new rate schedule attached hereto and titled "Renewal Schedule A: Program Pricing Schedule."
2. ARTICLE 2.A is amended by inserting the following sentence at the end of paragraph A.1): The rates in the Renewal Schedule A: Program Pricing Schedule shall be Contractor's pricing for the term of April 2, 2014 to April 2, 2015.
3. ARTICLE 2.A.2) is amended by inserting a new subparagraph "a" to read as follows:
 - a. Pursuant to Amendment No.1 to extend the term of this Agreement from April 2, 2014 to April 2, 2015, the total amount payable to the Contractor for the term of April 2, 2014 to April 2, 2015 shall

not exceed one hundred thousand dollars (\$100,000) exclusive of NM gross receipts tax. Any gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor. With Amendment No. 1 to this Agreement, the total amount payable to the Contractor under this Agreement as amended shall not exceed two hundred thousand dollars (\$200,000), exclusive of NM gross receipts tax.

4. ARTICLE 3. "EFFECTIVE DATE AND TERM" is amended by inserting a subparagraph "a" to read as follows:
 - a. Pursuant to Amendment No. 1, the term of this Agreement is extended from April 2, 2014 to April 2, 2015 upon the same terms and conditions as the original Agreement 2012-0145-PW/PL, subject to increased rates as indicated in the Renewal Schedule A: Program Pricing Schedule.
5. All other provisions of Agreement No. 2012-0145-PW/PL not specifically amended or modified by this Amendment No.1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 to the Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

4.5.14
Date

Approved as to Form


Stephen C. Ross
Santa Fe County Attorney

3/31/14
Date

Finance Department Approval


Teresa C. Martinez
Finance Department Director

4/1/14
Date

CONTRACTOR

Bruce H Dinkel
(Signature)

Bruce H Dinkel
(Print Name)

NM OPS Mgr
(Print Title)

4-09-14
Date

Renewal Schedule A:

PROGRAM PRICING SCHEDULE

Records Management

This Records Management Pricing Schedule is incorporated into and made part of the Customer Agreement ("Agreement") between Iron Mountain Information Management LLC, (the "Company" or "Iron Mountain") and Santa Fe County, (the "Customer").

Please see our Customer Information Center at cic.ironmountain.com for a Glossary with definitions of the terms used in this Pricing Schedule and more detail regarding our services, standard processes, and billing practices. In addition, restrictions apply to volume and/or stated timeframes for some service transaction types and these may be found in the Glossary under each service type.

This Records Management Pricing Schedule supersedes and terminates any prior Records Management Pricing Schedule and/or Schedule A existing between Iron Mountain and the Customer for the accounts noted below. All other Records Management services not specifically listed on this Schedule A will be charged at Iron Mountain's then current rates.

Santa Fe County

District Name/Number: Albuquerque - 01341 | Customer No. To be determined

Effective Date: April 1, 2014

Pricing for Core Services

STANDARD STORAGE AND SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)		
DESCRIPTION	EFFECTIVE PRICE	PER
▣ Carton Storage	\$0.299	Cubic Foot
▣ Receiving and Entering - Carton	\$1.897	Cubic Foot
▣ Regular Retrieval - Carton	\$2.448	Cubic Foot
▣ Regular Retrieval - File from Carton	\$5.75	File
▣ Regular Refile - Carton	\$2.448	Cubic Foot
▣ Regular Refile - File to Carton	\$5.75	File
▣ Archival Destruction - Carton	\$2.958	CF plus Regular Retrieval Charge
▣ Permanent Withdrawal - Carton	\$3.693	CF plus Regular Retrieval Charge
▣ Permanent Withdrawal - File from Carton	\$3.20	File plus Regular Retrieval Charge
▣ Next Day Delivery	\$23.225	Visit plus Handling Charge
▣ Regular Pickup	\$23.225	Visit plus Handling Charge
▣ Handling Charge	\$2.142	Cubic Foot

PREMIUM STORAGE AND SERVICES (see http://cic.ironmountain.com/records/glossary for service definitions)		
DESCRIPTION	EFFECTIVE PRICE	PER
▣ Rush Retrieval - Carton	\$6.089	Cubic Foot
▣ Rush Retrieval - File from Carton	\$8.50	File
▣ Regular Interfile - Carton	\$7.80	Each
▣ Half Day Delivery	\$56.45	Visit plus Handling Charge
▣ Rush Delivery - Business Day	\$112.00	Visit plus Handling Charge
▣ Rush Delivery - Weekends/Holidays/After Hours	\$225.00	Visit plus Handling Charge
▣ Rush Pickup - Business Day	\$112.00	Visit plus Handling Charge
▣ Archival Destruction - File from Carton	\$4.90	File plus Regular Retrieval Charge
▣ Miscellaneous Services - Labor	\$58.00	Hour
▣ Re-Boxing Charge	\$5.75	Labor plus New Carton Cost

OTHER PROGRAM FEES (see <http://cic.ironmountain.com/records/glossary> for service definitions)

DESCRIPTION	EFFECTIVE PRICE	PER
Administrative Fee (Summary Billing)	\$25.12	Account ID per Month
Administrative Fee (Detailed Billing)	\$62.80	Account ID per Month
Fuel Surcharge		Transportation Visit

*A Fuel Surcharge is applied monthly based upon changes in the price of diesel fuel as published by the US Department of Energy. This charge is calculated monthly and included as a percentage of transportation related service charges. The current monthly Fuel Surcharge Information can be found at <http://cic.ironmountain.com/FuelSurcharge>

Custom Pricing

CUSTOM STORAGE AND SERVICES (see <http://cic.ironmountain.com/records/glossary> for service definitions)

DESCRIPTION	EFFECTIVE PRICE	PER
Individual Listing	\$0.63	File
Data Entry of Carton (descriptions into Database)	\$4.08	per box
Empty Cartons 1.2 cft (Model #2000)	\$3.01	per carton
Empty Cartons 2.4 cft (Model#450)	\$3.21	per carton
Empty Cartons 3.6 cft (Model#550)	\$3.42	per carton
Storage Minimum	\$152.00	Month
Minimum Service Order Charge	\$13.26	Order
Image on Demand - Imaging Minimum (includes first 50 images)	\$25.00	Order
Image on Demand - Digital Images Scanned (in excess of the first 50 images)	\$0.091	Image
Image on Demand - Hourly Labor	\$58.00	Hour
Image on Demand - Professional Services	\$250.00	Hour

Image on Demand is not available in all markets. If the customer's requirements differ from those described in "Image on Demand - Overview" within the glossary of the Customer Information Center (<http://cic.ironmountain.com/records/glossary>), then custom services are available and must be described in an agreed upon statement of work.

Additional Services beyond those listed in this Pricing Schedule are available. For service descriptions, please go to Additional Services at cic.ironmountain.com/additionalservices.

**PROFESSIONAL SERVICES AGREEMENT
WITH IRON MOUNTAIN INFORMATION MANAGEMENT, LLC.
TO PROVIDE RECORDS MANAGEMENT AND STORAGE SERVICES**

THIS AGREEMENT is made and entered into on this 2nd day of April 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), an New Mexico political subdivision, and **IRON MOUNTAIN INFORMATION MANAGEMENT, LLC** (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County requires records storage and management services to archive its records and documents in adherence to mandated record retention policies for various departments;

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued Request of Proposal (RFP) No. 2012-0145-PW/PL for these services;

WHEREAS, the Contractor meets all Professional Records and Information Services Management (PRISM) standards for commercial record centers and the National Fire Protection Association (NFPA) codes for building safety;

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

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

The Contractor shall:

- A. Provide a current inventory listing of Santa Fe County boxes and tapes which are presently in storage at the off-site facility.
- B. If requested by the County, transport all County records, tapes, documents, and boxes containing such, which are presently in storage, to Contractor's facility in a professional, secure and efficient manner.
- C. Upon the County's request, pick up and transport documents and records from the County to the Contractor's storage facility for indexing and storage.
- D. Provide and maintain a computerized indexing system or inventory database for all County records and documents that provides for efficient and accurate indexing and timely identification, tracking and retrieval of records at the box / carton level, as opposed to items within a box.

Contractor shall make IMConnect available to the County so that the County may utilize this service for its own benefit.

- E. Identify, retrieve and deliver to the County cartons containing documents or records requested by the County within twenty-four (24) hours after receipt of a request (Rush Retrieval).
- F. Identify, retrieve and deliver to the County cartons containing documents or records requested by the County within three (3) business days after receipt of a request (Regular Retrieval).
- G. Maintain a professional procedure for orderly and timely document and record pick-up and transport.
- H. Maintain confidentiality and security of all County documents and records including restricting access to Contractor's authorized personnel.
- I. Consistent with Contractor's current security procedures, which shall be maintained throughout the term of this Agreement, conduct background checks for all Contractor employees with access to County records and documents.
- J. Destroy records and documents upon written request by the County, pursuant to Santa Fe County's Records and Retention and Disposition Schedules as communicated in writing by the County to the Contractor. Contractor's system for document destruction shall be permanent. Contractor shall provide a written Certificate of Destruction to the County for all records or documents destroyed.

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed at the rates indicated in the attached Pricing Schedule (see Exhibit A attached hereto). Transportation surcharges apply and change monthly without notice in accordance with the fuel surcharge policy, which is based on the national price of diesel fuel and may found at <http://cic.ironmountain.com/fuelsurcharge/>.
- 2) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed One Hundred Thousand (\$100,000.00) per year. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by 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 services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation absent a written amendment to this Agreement.

B. The Contractor shall submit a written request for payment to the County in the form of an invoice when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the 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, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the 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. Subject to Section 5 (A) herein, in the event the Contractor commits a material breach of the Agreement and the County notifies the Contractor in writing of such breach, then Contractor shall cure the material breach within thirty (30) days of County's notice and without cost to the County.

D. Payment under this Agreement shall not foreclose the right of the 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 year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement upon the same terms and conditions in one-year increments not to exceed a term of four (4) years total, provided that in each of years two, three and four Contractor shall have the right to increase rates once per year by an amount not to exceed two percent (2%) above the prior year's rates. The County may exercise this option by submitting a written notice to the Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the term of the initial Agreement or any extended term.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2 (Compensation, Invoicing) of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. 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 within 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 the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than sixty (60) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The 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 the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the 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 the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due to any business entity that is not legally affiliated with Contractor's business organization without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

Upon the County's execution of this Agreement, the County approves Contractor's assignment to a subsidiary or affiliate wholly owned by Contractor. Contractor assumes full liability for the actions and omissions of any subsidiary or affiliated business entity to whom Contractor makes an assignment and Contractor is fully responsible for making any and all payments due to such affiliate or subsidiary.

9. SUBCONTRACTING

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

By the execution of this Agreement, the County hereby approves the Contractor's subcontracting or delegating certain services to third party vendors and subcontractors. Contractor shall be as fully responsible to the County for the performance of services under this Agreement by such delegates and subcontractors and of persons either directly or indirectly employed by them, as it is for its own acts and omissions in accordance with the terms of this Agreement, including making all payments to said third party vendors, subcontractors or delegates. Nothing contained in this Agreement shall create any contractual relation between the County and any of Contractor's third party vendors, subcontractors, or delegates.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or by Contractor's subcontractor under Contractor's supervision.

B. The 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 the County and (ii) shall be fully

qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

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

12. CONFIDENTIALITY

Any confidential information provided by the County to the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual (other than Contractor's employees, agents or subcontractors) or organization by the Contractor without the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

A. The 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, except for any of Contractor's information that is confidential under New Mexico law. Confidential data is normally restricted to confidential financial information concerning the Contractor's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1, NMSA 1978. Nothing herein shall permit the County from naming Contractor in any public statement or media announcement.

14. CONFLICT OF INTEREST

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

15. 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. The Contractor specifically acknowledges and agrees that the 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.

16. 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.

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the 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. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations including such laws, ordinances and regulations that apply to Contractor as a third party processor of data.

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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its 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 the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of three (3) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon five (5) days written notice during the term of this Agreement and for a period of three (3) years from the date of final payment under this Agreement; ; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

21. INDEMNIFICATION

A. Personal Injury/Property Damage Indemnification. Contractor agrees to indemnify the County with respect to any claim or demand for bodily injury (including death) or loss of or damage to tangible property (excluding Deposits and data), to the extent based upon the negligent acts or omissions of the Contractor, provided that the County provides the Contractor prompt written notice of any such claim or demand. The County shall grant the Contractor the option to control the defense and/or settlement of the claim or demand and, in the event the Contractor exercises such option to control the defense/settlement, then (i) the Contractor shall not settle any claim requiring any admission of fault on the part of the County without its prior written consent, (ii) the County shall have the right to participate, at its own expense, in the claim or suit and (iii) the County shall cooperate with the Contractor as may be reasonably requested. The Contractor's sole obligation hereunder shall be to pay any judgment rendered, or settlement made, as a result of any such claim or demand.

B. Infringement Indemnification. Contractor shall defend, indemnify and hold harmless County and its officers, directors and employees from and against any claim, suit, demand, alleging that Contractor's services under this Agreement infringe any US patent or copyright of any third party or misappropriate any third party's trade secrets, provided that County provides Contractor with prompt written notice of any such claim, suit or demand and consents and authorizes Contractor's sole control of the defense of any resulting litigation or settlement thereof.

C. Contractor shall have no liability or obligation to County with respect to any claim of infringement or misappropriation in the event and to the extent based upon:

- a) use of or access to the Contractor's Services in or from an application or environment or on a platform or with devices not authorized in the applicable Contractor-published documentation or other requirements specified under this Agreement,
- b) modifications, alterations, combinations or enhancements of the services not created by Contractor; or
- c) any patent, copyright, or trade secret in which County or any affiliate of County has an interest.

D. The foregoing indemnification obligations shall not apply in the event and to the extent that the claim or demand arises as a result of County's negligence, intentional misconduct, or failure to use Contractor's Services in accordance with applicable documentation or this Agreement.

E. If any of Contractor's Services are held, or in Contractor's reasonable opinion could be held, to constitute an infringement or misappropriation of any third party's intellectual property rights, Contractor may at its option:

- a) procure the right for County to continue using or accessing the Contractor's Services,
- b) replace the Contractor's Services with a non-infringing equivalent service, or
- c) modify Contractor's Services to make them non-infringing and without substantially compromising their functionality.

F. This paragraph states Contractor's entire obligation to County and County's sole and exclusive remedy with respect to any claims of infringement or misappropriation.

22. 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.

23. 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:	Iron Mountain Attn: Bruce Dinkel, General Manager 555 Gallatin Place NW Albuquerque, NM 87121
With a copy to:	Iron Mountain Information Management, LLC Attn: General Counsel 745 Atlantic Avenue Boston, MA 02111

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in New Mexico and is properly licensed to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the 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 the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

A. General Conditions. The 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. Contractor shall, at its sole cost and expense, throughout the term of this Agreement, procure and maintain in full force and effect, the following insurance coverages, with an insurance carrier that is rated B+ or better by A.M. Best.

General Liability:	\$2,000,000 General Aggregate
	\$1,000,000 Product Aggregate
	\$1,000,000 Each Occurrence
Automobile Liability:	\$1,000,000 Each Occurrence
Workers' Compensation:	Statutory Limits

Employer's Liability:	\$1,000,000 Each Accident \$500,000 Disease
Umbrella Coverage:	\$5,000,000 General Aggregate
Crime Insurance	\$2,000,000 Each Occurrence

The "County of Santa Fe, its subsidiaries and affiliates" shall be a named additional insured on the policies with respect to General Liability, Automobile Liability and/or Umbrella Liability. All certificates of insurance shall require that the County be provided with advance written notice of cancellation of the stated coverage, and Contractor shall request that its insurer or their agent use their best efforts to provide at least thirty (30) days' advance written notification of such cancellation.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

29. LIMITATION OF CONTRACTOR'S LIABILITY

A. This provision establishes and governs Contractor's maximum aggregate liability, if any, arising under this Agreement regardless of whether an action is brought in contract, tort or under any other theory. For the purposes of this Agreement, the County declares the following values for items stored under this Agreement ("Deposits"):

- a. for hard-copy records, \$1.00 per carton, linear foot of open-shelf files or other storage pricing unit; and
- b. for media, the cost of replacing the physical item (each a "Declared Value").

The County acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged.

B. Contractor shall not be liable under this Agreement, with respect to any claims related to the Deposits and data therein or with respect to any non storage services or electronic storage services performed, unless Contractor fails to exercise such care as a reasonably careful person would exercise under like circumstances. If liable, the amount of Contractor's liability is limited as follows:

- a) with respect to Deposits and related data, Contractor's liability is limited to the Declared Value; and
- b) with respect to non storage services and electronic storage services and data related to each, Contractor's liability is limited to six (6) months of fees paid by the County for the particular service that gave rise to the claim.

C. Deposits and data are not insured by Contractor against loss or damage, however caused. If Deposits and/or data are placed in the custody of a third-party carrier for transportation, the carrier shall be solely responsible for any claim related to the Deposits and/or data while in the custody of the carrier. In no event shall either party be liable for any consequential, incidental, special or punitive damages, or for loss of profits or loss or

interruption of business, or the cost of recreating any data or information, regardless of whether an action is brought in tort, contract or under any other theory of liability. The provisions of this Section 29 or paragraph 29 shall survive the expiration or termination of this Agreement.

D. The foregoing limitations of Contractor's liability shall not apply to claims involving: (i) Contractor's gross negligence or willful misconduct; (ii) Contractor's infringement of any United States patent, copyright or trademark; (iii) bodily injury or death proximately caused by Contractor's negligence; (iv) property damage (excluding the Deposits and data) proximately caused by Contractor's negligence; or (v) Contractor's indemnity obligations stated in paragraph 21 above (Indemnification).

30. PERMITS, FEES, AND LICENSES

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

31. 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.

32. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

33. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor may be served at either address identified in paragraph 23. The Contractor acknowledges and agrees that the service upon its designated agents shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

34. SURVIVAL

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

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

SANTA FE COUNTY:

Katherine Miller 3/21/13
Katherine Miller Date
Santa Fe County Manager

Approved as to Form:

Stephen C. Ross 3/15/13
Stephen C. Ross Date
Santa Fe County Attorney

Finance Department Approval:

Teresa Martinez 3/20/13
Teresa Martinez Date
Santa Fe County Finance Director

CONTRACTOR:

(Signature)

Date

By: _____
(Print Name)

Federal Tax I. D. Number

Its: _____
(Print Title)

Approved as to Form and Legal Content
Iron Mountain Legal Department

Thomas J. Lane
Corporate Counsel
Date: 03/14/13
Customer: Santa Fe County

SANTA FE COUNTY:

Katherine Miller 3/21/13
Katherine Miller Date
Santa Fe County Manager

Approved as to Form:

Stephen C. Ross 3/15/13
Stephen C. Ross Date
Santa Fe County Attorney

Finance Department Approval:

Teresa Martinez 3/20/13
Teresa Martinez Date
Santa Fe County Finance Director

CONTRACTOR:

Bruce H. Dinkel 04/02/13
(Signature) Date

By: Bruce H. Dinkel
(Print Name)

Federal Tax I. D. Number

Its: General Manager-Operations 04-3038590
(Print Title)

Approved as to Form and Legal Content
Iron Mountain Legal Department

Thomas J. Lane
Corporate Counsel
Date 03/14/13
Customer Santa Fe County



RFP# 2012-0145-CSD/PL
RECORDS MANAGEMENT AND STORAGE SERVICES

REVISED COST PROPOSAL

Please offer your best price for all services listed below. Price should include all labor, overhead, profit and any miscellaneous fees. Include signature at the bottom as stated.

Offeror's Organization Name: Iron Mountain Inc.

#	DESCRIPTION	UNIT	PRICE	WRITTEN PRICE
1	Administration Fee Monthly fee for account maintenance	Each	\$25.12	Twenty Five Dollars and Twelve Cents. Includes Summary Billing.
2	Minimum Service Order Charge Minimum charge for an order, excluding transportation related services	Each	\$13.00	Thirteen Dollars.
3	Regular Monthly Storage Charge	Monthly	\$2,344	Two Thousand Three Hundred Forty Four Dollars. Based on 8,000 cubic feet of storage at .293 Cents per cubic foot.
4	Transportation Handling Charge	Each	\$24.87	Twenty Four Dollars and Eighty Seven Cents. Combined charge for regular transportation (\$22.77) and handling (\$2.10 per cubic foot). Fuel Surcharge charged separately based on price of fuel.
5	Data Entry of Carton Descriptions into Database	Each	\$4.00	Four Dollars.
6	Receiving and Entering-Carton Receiving and adding new cartons to storage	Cubic Foot	\$1.86	One Dollar and Eighty Six Cents.
7	Regular Retrieval-Carton Temporary removal of cartons from storage, next business day delivery	Cubic Foot	\$2.40	Two Dollars and Forty Cents. Standard transportation and handling charges apply.
8	Rush Retrieval-Carton Temporary removal of cartons from storage, expedited same business day delivery	Cubic Foot	\$5.97	Five Dollars and Ninety Seven Cents. Rush transportation charges (\$52.00-\$105.00) and handling charges apply.
9	Regular Refile-Carton Refile of carton to shelved location	Cubic Foot	\$2.40	Two Dollars and Forty Cents.
10	Permanent Withdrawal-Carton Retrieval, documentation & preparation for permanent removal of cartons from facility	Cubic Foot	\$3.62	Three Dollars and Sixty Two Cents. Regular Retrieval charges apply in addition to Permanent Withdrawal charge per cubic foot.
11	Archival Destruction-Carton Retrieval, documentation, preparation & permanent destruction of records & documents	Cubic Foot	\$2.90	Two Dollars and Ninety Cents. Regular Retrieval charges apply in addition to Archival Destruction charge per cubic foot.

#	DESCRIPTION	UNIT	PRICE	WRITTEN PRICE
12	<i>Imaging Services</i> Scanning of one page	Page	.09	Nine Cents. Standard pricing with basic document preparation including removal of staples and paper clips. Price varies based on volume and complexity of project.
13	<i>Imaging Services</i> Scanning of one page	Page		
14	<i>Standard File Carton-Price</i> 10 x 12 x 15	Each	\$2.95	Two Dollars and Ninety Five Cents.
15	<i>Legal File Carton-Price</i> 10 x 24 x 15	Each	\$3.15	Three Dollars and Fifteen Cents.
16	<i>Large File Carton-Price</i> 24 x 10 x 16	Each	\$3.35	Three Dollars and Thirty Five Cents.

TOTAL COST PROPOSAL AMOUNT: \$2,439.68

TOTAL WRITTEN IN WORDS: Two Thousand Four Hundred Thirty Nine Dollars and Sixty Eight Cents

OFFEROR'S SIGNATURE: 

Please note that all pricing is exclusive of GRT

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: *March 21, 2016*

TO: *Santa Fe County Board of County Commissioners*

FROM: *David Sperling, Fire Chief* 

THRU: *Katherine Miller, County Manager* 
Pablo Sedillo, Public Safety Director 

ITEM AND ISSUE: BCC Meeting March 29, 2016

REQUESTING APPROVAL OF AMENDMENT NO. 1 TO ELECTRONIC SITE LEASE 2015-0151-FD/SO/BT FOR THE PUBLIC SAFETY AGENCY'S RADIO COMMUNICATION TOWERS. (DAVID SPERLING, COUNTY FIRE CHIEF)

ISSUE:

Pursuant to Resolution 2006-60, Santa Fe County Purchasing Regulations and Policy, the Santa Fe County Fire Department requests Board of County Commission approval of Amendment No. 1 to Electronic Site Lease 2015-0151-FD/SO/BT.

BACKGROUND:

Santa Fe County Fire Department and Santa Fe County Sheriff each maintain separate radio repeaters, omnidirectional dipole antennas, and associated equipment on Tesuque Peak. This emergency communications equipment is housed in a facility under the authority and control of Tesuque Radio Company, Inc., a New Mexico Corporation. The repeaters and antennas serve as the backup or secondary radio communication infrastructure for both agencies in the event that the primary repeater site, also housed on Tesuque Peak in a separate facility, fails. These secondary repeaters are an essential component of Santa Fe County's emergency communications network.

Santa Fe County entered into this Lease in 2012 for a term of three years subject to automatic renewal if not affirmatively terminated. The term of the Lease was set forth in Exhibit A. As of June 30, 2015, the term was renewed for three years pursuant to Article 4. With the commencement of this term renewal, the parties wish to update Exhibit A regarding the base rent and other charges due for the Lease term of July 1, 2015 to June 30, 2018.

Therefore, Exhibit A to the Lease is replaced with Exhibit A attached hereto. All other provisions and terms and conditions of the Lease, not specifically amended or modified by Amendment No. 1, remain in full force and effect.

RECOMMENDATION:

Recommend Board of County Commissioner approval of Amendment No. 1 to Electronic Site Lease 2015-0151-FD/SO/BT. Approval will update the terms and conditions of the Lease through June 30, 2018.

**AMENDMENT NO. 1
TO ELECTRONIC SITE LEASE 2015-0151-FD/SO/BT**

This amendment is made and entered into this ____ day of _____, 2016, by and between **Santa Fe County**, (hereinafter referred to as the "Lessee"), a New Mexico political subdivision, and **Tesuque Radio Company, Inc.**, a New Mexico corporation ("Lessor").

WHEREAS, the Lessor and Lessee entered into Lease No. 2015-0151-FD/SO/BT in 2012 (the Lease) for the Lessee's lease the Electronic Site for a term of three years subject to automatic renewal if the Lessee does not affirmatively terminate the Lease; and

WHEREAS, the term and termination date of the Lease was set forth in Exhibit A to the Lease. As of June 30, 2015, such term has renewed for three years pursuant to Article 4. Term of the Lease; and

WHEREAS, according to Article 22 (o) (Miscellaneous Provisions) of the Lease, the Lease may be modified by an instrument in writing executed by the parties; and

WHEREAS, with the commencement of this term renewal, the parties wish to update the information in Exhibit A regarding the base rent and other charges due for the Lease term of July 1, 2015 to June 30, 2018.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Exhibit A to the Lease is replaced with Exhibit A attached hereto.
2. All other provisions and terms and conditions of the Lease, not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

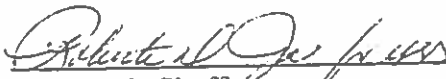
LESSEE - SANTA FE COUNTY:

Miguel M. Chavez, Chair
Santa Fe County Board of County Commissioners

ATTESTATION:

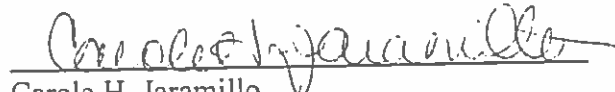
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney


3-11-16
Date

Finance Department:


Carole H. Jaramillo
Finance Director

3-11-16
Date

LESSOR - TESUQUE RADIO COMPANY, INC.,
A New Mexico Corporation


John C. Herklotz, President
Lauren Thompson,
Senior Vice President

3-11-16
Date

EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT

Lessee: Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504
Telephone: (505) 986-6200

Date of original Lease: July 1, 2012

Commencement Date: July 1, 2012

Termination Dates: Initial Lease: June 30, 2015. Automatic Lease term renewal according to Section 4. Term: June 30, 2018.

Description of Equipment:

Santa Fe County Fire Department has one (1) repeater with SN0201482, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

Santa Fe County Sheriff's Office has one (1) repeater with SN0201476, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15' – 20' off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz.

Base Rent and charges from July 1, 2015 through June 30, 2016 (Base Rent for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Monthly Base Rent	\$1,047.38
GRT	\$72.01
Electricity	<u>\$25.00</u>
TOTAL	$\$1,144.39 \times 12 = \$13,732.68 + \text{FS fee } \$550.00 = \$14,282.68$

Base Rent and charges from July 1, 2016 through June 30, 2017 (Base Rent for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Monthly Base Rent	\$1,099.75
GRT (7%)	\$76.98
Electricity	<u>\$25.00</u>
TOTAL	$\$1,201.73 \times 12 = \$14,420.76 + \text{FS fee } \$550.00 = \$14,970.76$

Base Rent and charges from July 1, 2017 through June 30, 2018 (Base Rent for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Monthly Base Rent	\$1,154.73
GRT (7%)	\$80.83
Electricity	\$25.00
TOTAL	\$ 1,260.56 X 12 = \$15,126.72 + FS fee \$550.00 = \$15,676.72

Deposit: None

Other Terms:

This Lease terminates and replaces all prior leases between Tesuque Radio Company and Santa Fe County, including the Electronic Site Lease dated July 1, 2007 (the "Prior Lease"). The following provisions, revise and supersede the provisions of the Electronic Site Lease Agreement (the "Agreement") to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Notwithstanding the provisions of Section 3 respecting monthly installments of rent, Lessee shall pay annual rent based upon an annual period of July 1 to June 30. The first payment of rent, for the periods July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014, in the amount of \$22,800.00, shall be paid by Lessee to Lessor on or before February 28, 2014, together with electricity charges of \$600.00 and New Mexico gross receipts tax of \$1,567.50.

2. Notwithstanding the provisions of Subsection 3(b) respecting escalations in the rent provided for under the Electronic Site Lease Agreement, there shall be no increase to Base Rent under Subparagraph 3(b) for the periods July 1, 2012 through June 30, 2013 or July 1, 2013 through June 30, 2014. Commencing with the period July 1, 2014 through June 30, 2015, Base Rent shall increase at a rate of five percent (5%) on each anniversary date of the Agreement.

3. Lessee shall pay to Lessor, on or before February 28, 2014, the amount of \$15,001.97, representing the amount agreed by Lessor and Lessee to represent and discharge all obligations of Lessee to Lessor for (1) payments of rent, electricity charges, and New Mexico gross receipts tax under the Prior Lease through June 30, 2012, and (2) payments of United States Forest Service use fee amounts through the September 30, 2012 reporting date.

4. Section 3(b) of the Electronic Site Lease Agreement is deleted in its entirety.

5. The second sentence of Subsection 3(e) of the Electronic Site Lease Agreement is revised to read as follows:

Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, an amount equal to New Mexico State gross receipts tax (or other applicable taxes for which Lessor is entitled to seek reimbursement from Lessee) at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

6. The third sentence of Subsection 3(f) of the Electronic Site Lease Agreement is revised to read as follows:

Lessee will pay each such amount to Lessor, together with an amount equal to any gross receipts tax (or other applicable tax for which Lessor is entitled to seek reimbursement from Lessee) thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

7. The following sentence is inserted at the end of Section 4. Term: Lessor agrees to provide advance written notice to Lessee if Lessor plans or intends to assign this Lease pursuant to Section 22(f) of this Lease. Lessor's failure to provide sufficient advance notice to the Lessee of any assignment of this Lease shall not constitute a default of Lessor's obligations under this Lease.

8. The words "to indemnity" are deleted from the last line of Section 5(c) of the Electronic Site Lease Agreement, and are replaced with the word "for."

9. Section 9 of the Electronic Site Lease Agreement is revised to read as follows:

Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect).

10. The second sentence of Subsection 12(a) of the Electronic Site Lease Agreement is deleted in its entirety.

11. Subsections 12(b) and 12(c) of the Electronic Site Lease Agreement are both deleted in their entirety.

12. Section 13 of the Electronic Site Lease Agreement is revised to read as follows:

Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors

installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3. Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

Santa Fe County

ELECTRONIC SITE LEASE AGREEMENT

This Lease Agreement is entered into as of the date set forth for "Date of Lease" in Exhibit A, by and between Tesuque Radio Company, Inc., a New Mexico corporation ("Lessor"), and the person who is identified as Lessee in Exhibit A ("Lessee").

RECITALS

A. Lessor is the lessee under that certain Communication Use Lease under which Lessor is granted a leasehold by the United States Department of Agriculture, United States Forest Service, to construct, maintain and operate a facility to house certain electronic equipment and rent space in that facility for the operation of certain electronic transmission equipment at Tesuque Peak, Santa Fe County, New Mexico, at a site more specifically described as follows:

A building and antenna tower site on Tesuque Peak, Santa Fe National Forest, situated in the northwest quarter NW¼, NW¼, SE¼, Section 16 T.18N., R.11E., NMPM, 35 degrees, 47' 09" north latitude, by 105 degrees 46' 54" west longitude, as shown on the Tesuque Peak Electronic Site Plan.

B. Lessee seeks a lease of space to maintain and operate certain electronic equipment at the Electronic Site, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

1. Definitions. For the purposes of this Lease Agreement, certain terms will be defined as follows.

(a) "Base Rent" is the minimum rent paid by Lessee to Lessor on a monthly basis. Base Rent is described in 3(a).

(b) "Electronic Site" means the building and antenna tower site and the improvements maintained thereon from time to time by Lessor on Tesuque Peak, Santa Fe County, New Mexico.

(c) "Cabinet" means the cabinet, closet or other space which will be furnished for Lessee's use in installing its equipment in the Electronic Site.

(d) "Commencement Date" is the first day for which a rent is due from Lessee to Lessor.

(e) "Equipment" means the electronic equipment, cabinets, wiring, antennae and other fixtures and installation which Lessee installs at the Electronic Site in accordance with its Equipment Layout Plan.

(f) "Equipment Layout Plan" means the set of documents describing the Equipment which Lessee seeks to install at the Electronic Site, together with installation and wiring diagrams, frequency and power usage specifications, and such other information respecting Lessee's Equipment and installation as Lessor may require.

(g) "Objectionable Interference" means both intra-site and inter-site signal interference, of whatsoever cause or source, and is more specifically described in Section 11.

(h) "Term" or "Lease Term" means the term of this Lease Agreement, beginning on the Commencement Date and continuing until termination hereof, including all extensions or renewals.

(i) "Termination Date" means the last date of the Lease Term, as specified in Exhibit A, but subject to provisions of this Agreement under which this Agreement may be extended or earlier terminated.

2. Grant of Lease. In consideration of the Lessee's payment of the rents as provided in this Agreement, and in further consideration of Lessee's representations, warranties and covenants hereinafter set forth, Lessor hereby grants to Lessee during the term hereof the right to occupy the Cabinet in the manner hereinafter described, and further confers upon Lessee a non-exclusive lease to maintain and operate its equipment in the Electronic Site located at the Tower Site, subject, however, to all of the terms and conditions of this Agreement.

3. Rents. Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as partial consideration for the lease herein granted, the amounts described in this Section 3.

(a) Base Rent. The Lessee will pay to the Lessor the Base Rent described in Exhibit A which is attached hereto and made a part hereof. Subject to Lessor's rights upon any default by Lessee under this Agreement, Lessee will pay to Lessor without abatement, offset, notice or demand, in advance, commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the term of this Agreement, the monthly installment of the Base Rent shown in Exhibit A.

(b) Additional Rent. The Base Rent will be adjusted annually during the term of this Agreement, on the anniversary of the commencement of this Agreement, or if that anniversary does not fall on the first day of a calendar month, the first day of the calendar month in which the anniversary falls (the "Adjustment Date"). For each year subsequent to the first year of the Lease Term, an adjustment to the Base Rent will be made (the "Adjustment"). The Adjustment will be an addition to the Base Rent, and will be computed by use of the Consumer Price Index (the "Index"). The Index will mean the Consumer Price Index (all items) For All Urban Consumers, U. S. City Average (1982-1984 = 100) published by the U. S. Department of Labor, Bureau of Labor Statistics. If the Index is revised so that the base year changes, the Index will be converted in

accordance with the conversion factors published by the Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would have been attained if the Index had not been discontinued or revised. The Index which is published for the second month preceding each Anniversary Date (the "Extension Index") will be compared with the Index published for the month in which the original Commencement Date falls (the "Beginning Index"). If the Extension Index has increased over the Beginning Index, the Adjustment payable for each of the twelve months following the Anniversary Date will be calculated as follows:

- (1) First, subtract the Beginning Index from the Extension Index;
- (2) Second, divide the result of the subtraction by the Beginning Index;
and
- (3) Multiply the monthly installment of Base Rent by the product of (2).

The figure produced by this computation will be the Adjustment for each month of the subsequent year of the Lease Term, and will be paid each month in monthly installments during that year of the Lease Term in addition to the Base Rent, until the next Adjustment Date. There will be an Adjustment in each year of the Lease Term, but in no event will the sum of the Base Rent plus the Adjustment for any year of the Lease Term (the "Total Rent") be less than the Total Rent in the preceding year.

(c) Electricity Charge. Lessee will pay to Lessor an electricity charge computed in accordance with this Paragraph. Lessor will compute an estimated annual electricity charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the electricity charge. At the end of each calendar year, Lessor will determine the actual electricity charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(d) Fuel Charge. The Electronic Site currently is equipped with backup electricity generating equipment, and may be equipped with other generating or heating equipment in the future. Lessor will compute an estimated annual fuel charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the fuel charge. At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

3. Gross Receipts Tax. Lessee acknowledges that the amounts described in the preceding Paragraphs of this Section may be or become subject to New Mexico State gross receipts tax or other federal or state taxes or exactions. Accordingly, Lessee will pay with all payments payable under this Section, together with such amounts, New Mexico State gross receipts tax or other taxes at the rate of taxation then specified in Santa Fe County, upon notice from Lessor.

4. Additional Charges. From time to time and in accordance with Sections 1(a), 1(b), 5(a), 13 and 21(a) of this Agreement Lessee may be required to pay amounts to Lessor for specific items described in those Sections. Additionally, Lessee will pay a late fee of 1% of any past due amount of Rent or any other charge on each month or portion of a month during which the last due amount of Rent or any other charge remains unpaid. Lessee will pay each such amount to Lessor, together with all gross receipts or other taxes thereon, within the calendar month commencing after the month in which the Lessee is notified of delinquency.

5. Term. The Term of this Lease Agreement will commence on the Commencement Date set forth in Exhibit A attached hereto and incorporated herein by reference. The Term of the Lease will terminate on the Termination Date and the Termination Date described in the same Exhibit, unless earlier terminated in accordance with the terms and conditions set forth herein. The Lease Agreement will automatically renew for successive terms each of the same duration unless and until Lessee notifies Lessor in more than ninety (90) days before the Termination Date that Lessee will not require renewal of the Lease Agreement. At any time after the Initial Term of this Agreement, Lessor may terminate this Agreement by giving written notice to Lessee no less than 120 days before the Termination Date set forth by Lessor in its notice to Lessee provided, however, that Lessor will not effect any such termination if the termination would violate Lessor's Communications Use Lease or Lessee's permit use permit to use the Electronic Site.

6. Lessee's Installation of Equipment.

6(a) Lessee will submit to Lessor at Lessor's request, before installing any equipment at the Electronic Site, an Equipment Layout Plan respecting all equipment which Lessee proposes to install at the Electronic Site. The Equipment Layout Plan will be subject to Lessor's reasonable approval. Lessor will have Lessee's Equipment Layout Plan, proposed installation and operating frequencies reviewed by a licensed electrical engineer selected by Lessor. Lessee will pay the amount, reasonable fee for this review, together with a small fee charged by Lessor for providing a 24-hour maintenance service for the Equipment Layout Plan and for any other services or equipment maintenance and other engineering services as may be required for and in connection with the Electronic Site, compatibility with other services, efficient use of mechanical and utility infrastructure and accommodations, and other information. Lessee hereby represents that it recognizes that the location, configuration, installation, design and layout of equipment may be less than ideal. Lessor may require relocation of equipment from a Plan in accordance with applicable regulations and standards of the Federal Communications Commission, United States Federal Government, or other governmental authorities. Lessee understands that it is not to be taken as a condition of this Agreement that Lessor will not be responsible for any equipment damage or loss, including equipment damage or loss caused by fire, theft, flood, or other causes, or by any other cause, and that Lessee will be responsible for the replacement of any such equipment. Lessee further understands that it is not to be taken as a condition of this Agreement that Lessor will not be responsible for any equipment damage or loss caused by fire, theft, flood, or other causes, or by any other cause, and that Lessee will be responsible for the replacement of any such equipment.

install its equipment at the Electronic Site in strict accordance with the final Equipment Layout Plan.

(b) Lessee will install its equipment at the Electronic Site in accordance with the final Equipment Layout Plan, and in accordance with all applicable federal, state and local laws, regulations and ordinances. Any change or alteration to the installation or to the equipment specified in the final Equipment Layout Plan will be pursuant to written change order only, approved by both Lessor and Lessee. Changes required by physical site characteristics or governmental regulations or construction economics or exigencies, and which do not materially affect the Electronic Site or the use of the Electronic Site by Lessor or other lessees, will not be unreasonably withheld by Lessor. Lessor may require Lessee, upon reasonable notice, to move its Equipment to another cabinet or other location in the shelter at the Electronic Site, and to move its antennas to another location or locations on the towers or shelter at the Electronic Site. Lessor's engineers and representatives will have the right at all reasonable times during the course of installation to inspect the work in progress.

(c) Lessee acknowledges that Lessor's approvals of Lessee's Equipment and Equipment Layout Plan do not constitute any representation or warranty that the Equipment or Equipment Layout Plan are safe, meet any engineering standard or guideline, or comply with any industry standard or governmental law, regulation or rule and, further, that any inspection or approval does not constitute any waiver or reduction of any right Lessor has under this Agreement to indemnify or other relief from Lessee under this Agreement.

6. Utilities.

(a) Electric Power. Lessor will arrange for the supply of 30 amp, 240 volt alternating current electrical power to the Electronic Site by the electric utility company having the franchise and responsibility for supply of electricity thereto, and will supply a main disconnect and distribution panel to which the supply of electricity is connected. Lessor may, but is not required, to supply standby power. Lessee may connect to the main disconnect and distribution panel at its own cost and expense, and will obtain all its power requirements therefrom. Lessee will effect such connection in a manner specified in its final Equipment Layout Plan, and will cause the work to be performed by a licensed electrical contractor reasonably satisfactory to Lessor. Lessee will pay for power consumed in accordance with Paragraph 3(c), above.

(b) Telephone. Lessor will not provide any telephone service to the Electronic Site. If in the future Lessor obtains any form of telephone service, access which is generally available to lessees, Lessee will have the right to equal access thereto upon appropriate subscription and payment for services therefor independent of this Agreement.

(c) Sewer, Water and Natural Gas. Lessor will not have any obligation to supply sewer, water or natural gas to the Electronic Site. If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement.

(d) Trash Removal. Lessee will be responsible for the prompt removal from the Electronic Site of any surplus material or trash created in connection with the installation, operation, maintenance, alteration, modification or removal of Lessee's equipment, whether or not flammable or of a dangerous character. In all events, Lessee will not introduce or permit the introduction of any material to the Electronic Site which may by the provisions of any law, rule or regulation be in the nature of, or subject to regulation as, an explosive, poisonous or hazardous material or substance.

(e) Grounding System. Lessor has provided a grounding system at the Electronic Site. Lessee will connect all Equipment to the grounding system in accordance with its Equipment Layout Plan, and will maintain the integrity of these connections throughout the term of this Lease Agreement. All costs and expenses of grounding Lessee's equipment will be paid by Lessee.

(f) Air Conditioning. Lessor will have no duty to supply heating or air conditioning to the Electronic Site.

(g) Security. Lessor has installed a locked gate at the access road and locking devices at entry doors to the Electronic Site. All interior door locks, including the entry doors to the Cabinets and the Electronic Site, may be keyed to a master key which Lessor may keep in controlled custody. Lessor may install and remove other security and monitoring devices from time to time, and Lessee shall cooperate in their installation and use. Notwithstanding the foregoing, Lessor will have no liability for any act of any lessee or other person for any act (whether or not negligent or willful) which causes damage to the Electronic Site or any equipment or person therein, irrespective of the failure of any security system or absence of any security system.

7. Use of Electronic Site by Lessee.

(a) Lessee's use of the Electronic Site is limited to the operation of its unmanned radio transmitting and receiving equipment, on the frequencies, and with the powers, and limited to the scope, set forth on Exhibit B, which is attached hereto and incorporated herein by this reference.

(b) Lessee will not use the Electronic Site for storage, shop space, office, or any other purpose aside from the specific purposes described in the preceding Paragraph (a), it being specifically understood that the Electronic Site is constructed and operated as an unmanned radio transmission site. Lessee will not install or attempt to use additional equipment or devices of any character whatsoever in the Electronic Site unless and until it shall have obtained the prior written approval of Lessor to an amended Equipment Layout Plan.

8. Access to Electronic Site.

(a) Lessee will have the right, through its engineers, technicians and employees, to obtain access to the Electronic Site and its Cabinet at all reasonable times for the purpose of normal, recurring maintenance duties, for extraordinary repair and emergency purposes, and for the installation and removal of equipment in accordance with this Lease Agreement. Lessor will provide Lessee with a key to its Cabinet, and keys to the Electronic Site and any gates on the access

road. Lessee represents and warrants that personnel acting for Lessee or on its behalf will have skills, knowledge and training commensurate with those prevailing in the industry, including knowledge of the possible effects of radio frequency radiation and energy and the hazards of lightning and high voltage electricity. Lessee further warrants that all such personnel for whom it obtains access to the Electronic Site are covered by both worker compensation and other insurance sufficient to cover any hazard, risk or injury which may be attendant to, or occur by reason of or as a proximate cause of, those personnel being at or upon the Electronic Site.

(b) Lessee will perform its repair, maintenance and other work at the Electronic Site in a manner so as to prevent any damage or injury to equipment maintained by Lessor or Lessee or other persons in or about the Electronic Site or to any persons in the Electronic Site or areas nearby. Lessee further agrees to cooperate with Lessor and all other Lessees by removing its carrier from the air when it is necessary for antenna workers to be in a field of radiation which exceeds the prescribed maximum range specified by any industry standard or governmental regulatory authority, in order to work on antennas or other portions of the Electronic Site. Lessee will restrict repair work to periods of time least disruptive to other lessees and users.

(c) Lessee will not place locking devices or otherwise prevent access by Lessor to Lessee's Cabinet, without the previous written consent of Lessor; and in that event Lessee will furnish the keys or other means to permit Lessor to enter the Cabinet. However, Lessor will not, except in emergency situations which could result in immediate danger or harm to life or property, or which by the terms of any insurance carried by Lessor or order of any governmental authority would require immediate action on the part of Lessor, enter into the Cabinet in which Lessee maintains its equipment without first notifying Lessee of its intent to enter, and affording Lessee the opportunity to accompany Lessor's representatives. Lessor agrees to make reasonable attempts to advise Lessee by telephone or comparable means of any such emergency situation or immediate action so that Lessee's representative can be present if possible.

9. Governmental Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal, state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's use of the Electronic Site.

10. Repair and Maintenance of Lessee's Equipment. Lessee will keep all of its Equipment in good working order, condition and repair, in a safe and operative condition, at Lessee's sole cost and expense, all in accordance with good engineering practices, taking into consideration and implementing all reasonable precautions to avoid interference or hindrance to and with the operations of all other lessees or other uses of the Electronic Site and the Lessor, and in a manner so as to avoid and preclude any (i) objectionable interference, (ii) hazardous radiation, (iii) any emission or contamination by any hazardous substance or any other dangerous chemical or

substance in or about the Electronic Site, (iv) the creation of any hazard of fire, electrical shock, dangerous emissions or contamination, or other similar hazard or calamity, or (v) the creation of any other hazardous condition or risk which could result in material damage to any person or property in or about the Electronic Site.

11. Prevention of Objectionable Interference.

(a) "Objectionable Interference" means any interference produced by a Electronic Site user which originates at or by reason of the use of the Electronic Site by the user, and which (i) is determined by an authorized representative of the Federal Communications Commission to be objectionable interference, (ii) is objectionable interference within the meaning of the rules and regulations of the Federal Communications Commission as in effect from time to time, or (iii) otherwise causes a material impairment of the signals transmitted or received by a user of the Electronic Site within the Facility's service area as such area is or may be defined by the Federal Communications Commission. Lessee will install and operate its Equipment so as not to cause any Objectionable Interference to any other current lessee of the Electronic Site, Lessor or any other person. Lessee will cooperate fully with all other lessees and users in preventing interference among equipment employed by any of those persons at the Electronic Site. Lessee will install at Lessee's sole cost and expense suitable interference protection devices before equipment operation begins or as may become necessary thereafter because of Lessee's operations.

(b) In all events, the determination of Objectionable Interference, the resolution of disputes and other matters relating to interference will be determined in accordance with and subject to rules, regulations and decisions of the Federal Communications Commission then applicable, as well as Lessor's United States Forest Service Communications Use Lease and applicable United States Forest Service rules and regulations.

12. Lessee's Risk of Loss or Injury.

(a) Lessee assumes all risk of damage or loss to its property or equipment at the Electronic Site and that risk will be and remain exclusively Lessee's responsibility and not that of Lessor. Lessee hereby indemnifies and saves harmless Lessor, its stockholders, directors, officers, agents, employees and affiliates from any liability or expense, including attorney fees and costs, that shall or may arise because of any claims asserted by Lessee or any other person on account of the destruction of or damage to Lessee's property or Equipment.

(b) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorneys' fees and costs) arising from or occasioned in any respect by (i) any alleged act, omission, fault or negligence of Lessee, or (ii) injury (including death) or damage to Lessee's employees or employees of Lessee's contractors and subcontractors arising from or occasioned by or allegedly occasioned by any act or omission, or by reason of the use and occupancy of the Electronic Site or the access road or any part thereof by Lessee or any other person.

(c) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorney fees and costs) arising from or occasioned in any respect by (i) any failure of any warranty or representation by Lessee, (ii) Lessee's failure to perform any obligation by it to be performed hereunder, or (iii) any act or omission of Lessee or its employees or contractors which results in any prejudice to Lessor's rights under its Communications Use Lease with the United States Forest Service.

(d) Lessor will not be liable to Lessee or anyone claiming under or through Lessee for any loss or damage caused by the acts or omissions of any other lessee or any other person or the malfunctioning or interruption of any service, utility, facility or installation.

(e) Lessor undertakes only to exercise reasonable care in the management of the Electronic Site and Lessor will not be liable on this account to Lessee for any event except for any act or omission caused by the negligence, gross negligence or willful misconduct of Lessor. Lessor further agrees to observe its obligations under and will be liable to Lessee for damages provided by law for any material breach of these obligations. Notwithstanding anything else in this Agreement to the contrary, in no event will Lessor be liable to any of the persons described in the preceding sentence for consequential damages under any circumstances, and Lessee, for itself and for all other persons for whom it may make such a waiver, hereby expressly waives all such claims.

(f) Lessee represents and warrants that it or its representatives are knowledgeable in matters of electrical engineering and related fields, and have evaluated fully the suitability of the Electronic Site for Lessee's purposes. Lessee acknowledges that its determination to enter into this Agreement is based solely upon its own investigation and inspection of the Electronic Site and not in reliance upon any representation of Lessor as to any feature, specification or aspect of the Electronic Site, except as specifically described in this Agreement.

13. Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to obtain such additional insurance coverage or to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will be issued by insurers having a Best's AAA or better rating, and will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement, and will contain a waiver of subrogation against Lessor. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3.

14. Radio Frequency Radiation Considerations. Lessee recognizes and acknowledges that radio frequency radiation ("RF Hazards") as they may affect humans and all other forms of life are of concern and are specifically regulated by the Federal Communications Commission and may be subject from time to time to other rules and regulations ("RF Standards"). Lessee further acknowledges that RF Hazards will be measured and considered under RF Standards in the aggregate of the combined radio frequency densities of all users of the Electronic Site, and that this combined aggregate power density must be considered for assessment of compliance with applicable RF Standards. Accordingly, in order to assure that the Electronic Site complies with applicable RF Standards after consideration of Lessee's and all other transmissions of radio frequency energy from or to the Electronic Site, Lessee hereby agrees:

(a) To design, install and operate its Equipment in such a manner that Lessee's use of the Electronic Site, in concert with all other users of the Electronic Site, will at all times comply with all applicable RF Standards;

(b) To design, install and operate its Equipment so as to minimize downward radio frequency radiation affecting the Electronic Site and surrounding lands;

(c) To provide Lessor with a complete copy of Lessee's FCC filings, permits, and any other documents from any source addressing potential biological or botanical exposure to RF Hazards which could be caused by Lessee's operations or Equipment at the Electronic Site;

(d) That measurements of radio frequency power densities present on the site or surrounding land may be required by Lessor, or in order to assure compliance with RF Standards by government agencies, including but not limited to the Federal Communications Commission and the Environmental Protection Agency and the Environment Department of the State of New Mexico; and

(e) Should such measurements be required by Lessor or under any law, rule or regulation, the measurements will be carefully conducted and results certified by a registered professional engineer (electrical, State of New Mexico) or any other qualified person authorized by Lessor, the cost of the measurement to be paid by Lessee.

15. Use of Road. Lessee will have the nonexclusive right to use the access road for access, ingress and egress to the Electronic Site.

16. Certain Obligations of Lessor. Lessor will keep the foundations, exterior walls, roofs, tower structures and foundations, and the structural portions of the Electronic Site in a good state of repair in accordance with rules and regulations of the United States Forest Service during the term of this Agreement, at Lessor's expense except as to damage or injury thereto caused by any lessee. The access road will be maintained (except during inclement weather) in a condition sufficient for four-wheel drive vehicular travel. In this regard, Lessor reserves the right, without liability to Lessee, to interrupt the electrical or other services at the Electronic Site at such time as may be necessary and for so long as may be reasonably required for the making of necessary repairs, alterations or improvements thereto. Except for emergencies, these interruptions will to the extent possible be confined to non-working hours (or in cases of 24 hour transmitting or receiving

at such hours as will cause the least practicable interruption to Lessee's activities) and will be commenced only after Lessor's having given at least one week's notice to the lessees affected. Lessor will not be liable to Lessee for any consequential damages of any kind, or by reason of inconvenience, annoyance, or injury to the Electronic Site, or activities conducted by Lessee from the Electronic Site, arising from the necessary repairing or maintenance of any portion thereof, whether due to casualty, fire, normal maintenance requirements or otherwise, or from the making of any alteration or improvements in or to any portion of the Electronic Site or its equipment.

17. Termination of Communications Use Lease. If Lessor's Communications Use Lease is terminated for any reason whatsoever, this Agreement will terminate at Lessor's election as of the date of the Communications Use Lease's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. If Lessee's United States Forest Service special use permit respecting Lessee's use of the Electronic Site is terminated through no action or fault of Lessee, this Agreement will terminate at Lessee's election as of the date of the permit's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. Any amounts remaining unpaid with respect to periods before the termination will be immediately due and payable from Lessee to Lessor. Lessee will immediately remove its Equipment and otherwise act in accordance with the provisions of this Agreement ordinarily applicable to termination of this Agreement. Lessor will have no further liability or obligation under this Agreement from and after the date of such termination.

18. Destruction of Electronic Site. If the Electronic Site, or any part thereof, shall at any time during the term of this Agreement be destroyed by fire, wind or other casualty, Lessor will with all reasonable speed, but subject to the receipt of insurance proceeds and other limitations set forth in this Agreement, cause the Electronic Site to be restored to the same condition as existed immediately prior to the damage. However, if substantial damage occurs within one year before the end of the term of this Agreement (exclusive of any option or ability to renew by either party), then Lessor, at its sole option, will have the right to terminate this Agreement by giving notice to Lessee. If reconstruction or repair of the Electronic Site cannot be made without dismantling or removing Lessee's Equipment, then Lessee will cooperate fully with Lessor and its contractors, and Lessor may remove Lessee's Equipment or any portion thereof and interrupt its broadcasting activity during the making of the repairs or during reconstruction. Lessee will be entitled to a *pro rata* abatement of its monthly Rent for such time as it is unable to conduct its normal broadcasting activities as a result of the damage or destruction to the Electronic Site or during the making of repairs or reconstruction of the Electronic Site. Lessee will bear the expense of replacing its equipment, fixtures and appurtenances, or any part thereof, arising as a result of or caused by virtue of the damage, destruction, repairing or reconstruction of the Electronic Site, and in all event shall carry sufficient insurance on its own property to cover the expense of any new installation required.

19. Certain Duties of Lessee Upon Termination of This Agreement. At the end of the Term of this Agreement, or upon the earlier termination of this Agreement, or upon the termination of any extensions or renewals of this Agreement, and provided that Lessee is not in default under the provisions of this Agreement, Lessee will within a reasonable time remove from the Electronic Site any and all Equipment and other property placed in or about the Electronic Site by Lessee. To the extent that this removal causes any damage or change to the Electronic Site, the Lessee will repair the damage and correct any change at its sole cost and expense. If the Lessee continues to

maintain its Equipment in the Electronic Site or otherwise conducts any activity in or from the Electronic Site, this will in no event be construed to be a renewal of this Lease Agreement. However, to the extent and for the time Lessee maintains such Equipment or continues such activity, it will pay a daily fee to Lessor in an amount equal to double the sum it had paid on a daily basis rate of rent payable in the last month of the Term of this Agreement.

20. Default. The following events will be events of default by the Lessee under this Agreement:

(a) Lessee fails to pay any installment of the rent or any other sum due to Lessor from Lessee on the date that the same is due, and that failure continues for a period of ten (10) days thereafter;

(b) Lessee fails to comply with any term, condition or covenant of this Lease, other than the payment of money, and does not cure that failure within thirty (30) days after written notice thereof to Lessee, or there is a material failure of any of Lessee's warranties or representations;

(c) A receiver or trustee is appointed for all or substantially all of the assets of the Lessee; or

(d) Lessee attempts to assign its rights or otherwise attempts to allow the use of any of its interest or right under this Lease, except as expressly provided herein or permitted by a previous written instrument from Lessor, which will not be unreasonably withheld.

21. Remedies Upon Lessee's Default. Upon the occurrence of any of the events of default, Lessor will have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever:

(a) Lessor may terminate this Agreement. In that event, Lessor may remove Lessee's Equipment from the Electronic Site without prejudice to any other remedy which it may have for arrearages in Rents and other amounts owed by Lessee, unless Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of the termination of this Agreement;

(b) Lessor may do whatever Lessee is obligated to do under the terms of this Agreement, and Lessee agrees to reimburse Lessor on demand for any expenses incurred by Lessor in effecting Lessee's compliance with its obligations under this Agreement, and Lessee further agrees that Lessor will not be liable for any damages resulting to Lessee from that action, whether caused by the negligence of Lessor or otherwise;

(c) Lessor may enter Lessee's Cabinet by any means whatsoever not causing physical harm to any individual, to remove Lessee's Equipment, without being liable to any person for damages occasioned thereby, and without terminating this Agreement except at Lessor's sole option by notice to Lessee;

(d) Lessor may obtain a temporary restraining order and injunctive relief, it

being acknowledged by the parties that money damages would be an inadequate relief for Lessee's obligations under this Agreement;

(e) Lessor may make Lessee's Cabinet and Equipment available to any other person, for a fee or other compensation, with the right to receive from Lessee the costs of Lessor's action (including costs of repair and attorney fees and costs) together with any deficiency between what Lessee is obligated to pay and what Lessor actually receives under the arrangement with such other person; and

(f) Lessor may pursue any one or more other rights available to Lessor under applicable law.

22. Miscellaneous Provisions.

(a) Failure of Lessor to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, or any delay by Lessor in enforcing any right of Lessor hereunder, shall not constitute a waiver of the default or right, but Lessor will have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement at any time. Pursuit of any one or more of the remedies set forth in Section 21 above will not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor will pursuit of any remedy provided constitute forfeiture or waiver of any amount or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Agreement. The receipt of any amount by Lessor with knowledge of any breach of this Agreement by Lessee or of any default on the part of Lessee in the observance or performance of any of the terms, covenants or conditions of this Agreement, will not be deemed to be a waiver of any provision of this Agreement. No receipt of any amount by Lessor from Lessee after the termination hereof will reinstate the Term of this Agreement, or affect any notice theretofore given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of any other amount required to be paid by Lessee by law or under the terms of this Agreement.

(b) Neither party will be required to perform any covenant or obligation in this Agreement not involving the payment of money to the other party, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or *force majeure*. An "act of God" or "*force majeure*" is defined for purposes of this Agreement as negligent or intentional destruction of property by another party, strikes, lockouts, sitdowns, power shortages or blackouts, adverse weather, material or labor restrictions by any governmental authority, any governmental action, unusual transportation delays, military or criminal action, floods, washouts, explosions, earthquakes, fire, acts of the public enemy, insurrections, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

(c) If Lessee fails in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and by it to be performed, and Lessor places in the hands of an attorney the enforcement of all or any part of this Agreement, Lessee agrees to pay Lessor without any further notice or demand Lessor's reasonable attorney fees and costs, whether suit is

actually filed or not; provided, however, that Lessee will not be required to pay such fees and costs if Lessee cures its failure of performance within ten (10) days of the commencement of the failure.

(d) If Lessee continues to occupy or otherwise use the Electronic Site after the expiration or termination of this Agreement, all of the terms and provisions of this Agreement will be applicable during the period, except that Lessee will pay the increased rent described in Section 19 of this Agreement. No holding over by Lessee, whether with or without the consent of Lessor, will operate to extend this Agreement except as otherwise expressly provided.

(e) Lessee agrees to furnish promptly, from time to time, upon Lessor's request, a statement certifying that this Agreement is in full force and effect and that there is no prepayment of the Rent, and that there is no existing default by reason of any act or omission by Lessor, and such other matters as may be reasonably required by Lessor.

(f) This Agreement will be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. The parties agree that Lessor may assign this Lease, and upon such assignment Lessor shall have no further responsibility hereunder.

(g) The captions appearing in this Agreement are employed only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any paragraph or section.

(h) If any provision of this Agreement is ever held to be invalid or unenforceable, that invalidity or unenforceability will not affect any other provision of this Agreement, and the other provisions will continue in full force and effect.

(i) All payments required to be made by Lessee will be payable to Lessor at Lessor's address set forth below. Any notice or document required or permitted to be delivered under the terms of this Agreement will be deemed to be delivered when personally delivered or (whether or not actually received) when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below.

If to Lessor:

Tesuque Radio Company, Inc.
Attention: John C. Herklotz
Post Office Box 3636
Laguna Hills, California 92654

If to Lessee:

Santa Fe County
Attn: Katherine Miller, Santa Fe County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

Any party may change its address by giving notice in the prescribed fashion to all of the other parties hereto.

(j) Lessee and Lessor will execute, acknowledge as appropriate and deliver to the other any document or instrument reasonably necessary to effectuate or carry out the provisions of this Agreement promptly upon request therefor.

(k) Nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties, and it is understood and agreed that neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties, will be deemed to create any relationship other than the relationship of lessor and lessee.

(l) This Lease Agreement will be interpreted according to the substantive laws of the State of New Mexico. If a dispute arises under the terms of this Agreement or with respect to the subject matter hereof, suit shall be brought, if at all, in the courts of general jurisdiction, federal or state, for Santa Fe, New Mexico.

(m) If Lessee is a corporation or partnership, then Lessor may require guaranties of Lessee's obligations hereunder by Lessee's shareholders, officers, or partners; and any such persons, by their execution of any counterpart of this Agreement, do hereby guarantee the timely and complete performance by Lessee of all of its undertakings and covenants herein contained, including the payment of money, and do further guarantee the payment of any sum of money or the performance of any act which it is later determined that Lessee is required to pay or do as a result of any breach of this Agreement by Lessee. This shall be a continuing guaranty given as a further inducement to Lessor to enter into this Agreement, and may not be terminated in any respect by any guarantor. Lessor may extend any obligation of Lessee or any guarantor and may renew, exchange, surrender or otherwise deal with any collateral offered or given by Lessee or any person. Each of the guarantors hereby waives presentment, demand for payment by any person, protest and notice of nonpayment, dishonor or protest and all other notices and demands.

(n) Lessee shall pay to Lessor as additional Rent upon invoice by Lessor any additional charge, fee or rent imposed upon Lessor by the United States Forest Service or other U.S. government agency under Lessor's Communications Use Lease. Lessor shall allocate any such additional charge, fee or rent among its lessees (including Lessee) in accordance with a reasonable method of proration based upon the lessees' respective base rents or other factors.

(o) IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS LEASE AGREEMENT, WITH ANY SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS AGREEMENT OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS ATTACHED TO OR INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND AGREEMENTS, WRITTEN OR ORAL, PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE WILL BE NO MODIFICATION OF THIS AGREEMENT EXCEPT BY A SUBSEQUENT WRITTEN INSTRUMENT EXECUTED BY THE PARTIES HERETO. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES BY LESSOR OF MERCHANTABILITY, USE, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE WHICH MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

IN WITNESS WHEREOF this Agreement is executed as of the date stated in Exhibit A attached hereto and made a part hereof.

LESSOR:

TESUQUE RADIO COMPANY,
a New Mexico corporation

By: *John C. Herklotz*
John C. Herklotz, President

LESSEE:

SANTA FE COUNTY

By: *Daniel W. Mayfield*
Daniel W. Mayfield, Chair
SANTA FE BOARD OF COUNTY
COMMISSIONERS



ATTEST:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

1-28-2014

Finance Department:

By: *Mailey*
Date: 1/14/14

Approved as to Form:

By: *Stephen C. Ross* 1/14/14
Stephen C. Ross, County Attorney

CPI - TERRY

Agreement No. 2014 - 0212 - LD/BT

**EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT**

Lessee: Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504
Telephone: (505) 986-6200

Date of Lease: July 1, 2012

Commencement Date: July 1, 2012

Termination Date: June 30, 2015

Description of Equipment:

Santa Fe County Fire Department has one (1) repeater with SN0201482, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

Santa Fe County Sheriff's Office has one (1) repeater with SN0201476, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15' - 20' off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz

Monthly Rent Installment and Charges from July 1, 2012 through June 30, 2015 (Base Rent and charges for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Rate of Monthly Base Rent	\$950.00
Monthly Electricity	25.00
Gross Receipts Tax	<u>65.31</u>
TOTAL	\$1,040.31

Deposit: None

Other Terms:

This Lease terminates and replaces all prior leases between Tesuque Radio Company and Santa Fe County, including the Electronic Site Lease dated July 1, 2007 (the "Prior Lease"). The following provisions, revise and supersede the provisions of the Electronic Site Lease Agreement (the "Agreement") to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Notwithstanding the provisions of Section 3 respecting monthly installments of rent, Lessee shall pay annual rent based upon an annual period of July 1 to June 30. The first payment of rent, for the periods July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014, in

the amount of \$22,800.00, shall be paid by Lessee to Lessor on or before February 28, 2014, together with electricity charges of \$600.00 and New Mexico gross receipts tax of \$1,567.50.

2. Notwithstanding the provisions of Subsection 3(b) respecting escalations in the rent provided for under the Electronic Site Lease Agreement, there shall be no increase to Base Rent under Subparagraph 3(b) for the periods July 1, 2012 through June 30, 2013 or July 1, 2013 through June 30, 2014. Commencing with the period July 1, 2014 through June 30, 2015, Base Rent shall increase at a rate of five percent on each anniversary date of the Agreement.

3. Lessee shall pay to Lessor, on or before February 28, 2014, the amount of \$15,001.97, representing the amount agreed by Lessor and Lessee to represent and discharge all obligations of Lessee to Lessor for (1) payments of rent, electricity charges, and New Mexico gross receipts tax under the Prior Lease through June 30, 2012, and (2) payments of United States Forest Service use fee amounts through the September 30, 2012 reporting date.

4. Subsection 3(b) of the Electronic Site Lease Agreement is deleted in its entirety.

5. The second sentence of Subsection 3(e) of the Electronic Site Lease Agreement is revised to read as follows:

Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, an amount equal to New Mexico State gross receipts tax (or other applicable taxes for which Lessor is entitled to seek reimbursement from Lessee) at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

6. The third sentence of Subsection 3(f) of the Electronic Site Lease Agreement is revised to read as follows:

Lessee will pay each such amount to Lessor, together with an amount equal to any gross receipts tax (or other applicable tax for which Lessor is entitled to seek reimbursement from Lessee) thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

7. The words "to indemnify or" are deleted from the last line of Subsection 5(c) of the Electronic Site Lease Agreement, and are replaced with the word "for."

8. Section 9 of the Electronic Site Lease Agreement is revised to read as follows:

Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect).

9. The second sentence of Subsection 12(a) of the Electronic Site Lease Agreement is deleted in its entirety.

10. Subsections 12(b) and 12(c) of the Electronic Site Lease Agreement are both deleted in their entirety.

11. Section 13 of the Electronic Site Lease Agreement is revised to read as follows:

Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3. Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

**EXHIBIT B
TO
ELECTRONIC SITE LEASE AGREEMENT**

Equipment and Operating Frequencies:

Santa Fe County Fire Department has one (1) repeater with SN0201482, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

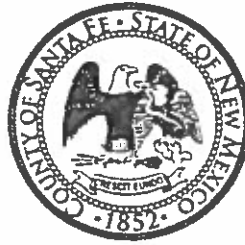
Santa Fe County Sheriff's Office has one (1) repeater with SN0201476, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15' – 20' off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz

*c:\esque radio\docs\electronic site lease (santa fe county 2012 {2013}).doc
File No. 7209-000*

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4


Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: *March 16, 2016*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director*

VIA: *Katherine Miller, County Manager* 

ITEM AND ISSUE: *BCC Meeting March 29, 2016*
Discussion and Direction on Residential Solid Waste and Recycling Collection (Public Works/Robert Martinez)

SUMMARY:

This is a request for the governing body to provide direction to staff on residential solid waste and recycling collection and on requiring all solid waste haulers to be licensed and submit solid waste data reports to the County.

BACKGROUND:

Residential solid waste and recycling collection was addressed by the governing body and pursued by staff last year (see attached "2015 – Residential Solid Waste and Recycling Collection Events"). Based on direction received from the Board at its August 25th meeting, staff obtained input from the public in the fall on a proposal that would require that all SW Haulers providing residential refuse service in the more densely populated areas surrounding the City of Santa Fe also provide curbside recycling service as a single "bundled" service for a single fee. In general, the public supported the proposal.

This approach was developed as an alternative to the original proposal (introduced as an ordinance and for which a June 30, 2015 BCC public hearing was held) which would have established exclusive private hauler franchise areas in three proposed Collection Districts. The franchising ordinance would have had the County competitively select a single hauler for each of the three districts. Haulers other than the County-selected hauler would have been prevented from operating in the district. Homeowners desiring curbside service would have been required to use the County-identified hauler.

Significant public opposition was received to that proposal. The draft franchising ordinance was abandoned in favor of a compromise "bundled refuse and recycling service" approach that staff is now requesting direction from the governing body on. A single, consolidated Solid Waste

Collection District is proposed that includes the same geographic area as the three districts in last year's franchising ordinance (see attached map). This new approach maintains existing private hauler competition and homeowner choice of hauler – two issues important to the public. Staff feels that the revised proposal continues to significantly advance the Commission's waste reduction and recycling objectives –the primary goal of the original franchising ordinance.

In the interest of better managing solid waste throughout the County, staff is also recommending that commercial and residential haulers be required to submit solid waste data to the County twice per year.

DISCUSSION:

Key aspects of the proposal include:

- Require residential SW Haulers within the Solid Waste Collection District to provide at least every other week recycling service (excluding glass) as a single bundled service. Refuse-only service would no longer be permitted.
 - Establish a minimum 60 gallon container volume for recyclables.
 - Continue to allow homeowners the choice to self-haul their refuse and recyclables to appropriate disposal facilities.
- Require that all refuse and recyclables collected by SW Haulers within the Solid Waste District be delivered to the Caja Road Landfill and the Buckman Road Recycling and Transfer Station (BuRRT), respectively.
- Require commercial and residential haulers operating throughout the unincorporated County to obtain a license from the County and to pay an annual licensing fee.
- Require SW Haulers operating throughout the unincorporated County to submit a solid waste data report to the County semiannually (twice per year).

ACTION REQUESTED:

Staff requests that the governing body consider adopting the following motion:

“Direct staff to prepare an ordinance requiring solid waste haulers providing service in the proposed Residential Solid Waste Collection District to bundle refuse and recycling service for a single fee and to include other solid waste provisions in the ordinance as outlined in the “Discussion” section above. Furthermore, direct the County Manager to schedule the ordinance for the April 26, 2016 BCC meeting for “request approval to publish title and general summary.”

Attachments:

1. 2015 – Residential Solid Waste Collection District Events
2. Map of proposed Residential Solid Waste Collection District

2015 – Residential Solid Waste Collection District Events

- January 15: Kick-off meeting with consultants to develop franchising ordinance and RFP.
- February 24 BCC Meeting: Update on franchising initiative and timeline. No action taken.
- April 28 BCC Meeting: Request to publish title and general summary for franchising ordinance.
- Spring/Summer/Fall/Winter – Individual Meetings with Private Haulers: periodic in-person and e-mail updates to private haulers.
- May 12 Eldorado – Solid Waste Committee Meeting on Franchising Ordinance
- May 18 Southwest District Public Meeting on Franchising Ordinance: Amy Biehl Elem. School. 14 attendees, mild support.
- May 20 North District Public Meeting: Las Campanas Community Room. 70 attendees, vehement opposition.
- May 21 Southeast District Public Meeting: Eldorado Senior Center. 20 attendees, relatively strong support.
- June 9 BCC Meeting: Public input update.
- June 30 BCC Meeting: Public hearing on franchising ordinance. 48 testifiers against the proposal. Two in support. BCC takes action on the ordinance and directs staff to draft amendments and/or develop a proposal that addresses the concerns raised by the public during the hearing.
- August 25 BCC Meeting: The staff memo to the BCC provided 3 options for the Commission's consideration and recommended Option 2 – the bundled refuse and recycling approach in the same 3 Collection Districts identified in the franchising ordinance. Staff interpreted that the Commission clearly expressed their support for proceeding with Option 2 and to investigate the possibility of a franchise pilot program in a favorable community. The Commission directed staff via further discussion to engage in more public input around Option 2 and to investigate the merits of a pilot franchising program in a favorable community. Staff indicated that, based on public interest, Eldorado was likely the most promising community for a pilot program.
- Sept. 14 – Eldorado Community Improvement Assn. Board Meeting: County staff suggested that the County was reluctant to initiate a franchising pilot program in the community, unless there was clearly strong support for it by homeowners – ideally including a formal vote by the ECIA Board endorsing or supporting the concept. ECIA sent out their newsletter in October with an article from the Board President (Dag Ryen), explaining the concept and requesting homeowners to express their support or opposition to the proposal to the ECIA Board. Apparently, very little input was received by the Board.
- October/November Public Meetings on Bundled Refuse and Recycling Approach: Southwest District (10/20), North District (10/22), and the Southeast District (11/12). General public support for Option 2 was received – including in the North District. In addition to the public meetings, an e-mail notification to approximately 200 citizens in the Solid Waste Districts occurred. General support for Option 2 (including in the North District). At the Southeast District meeting, some members of Eldorado expressed an interest in a pilot franchising program in their community.
- December ECIA Board Meeting: The Board chose not to formally vote on or otherwise take formal action supporting the proposal, feeling that the issue was outside of their jurisdiction. On January 20, 2016, Board President Ryen submitted a general letter of support for the pilot program to the BCC, "...so long as the actual costs of waste collection.... are not increased."

- December Internal Public Works Discussions: Based on positive public input, staff decides to proceed with drafting an ordinance requiring haulers to provide bundled refuse and recycling service in the 3 Collection Districts (subsequently consolidated into one Collection District in the ordinance.) Staff also agrees to not recommend proceeding with a pilot franchising program in 2016 in Eldorado for 3 main reasons: 1) ECIA Board's reluctance to formally endorse/support the proposal, 2) uncertainty regarding the total number of homes that would subscribe to the curbside service (creating concerns regarding the monthly cost impacts on homeowners) and 3) the fact that the bundled refuse and recycling approach is likely to successfully achieve the same rate of waste reduction and recycling as a franchising approach, with a lot less burden on private haulers, homeowners, and County staff. This final point is emphasized in the February 10, 2016 transmittal memo to the BCC for the February 23 BCC agenda item (below)

"Staff believes that the main goal of the original franchising ordinance, to increase waste reduction and recycling rates, is essentially achieved with this new ordinance. ...Staff believes that it is prudent to adopt and implement the new ordinance before considering whether a pilot franchise program in Eldorado is necessary. It's quite likely that the new initiative will be successful at appreciably increasing waste reduction and recycling rates in Eldorado – obviating the need to pursue franchising. If, however, after six to nine months, the revised approach is not successful, staff would recommend consideration of an Eldorado pilot franchising program at that time.

Even for a small community such as Eldorado (approximately 2800 homes), pursuing franchising is a large administrative undertaking (ordinance adoption, procuring a hauler, implementation, oversight, etc.). As explained above, staff does not recommend pursuing the implementation of the attached ordinance and simultaneously pursuing an Eldorado franchising pilot program. If, however, that is the wishes of the governing body, the Public Works Department will, of course, proceed with both initiatives, as directed."

