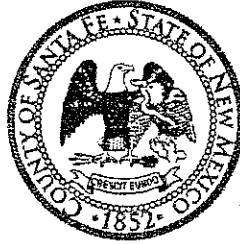


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: March 14, 2018
TO: Board of County Commissioners
VIA: Katherine Miller, County Manager
FROM: Michael K. Kelley, Public Works Department Director MK 3/14/18

ITEM AND ISSUE: BCC Meeting March 27, 2018
Approval Of Agreement No. 2018-0239-PW Between Santa Fe County And La Cienega Lakeside Mobile Home Park, LLC (Lakeside) To Connect Lakeside to County Water (Public Works/Jerry Schoeppner)

SUMMARY:

The Public Works Department is requesting approval of Agreement No. 2018-0239-PW between Santa Fe County and La Cienega Lakeside Mobile Home Park, LLC ("Lakeside") to connect Lakeside to Santa Fe County's water utility.

BACKGROUND:

A Letter of Understanding (LOU) between Lakeside and Santa Fe County was executed on March 25, 2014. The purpose of the LOU was to address the Parties' mutual concerns regarding the health, safety and welfare of the Condominium's residents including ensuring that the residents within Condominium have safe and adequate fresh water for domestic purposes.

A total of four wells owned by Lakeside are used, or have been used, to provide water to the Condominium. The use of these wells qualifies Lakeside as a public water system under the Safe Drinking Water Act (SDWA). Lakeside has experienced various compliance issues under the SDWA and in addition residents have experienced low water pressure issues. In order to correct these issues Lakeside desires to connect the Condominium to the County water system to ensure consistent and good water quality for its residents and to no longer to be regulated under the SDWA.

The County has an existing 8-inch water line that is located adjacent to the Condominium property boundary which is adequate to serve the development. This waterline is at the end of the "La Cienega" line extension and dead ends near Lakeside. Because this line terminates near Lakeside it creates a stagnant area which results in poor water quality. Currently, in order to address this situation and to ensure safe drinking water, the line is flushed every week resulting in approximately 1.50 acre-feet per year of water being wasted. Once Lakeside is connected to the

County water system, flushing will no longer be required, thus benefiting the County water system by eliminating the need to flush the end of the water line and wasting water. Lakeside requires 5.76 acre-feet per year (AFY) to meet their demand for the 24 unit Condominium. To assure that the County has sufficient water rights to meet Lakeside's total water demand in accordance with Resolution No. 2006-57, Lakeside will transfer their groundwater water rights totaling 5.1 acre-feet to the County, the County will accept transfer of Lakeside's water rights and credit Lakeside 2.55 AFY toward the total water demand, and allow Lakeside to purchase 3.21 acre-feet from the County at a rate of \$11,000 per acre-foot for a total of \$35,310.¹ Because the County cannot currently use Lakeside's water rights without incurring substantial expense, the Parties agree that Lakeside shall only be credited one half AFY for each AFY transferred.

ACTION REQUESTED:

Approval and execution of the Water Use Agreement No. 2018-0239-PW.

¹ Because the Parties commenced negotiating this Agreement over one year ago and Lakeside was not responsible for the delay in executing this Agreement, the cost per acre-foot is based on the County's water right fee prior to adoption of County Resolution No. 2018-12.

WATER DELIVERY AGREEMENT

This Water Delivery Agreement (“Agreement”), effective as of the last date written below (“Effective Date”), is between Santa Fe County (“County”), a political subdivision of the State of New Mexico, and La Cienega Lakeside Mobile Home Park, LLC (“Lakeside”), a New Mexico limited liability company whose address is 86 C de Baca #9, Santa Fe, New Mexico 87507.

RECITALS

A. Lakeside established the La Cienega Condominium (“Condominium”) pursuant to that certain Condominium Declaration filed as Instrument No. 1513351 in the records of the County Clerk and re-recorded as Instrument 1513532. The Condominium consists of 26 units but only 24 of the units will receive water under this Agreement.

B. A total of four wells owned by Lakeside (“Lakeside Wells”) are used, or have been used, to provide water to the Condominium. Lakeside will retain ownership of the Lakeside Wells and shall properly plug and abandon them in accordance with the regulations of the Office of the State Engineer (“OSE”) following connection to the County water system.

C. Lakeside owns a total of 5.1 acre-feet per year (“AFY”) of groundwater rights (“Lakeside Water Rights”) associated with the Lakeside Wells. The Lakeside Water Rights are described in OSE Files RG-17913, RG-17913-S, RG-17913-S-2, and RG-17913-S-CLW.

D. The units of the Condominium are individually connected to a 2-inch water line and a 10,000 gallon tank is used for storage and fire protection.

E. Lakeside is regulated as a public water system under the Safe Drinking Water Act, but will cease being a public water system after it connects to the County water system.

F. Lakeside desires to connect the Condominium to the County water system to ensure consistent, good water quality for its residents.

G. The County has an existing 8-inch water line that is located adjacent to the Condominium property boundary which is adequate to serve the development.

H. Based on meter readings submitted to the OSE, Lakeside has diverted an average of 3.45 AFY over the last 16 years from the Lakeside Wells. Therefore, for purposes of this Agreement, 0.20 AFY per unit will be assumed, which results in a total annual water demand of 5.76 AFY (“Total Water Demand”). The Total Water Demand includes the additional 20% required under County Resolution No. 2006-57.

I. To assure that the County has or can obtain sufficient water rights to meet the Total Water Demand in accordance with Resolution No. 2006-57, Lakeside will transfer all of the Lakeside Water Rights to the County and make a payment to the County in accordance with Section 2 below. Because the County cannot currently use the Lakeside Water Rights without incurring substantial expense, the Parties agree that Lakeside shall only be credited one half AFY

for each AFY of the Lakeside Water Rights that Lakeside transfers to the County, or a total of 2.55 AFY.

J. Ruth A. Parks represents that she is the sole owner and manager of Lakeside and that she has authority to enter into this Agreement on behalf of Lakeside.

AGREEMENT

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

1. INCORPORATION OF RECITALS. The Recitals to this Agreement are incorporated into and made a part of this Agreement by reference.

2. WATER SERVICE AGREEMENT.

a. The County shall:

- i. Connect Lakeside to the County water system via a single connection.
- ii. Install a pressure release valve.
- iii. Accept transfer of the Lakeside Water Rights totaling 5.1 acre-feet and credit Lakeside 2.55 AFY toward the Total Water Demand, subject to Section 3 below.
- iv. Allow Lakeside to purchase 3.21 acre-feet at a rate of \$11,000 per acre-foot for a total of \$35,310 to meet anticipated water demand, subject to Section 3 below.
- v. Perform such other tasks as may be necessary to deliver 5.76 AFY to the 2-inch meter described below and provide residential water service.

b. Lakeside shall:

- i. Purchase and install a 2-inch meter and vault to the County's specifications to service the Condominium.
- ii. Pay the County \$35,310 for 3.21 AFY, subject to Section 3 below.
- iii. Transfer to the County by warranty deed at Lakeside's expense all of the Lakeside Water Rights. Lakeside shall cooperate with the County and execute such additional documents, including a change of ownership form, as may be required to transfer the Lakeside Water Rights to the County and record the warranty deed and change of ownership.

- iv. Pay all applicable fees and charges applicable to residential water service when due, including the monthly 2-inch meter base charge.
- v. Distribute water to 24 units within the Condominium.
- vi. Provide the initial pressure release value setting.
- vii. Perform such other tasks as may be reasonably necessary or appropriate to safely and efficiently distribute County water from the 2" meter to 24 units within the Condominium.

3. **ADJUSTMENT PAYMENT.** If, within three years of the execution of this Agreement, OSE determines that less than 5.1 AFY of the Lakeside Water Rights may be transferred to a new point of diversion, Lakeside shall within 60 days of receiving notice of the OSE's decision, make an Adjustment Payment to the County. The Adjustment Payment shall be equal to \$11,000 multiplied by the difference between 2.55 and one half of the permitted transfer amount. For example, if OSE permits only 4.0 AFY to be transferred, the Adjustment Payment would be $\$11,000 \times (2.55 - 2.0) = \$6,050.00$.

4. **NOTICES.** Notices required under this Agreement shall be provided by first class mail as follows:

To the County: Santa Fe County Utility Director
424 NM HWY 599, Frontage Road
Santa Fe, New Mexico 87507

To Lakeside: La Cienega Lakeside Mobile Home Park, LLC
8751 Coats Road
Benzonia, Michigan 49616

A party may change its address of record under this Agreement by mailing notice of the new address to the other party by first class mail.

5. **SCOPE OF AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the County and Lakeside and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

6. **SUCCESSORS.** This Agreement shall binding on the parties' successors and heirs.

7. **AMENDMENT.** This Agreement shall not be altered, changed or amended except by an instrument executed by the County and Lakeside.

8. **APPLICABLE LAW; VENUE.** This Agreement shall be governed by the laws of the State of New Mexico. If a conflict arises between the parties concerning this Agreement, the First Judicial State Court District, Santa Fe County, shall be the exclusive venue.

9. **LIMITATIONS ON COUNTY LIABILITY.** As a political subdivision of the State of New Mexico, any potential liability of the County is limited by state law, including the Batement Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, the and Anti-Debt and Anti-Donation Clauses of the New Mexico Constitution, N.M. Const. article 9, section 10 and 14, respectively, and NMSA 1978, Section 37-1-23. Any obligation on the part of the County to expend funds under this Agreement shall be subject to the availability of sufficient appropriations from the Board of County Commissioners.

10. **NO PARTNERSHIP.** Nothing in this Agreement shall be construed as creating a partnership or joint venture between the County and Lakeside.

11. **TERMINATION.** Termination of this Agreement shall not relieve Lakeside of its obligation to comply with all federal, state, and local laws applicable to the Subdivision, nor shall termination alter or diminish the County's remedies under such laws.

12. **MISCELLANEOUS PROVISIONS.**

12.1 Water Wells. Lakeside shall cease using the Lakeside Wells and shall not drill any new water wells to serve the Condominium so long as water service from the County is available.

12.2 No Third-Party Beneficiaries. This Agreement may only be relied upon and enforced by the County and Lakeside. There are no third-party beneficiaries to this Agreement.

12.3 No Waiver. The Utility's or Lakeside's failure or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

12.4 Duplicate Originals. This Agreement shall be executed in duplicate originals.

12.5 Compliance with Law. Lakeside shall assure that it, including its employees, contractors and agents, complies with all applicable federal, state, and local laws, regulations, and ordinances in performing this Agreement. Nothing in this Agreement relieves Lakeside of its duty to comply with all such applicable law, including the SLDC.

12.6 Counterparts. The Parties may execute this Agreement in counterparts.

SANTA FE COUNTY

By: _____
Anna Hansen, Chair
Board of County Commissioners

Date

APPROVED AS TO FORM:

[Signature]
R. Bruce Frederick
County Attorney

3/14/2018
Date

APPROVED:

Stephanie S. Clarke
County Finance Director

Date

LA CIENEGA LAKESIDE MOBILE HOME PARK, LLC

By: Ruth A. Parks
Ruth A. Parks
Owner and Manager

1-6-2018
Date

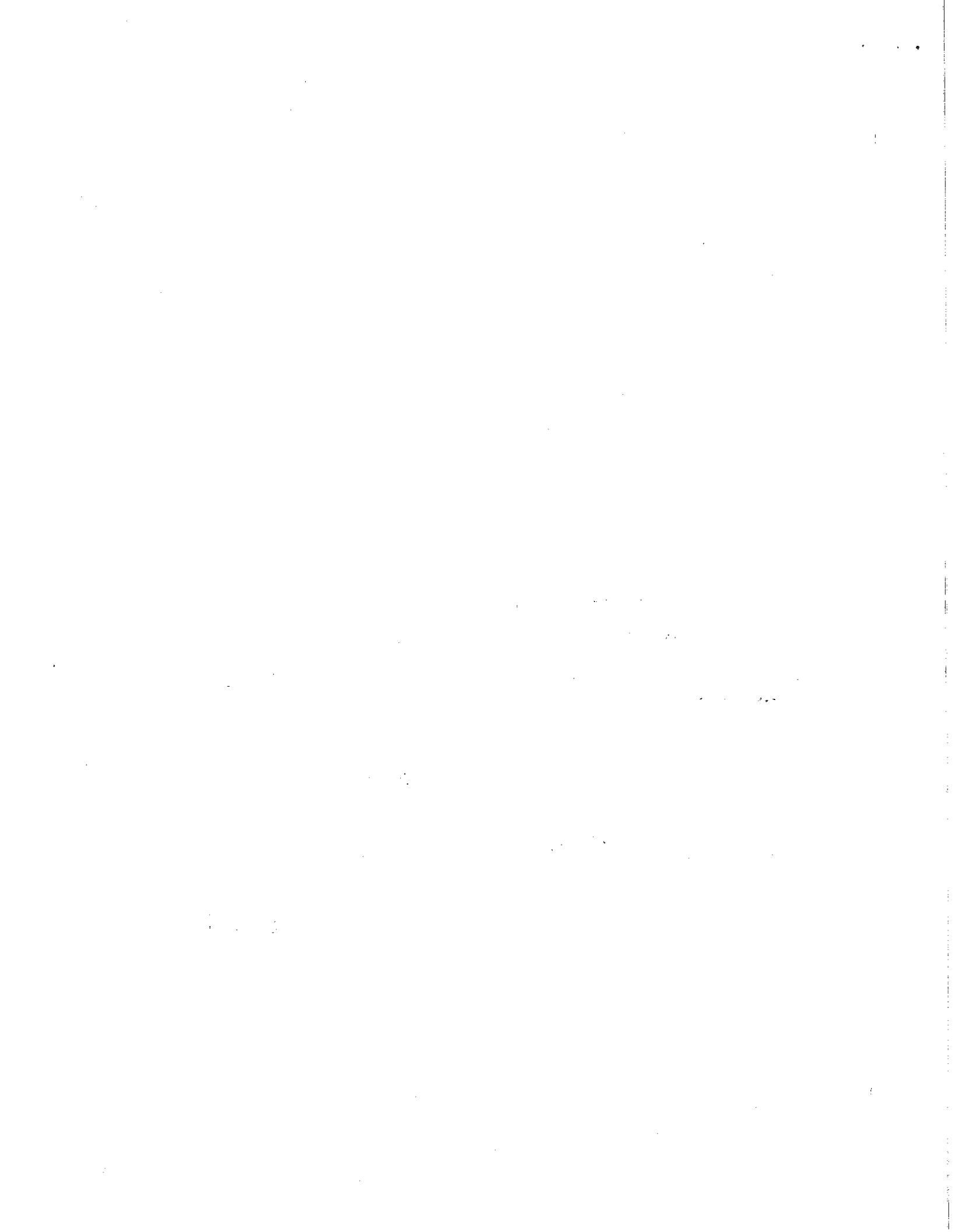
STATE OF Michigan
COUNTY OF Benzie

The foregoing Water Delivery Agreement was acknowledged before me on this 6 day of January 2018, by Ruth A. Parks, as owner and manager of La Cienega Lakeside Mobile Home Park, LLC, for and on behalf of said corporation.

Kayla Russell
Notary Public

My commission expires: 06/06/2024

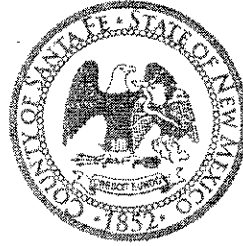
KAYLA RUSSELL
NOTARY PUBLIC
BENZIE COUNTY MI
My Commission Exp. June 06, 2024
Acting in the county of Benzie



Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4


Ed Moreno
Commissioner, District 5


Katherine Miller
County Manager

MEMORANDUM

Date: *March 14, 2018*

To: *Santa Fe County Board of County Commissioners*

From: *Bill Taylor, Procurement Manager* 

Via: *Katherine Miller, County Manager*
Stephanie S. Clarke, Finance Director
Ken R. Martinez, Director RECC
Pablo Sedillo III, Public Safety Director 

ITEM AND ISSUE: BCC Meeting March 27, 2018

Request Approval of Agreement No. 2017-0288-RECC/IC Between Santa Fe County and Superior, LLC to Provide a Comprehensive Computer Aided Dispatch System (CAD) for the Regional Emergency Communication Center for a Total Contract Amount of \$1,019,015.60, Exclusive of NM Gross Receipts Tax; Granting Signature Authority to the County Manager to Sign the Purchase Orders.

(Bill Taylor, Purchasing Division)

ISSUE:

In August 2017, Santa Fe County Purchasing Division issued a Request for Proposal (RFP) No. 2017-0288-RECC/IC to procurement a new comprehensive computer aided dispatch system for the Regional Emergency Communications Center (RECC). Proposals were received on Sept. 22, 2017 from the following Offerors:

Capers
Superion
Tritech
Tyler
Securus
Mobile Tec
Spillman

Upon final evaluation and oral presentation, the County determined that Superior, LLC was the most qualified, responsive Offeror. The County Purchasing Division recommends contract award to Superior, LLC for the new CAD system for RECC.

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

The total compensation for the referenced Agreement requires Board of County Commissioners approval, pursuant to County Resolution 2014-143.

BACKGROUND:

The current CAD system that is utilized at the RECC facility is antiquated and has reached its life cycle. The capacity and capability to provide accurate data regarding response times, does not meet the County's needs due to the growth in population and services to be provided.

RECOMMENDATION:

The Purchasing Division requests approval of Agreement No. 2017-0288-RECC/IC between Santa Fe County and Superior, LLC to provide a new computer aided dispatch system for RECC in the amount of \$1,019,015.60, exclusive of NMGRT, and granting authority to the County Manager to sign the purchase order.

**PROFESSIONAL SERVICES AGREEMENT
WITH SUPERION
TO PROVIDE A COMPUTER AIDED DISPATCH SYSTEM**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2018, by and between **SANTA FE COUNTY** (hereinafter "County"), a political subdivision of the state of New Mexico, and **SUPERION, LLC**, whose principal place of business is located at 1000 Business Center Drive, Lake Mary, Florida 32746 (hereinafter "Contractor").

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited through Request for Proposals No. 2017-0288-RECC/IC (RFP) for the provision of a comprehensive computer aided dispatch system (CAD); and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; and

WHEREAS, the County, as a party to the Joint Powers Agreement No. 08-0413 (Second Amended and Restated JPA between City of Santa Fe, Town of Edgewood and Santa Fe County) that established the Regional Emergency Communications Center ("RECC") and its authorities, 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 WORK

- A. Prepare a project plan which includes identifying system requirements; analyze the RECC facility environment, define the project objectives and scope, estimate high-level project activities' completion dates and describe milestones. Contractor will also describe the feasibility of the project; outline the development of the project plan, software quality assurance plan, software configuration management plan and their approval processes. Contractor will identify hardware specifications for the RECC and identify hardware specifications for RECC's servers and workstations.
- B. Prepare an analysis of the RECC's current systems, business practices, processes and needs. Contractor shall prepare the translation of those processes and needs into formal requirements and plan the testing activities to validate the performance of the software products.
- C. Provide the overall structure of the software product defined from a functional viewpoint to include the logical system flow, data or organization system inputs and outputs, processing rules and operational characteristics of the software production from the RECC's point of view.
- D. Provide the RECC with user-oriented functional design specifications that are

translated into a set of technical, computer-oriented system design specifications. The design should depict how the RECC will utilize the software, and identify table data and /or any development required. Flow charts and graphics should be included as part of the system design.

- E. Provide hardware requirements to ensure the compatibility to the software components. That all software components are integrated and tested to determine whether the software product meets predetermined functionality, performance, quality, interface and security requirements. Contractor shall supervise initial functionality testing, including tests with sample data, test cases with real data and tests using converted data in a controlled environment. Contractor shall provide on-site management, supervision and assistance to plan, prepare, assist and supervise system testing, as well as the comprehensive system structure.
- User testing shall be structured to include many of the anticipated users, with training for users on test protocols and system expectations as part of the test preparation work, and supervision throughout the testing process.
 - Certain phases of the testing shall be oriented towards exception testing, where the system is tested with invalid and out of range data.
- F. Install the software on-site to verify software readiness with the supplied hardware and conduct functionality testing. The objectives of the activities in this stage are to verify that software products meet design requirements and to obtain the County and RECC's acceptance and approval of the software product(s).
- The County reserves the right to perform post-delivery and post-training acceptance testing for a period beginning at the end of each phase of system installation and implementation at the RECC, and lasting for a maximum period of six months. The County reserves the right to have an independent contractor audit Contractor's CAD system to obtain reasonable assurance pertaining to the functions pertaining, auditability, and related controls of the system. At any time before the end of six months, if the specifications or requirements of this Agreement, or that features or functions represented the Contractor's proposal in response to this RFP, are absent or do not function properly, the County may execute any or all of the following:
 - Require Contractor modify the installed software to eliminate the deficiency to the County and the RECC's satisfaction;
 - Required Contractor to re-install a new copy of the software;
 - Extend the acceptance testing period for a period of 30 days to allow time for the Contractor to remedy the problems; or
 - Remove the application software, cancel or terminate this Agreement, and recover all payments made to Contractor.
- G. Provide on-site resources for accomplishment of data conversion to the new system, including testing and verification of data conversion results. Contractor and RECC staff will work together to configure a file format suitable for the conversion. Contractor shall load the data onto the new software database. The RECC anticipates historical conversion of multiple years' worth of historical data.
- H. Provide transition, parallel system and supervision for the implementation to the

new system to include; integration, testing, installation, acceptance and data conversion phases.

- I. Provide continued on-site resources for the initial system start-up, including debugging, help-response to users, one on one training with critical users, and other recommended approaches to ensure a smooth implementation. Contractor will provide all supporting technical user documentations, help files, data files, libraries, software customizations and modifications.
- J. Provide support for the installed and completed CAD system including support for existing software; updates to supplemental files; revisions to documentation; utilities; and new functionality through software upgrades. Contractor shall provide 24 hour unlimited telephone CAD technical support for the RECC.

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 a not-to-exceed sum of \$ 1,019,015.60, exclusive of any applicable NM gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 2) This amount is a maximum and not a guarantee that the work 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. Contractor is responsible for notifying the County 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. 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. 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 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 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.

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 in one-year increments and at the same price, terms and conditions for a period of three years total. The County may exercise this option by submitting a written notice to Contractor that the term of this Agreement will be extended an additional year. The notice must be submitted to Contractor at least 60 days prior to expiration of the term of this Agreement.

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, 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 compensation payable to the Contractor, 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 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.

(1) The software license granted to the County for use of Contractor's OneSolution applications referenced in the Superior Order, attached hereto as Attachment A, may be terminated by Contractor if: a) the County fails to comply in any material respect with any of its obligations under Section 5.5 (Use Restrictions) of the Standard Terms, or b) if the County fails to abide by the requirements of Section 5.1 (Confidentiality) of the Superior Standard Terms (Exhibit A to the Superior Order). In either event, Contractor will provide no less than 30 day's written notice of such termination and the County shall not have a right

to cure. In the event of termination by Contractor under this provision, County shall promptly return to Contractor, or at Contractor's request, will destroy all copies of the OneSolution application and will certify to Contractor in writing, that it and the RECC have done so.

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 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work by Contractor, Contractor's subcontractors and third-party providers, determined in accordance with the specifications and standards set forth in this Agreement, performed before and up to the effective date of termination, but shall not be liable for payment for any work performed by Contractor or Contractor's subcontractors or third-party service providers 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 compensate Contractor for expenditures made in the performance of this Agreement for which no funds have been appropriated. 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 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.

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.

10. 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.

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 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.

13. 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.

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

The agreement between the parties consists of this Agreement, the provisions of Attachment A (the Order and its Exhibit A (the Superior Standard Terms or "SST")), the Superior Solution and Related Information, the Support Supplement, Support Standards, Superior Travel Expense Guidelines, GIS Software Supplement, General Project Conditions Supplement, and the Data Access Subscription Supplement (Police to Police), all collectively referred to as the "Agreement." The 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 writing in the 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.

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 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 six (6) 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 (6) 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.

21. INDEMNIFICATION

A. Intellectual Property Indemnity. Contractor will defend, indemnify and hold County and RECC harmless from and against any loss, cost and expense that County and/ or RECC incur because of a claim that use of a Baseline Component System infringes any United States copyright of others. Contractor's obligations under this indemnification are expressly conditioned on the following: (i) County must promptly notify Contractor of any such claim; (ii) County must in writing grant Contractor sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if County chooses to represent its own interests in any such action, County may do so at its own expense, but such representation must not prejudice Contractor's right to control the defense of the claim and negotiate its settlement or compromise); (iii) County must cooperate with Contractor to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications or (with the express exception of the other Component Systems and third party hardware and software specified by Contractor in writing as necessary for use with the Software) from the use or combination of products provided by Contractor with items provided by County or others. If any Component System is, or in Contractor's opinion is likely to become, the subject of a United States copyright infringement

claim, then Contractor, at its sole option and expense, will either: (A) obtain for County the right to continue using the Component System under the terms of this Agreement; (B) replace the Component System with products that are substantially equivalent in function, or modify the Component System so that it becomes non-infringing and substantially equivalent in function; or (C) refund to County the portion of the license fee paid to Contractor for the Component System(s) giving rise to the infringement claim, less a charge for use by County based on straight line depreciation assuming a useful life of five years. THE FOREGOING IS CONTRACTOR'S EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

B. General Indemnity. Contractor will defend, indemnify and hold harmless County and its elected officials, agents, and employees from and against any loss, cost and expense that County incurs in connection with a claim asserted against County by a third party and which resulted from, or directly or indirectly arose 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. Contractor's obligations under this indemnification are expressly conditioned on the following: (i) County must promptly notify Contractor of any such claim; (ii) County must in writing grant Contractor sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if County chooses to represent its own interests in any such action, County may do so at its own expense, but such representation must not prejudice Contractor's right to control the defense of the claim and negotiate its settlement or compromise); and (iii) County must cooperate with Contractor to facilitate the settlement or defense of the claim.

C. Subject to the foregoing, 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.

D. 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.

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
Attn: County Manager
102 Grant Avenue
PO Box 276
Santa Fe, New Mexico 87504-0276

To the Contractor:

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 NM Secretary of State on Contractor's behalf.

C. Contractor is legally registered and properly licensed by 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.

25. FACSIMILE SIGNATURES

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

26. NO THIRD-PARTY BENEFICIARIES

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

27. 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. Technology Professional Liability. Contractor shall maintain during the term of this Agreement, Technology Professional Liability (Technology Errors and Omissions) Insurance, with policy limits of not less than \$1,500,000.00 per occurrence and \$2,500,000.00 per aggregate.

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.

28. 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.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints CT Corporation, 206 S. Coronado Avenue, Espanola, New Mexico 87532, 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.

32. 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 of last signature by the parties.

SANTA FE COUNTY:

Anna Hansen, Chair
Santa Fe County Board of County Commissioners

ATTESTATION:

Geraldine Salazar,
Santa Fe County Clerk

Date

Approved as to Form:

R. Bruce Frederick
Santa Fe County Attorney

Date

Finance Department:

Stephanie S. Clarke
Finance Director

Date

CONTRACTOR:

Signature

Date

Print Name

Print Title

