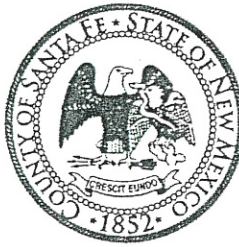


Henry P. Roybal
Commissioner, District 1

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: 8/28/2017

TO: Board of County Commissioners

FROM: Michael Kelley, Public Works Department Director MK 8/29/17

VIA: Katherine Miller, County Manager

ITEM AND ISSUE: BCC Meeting September 12, 2017

Approval of a Lease and Option to Purchase Agreement for 318 Acres of Agricultural Land within the Property Known as La Bajada Ranch with Alamo Creek Conservation, LLC (Public Works / Terry Lease)

ISSUE:

Approval of a Lease and Option to Purchase Agreement ("2017 Agreement") with Alamo Creek Conservation, LLC ("Lessee"), Mr. Frank Mancuso Jr. as manager, for agricultural land, buildings and other improvements on a portion of the County owned real property ("Premises") commonly referred to as La Baja Ranch in La Cienega, New Mexico.

BACKGROUND AND SUMMARY:

In November of 2009 Santa Fe County acquired the 470.55 acre La Baja Ranch ("Property") and the Santa Fe County Board of County Commissioners ("BCC") then directed staff to work with the community at La Cienega and the larger County constituency to plan for the appropriate development of the Property. In 2014 a Request for Proposals was issued and based upon the receipt of one timely and responsive proposal, the County entered into negotiations with the responsive offeror. Although the negotiation process was extremely long due to a number of considerations, such as adoption of the zoning map and implementation of the Sustainable Land Development Code and evaluation of concept options for the Property, staff and the eventual Lessee completed the negotiations of a long term Lease and Option to Purchase Real Property Agreement ("2016 Agreement") which was approved by the BCC on December 13, 2016.

The 2016 Agreement was then submitted to the New Mexico State Board of Finance for approval, and subsequently withdrawn due to an issue with the appraisal of the Premises. The 2016 Agreement was then renegotiated and is before the BCC today for consideration. The primary changes between the 2016 Agreement and the 2017 Agreement are a reduced term from 25 years to

5 years, the option to extend the term was removed and provisions regarding approval by the New Mexico Department of Finance and Administration, Local Government Division was added.

RECOMMENDED ACTION:

Approval of the 2017 Agreement.

**LEASE
AND
OPTION TO PURCHASE**

This Lease and Option to Purchase (collectively, "Lease") is between **SANTA FE COUNTY** ("County"), a political subdivision of the State of New Mexico, and **Alamo Creek Conservation, LLC** ("Lessee"), a New Mexico limited liability company whose address is 1005 Paseo Barranca, Santa Fe, NM 87501.

NOW, THEREFORE, the County and Lessee agree as follows:

1. **GRANT OF LEASE.** For and in consideration of and subject to the terms, conditions, covenants, and reservations contained in this Lease, the County hereby leases to Lessee the tract of land, including the buildings and other improvements located thereon, described on Exhibit A ("Leased Premises" or "Premises"). Lessee shall have the right of exclusive use and quiet enjoyment of the Leased Premises during the term of this Lease, subject to any approved subleases. Lessee shall bear all cost of operating and maintaining the Leased Premises during the term of this Lease, including the cost of operating and maintaining utilities, buildings, and all other improvements located on the Leased Premises.
2. **TERM.** The term of this Lease shall begin on the Effective Date and end at midnight on the 5th anniversary of the Effective Date, unless terminated earlier as herein provided.
3. **RENT.** The annual rent shall be \$1,800.00, due and payable in advance on the Effective Date and on each anniversary of this Lease through the 4th anniversary. Time is of the essence in the performance of this Lease. Interest on delinquent rent payments shall accrue from the date the payment becomes due at the rate of one percent a month. If this Lease is terminates prior to its full term for any reason, Lessee shall not be entitled to refund of advance rent.
4. **SECURITY DEPOSIT.** To secure payment of rent and restoration of the Leased Premises after termination of this Lease, Lessee shall provide a security deposit of \$5000.00, which shall be payable upon the Effective Date of this Lease. The County shall return the security deposit to Lessee within ninety (90) days after the termination of this Lease, including any tenancy at sufferance, less any unpaid rent and the cost of restoring the Leased Premises to the condition existing on the Effective Date. This Section shall survive termination of this Lease.
5. **PERMITTED USES.** Lessee shall use the Leased Premises solely for traditional agricultural, livestock, and educational purposes.
6. **WATER RIGHTS.** This Lease does not include water rights. Lessee may bring water to the Leased Premises, as may be necessary or appropriate to carry out the Permitted Uses, to the extent permitted by law.
7. **IMPROVEMENTS.**

7.1 DEFINITION OF PERMANENT IMPROVEMENT. As used in this Lease, "permanent improvement" means buildings, structures, fences, roads, irrigation systems, and other substantial changes to the Leased Premises or existing buildings during the term of this Lease that: (a) are related to the Permitted Uses, (b) enhance the value, utility, or aesthetics of the Leased Premises, (c) are not removable from the Leased Premises except at substantial expense or effort, and (d) are approved in a final determination by the County under Section 7.3.

7.2 PERMANENT IMPROVEMENTS TO THE LEASED PREMISES. To carry out the Permitted Uses, Lessee may make such permanent improvements to the Leased Premises as may be approved in a final determination by the County pursuant to Section 7.3.

7.3 REVIEW COMMITTEE. A committee shall be formed consisting of three members: one appointed by the County Manager, one appointed by the Lessee, and one from the Community of La Cienega ("Review Committee") mutually agreed upon by the other two members. The appointees of the County Manager and Lessee shall work in good faith to promptly agree on and appoint the community member. Before Lessee or a sublessee makes any permanent improvement to the Leased Premises, Lessee or the sublessee shall propose the improvement to the Review Committee. The proposal shall be in writing and include a description of the permanent improvement, the cost of making the improvement, and the basis for the cost. Lessee or the sublessee shall submit a copy of the proposal to all committee members. The Review Committee shall meet within ten (10) days of receiving a proposal and determine whether any additional information or a presentation by Lessee is necessary, which Lessee shall provide upon request. The County appointee shall within ten (10) days of receiving a complete proposal submit the Review Committee's recommendation to the County Manager and Lessee, including the reasonable cost of making the permanent improvement, the basis for the recommendation, any dissenting views, and proposed conditions. The recommendations and cost approved by at least two members shall constitute the final determination of the County unless within ten (10) days the County Manager provides a separate written determination to Lessee, which shall constitute the County's final determination.

7.4 OWNERSHIP OF PERMANENT IMPROVEMENTS. Permanent improvements shall, upon termination of this Lease, revert to the County and become a fixture of the Leased Premises; *provided*, however, that the County Manager may at least sixty (60) days prior to termination of this Lease provide written notice to Lessee that the County declines the improvement, in which case the improvement shall constitute Lessee's personal property.

7.5 COMPLIANCE WITH SUSTAINABLE LAND DEVELOPMENT CODE. To the extent it applies, Lessee shall comply with the County Sustainable Land Development Code ("SDLC") in making any improvement to the Leased Premises. Nothing in this Lease or any final determination under this Lease shall constitute or imply County approval under the SDLC or other County ordinance, resolution, policy, or regulation.

7.6 REMOVAL OF LESSEE'S PERSONAL PROPERTY. All buildings, structures, roads, fences, equipment, and every other item placed on the Leased Premises by Lessee that is not an approved permanent improvement shall constitute Lessee's personal property. Lessee shall remove Lessee's personal property from the Leased Premises and restore the Leased Premises to the condition existing on the Effective Date prior to termination of this

Lease or such longer time as the County Manager may permit. Any of Lessee's personal property that is not timely removed shall constitute a trespass unless, within sixty (60) days after the deadline for removal, the County Manager deems the property abandoned or, alternatively, deems Lessee a tenant at sufferance.

8. ASSIGNMENT AND SUBLETTING. Lessee shall not assign this Lease, in whole or in part, without the County Manager's express written consent, and any attempt to assign this Lease without such consent shall be void. Lessee or the County may propose a sublease to the Review Committee in accordance with the procedures set out in Section 7.3. The Committee shall not approve a sublease if the sublessee's proposed use would clearly interfere or conflict with Lessee's use, and the Committee shall require such sublease conditions as may be appropriate to minimize the potential for such interference or conflict. If the Committee approves a sublease, the terms and conditions of the sublease shall promptly be negotiated between Lessee, the County, and the sublessee, and the form of sublease shall be subject to approval by the County Attorney. If the Committee approves a sublease over the Lessee's objection, the parties shall amend this Lease, as appropriate, to allow for a direct lease between the County and the proposed sublessee if the Lessee declines to enter into a sublease. If the parties are unable to agree on an appropriate amendment within 60 days after the County's request to do so, the area subject to the new lease shall automatically be excluded from the Leased Premises and the lessee under such new lease, including its employees, contractors, agents and invitees, shall have reasonable access across, under, and above the Leased Premises, as applicable, for ingress and egress and utilities.

9. DEFAULT BY LESSEE; TERMINATION BY LESSOR. Lessee's failure to comply with this Lease shall constitute a default. If Lessee defaults, the County may give Lessee written notice of the default, specifying the nature of the default. If Lessee does not cure the default within fifteen (15) days after the County mails the notice, or such longer period as the County may specify in the notice, the County may terminate this Lease by mailing Lessee a notice of termination. This Lease shall thereafter terminate on the date specified in the termination notice, and Lessee shall on that date quit and surrender the Leased Premises to the County. The date of termination shall provide Lessee with reasonable time to remove its improvements, if any. The remedies provided to the County under this Lease are supplemental to those available at law or equity. This Section shall survive termination of this Lease.

10. TERMINATION BY LESSEE; CONDEMNATION.

10.1 LESSEE'S RIGHT OF TERMINATION. Lessee may terminate this Lease for any reason by providing written notice to Lessor at least ninety (90) days prior to the date of termination.

10.2 CONDEMNATION. If the Leased Premises are condemned in whole or in part such that Lessee can no longer carry out the Permitted Uses, Lessee shall have the right to terminate this Lease on the date the condemning entity obtains title. The County shall be entitled to all proceeds from any condemnation or sale of the Leased Premises to the condemning entity. The County shall have the right to negotiate a sale of the Leased Premises, in whole or part, with the condemning entity in order to avoid or settle a condemnation action.

10.3 DESTRUCTION OF PREMISES. If the Leased Premises are destroyed in whole or in part through circumstances beyond the control of Lessee and that do not constitute a breach of this Lease, Lessee shall have the right to terminate this Lease upon third (30) days prior notice; provided, however, that the right of termination under this Section shall arise only if the destruction prevents Lessee from carrying out the Permitted Uses.

10.4 ASSIGNMENT OF RISK. Lessee bears the risk that the Leased Premises could be condemned or destroyed, in whole or part, during the term of this Lease.

11. RESTORATION OF PREMISES. Prior to termination of this Lease, Lessee shall remove Lessee's improvements, equipment, and other property from the Leased Premises and restore the Leased Premises to the condition existing on the Effective Date. If Lessee fails to restore the Premises, the County shall have the right to withhold an amount equal to the cost of restoration from the security deposit and, if the security deposit is insufficient, to pursue all remedies available to the County at law or equity. Nothing herein renders Lessee liable for normal wear and tear of the Leased Premises. This Section shall survive termination of this Lease.

12. NO WAIVER. The failure of the County to enforce any requirement of this Lease or to exercise any option it has under this Lease shall not constitute a waiver of the County's right to do so. This Section shall survive termination of this Lease.

13. NO WARRANTIES. Lessee accepts the Leased Premises "as is." The County makes no warranties or representations of any kind, express or implied, concerning the Leased Premises, including but not limited to any condition of the Leased Premises or the County's title. The County specifically disclaims any warranty of merchantability, marketability, or fitness or suitability for a particular purpose, including the Permitted Uses. Lessee acknowledges that Lessee is not relying upon any representation, statement or other assertion with respect to the Leased Premises, but is relying solely upon its examination thereof.

14. COMPLIANCE WITH LAW. Lessee shall comply with all applicable federal, state, and local law regarding Lessee's use and occupancy of the Leased Premises. Lessee shall not cause, maintain, or permit any nuisance on the Leased Premises, or allow them to be used for any unlawful purpose. Lessee shall promptly abate any nuisance, hazardous, or unsafe condition that arises on the Leased Premises.

15. INDEMNIFICATION. Lessee shall hold harmless, indemnify and defend the County and the County's governing body, elected and appointed officials, employees, and agents, in both their official and individual capacities, from any and all liability, claim, cause of action, loss, damage, or expense arising out of or related to the Leased Premises during the term of this Lease. In the event that any action, suit or proceeding is brought against Lessee, Lessee shall as soon as practicable notify the County. Any cause of action of the County to enforce this provision shall not be deemed to accrue until the County's actual discovery of the liability, claim, loss, damage, or expense. This Section shall survive termination of this Lease for five (5) years.

16. INSURANCE.

16.1 COMMERCIAL GENERAL LIABILITY. Lessee shall maintain commercial general liability insurance, including without limitation contractual liability insurance (specifically concerning the indemnity provisions of this Lease with the County), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Lessee's use and occupation of the Leased Premises. The insurance policy shall contain no exclusion or limitation for independent contractors working on the behalf of the named insureds. At a minimum, the insurance policy shall provide coverage of \$1,000,000 per each occurrence and have a general aggregate limit of no less than \$2,000,000.

16.2 FIRE AND CASUALTY. Lessee shall maintain on the Leased Premises a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of full replacement value. The insurance policy shall be issued in the names of Lessee with the County named as an additional insured. The insurance policy shall provide that any proceeds shall be made payable to Lessee, and Lessee shall apply all such proceeds to repair and restore the Leased Premises as directed by the County.

16.3 CLAIMS MADE. If any of the insurance coverage required under this Lease is written on a claims-made basis, Lessee, at Lessee's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Lease with coverage extending back to the Effective Date; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Lease; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

16.4 CANCELLATION OF INSURANCE. All insurance policies required under this Lease shall be maintained by Lessee until completion of all of Lessee's obligations under this Lease and throughout Lessee's occupation and possession of the Premises. Each insurance policy supplied by Lessee must be endorsed to provide that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Lessee shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

16.5 COMPANY RATING. All insurance policies required under this Lease shall be issued by a company or companies admitted to do business in New Mexico and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-.

16.6 PRIMARY INSURANCE. All insurance policies required under this Lease shall be primary to and not contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.

16.7 NO LIMITATION. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Lessee for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage,

or to preclude the County from taking such other actions as are available to it under any other provision of this Lease or otherwise under Applicable Laws.

16.8 FAILURE TO MAINTAIN INSURANCE. Failure by Lessee to maintain all such insurance in effect at all times required by this Lease shall be a material breach of this Lease by Lessee. The County, at its sole option, may terminate this Lease and obtain damages from Lessee resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Lessee, County shall deduct from sums due to Lessee any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Lessee pursuant to this Lease is insufficient to reimburse County for the premiums and any associated costs, Lessee shall reimburse County for the premiums and pay for all costs associated with the purchase of said insurance within ten (10) days of demand by County. Any failure by County to take this alternative action shall not relieve Lessee of its obligation to obtain and maintain the insurance coverages required by this Lease.

16.9 PROOF. On or before the Effective Date, Lessee shall deliver to the County certificates of insurance indicating that Lessee has complied with the provisions of this Section. Lessee shall provide the County further proof of insurance during this term of this Lease within ten (10) days of the County's request for such proof.

16.10 This Section 16 shall survive termination of this Lease to the extent Section 16.3 applies.

17. LIENS. Lessee shall keep the Leased Premises free from any liens and any other security interests (collectively, "liens") arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause. If a lien is recorded against the Leased Premises, and Lessee fails to remove it or post a bond to remove same within fifteen (15) days after its filing, the County shall give a fifteen (15) day notice to Lessee, requiring Lessee to remove the lien within the fifteen (15) day period. If Lessee fails to do so, the County may cause the lien to be removed, in which case Lessee shall reimburse the County for its costs in doing so. This Section shall survive termination of this Lease.

18. COST RECOVERY. If Lessee fails to take any action required under this Lease, including but not limited to purchasing insurance in the required amounts, taking corrective action in response to a release of regulated substances, removing a lien, or restoring the Leased Premises, the County shall have the right but not the duty to take such action and to recover its costs in doing so from Lessee. This Section shall survive termination of this Lease.

19. THIRD PARTIES.

19.1 Lessee may invite the public and other third parties to participate in or carry out the Permitted Uses. Lessee shall supervise invitees and shall assure that no hazardous or unsafe conditions exist on the Leased Premises that would pose an unreasonable risk to the safety, health, or welfare of Lessee's invitees and all other third parties to may enter the Leased Premises.

19.2 Lessee shall take reasonable precautions to protect the Leased Premises from trespass and to prevent third parties from carrying out any illegal, unsafe, tortious, or unauthorized activity on the Leased Premises.

19.3 Lessee's obligation to restore the Leased Premises as provided in this Lease shall apply regardless of whether the Lessee, an invitee, or a trespasser damages, injures, or otherwise alters the Premises such that restoration is required.

19.4 This Lease is not intended to and does not benefit any person or entity that is not a party to this Lease. Only the County and Lessee may enforce the terms of this Lease, and no person or entity shall be deemed a third-party beneficiary of this Lease.

20. HAZARDOUS MATERIALS.

20.1 Neither Lessee, nor any of Lessee's agents, contractors, employees, licensees or invitees shall at any time handle, use, manufacture, store or dispose of in or about the Leased Premises any flammable substances (meaning any substance that has a flash point of 80 degrees Fahrenheit or lower, as determined by the Tagliabue Open Cup Tester), explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state, or local laws relating to the protection of the environment or the keeping, use, or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws.

20.2 Notwithstanding the foregoing, and subject to the County's prior consent, Lessee may handle, store, use or dispose of products containing small quantities of Hazardous Materials to the extent customary and necessary to carry out the Permitted Uses; provided that Lessee shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises or the environment.

20.3 If a state or federal regulatory agency or a court having jurisdiction orders the County or Lessee to take any corrective action of any kind during the term of this Lease in response to the release of hazardous, toxic, or otherwise regulated substances or materials (collectively, "release") on the Leased Premises, Lessee shall promptly take, and bear the cost of taking, the corrective action unless: (a) the release occurred prior to the Effective Date; (b) if Lessee discovered the release, Lessee promptly reported it to the County and the appropriate regulatory agencies; and (c) Lessee did not aggravate the environmental damage caused by the release. Any liability of the County regarding a release that triggers Lessee's duty to take and pay for corrective action under this Section shall be subject to Section 15. In addition, Lessee shall take or pay the cost of taking corrective action in response to any release that occurred during the term of the Lease, even if the release or resulting environmental damage are not discovered until after the termination of this Lease. This Section shall survive termination of this Lease.

20.4 If Lessee receives a notice of violation from a regulatory agency regarding the Leased Premises, Lessee shall immediately provide a copy of the notice to the County.

21. UTILITIES; TAXES; OTHER CHARGES.

21.1 Lessee shall pay the cost of all utilities for the Leased Premises, including but not limited to gas, electricity, water, sewer, telephone service, and trash and refuse disposal services. Upon the County's written consent, Lessee may extend utilities onto and within the Leased Premises at locations approved by the County, and any such utilities shall be separately metered if required by the County. Lessee shall not modify any utilities on the Premises without the prior written consent of the County. Lessee shall within thirty (30) days of the Effective Date place all utilities in Lessee's name unless otherwise agreed by the County Manager in writing. All utilities placed in the Lessee's name shall be transferred back to the County as of the termination of this Lease.

21.2 Lessee shall pay all taxes, fees, assessments, and all other charges that may be levied upon the Leased Premises or arise out of Lessee's use or occupancy of the Leased Premises. This Section shall survive termination of this Lease.

22. HOLDOVER.

22.1 TENANCY AT SUFFERANCE. If Lessee fails to surrender the Premises upon the termination of this Lease, with or without the consent of the County, such tenancy shall be at sufferance only, and shall not constitute a renewal hereof or an extension for any further term. In no event shall any Tenancy at Sufferance extend longer than six months from the date of termination.

22.2 RENT. Under a tenancy at sufferance, rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the annual rent divided by twelve. The rent applicable during the last rental period during the tenancy at sufferance shall be prorated based on the actual number of holdover days.

22.3 RIGHTS RESERVED. Lessee's tenancy at sufferance shall be subject to all terms in this Lease. Nothing contained in this Article shall be construed as consent by the County to any holding over by Lessee, and the County expressly reserves the right to require Lessee to surrender possession of the Leased Premises to the County as provided in this Lease upon the termination of this Lease. The provisions of this Article shall not be deemed to limit or constitute a waiver of any other rights or remedies of the County provided in this Lease or at law.

22.4 INDEMNIFICATION. If Lessee fails to surrender the Leased Premises upon the termination of this Lease, in addition to any other liabilities to the County accruing therefrom, Lessee shall protect, defend, indemnify and hold the County harmless from all loss, costs (including reasonable attorney's fees) and liability resulting from such failure, including any claims made by any succeeding Lessee founded upon such failure to surrender and any lost profits to the County resulting therefrom, but only if the holdover continues beyond thirty (30) days and the County has notified Lessee of the existence of the new lease.

22.5 SURVIVAL. This Section 22 shall survive termination of this Lease.

23. OPTION TO PURCHASE.

23.1 OPTION TO PURCHASE. Subject to the annual payment specified in Section 23.4 below, Lessee shall have the option to purchase ("Option") the Leased Premises and all permanent improvements thereon for a price that shall be no less than the Property's appraised fair market value. The Lessee shall pay the cost of the appraisal, which shall be conducted by an appraiser mutually agreed upon by the County and Lessee and which shall separately value the permanent improvements, if any, that are not owned by the County or Lessee. Lessee shall compensate the owner for the value of such permanent improvements unless otherwise agreed by the owner in writing. Subject to Section 23.2, Lessee shall exercise the Option, if at all, prior to termination of this Lease by providing written notice to the County. If Lessee exercises the Option, the County and Lessee shall within ninety (90) days thereafter enter into a negotiated purchase agreement, which shall be subject to approval by the BoF. Lessee shall bear all transaction costs. If there is a lease or sublease of the Leased Premises, it shall remain in effect after the County conveys the Leased Premises to Lessee for the remainder of the original term of the lease or sublease. In the case of a sublease, it shall be deemed a direct lease between Lessee and the sublessee upon conveyance of the Leased Premises to Lessee. Unless timely exercised, and subject to Sections 23.2 and 23.4, the Option shall terminate upon the termination of this Lease. This Section shall survive termination of this Lease.

23.2 PROSPECTIVE THIRD-PARTY PURCHASER. If the County receives a bona fide offer to purchase the Leased Premises, in whole or part, from a prospective third-party purchaser, the County shall notify Lessee of the offer unless the County intends to decline it. Lessee shall have thirty (30) days after such notice to exercise its Option under Section 23.1 to purchase the Leased Premises on substantially the same terms as offered by the third party; *provided*, however, that the price to be paid by Lessee shall be the appraised fair market value or the amount offered by the prospective third-party purchaser, whichever is greater. If Lessee does not exercise its Option within the thirty-day period, the Option shall terminate as to the portion of the Leased Premises subject to the third-party offer and the County may accept the third-party offer and sell the Leased Premises, in part or in whole, subject to this Lease; *provided*, however, that if the third party fails to purchase the Leased Premises for any reason, and the County does not seek or is denied specific performance of a third-party purchase agreement, Lessee's Option shall be reinstated to the extent this Lease remains in effect.

23.3 TRANSFERABLE DEVELOPMENT RIGHTS.

23.3.1 Lessee acknowledges: (a) that the real property described in the Second Corrective Warranty Deed filed in the records of the County Clerk as Instrument No. 1740979 ("Ranch Property"), which includes the Leased Premises, is subject to an existing master plan; (b) that the County intends to sever all or some of the transferrable development rights ("TDRs") from the Ranch Property in accordance with Section 12.14 of the SLDC; and (c) that the County further intends to replace the existing master plan with a conceptual plan in

accordance with County Resolution No. 2016-118. The purpose of this Section 23.3 is to insure that the County retains ownership of and control over the master plan and the TDRs as they pertain to the entire Ranch Property, including the Leased Premises, both during the term of this Lease and in the event that Lessee exercises its Option prior to the severance of TDRs from the Leased Premises.

23.3.2 Notwithstanding this Lease or the sale of the Leased Premises to Lessee or to a third party, the County shall retain ownership and control over the master plan and the TDRs for the entire Ranch Property, including the Leased Premises. At any time during the term of this Lease or after Lessee exercises its Option (if it does), the County may at its discretion sever the TDRs from the Leased Premises by any means available under the SLDC, including but not limited to severance pursuant to Section 12.14, a density transfer, replacement of the master plan with a conceptual plan, or any combination of options available under the SLDC that allow the County to sever and retain the TDRs from the Leased Premises. However, the County shall not seek any subdivision approval pursuant to the existing master plan during the term of this Lease, and it shall replace the master plan with a conceptual plan that excludes the Leased Premises before or as soon as practicable after the sale of the Leased Premises to Lessee or a third party.

23.3.3 At any time during the term of this Lease, the County may subject the Leased Premises to a conservation easement, deed restriction, or other permanent limitation on future development (collectively, "Deed Restrictions") consistent with the SLDC and the severance of TDRs from the Leased Premises. If Lessee exercises the Option, but the County has not yet severed the TDRs from the Leased Premises, the County may delay the grant of the Leased Premises to Lessee until it can sever the TDRs and subject the Leased Premises to the Deed Restrictions; alternatively, if the County in its discretion agrees to grant the Leased Premises prior to severing the TDRs, Lessee shall by an instrument prepared by the County Attorney agree to permanently subject the Leased Premises to the Deed Restrictions, which shall be duly recorded in the records of the County Clerk.

23.3.4 The County and Lessee shall execute such additional agreements, grants, and instruments as may be necessary to carry out the intent of this Section 23.3, which shall survive termination of this Lease. Any appraisal in connection with the sale of the Leased Premises shall take into account the TDRs that the County intends to sever, or has severed, from the Leased Premises. All costs associated with severing the TDRs and subjecting the Leased Premises to the Deed Restriction shall be borne by the County.

23.4 CONSIDERATION AND EARNEST MONEY. As consideration for the Option, upon execution of this Lease and every Lease anniversary thereafter, Lessee shall pay an additional annual rent of \$600.00. If Lessee exercises the Option, the purchase agreement shall include a requirement that Lessee pay the County \$50,000.00 in earnest money on the effective date of the purchase agreement, which sum shall constitute the County's liquidated damages and be non-refundable if Lessee fails to purchase the Property in breach of the purchase agreement. The termination of the purchase agreement for failure of the County to satisfy an express condition precedent to sale shall not constitute a breach of the purchase agreement by Lessee. This Section shall survive termination of this Lease.

24. **EFFECTIVE DATE.** This Lease shall be effective on the date ("Effective Date") it is approved by the Local Government Division of the New Mexico Department of Finance and Administration.

25. **RESERVATION.** Notwithstanding any other provision in this Lease, the County shall have the right to enter the Leased Premises for the purpose of using and maintaining County buildings, structures, and County improvements that are excluded from but within the exterior boundaries of the Leased Premises, as shown on Exhibit A. The County shall not unreasonably interfere with Lessee's use of the Leased Premises.

26. MISCELLANEOUS TERMS:

26.1 NOTICE. Notices required under this Lease shall be provided by first class mail as follows:

To the County: Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Grantee: Frank Mancuso, Jr.
151 Humble Way
Santa Fe, NM 87508
With a copy to: fmancuso@boss-media.com

With a copy to:
Kyle Harwood
123 West San Francisco St, 2nd Floor
Santa Fe, NM 87501
With a copy to: kyle@egolflaw.com

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

26.2 SCOPE OF LEASE. This Lease constitutes the entire lease and understanding between the County and Lessee and supersedes any and all prior leases and understandings, oral or written, relating to the subject matter hereof.

26.3 REMEDIES NOT EXCLUSIVE. The remedies provided in this Lease are not exclusive, and the parties shall have in addition thereto any remedy otherwise available at law or equity.

26.4 SEVERABILITY. If a court of law deems a provision of this Lease invalid, the validity of the remaining provisions shall be deemed severable therefrom and this Lease shall remain in force and effect as to the remaining provisions unless the purposes of this Lease cannot reasonably be carried out without the invalid provisions. If this Lease is deemed invalid, Lessee shall not be entitled to a refund of any rent or other sums paid under this Lease.

26.5 NEUTRAL CONSTRUCTION. Both parties fairly and fully negotiated the terms of this Lease and both were represented by counsel. If a court deems any provision of this Lease ambiguous, such ambiguity shall not be construed against either party and shall be construed neutrally so as to carry out the intent of the parties.

26.6 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 Anti-Donation Clause of the New Mexico Constitution, N.M. Const. article 9, section 14, and NMSA 1978, Section 37-1-23. Any obligation of the

County to expend money under this Lease shall be contingent upon sufficient appropriations by the Board of County Commissioners ("Board"), which shall be at the Board's sole discretion.

26.7 RIGHT TO MARKET AND SELL. The County reserves the right to market and sell the Leased Premises, in whole or part, subject to this Lease.

26.8 SUCCESSORS. This Lease shall binding on the parties' successors and heirs; *provided*, however, that Lessee shall not voluntarily assign this Lease or sublet the Leased Premises.

26.9 CAPTIONS. Section headings in this Lease are used solely for convenience, and shall be disregarded in the construction of this Lease.

26.10 EXHIBITS. All exhibits attached to this Lease are incorporated into and made a part of this Lease by reference.

26.11 TIME OF THE ESSENCE. Time is hereby expressly declared to be of the essence in the performance of this Lease, and provision of this Lease is a material, necessary, and essential part of this Lease.

26.12 AMENDMENT. This lease shall not be amended except by an instrument executed by the County and Lessee.

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

26.14 NO PARTNERSHIP. Nothing in this Lease shall be construed as creating a partnership or joint venture between the County and Lessee.

LESSOR: SANTA FE COUNTY

By: _____
Henry P. Roybal, Chair

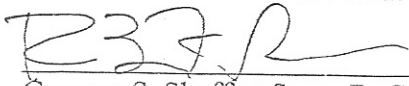
Date: _____

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

Er 

Gregory S. Shaffer, Santa Fe County Attorney
Won Moya 7-21-17
SFC Finance Director

Date: 7/28/2017

By: Frank Mancuso, Jr. (title)
manager

By: Clark Mancuso, Jr.
manager (title)

State of New Mexico)

153

County of Santa Fe)

OFFICIAL SEAL
Christina Hornig
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8/15/19

Christina Horrig
Notarial Officer

(Seal, if any)

My commission expires: Aug 14, 2019

APPROVED BY: NEW MEXICO DEPARTMENT OF FINANCE AND
ADMINISTRATION, LOCAL GOVERNMENT DIVISION

By: _____
Name: _____
Title: _____

Date: _____



EXHIBIT A

- Legend**
- Roads
 - Parcels
 - Proposed Lease 318 77

1,8400
1 inch = 700 feet
700 350 0 700 Feet



2014 Orthophotography
This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
User are solely responsible for
confirming data accuracy.



December 7, 2016

