Date: November 13, 2025

TO: Procurement File

FROM: Bill Taylor, Procurement Manager BT

RE: **Sole Source Determination Pursuant to Section 13-1-126 NMSA 1978 for the Provision of Providing the Implementation of a Cloud-Based Licensed Software with Flowpoint Environmental Systems, Inc. to Continue the Monitoring and Billing for Bulk Water Storage Flows in Santa Fe County**

SUMMARY

Flowpoint Environmental Systems is the owner and developer of certain proprietary cloud-based computer software solution used for the management of fluid dispensing and receiving stations (the "**Software**"). The Software is comprised of the following elements: (i) a Microsoft Azure ASP.NET website user interface; (ii) Microsoft Azure SQL database; (iii) zero or more Azure worker communication modules; (iv) zero or more Microsoft Windows Service communication modules; (v) an Allen-Bradley PLC program; and (v) an Allen-Bradley PLC tag definitions.

Flowpoint Environmental Systems conceived, designed and developed the Software, and desires to grant a license for the use of Software to Santa Fe County

BACKGROUND

In 2018 the County purchased the software license pursuant to NMSA 1978, 13-1-125. Small purchase, not to exceed $20,000, exclusive of NM GRT. The Public Works Department/Utilities Division are seeking a software upgrade to the existing system. The software upgrade is needed to add a new site as well as adding another bulk water site in 2026, as the County moves toward a cloud-based system.

DETERMINATION

In researching this specific cloud-based flow system software, it was determined that Flowpoint has the unique system elements required to any upgrade to the system currently installed for the County.

It is therefore the determination of the County the procurement of the required services meets the intent of a sole source procurement, pursuant to 13-1-126, NMSA 1978.

Based on this determination it is in the best interest of Santa Fe County to continue the services with Flowpoint to utilize the existing technology for monitoring the County's water usage.

Contract Information:

Vendor:

Flowpoint Environmental Systems, Inc.
Attn: Allan Bradley
191 University Blvd
Denver, CO 80206-4613
Phone: 1 (877)655-5585

Services:

Flowpoint shall provide one year of service including the upgrade of a cloud-based licensed software ending 12 months after system start-up. Following the one year of service the annual charge for the license software is $6000. Every subsequent year will require a 2% increase to the software fee.

WATER+ CLOUD FULL

CLOUD BASED SOFTWARE LICENSE AGREEMENT

Revisions
R2: Oct 6, 2025 – Modify section 4 Indemnification, changed governing law to the State of New Mexico (section 8.7), removed automatic renewal (section 7.1).
R1: Sep 3, 2025 – Updated contact information, Effective date and Exhibit A regarding Point&Pay.

THIS CLOUD BASED SOFTWARE LICENSE AGREEMENT (the "**Agreement**", which term shall include all Exhibits and Schedules attached hereto and incorporated by this reference) dated as of October 6th, 2025 (the "**Effective Date**") is made and entered into by and between Flowpoint Environmental Systems, Inc., a Montana corporation ("**Flowpoint Environmental Systems**") and individual, corporation, limited liability company, limited partnership, partnership, sole proprietorship, governmental entity or other business entity executing this Agreement (the "**Client**"). Flowpoint Environmental Systems and Client are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

Flowpoint Environmental Systems is the owner and developer of certain proprietary cloud-based computer software solution used for the management of fluid dispensing and receiving stations (the "**Software**"). The Software is comprised of the following elements: (i) a Microsoft Azure ASP.NET web-site user interface; (ii) Microsoft Azure SQL database; (iii) zero or more Azure worker communication modules; (iv) zero or more Microsoft Windows Service communication modules; (v) an Allen-Bradley PLC program; and (v) an Allen-Bradley PLC tag definitions

Flowpoint Environmental Systems conceived, designed and developed the Software, and Flowpoint Environmental Systems desires to grant a license for the use of the Software to Client under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto expressly agree as follows:

1. LICENSE GRANT AND RESTRICTIONS

1.1. License Grant. Subject to the terms and conditions of this Agreement, Flowpoint Environmental Systems hereby grants to Client a nonexclusive, nontransferable, royalty-bearing license to use and operate the Software in connection with Client's use of the System (the "**Approved Use**"). The term "**System**" mean Flowpoint Environmental System's fluid dispensing station, as more fully described in that certain Purchase and Sale Agreement by and between Flowpoint Environmental Systems and Client dated of even date herewith, if any ("**Purchase and Sale Agreement**"). Client covenants and agrees to only use the Software for the Approved Use and for no other purpose. For the Approved Use, Client shall be required to comply with the requirements set forth on Exhibit A attached hereto and incorporate by this reference.

1.2. Ownership Rights. Client acknowledges and agrees that, other than the rights specifically granted to Client herein, Flowpoint Environmental Systems owns all right, title and interest in and related to the Software. Nothing in this Agreement shall be construed, by implication or otherwise, to transfer to

Client title to, or any ownership interest in, the Software or any of Flowpoint Environmental Systems' Proprietary Rights. As used in this Agreement, the term "**Proprietary Rights**" means all rights worldwide in and to (i) Confidential Information; (ii) copyrights; (iii) inventions; (iv) patents; (v) rights to register copyrights, patents and trademarks; (vi) trade secrets; (vii) trademarks; and (viii) similar rights or interests protected under contract or otherwise under law or in equity.

1.3. Restrictions. In addition to refraining from activity not specifically authorized in Section 1.1, Flowpoint Environmental Systems grants the license described herein to Client subject to the following restrictions:

1.3.1. Encumbrance. Client shall not sell or in any way encumber the Software.

1.3.2. Modification. Client shall not decompile, disassemble, modify or otherwise reverse engineer any portion of the Software or create any derivative work thereof. As used herein, the term "**derivative work**" has the definition set forth in the United States Copyright Act of 1976, 17 U.S.C. Section 101, as amended.

1.3.3. Promotional Use. Client shall not distribute copies of the Software for promotional use.

1.3.4. Trademark Rights. The License does not include any trademark rights, and Client shall not trademark the Software.

2. ROYALTIES; AUDIT RIGHTS

2.1. Royalties. The first year of Cloud service is provided free of charge. Starting the second year of service, the Client shall pay Flowpoint an annual royalty fee (each a 'Royalty Payment" and collectively the "Royalty Payments") on or before the 5th day of January each year, equal to *$6000.00*, for use of the 'FULL' version of the cloud-based management software license. The annual term is from January 1st to December 31st. The year starts when customer transactions are being recorded in the software so the first royalty payment will be prorated to reflect the remaining months of the term..

2.2. Yearly Royalty Adjustment. Commencing January 1, 2028 and on January 1 of each subsequent calendar year during the Term and Renewal Term, if any, there shall be an adjustment to the amounts used to determine the Royalty Payment (e.g. $6000) as set forth above in Section 2.1 equal to two percent (2%). This annual Royalty Payment adjustment shall take place automatically without the need of necessity of Flowpoint Environmental Systems providing notice to the Client or modification to this Agreement.

2.3. Royalty Payments. Notwithstanding anything contained in this Agreement, Client acknowledges and agrees that Flowpoint Environmental Systems shall not be responsible for any maintenance or warranty on the Client's dispensing sites, or for any emergency response to those sites.

2.4. Taxes. Flowpoint Environmental Systems shall be responsible for all taxes assessed or levied upon Flowpoint Environmental Systems with respect to any amounts received by Flowpoint Environmental Systems under this Agreement.

2.5. Audit Rights. For Transaction Based Fee Schedules Only (does not apply to fixed monthly or yearly fee schedules): Client hereby grants to Flowpoint Environmental Systems, during the Term and for one (1) year following the expiration or termination of this Agreement, view only rights of the Software database used to record each and every Transaction (the "**Database**"), in order to audit and confirm Client's Royalty Payments hereunder. If any such audit discloses an underpayment or overpayment of Royalty Payments due hereunder, the appropriate Party will promptly remit the amounts due to the other Party. If any such audit discloses a shortfall in payment to Flowpoint Environmental Systems of more than five percent (5%) for any month, Client agrees to pay or reimburse Flowpoint Environmental Systems the Royalty Payment plus interest at the rate set forth in Section 2.1 above; *provided, however*, no interest shall be due and payable in the event such underpayment was due solely to faulty or inaccurate equipment.

3. CONFIDENTIAL INFORMATION

3.1. Definition of Confidential Information. "**Confidential Information**" means any information, technical data, or know-how, including, but not limited to, that which relates to the Software, research, product or service plans, business practices, products, services, names and expertise of employees and consultants, suppliers, customers, technology or other strategic partners, stockholders, markets, software, inventions (whether patentable or not), processes, designs, drawings, engineering, hardware configuration information, marketing, finances, notes, analyses or studies and all tangible and intangible embodiments thereof of any kind whatsoever, whether conveyed in writing or orally by the disclosing Party (the "**Disclosing Party**") or its Associates, to the receiving Party (the "**Receiving Party**"), either before or after the execution of this Agreement. Confidential Information shall also include (i) any notes, analyses, compilations, studies, interpretations, memoranda or other documents (regardless of the form thereof) prepared by the Receiving Party or its Associates that contain, reflect or are based upon, in whole or in part, any information furnished to the Receiving Party or its Associates pursuant hereto; (ii) all information regarding Client's customers and each Transaction stored in the Database. The term "**Associate**" means the directors, managers, officers, employees, agents, representatives, consultants, accountants, attorneys and advisors of a Party or a subsidiary or other individual or entity controlled, directly or indirectly, by a Party (each an "**Affiliates**").

3.2. Exclusions. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how that: (i) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's files and records immediately prior to the time of disclosure, provided that the source of such information was not bound by a separate contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other individual or entity (a "**Person**") with respect to such information; (ii) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Receiving Party; (iii) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any of its Associates, provided that such source is not bound by a contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other Person with respect to such information, (iv) is approved for release by the Disclosing Party in writing; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

3.3. Use and Non-Disclosure. The Receiving Party agrees not to use the Confidential Information disclosed to it by the Disclosing Party or its Associates for its own use or for any purpose except as expressly authorized by this Agreement. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to any Thirty Party except those Associates of the Receiving Party who are required to have the information in order to carry out the Receiving Party's rights or obligations with respect to this Agreement. The Receiving Party has had or will have those Associates and independent contractors of the Receiving Party to whom Confidential Information of the Disclosing Party is disclosed (or who have access to Confidential Information of the Disclosing Party) agree in writing (with the Disclosing Party named as a third party beneficiary) to honor the terms of this Section 3 to the same extent as the Receiving Party. In any event, the Receiving Party shall be responsible for any breach of this Agreement by any of its Associates or independent contractors, and agrees, at its sole expense, to take all reasonable measures (including but not limited to court proceedings) to restrain its Associates or independent contractors from prohibited or unauthorized disclosure or use of the Confidential Information. The Receiving Party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of Persons other than those Persons authorized hereunder, which measures shall include the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, or reasonable care, whichever standard of care is higher. The Receiving Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of the Confidential Information of the Disclosure Party that may come to its attention.

3.4. **Required Disclosure.** In the event that the Receiving Party or one or more Associates or independent contractors (each a "**Compelled Party**") becomes legally compelled under applicable law, regulation or securities exchange listing agreement, or by a competent governmental, administrative or regulatory authority or in a proceeding before a court, arbitrator or administrative agency to disclose any portion of the Confidential Information of the Disclosing Party or any of the terms, conditions or other facts with respect to this Agreement, such Compelled Party will, and will direct its Associates and independent contractors to, provide the Disclosing Party with prompt written notice (unless prohibited by law) of such legal compulsion, and shall delay disclosure, if and to the extent practicable, until the Disclosing Party has had an opportunity to seek a protective order or other appropriate remedy or to waive compliance by such Compelled Party with the relevant provisions of this Agreement. In the event that a protective order or other remedy is not obtained in such a proceeding, the Compelled Party will, and will direct its Associates and independent contractors to, disclose only that Confidential Information of the Disclosing Party that its counsel advises is legally required to be disclosed and will exercise its reasonable best efforts, and will direct its Associates and independent contractors to exercise their reasonable best efforts, to cooperate with the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information that is so disclosed.

3.5. **Return of Materials.** Promptly upon request by the Disclosing Party, the Receiving Party will, and will direct its Associates and independent contractors to, deliver to the Disclosing Party any written Confidential Information of the Disclosing Party and all copies or modifications thereof, except for that portion of the Confidential Information that consists of analyses, compilations, studies or other documents prepared by the Receiving Party or its Associates or independent contractors, without retaining any copy thereof. That portion of the Confidential Information or any modification thereof that consists of analyses, compilations, studies or other documents prepared by the Receiving Party or its Associates or independent contractors and that is not returned to the Disclosing Party shall be destroyed and no copy thereof shall be retained (provided that the Receiving Party may retain one copy solely for archival purposes) and an authorized officer of the Receiving Party supervising such destruction shall certify in writing to the Disclosing Party that such destruction has occurred.

4. RESPONSIBILITY AND RELEASE

4.1 **Client Responsibilities; Release**. Client shall be solely responsible for all claims, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings relating to or arising from Client's breach of this Agreement or Client's use or misuse of the Software. Client hereby releases Flowpoint Environmental Systems, its officers, directors, members, managers, partners, shareholders, employees, agents and representatives from and against any and all claims, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings relating to or arising from Client's breach of this Agreement or Client's use or misuse of the Software.

4.2 Flowpoint Environmental Systems' Responsibilities; Release. Flowpoint Environmental Systems shall be solely responsible for all claims, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings relating to or arising from Flowpoint Environmental Systems' breach of this Agreement. Flowpoint Environmental Systems hereby releases Client, its employees, agents and representatives from and against any and all claims, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings relating to or arising from Flowpoint Environmental Systems' breach of this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1. Client Representations and Warranties. Client represents and warrants that: (A) Client has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (B) this Agreement has been duly and validly executed and delivered by Client, and constitutes a valid and binding obligation of Client, enforceable against Client in accordance with its terms; and (C) Neither the execution and delivery of this Agreement by Client nor the consummation by Client of the transactions contemplated by this Agreement will: (i) conflict with or violate any provision of Client's governing and organizational documents; (ii) require on the part of Client any filing with, or any permit, authorization, consent, or approval of, any court, arbitrational tribunal, administrative agency or commission, or other governmental or regulatory authority or agency (a "**Governmental Entity**"); (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice, consent, or waiver under, any agreement, instrument, contract or arrangement to which Client is a party or by which Client or any of its properties are bound; or (iv) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to Client.

5.2. Flowpoint Environmental Systems Representations and Warranties. Flowpoint Environmental Systems represents and warrants that: (A) Flowpoint Environmental Systems has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (B) This Agreement has been duly and validly executed and delivered by Flowpoint Environmental Systems and constitutes a valid and binding obligation of Flowpoint Environmental Systems, enforceable against Flowpoint Environmental Systems in accordance with its terms; and (C) Neither the execution and delivery of this Agreement by Flowpoint Environmental Systems nor the consummation by Flowpoint Environmental Systems of the transactions contemplated by this Agreement will: (i) conflict with or violate any provision of Flowpoint Environmental Systems' organizational documents; (ii) require on the part of Flowpoint Environmental Systems any filing with, or any permit, authorization, consent, or approval of a Governmental Entity; (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice, consent, or waiver under, any agreement, instrument, contract or arrangement to which Flowpoint Environmental Systems is a party or by which Flowpoint Environmental Systems or any of its properties are bound; or (iv) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to Flowpoint Environmental Systems.

5.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES DISCLAIM ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND (II) WARRANTIES ARISING FROM A COURSE OF DEALING,

USAGE OR TRADE PRACTICES. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

6. LIMITED LIABILITY

6.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOWPOINT ENVIRONMENTAL SYSTEMS SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTIAL OR CONSEQUENTIAL DAMAGES OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

6.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOWPOINT ENVIRONMENTAL SYSTEMS SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT RECEIVED BY FLOWPOINT ENVIRONMENTAL SYSTEMS FROM CLIENT HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OR ANY LIMITED REMEDY PROVIDED HEREIN.

6.3 EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASIS OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

7. TERM AND TERMINATION

7.1 **Initial Term and Renewal.** The term of this Agreement shall commence as of the first date on which the Client uses the Software in connection with dispensing fluid from the System and shall continue for a period of one (1) year thereafter ("**Term**"). Prior to expiration, this agreement will need to be renewed. The Client may renew by sending written notice to Flowpoint Environmental Systems thirty (30) days prior to the expiration date of the Term.

7.2 **Termination for Cause.** This Agreement may be terminated by a Party for cause immediately upon the occurrence of and in accordance with the following:

7.2.1 **Insolvency Event.** Either Party may terminate this Agreement by delivering written notice to the other Party upon the occurrence of any of the following events: (i) a receiver is appointed for either Party or its property; (ii) either Party makes a general assignment for the benefit of its creditors; (iii) either Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) either Party is liquidated or dissolved.

7.2.2 **Default**. Either Party may terminate this Agreement effective upon written notice to the other if the other Party violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within thirty (30) days after notice thereof from the non-breaching Party stating its intention to terminate this Agreement by reason thereof. A material breach by Client will include, but is not limited to: (i) failure to pay Royalty Payments in a timely manner; (ii) attempts to assign this Agreement without the express written approval of Flowpoint Environmental Systems; (ii) breach of its confidentiality obligations; (iv) or failure to make timely payments to Flowpoint Environmental Systems under that certain Purchase and Sale Agreement dated of even date herewith.

7.3 **Effect of Termination.** Upon termination or expiration of this Agreement, Client shall return to Flowpoint Environmental Systems, or at Flowpoint Environmental Systems' request destroy, the original and all copies of the Software, if applicable, including compilation, translations and partial copies, and Client shall also return to Flowpoint Environmental Systems all documentation and other materials relating to the Software provided to Client under this Agreement or generated by Client in connection with this Agreement.

7.4 **Injunction.** If Client uses the Software in an unauthorized manner or transfers the Software in breach of this Agreement, such breach may diminish the value of the Software and irrevocably harm Flowpoint Environmental Systems, and Flowpoint Environmental Systems may seek injunctive and/or other equitable relief, in additional to other remedies afforded by law for such breach.

7.5 **Survival.** Sections 1.2, 1.3, 2.2 (to the extent necessary for Client to pay any Royalty Payments due Flowpoint Environmental Systems following termination of the Agreement), 2.4, 2.5, 3, 4, 5, 6, and 8 shall survive termination or expiration of this Agreement. Notwithstanding anything in the foregoing to the contrary, in the case of termination by Flowpoint Environmental Systems for cause pursuant to Section 7, Client shall pay any outstanding Royalty Payments or other fees owed by Client after termination.

8. MISCELLANEOUS

8.1 **Notices.** Any notice required or permitted under this Agreement or required by law must be in writing and must be delivered in person, by facsimile, by certified mail (return receipt requested), or by a nationally recognized overnight service with all freight charges prepaid, to the recipient's address set forth below. Notices will be deemed to have been given at the time of actual delivery, if in person, or upon receipt (as evidenced by facsimile confirmation, return receipt or overnight delivery verification). Either Party may change its address for notices by written notice to the other Party in accordance with this Section.

If to Flowpoint Environmental Systems:

Flowpoint Environmental Systems, Inc.
Attn: Allan Bradley
191 University Blvd
Denver, CO 80206-4613
Phone: 1 (877)655-5585
Email: abradley@flowpointsystems.com

If to Client:

Santa Fe County Utilities
Attn: Chris Chappell, Administrative Manager
PO Box 276
Santa Fe NM 87507
Phone: 505-992-9870
Email: cbchappell@santafecountynm.gov

8.2 **Course of Dealing.** No course of dealing or usage of trade shall vary the terms and conditions of this Agreement.

8.3 **Relationship of the Parties.** The Parties are independent contractors and shall so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

8.4 **Severability.** If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

8.5 **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by an authorized representative of each Party and declared to be an amendment hereto. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

8.6 **Assignment.** Neither party shall assign any of its rights or obligations under this Agreement whether voluntarily or by operation of law without the written consent of the other party, provided however, that either party will have the right to assign its obligations hereunder without consent to any acquirer by merger, sale of substantially all of a party's assets, or majority of its stock or otherwise, so long as neither the acquiring party nor any of its affiliates operates a business that competes directly or indirectly with the non-selling party's business operations as conducted on the date of such assignment.

8.7 **Governing Law**. This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and construed in accordance with, the laws of the State of New Mexico, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New Mexico.

8.8 **Entire Agreement.** This Agreement and any attachments hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby and both Parties represent and acknowledge that they have not relied on any representation or warranty other than those explicitly set forth in this Agreement in connection with their execution of this Agreement. Neither Party shall be bound by terms and conditions imprinted on or embedded in purchase orders, order acknowledgments, statements of work not attached hereto or other communications between the Parties relating to this Agreement.

8.9 **Waiver of Right to Jury Trial.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, EACH PARTY HERETO WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY PARTY AGAINST THE OTHER PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY HERETO AGREES THAT ANY SUCH

CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, ANY ASSIGNMENT OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY ASSIGNMENT.

8.10 **Compliance with Laws.** Both Parties shall comply with all local, state and federal laws, ordinances, regulations and orders in the performance of their respective obligations under this Agreement.

8.11 **Additional Documents.** Each Party will execute such additional documents as may reasonably be requested by the other Party to effectuate the provisions of this Agreement.

8.12 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be executed and delivered via facsimile, electronically (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[*Signature page follows*]