

**Agreement for Ownership and Maintenance
of a Security Gate**

This Agreement is made this 3rd day of June, 2012 between Santa Fe County, a political subdivision of the State of New Mexico (hereinafter the “**County**”) and the Commonweal Conservancy, a New Mexico nonprofit corporation whose principal place of business is 117 N. Guadalupe Street, Suite C, Santa Fe, New Mexico, 87501 (hereinafter “**Commonweal**”).

RECITALS

WHEREAS, in 2009 the County purchased from Commonweal three separate tracts of real property totaling 465 acres located southwest of Santa Fe, NM, near an area known as the Galisteo Basin Preserve;

WHEREAS, Tract 10 consisting of 263 acres is the most northerly located tract commonly referred to as the “75 West Basin Ridge Parcel;”

WHEREAS, the transfer of title to Tract 10 of the 75 West Basin Ridge Parcel to the County included the grant of a non-exclusive private access easement to a road that runs along the northern boundary of Tract 10;

WHEREAS, the two other tracts, referred to as the “Ananda Valley tracts,” a 165 acre tract and a 37 acre tract, are both located approximately one mile south of Tract 10 of the 75 West Basin Ridge Parcel;

WHEREAS, located between the 75 West Basin Ridge Parcel and the Ananda Valley tracts is a 1,240 acre tract owned by the County and it is one of several archaeological sites protected by the Galisteo Basin Archaeological Site Protection Act, PL 108-208 (2004);

WHEREAS, the 1,240 acre tract referred to as “Petroglyph Hill” is a valuable prehistoric archeological resource whose protection, maintenance and preservation is subject to a cooperative agreement between Santa Fe County and US Bureau of Land Management;

WHEREAS, the undeveloped access road runs east to west on the northern boundary of Tract 10 of the 75 West Basin Ridge Parcel beginning at County Road 42 and dead-ends less than a mile northeast of Petroglyph Hill;

WHEREAS, the cultural resources of Petroglyph Hill are being irreparably damaged and vandalized due to trespassers that use the undeveloped access road at the entrance to West Basin Ridge;

WHEREAS, in order to protect and maintain the cultural properties at Petroglyph Hill, Commonweal installed a security gate on the undeveloped road at the entrance to West Basin Ridge;

WHEREAS, the County is responsible for the protection and preservation of Petroglyph Hill and wishes to enter into this Agreement with Commonweal to provide for joint ownership and maintenance of the Security Gate.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

SECTION ONE
COMPENSATION TO BE PAID BY THE COUNTY

The County will pay to Commonweal three thousand five hundred dollars (\$3,500.00) for an undivided share of ownership of the Security Gate.

SECTION TWO
MAINTENANCE AND ENTRY

Commonweal shall maintain the Security Gate and the County will pay to Commonweal a proportionate share of the maintenance of the Security Gate following any maintenance. Alternatively, any maintenance deemed necessary or advisable can be undertaken under this Agreement by any one of the parties at its expense without the consent of the other party without a right of compensation from the other party. Under no circumstances will either party cause or allow the other party to be prevented or obstructed from access to or passing through the Security Gate.

SECTION THREE
OWNERSHIP AND USE

1. The County and the Commonweal are co-owners with undivided ownership of the Security Gate.
2. Commonweal's rights to use the gate and access West Basin Ridge shall reside solely in its rights as conservator as exists in separate, previously executed conservation easements attached to the various deeds of the abutting properties.
3. No party will delete the Security Gate entry pass code without the Agreement of the other party.
4. The Security Gate shall be equipped with a "Knox Box" activation mechanism in a fire lock box to allow Santa Fe County Fire and emergency services access to the road.
5. Pursuant to its obligations under the Cooperative Agreement with the US Bureau of Land Management, the parties agree that the County may provide

the Security Gate entry pass code and/or any other entry code that it creates for the gate to the New Mexico Site Watch Stewards.

SECTION FOUR LIMIT OF LIABILITY

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

SECTION FIVE TERMINATION FOR NON-APPROPRIATION OR CONVENIENCE

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe 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 other parties. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the other party for any expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the other party in any way or forum, including a lawsuit.

SECTION SIX TERMINATION

Either party's participation in this Agreement may be terminated by sixty (60) days advance written notice; provided, that this Agreement shall not terminate while the County owns an interest in the Security Gate and Tract 10 of the 75 West Basin Ridge Parcel or Petroglyph Hill.

In the event that the County terminates this Agreement for non-appropriation during its ownership of Tract 10 of the 75 West Basin Ridge Parcel, Commonweal shall ensure that West Basin Ridge remains open and accessible to the County and that the County's private road easement as shown on Document 1339007, Plat Book 564, Page 046-047, of the records of Santa Fe County, NM, is not obstructed in any way by any person or entity.

SECTION SEVEN
ASSIGNMENT UPON SALE

The County has the right to assign its rights and duties under this Agreement upon the sale of Tract 10 of the 75 West Basin Ridge Parcel. The parties acknowledge and agree that the rights and duties conferred by this Agreement are intended to, and do, constitute a covenant that runs with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns. Without limiting the foregoing, Commonweal acknowledges that the County's rights under this Agreement are assignable and that the County may sell or otherwise transfer the County's rights and duties if Tract 10 of the 75 West Basin Ridge Parcel is sold, conveyed or transferred to a third party. Commonweal hereby consents to the County's assignment of all of its right, title and interest and its delegation of all of its rights and duties created under this Agreement upon any sale, transfer or assignment of Tract 10 of the 75 West Basin Ridge Parcel. Commonweal further agrees that upon such sale, transfer or assignment, the County shall be forever released and discharged from any and all claims, demands and damages which Commonweal may have, make or suffer as a result of anything done or occurring after the date of such sale, transfer or assignment. Nothing contained in this Section Seven, however, shall in any way be construed as releasing the County's successors and assigns from any obligations to Commonweal created by this Agreement or to in any way limits Commonweal's remedies at law or in equity as against such successors and assigns.

SECTION EIGHT
NOTICES

Any notice or report required under this Agreement shall be sent to the parties at the addresses indicated in this Agreement. Any required notice shall be made by regular mail, properly addressed and postage prepaid. Notice shall be effective when delivered personally to any party, or three days after deposited, postage fully prepaid, registered or certified, in any official receptacle of the U.S. Postal Service.

Commonweal Conservancy: Ted Harrison
Executive Director, Commonweal Conservancy
117 N. Guadalupe Street, Suite C
Santa Fe, NM 87501

Santa Fe County: Katherine Miller
Santa Fe County Manager
P.O. Box 276
Santa Fe, NM 87504-0276

SECTION EIGHT
GOVERNING LAW

This Agreement shall be governed by the laws of the State of New Mexico.

SECTION NINE
AMENDMENT

This Agreement shall not be modified or amended except by written agreement approved and signed by all the parties hereto.

SECTION TEN
ENTIRE AGREEMENT AND
NO THIRD PARTY BENEFICIARIES

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

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

Each party to this agreement has caused it to be executed at on the date indicated below.

SANTA FE COUNTY.



Katherine Miller
Santa Fe County Manager

Date: 6.1.2012

Approved as to form:



Stephen C. Ross
Santa Fe County Attorney

Date: May 16, 2012

Finance Department


Teresa Martinez, Director

Date: 5/31/12

Commonweal Conservancy

Ted Harrison

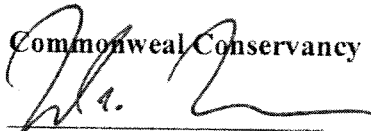
Date: _____

Finance Department


Teresa Martinez, Director

Date: 5/31/12

Commonwealth Conservancy


Ted Harrison

Date: 6.3.12