

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW MEXICO DEPARTMENT OF INFORMATION TECHNOLOGY
AND SANTA FE COUNTY
FOR EQUIPMENT HOSTING**

This Memorandum of Agreement is entered into on this 3rd day of Sept., 2013, by and between Santa Fe County (hereinafter referred to as the "County"), a New Mexico political subdivision and the State of New Mexico Department of Information Technology (hereinafter "DoIT"), a governmental department of the State of New Mexico.

RECITALS

WHEREAS, the County has an IT disaster recovery plan for more commonly occurring disasters such as power failures, disk crashes, accidental or malicious deletion of data;

WHEREAS, the County does not have an IT disaster recovery plan for extreme disasters such as the destruction of the County's data center. Preparation for this type of extreme disaster is typically in the form of the establishment of a redundant site, "cold site" or "hot site";

WHEREAS, in an effort to reduce the County's Recovery Time Objective ("RTO") in the event of an extreme disaster such as the destruction of the County's data center, the County desires to establish a secondary data center at the State of New Mexico's Department of Information Technology's ("DoIT") Datacenter located at the John Simms Data Center in Santa Fe, NM;

WHEREAS, the DoIT has offered to assist the County in establishing a secondary data center by proposing to host County IT equipment and servers in the John Simms Data Center in Santa Fe and by this Agreement, the County accepts the DoIT's proposal on the terms and conditions stated in this Agreement;

WHEREAS, rates charged by the DoIT for the hosting as stated in this Agreement are approved by the Rate Committee of DoIT and any change in the rates stated herein shall be approved by the Rate Committee;

WHEREAS, the DoIT's hosting of County IT equipment and servers for an annual cost is exempt from the Procurement Code according to NMSA 1978, Section 13-1-98.

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

1. Duties of the Parties
 - A. The DoIT shall:

- 1) Host the County's IT equipment and County servers at the John Simms Data Center, Santa Fe, NM; provide physical security for the County IT equipment and servers including allowing access only to County employees designated and authorized by the Santa Fe County IT Division Director; provide authorized County IT employees with a badge to permit access to the Simms Data Center; provide for the fingerprinting of authorized County IT employees; maintain records of the most recent 5000 events pertaining to the activity of the DoIT equipment hosting for the County and make such records available within 24 hours of a request from the County IT Division Director.
- 2) Upon request from the County IT Division Director, assist with any audit carried out on the County procedures under this Agreement.
- 3) Ensure that a recording camera records all activity 24 hours per day, 7 days a week, 365 days per year that occurs around the location where the County equipment is located; log and photograph all equipment that leaves the location where County equipment is located and the individual(s) leaving with any County material.
- 4) Provide a minimum of 6 sq. ft. of floor space to host the County equipment and servers and such space will comply with all City, state and federal safety requirements. DoIT will also hold and make available for the County the adjacent 6 sq. ft. floor space at no additional cost to the County.
- 5) Maintain a maximum cooling temperature of 75 degrees for the County's equipment and servers. The temperature will be monitored 24 hours a day, 7 days a week by rounds performed by DoIT security staff.
- 6) Provide adequate and "clean" electrical power 24 hours per day, 7 days a week, 365 days to two (2) locations. Electrical power will be delivered without surges or spikes.
- 7) Electrical power will be backed up by an uninterruptible power supply ("UPS") and generator support. DoIT will maintain all power distribution and backup systems in conformity with manufacturer's specifications. Standard power configuration shall be 30 amp circuits (primary/backup) delivered on two L6-30 male plugs. Other configurations for power are available and may be installed for an additional fee.
- 8) Monitor power if the County provides a smart PDU.
- 8) Provide the County will access to a loading dock for the unloading and loading of County equipment. The County may ship equipment and parts directly to the John Simms Data Center.

B. The County shall:

- 1) Deliver its IT equipment and servers to the Simms Data Center.
- 2) Provide rack and power delivery units (“PDUs”) for the hosted equipment. The County may use any standard rack configuration such as HP or Dell 38” X 24” cabinet. The DoIT recommends IP/SNMP compliant PDUs.
- 3) Coordinate with DoIT for any upgrades to the application or change in management activities.
- 4) Report any trouble or issues to the DoIT Enterprise Support Desk via telephone or e-mail to (505) 827-2121 or EnterpriseSupportDesk@state.nm.us

C. Additional Services

- 1) The parties agree that all tasks set forth above shall be completed in full to the satisfaction of the County, for the amount set forth in Section 2 (Compensation) of this Agreement, and for no other cost, amount, fee, or expense.
- 2) The County may from time-to-time request changes in the equipment hosting services to be performed hereunder. Such changes, including any increase or decrease in the amount of the compensation, which are mutually agreed upon by and between the County and the DoIT, shall be incorporated in a written amendment to this Agreement.
- 3) The County has the option to secure adjacent space for planned expansion for installation and hosting of additional equipment or servers as provided in Section 1.A.4 above. If another customer requests the adjacent space, the County shall have a right of first refusal to give up the adjacent space to another customer.

2. **COMPENSATION BY COUNTY TO DoIT; NOT TO EXCEED AMOUNT**

- A. The compensation to be paid by the County to DoIT for equipment hosting for the term of this Agreement shall be a not-to-exceed sum of Ten Thousand Nine Hundred Sixty Two Dollars (\$10,962.00), exclusive of NM gross receipts tax, for a term of one (1) year (\$913.50 per month). The County has the option to extend the term of this Agreement in one-year increments for a total term not to exceed four (4) years.

The parties agree that the DoIT rate(s) is based on approval of the Rate Committee and is subject to change.

The compensation to be paid to DoIT is based on the following monthly and annual pricing:

Services	Units	Rate per RU	Monthly cost	Annual cost
Data Center – Rack Unit Fee	42	\$21.75	\$913.50	\$10,962.00
Electrical Power – up to 5kW delivered on L6-30			Included	
Cooling – up to 17K BTUs @ 75 degrees			Included	
Connectivity – 1 gig to Core network with two shared ISP (400 gig to TW 100 gig to Century Link)			Included	
		TOTAL	\$913.50	\$10,962.00

- B. DoIT shall submit an invoice to the County on or about the 10th day of each month commencing the month following the County’s delivery and installation of the County IT equipment and servers in the John Simms Data Center. County shall remit payment to DoIT within thirty (30) days from the date the County receives the invoice.
- C. The prices stated above do not include security (firewall) for the County IT equipment and servers or costs for PDUs.

3. **TERM**

This Agreement, shall become effective upon the date of last signature by the parties hereto (the Effective Date) and shall terminate one (1) year later, unless earlier terminated pursuant to Section 4 (Termination) or 9 (Appropriations) of this Agreement. In no event shall the Term of this Agreement exceed a term of four (4) years in total. The County has the option to extend the Term of this Agreement in one-year increments by providing thirty (30) days written notice to the DoIT.

4. **TERMINATION**

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party’s receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason and without penalty by giving the DoIT written notice of termination. The notice shall specify the effective date of termination, which shall not be less than thirty (30) days from the DoIT's receipt of the notice. The County shall pay the DoIT for acceptable hosting services, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any hosting services performed after the effective date of termination. Upon termination for convenience by the County, the County shall promptly remove any equipment or servers hosted by DoIT no later than the effective date of the termination, unless otherwise agreed to by the parties.

5. **NO THIRD PARTY BENEFICIARIES**

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

6. **LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omission in connection with this Agreement. Any liability incurred in connection with this agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, § 41-4-1 et seq., as amended. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by either party or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

7. **AMENDMENT**

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 DoIT specifically acknowledges and agrees that the County shall not be responsible for any changes to any provision of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

8. **APPLICABLE LAW; VENUE**

This Agreement shall be construed in accordance with the laws of the State of New Mexico. DoIT and the County agree that the exclusive forum for any litigation between them arising out of or related to this agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe, NM.

9. **APPROPRIATIONS**

This agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and 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 DoIT. Such termination shall be without penalty to the County, and the County shall have no duty to refund DoIT for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as funds are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorization have been made for the fulfillment of this agreement shall be final and not subject to challenge by DoIT.

10. **INTEGRATION CLAUSE**

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

11. **FACSIMILE OR SCANNED ORIGINAL SIGNATURES**

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

12. **INVALID TERM OR CONDITION**

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall continue to be valid and enforceable.

13. **NOTICES**

Any notice required by this agreement shall be given in writing to the parties designated below. 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.

DoIT: John Padilla
Deputy Director
Department of Information Technology
PO Box 22550
Santa Fe NM 87503

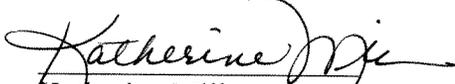
County: Katherine Miller
Santa Fe County Manager
102 Grant Avenue
Santa Fe, NM 87504

14. **SURVIVAL**

The provisions of the following paragraphs shall survive termination of this agreement
LIABILITY and SURVIVAL.

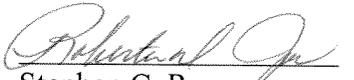
IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date written
above.

SANTA FE COUNTY


Katherine Miller, Manager
Santa Fe County

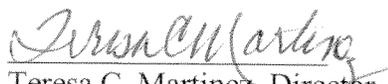
Date: 8.14.13

Approved as to form:


Stephen C. Ross
Santa Fe County Attorney

Date: August 9, 2013

Finance Department

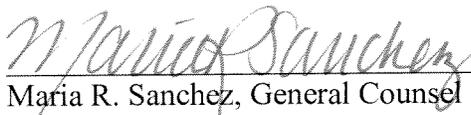

Teresa C. Martinez, Director

Date: 8/13/13

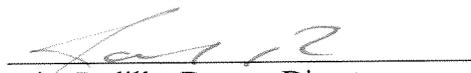
STATE OF NEW MEXICO, DoIT

 Date: 3 SEP 2013

Darryl M. Ackley, Cabinet Secretary
Department of Information Technology

 Date: Sept 3 2013

María R. Sanchez, General Counsel
Department of Information Technology

 Date: 9/30/13

John Padilla, Deputy Director
Department of Information Technology