SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
GRANICUS, LLC, *dba* HOST COMPLIANCE
FOR CONSULTANT SERVICES REGARDING SHORT TERM RENTALS

THIS AGREEMENT is made and entered into this 17th day of July 2020, by and between **SANTA FE COUNTY**, (hereinafter "County"), and **GRANICUS, LLC *dba* HOST COMPLIANCE**, 408 Saint Peter's St. Ste 600, St. Paul, MN 55102 (hereinafter "Contractor").

WHEREAS, the Economic Development/ Growth Management Department is committed to improving permit and tax compliance and increase tax revenue; and

WHEREAS, the Santa Fe Economic Development/ Growth Management Department requires the services of a consultant to perform technical, analytical and administrative support services for the development, implementation and management of short term rentals ("STR") in the County; and

WHEREAS, pursuant to NMSA 1978, 13-1-112 and 13-1-117, competitive sealed proposals were solicited via a Request for Proposals No. 2020-0180-GM/MAM (the RFP) to procure the services of a consultant who will conduct an analysis of the STR market in the County and develop software that will enable the County to monitor STRs for compliance and other regulatory requirements; and

WHEREAS, based upon the evaluation criteria established within the RFP for the purpose of selecting the most qualified offeror, the County has determined that the Contractor is the highest ranked and most qualified offeror to perform the needed services; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the County's Economic Development/ Growth Management Department:

A. Research, identify and provide specific details regarding the STR market in the incorporated and unincorporated areas of the County.

B. Design, develop and host an electronic web-based database and analytical reporting system to monitor STR properties in the County, enforce STR ordinances, manage registrations, compliance and secure payments of the tax and fees.

C. Develop a platform for web based registration and tax assessment collection forms. The capabilities of the forms should include:

1. 24/7 hotline availability,
2. Mobile adaptive design,
3. The ability to validate inputs whenever possible as to minimize data-entry Errors,
4. Electronic signature capability,
5. Electronic credit and debit card payment capabilities though the County's payment processing Partner Stripe, Inc.,
6. the ability to collect supporting documents (if required),
7. SSL encryption.
8. Data available through app.hostcompliance.com, and
9. Data downloadable into csv format via app.hostcompliance.com,

D. Develop educational marketing materials and conduct outreach to the public to ensure that all STR hosts are in compliance.

E. Provide recommendations, guidance in determining the best approach to create, update and implement STR ordinances.

1. Provide details regarding the ability to create online application capabilities and ability for the Contractor to perform reviews and processing of certain applications,
2. Provide support to the County in drafting an STR ordinance, discuss review options and what types of review can be submitted online,
3. Develop an online development review submittal form,
4. Notify all STRs of new regulations and timeline for compliance and review procedure including an online application, and
5. Create a system for streamlining the County's required STR licensing.

F. Provide information or necessary assistance to pursue violations or respond to complaints regarding STRs and the STR ordinance.

1. Summary of any complaints submitted relative to STRs to any of the listing platforms,
2. Documentation of violations that meets the standards of a court of law, tracking enforcement actions and status, and accounting for penalty payment collections and delinquencies of the new STR ordinance, and
3. Perform as necessary agreed-upon reports, market analysis, and documentation at the request of the County.

G. Provide ongoing monitoring of STRs operating in the County for zoning and permit compliance coupled with systematic outreach to non-compliant STRs.

H. Perform tax compliance monitoring and other enforcement practices that require knowledge of the STR activity level.

1. Rental activity history and monitoring,
2. Revenue validation capability,
3. Tax audit automation – the ability to request and collect data from STR owners suspected of improperly reporting taxes, with the ability to sort by quarters.

4. Zoning and permit compliance
5. Comparison of lodger's tax database and properties being listed to ensure new properties have the required development approvals.

2. DELIVERABLES

A. Project Deliverables

1) Customized project timeline and work plan to meet County's timing requirements and deadlines.
2) Quantitative report on the scale and scope of STR activity in the County.
3) Participation in (or facilitation of) at least one public hearing to identify key issues and regulatory objectives as it relates to STRs.
4) Post public hearing survey of key decision makers to prioritize regulatory Objectives.
5) Complete a draft of an STR ordinance developed based on national best practices and County's key issues and regulatory objectives.
6) Enforcement focused planning work session with the County's key stakeholders.
7) Draft a compliance monitoring and enforcement plan for the County

3. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Service), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

4. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

1) County shall pay to the Contractor in full payment for services satisfactorily performed.

2) The total amount payable to the Contractor for services provided during the initial one-year term of this Agreement shall not exceed $58,678.00, exclusive of NM GRT. Any NM GRT levied on the amounts payable under this Agreement shall be paid by the County to the Contractor. After the

initial one-year term, if the parties agree to extend the term of this Agreement, the Contractor's annual subscription fee shall not exceed $51,678.00 for each of year two and year three.

3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the Deliverables for which payment is sought.

1) The County's representative for certification of acceptance or rejection of contractual items and services shall be Chris Hyer, Economic Development Manager, 100 Catron Street, (505) 995-2728 or such other individual as may be designated in the absence of the County representative.

2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.

3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

5. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date of last signature by the parties hereto shall terminate one year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement. In no event will the term of this Agreement exceed four years in total. Notice that the County wishes to extend the term will be submitted to Contractor at least 60 days prior to the expiration of the term.

6. TERMINATION

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

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, 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 work performed after the effective date of termination.

7. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for 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 sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

8. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

9. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

10. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

11. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

12. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

13. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

14. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

15. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

16. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Service), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

17. ENTIRE AGREEMENT; INTEGRATION

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.

18. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

19. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

20. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

21. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

22. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

D. Under no circumstances shall either party's liability to the other party for damages exceed the fees paid by the County to the Contractor for the goods and services under this Agreement during the six months preceding the date the damaged party notifies the other party in writing of the claim for damages.

23. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

24. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County:

Santa Fe County Growth Management Department
Attn: Chris Hyer
Economic Development Manager
100 Catron Street
P.O. Box 276
Santa Fe, New Mexico 87504-0276

To the Contractor:

Host Compliance
Attn: Mark Hines
408 St. Peter's St. Ste 600
St Paul, MN 55102

25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with

Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

26. FACSIMILE SIGNATURES

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

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

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

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints **CSC at MC-CSC1, 726 E. Michigan Dr. Ste. 101, Hobbs, New Mexico 88240-3465** as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

33. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; and SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of last signature by the parties hereto.

SANTA FE COUNTY

Katherine Miller

Katherine Miller
Santa Fe County Manager

7-17-2020
Date

Approved as to form:

Roberta D. Joe for G.S.S.
Gregory S. Shaffer
Santa Fe County Attorney

July 8, 2020
Date

Finance Division:

Yvonne S. Herrera
Finance Director

7/14/2020
Date

CONTRACTOR:

(Signature)

Dawn Kubat, VP of Legal
(Print name and title)

7/14/2020
Date