



**SANTA FE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION CHAMBERS**

**COUNTY ADMINISTRATION BUILDING**

**REGULAR MEETING  
(Administrative Items)  
September 28, 2004 - 10:00 a.m.**

***Amended Agenda***

- I. Call to Order**
- II. Roll Call**
- III. Pledge of Allegiance**
- IV. Invocation**
- V. Approval of Agenda**
  - A. Amendments**
  - B. Tabled or Withdrawn Items**
  - C. Consent Calendar: Withdrawals**
- VI. Approval of Minutes**
  - A. August 17, 2004 – Special Meeting, Code Re-Write**
  - B. August 31, 2004**
- VII. Matters of Public Concern – Non-Action Items**
- VIII. Matters from the Commission**
  - A. Resolution No. 2004 *11/5* A Resolution Regarding “State of Schools” Address to the Community and Other Local Governing Bodies (Commissioner Montoya)**
  - B. A Proclamation in Support of Tesuque Volunteer Fire Department’s Open House Day on October 9, 2004 (Commissioner Montoya)**
  - C. Resolution No. 2004 *11/5* A Resolution Declaring October 4<sup>th</sup> - 9<sup>th</sup> as Fire Prevention Week in Santa Fe County (Commissioner Montoya)**
  - D. Resolution No. 2004 *11/6* A Resolution Declaring a Water Emergency in the Chupadero Community Water Association (Commissioner Montoya)**
  - E. Discussion of Options for Financial Assistance to the El Dorado Water and Sanitation District for Purchase of the El Dorado Utilities Inc. Water System (Commissioner Sullivan)**
- IX. Committee Resignations/Appointments/Reappointments**
  - A. Road Advisory Committee Reappointments**
- X. Consent Calendar**
  - A. Request Authorization to Enter into Amendment #6 to Professional Service Agreement #23-31-IN with Edith Powers for Coordination of the Maternal and Child Health Programs to Extend the Term of the Agreement Until June 30, 2005 and Allocate an Additional \$49,376 in Compensation for Services (Health & Human Services Department)**

*Present OK*

*Present OK*

*OK*

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- B. Request Authorization to Amend Contract #24-0150-CHDD with *OK* Community and Family Services, Inc. to Add \$58,123 for Evaluation Services for the Home for Good Program (Health & Human Services Department)
- C. Resolution No. 2004 <sup>117</sup> ~~A~~ Resolution Requesting a Reduction to an Operating Funds Transfer from the 1999 General Obligation Fund (385)/Open Space Program to the General Obligation Debt Service Fund (401) for Expenditure in Fiscal Year 2004/\$114,746 (Finance Department) *OK*
- D. Resolution No. 2004 <sup>118</sup> ~~A~~ Resolution Requesting an Increase to the Fire Impact Fees Fund (216)/Hondo Fire District to Budget Fire Impact Fees for Expenditure in Fiscal Year 2005/\$8,100 (Fire Department) *OK*
- E. Resolution No. 2004 <sup>120</sup> ~~A~~ Joint Resolution in Support of Improving the Existing Infrastructure Related to Recycling and the Quantity and Quality of Recycling Generated by Santa Fe County, City of Santa Fe, and the Santa Fe Solid Waste Management Agency (Public Works Department) *Isolated*
- F. Resolution No. 2004 <sup>119</sup> ~~A~~ Resolution Requesting a Budget Decrease to the General Fund (101)/HIDTA Grant Program to Realign the Fiscal Year 2005 Budget with the Revised Budget as Approved by the Office of National Drug Control Policy/\$11,550 (Sheriff's Office) *OK*
- G. Request Authorization to Accept and Award a Price Agreement to the Lowest Responsive Bidder for IFB #25-09 for the Equipment for Sheriff's Patrol Cars for the Santa Fe County Sheriff's Office (Sheriff's Office) *OK*
- H. Request Authorization to Amend Contract #24-0067-UT with Sheehan, Sheehan and Stelzer, P.A. to Extend Agreement Term for An Additional Year Through September 30, 2005 and To Increase Compensation by \$100,000 (Utilities Department) *OK*
- I. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases: *OK*
  - 1. CDRC CASE #A/V 04-5071 – John Montano Appeal Variance (Approved)

**XI. Staff and Elected Officials' Items**

- A. Clerk's Office
  - 1. Request Authorization for Previously Unauthorized Expenditures *Made* Incurred by the Clerk's Office in Fiscal Year 2004/\$143,000 (Moved *Statants* from Finance Department)
- B. Project & Facilities Management Department
  - 1. Request Authorization to Accept and Award a Professional Services Agreement to the Highest Rated Offeror for RFP #24-54 for the Professional Architectural and Engineering Services for the Vista Grande Senior Center/\$46,696.58
  - 2. Request Approval of Land Purchase Agreement between Santa Fe County and The Trust for Public Land for Approximately 23 Acres of Land in the Chimayo Area for Inclusion in the Santa Fe Open Space and Trails Program/\$488,700 *Returned Tabled to next October*
- C. Matters from the County Manager
  - 1. Ordinance No. 2004 – An Ordinance Adopting the Antifreeze Safety Ordinance *Tabled & moved* MOVED TO PUBLIC HEARINGS
  - 2. Request Authorization to Publish Title and General Summary of an Ordinance Approving Vista Studios, Inc. for a Work Force Economic Development Project with Santa Fe County *Approved*

- Agreed* 3. Consideration of Collective Bargaining Agreement with the Santa Fe County Deputy Sheriff's Association, a Subsidiary of the New Mexico Coalition of Public Safety Officers/Communication Workers of America/Local 7911

D. Matters from the County Attorney

1. Executive Session

- a. Discussion of Pending or Threatened Litigation
- b. Limited Personnel Issues
- c. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights
- d. Discussion of Bargaining Strategy Preliminary to Collective Bargaining Negotiations

XII. Public Hearings

- Tabled* A. Ordinance No. 2004 – An Ordinance Adopting the Antifreeze Safety Ordinance TABLED

XIII. ADJOURNMENT

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

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**SANTA FE COUNTY**

**REGULAR MEETING**

**BOARD OF COUNTY COMMISSIONERS**

**September 28, 2004**

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 10:00 a.m. by Chairman Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called by County Clerk Rebecca Bustamante and indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Paul Campos, Chairman  
Commissioner Mike Anaya  
Commissioner Jack Sullivan  
Commissioner Paul Duran  
Commissioner Harry Montoya

**Members Absent:**

[None]

**IV. Invocation**

An invocation was given by Assessor Benito Martinez.

**V. Approval of the Agenda**

- A. Amendments**
- B. Tabled or withdrawn items**
- C. Consent Calendar withdrawals**

ROMAN ABEYTA (Deputy County Manager): Thank you, Mr. Chair. Under approval of the agenda, item under VIII, Matters from the Commission, there's been a couple of additions. VIII. B, a resolution declaring a water emergency in the Chupadero Community Water Association. VIII. E. Discussion of the Eldorado Water and Sanitation District for purchase of the Eldorado Utilities, Inc. water system.

Then under item XI. C. 1, the ordinance adopting the anti-freeze safety ordinance was

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moved to public hearings, and Mr. Chair, that case or that ordinance has actually been tabled due to noticing issues. However, if the chairman and the BCC want, they can have some discussion regarding that matter if there's members from the public that have come to talk about that, and the actual public hearing will be held on October 12<sup>th</sup> for that ordinance.

CHAIRMAN CAMPOS: Okay.

MR. ABEYTA: And those are the changes, Mr. Chair.

CHAIRMAN CAMPOS: Let me ask you a question. There's an item on Consent. It's Consent Calendar X, the joint resolution concerning infrastructure and recycling. That's in Consent. Does that require any discussion? Do any of the Commissioners feel they need information and are not on SWMA about that.

COMMISSIONER DURAN: What number?

CHAIRMAN CAMPOS: That would be X. E.

COMMISSIONER SULLIVAN: I do. I had marked that for withdrawal for some discussion on possible long-term financial impact.

CHAIRMAN CAMPOS: I think that's a really important public issue and I think we should take it off the Consent and let's move that down to right after Consent. Is that okay? So that would be X. E. Any other Consent Calendar withdrawals other than X. E? Okay. Is there a motion to approve the agenda as amended?

COMMISSIONER SULLIVAN: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER DURAN: Second.

CHAIRMAN CAMPOS: Discussion?

The motion to approve the agenda as amended passed by unanimous [5-0] voice vote.

**VI. Approval of Minutes**

**A. August 17, 2004 – Special Meeting, Code Re-Write**

CHAIRMAN CAMPOS: Is there a motion to approve those minutes?

COMMISSIONER SULLIVAN: So moved.

CHAIRMAN CAMPOS: Is there a second? I'll second.

The motion to approve the August 17<sup>th</sup> minutes as submitted passed by unanimous [5-0] voice vote.

**VI. B. August 31, 2004**

CHAIRMAN CAMPOS: Minutes of August 31, 2004, is there a motion?

COMMISSIONER DURAN: Move for approval.

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COMMISSIONER MONTTOYA: Mr. Chair, I have a couple of corrections.

CHAIRMAN CAMPOS: Those are non-substantive, spelling corrections?  
Okay. Is there a second with the amendments?

COMMISSIONER ANAYA: Second as corrected.

The motion to approve the August 31<sup>st</sup> minutes, as amended, passed by unanimous [5-0] voice vote.

**VII. Matters of Public Concern - Non-Action Items**

CHAIRMAN CAMPOS: Anyone in the public who would like to address the County Commission on any matter of public importance, please come forward now. Okay, no one having come forward we move to item VIII. A.

**VIII. Matters from the Commission**

**A. Resolution No. 2004-114. A Resolution Regarding "State of Schools" Address to the Community and Other Local Governing Bodies (Commissioner Montoya)**

COMMISSIONER MONTTOYA: Commissioners, before you you have a resolution that was provided to us. This was a resolution similar to the one passed by the Santa Fe Public Schools Board of Education. It's interesting. It's going to be an annual State of the Schools address that we'll be receiving from the president of the school board at that time and I see Carmichael Dominguez here. Carmichael, welcome and I don't know if you wanted to mention anything, Carmichael, regarding the resolution that we're going to be voting on. He's the secretary of the school board.

CARMICHAEL DOMINGUEZ: Mr. Chair, Commissioner Montoya, you've all had a chance to read the resolution and the Santa Fe Public School Board of Education recognizes that education is an important issue for the entire community to address. And the intent of the resolution is to establish and inform on the relationships with all the local governing bodies. That includes the Santa Fe City Council, yourselves, the Santa Fe Board of County Commissioners, and the local legislative delegation. It also is an opportunity for us to establish a relationship and a collaborative relationship with the public as well. It's an opportunity for this district really to deliver important information in an official fashion and on a yearly basis. That's the intent. Specifically, the resolution states that the board president and the superintendent will prepare a state of the schools report and deliver a state of the schools address.

Timing was a little bit of an issue. We wanted to have it not too close to the beginning of the school year because there are issues that need to be taken care of as there

are every beginning of the school year. We also wanted to have it after the state gives its yearly school ratings. And we wanted to give the administration the time to evaluate the data and be able to provide that in the address as well. So there's some logistical issues that we've got to address but they're very minor and I stand for any questions.

CHAIRMAN CAMPOS: Questions or comments?

COMMISSIONER SULLIVAN: Good idea.

COMMISSIONER MONTOYA: Mr. Chair, I move for approval.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Okay. Any discussion?

**The motion to approve Resolution 2004-114 passed by unanimous [5-0] voice vote.**

**VIII. B. A Proclamation in Support of Tesuque Volunteer Fire Department's Open House Day on October 9, 2004 (Commissioner Montoya)**

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Again, I'd like to welcome from the Tesuque Fire Department Cathy Anseres, who's here with us, Eleanor Ortiz and Nora Hughes. I don't see Andrew Jaramillo. Oh, and Jack Miller, who's also here. Again, before you is a resolution that the Tesuque Volunteer Fire Department would like to invite all of you as well on October 9<sup>th</sup>. We'll be having an open house and recognition day. I don't know, Eleanor, would you like to say something on behalf of the resolution or roll the dice and hope that we pass it? Eleanor is an old friend, having been a school board member and -

ELEANOR ORTIZ: Mr. Chair, could you strike the word old from the record there?

CHAIRMAN CAMPOS: It's stricken.

COMMISSIONER MONTOYA: A young friend.

MS. ORTIZ: Thank you very much, Commissioner Montoya, Mr. Chair and members of the Commission and Madam Clerk and others in the audience. We certainly do appreciate you taking the time to recognize the Tesuque Volunteer Fire Department. It's a very, very important part of our community and we're having our open house and inviting all of our community out there and others around the county to come if it's possible.

Our open house begins around 10:00. At 11:00 I think we're going to ask some of our folks to speak. Mr. Montoya will be there and Speaker of the House, Ben Lujan and hopefully his son Ben R. Lujan will be there and other invited guests. So if you could come out on the 9<sup>th</sup> of October at around 11:00, we're also going to have a lot of activities. We're having a poster contest for the kids and of course we go into the schools as well along with the whole week of fire awareness and safety week. So thank you very much for our recognition.

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COMMISSIONER MONTOYA: Thank you, Eleanor.

CHAIRMAN CAMPOS: Thank you very much.

MS. ORTIZ: I don't know if other members would like to speak, Mr.

Chair.

CHAIRMAN CAMPOS: Is there a motion to approve this proclamation?

COMMISSIONER MONTOYA: So moved, Mr. Chair.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER ANAYA: Second.

**The motion to approve the Tesuque Fire Department Recognition Day proclamation passed by unanimous [5-0] voice vote.**

**VIII. C. Resolution No. 2004-115. A Resolution Declaring October 4th - 9th as Fire Prevention Week in Santa Fe County (Commissioner Montoya)**

COMMISSIONER MONTOYA: Mr. Chair, again, I think Mr. Holden presented this one to us and it is for that entire week for fire prevention week. Stan, if you wanted to maybe explain a little bit please.

STAN HOLDEN (Fire Chief): Mr. Chair, Commissioner Montoya, thank you for this opportunity. We're asking the Commission to approve this resolution which recognizes in conjunction with the National Fire Prevention Week those responsibilities that we would like our citizens to be aware of, specifically those of educating their children to stop drip and roll drills, fire safety in the home, changing their smoke detector batteries which will be coming up just around Halloween and installing fire extinguishers and smoke detectors in the home, and that's all part of Fire Prevention Week, which is declared nationally every week which includes October 9<sup>th</sup>. October 9<sup>th</sup> is significant because of Mrs. O'Leary's cow and the great Chicago fire. The cow got the blame. We're not sure today whether or not that's what's actually the true origin of the fire but the cow got the blame and it's stuck ever since.

But it's a great opportunity to remind people and kick off our national campaign and our local campaign every year with fire prevention as part of the education component of the Fire Prevention Bureau. And we appreciate your support of this proclamation.

CHAIRMAN CAMPOS: Thank you, Chief. Any other questions or comments? Okay, is there a motion to adopt Resolution 2004-115?

COMMISSIONER ANAYA: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER DURAN: Second.

**The motion to approve Resolution 2004-115 passed by unanimous [5-0] voice vote.**

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**VIII. D. Resolution No. 2004-116. A Resolution Declaring a Water Emergency in the Chupadero Community Water Association (Commissioner Montoya) [Resolution attached as Exhibit 1]**

COMMISSIONER MONTOYA: As the Commission, you are aware I've been having meetings throughout the district that I represent and recently actually it was just this past week that I was in Chupadero and met with some of the residents out there. It came to light that I think the situation there in terms of the water and the mutual domestic water association is under an emergency similar to what we encountered when we passed the resolution for Chimayo probably about a year ago. I have David, he's the president for the Chupadero Water Association. David, would you like to say a little bit please in terms of the resolution?

DAVID STUPEN: Thank you. I'm David Stupen, president of the Chupadero Water Association. This is a mutual domestic water association that's operated by volunteers. And in fact volunteers have operated the system for 25 years. It provides drinking water to over 60 families, provides fire protection to about 200 families, and I don't know if you're aware but Chupadero is a 200-year old village. It's about four miles northeast of Tesuque on State Route 592. It's located along three miles of the Rio Chupadero Valley.

We want to avoid a water emergency. We have two water wells, an old well that's 65 feet deep which supplies 90 percent of our water, and the new well that's 500 feet deep that was completed last year but it only supplies about 10 percent of our water. After it was drilled we found that it was basically dry. If our old well dries up or if the pump fails there will be 60 families without drinking water and 200 families without water for fire protection. Now this well last year went dry periodically during the summer and the winter and this well could fail. Last winter, to improve water flow we lowered the pump down into the well to within about two feet of the muck that's on the bottom of the well. Now, this improved our supply but being so close to the bottom it sucks in sand. The pump sucks in sand and it causes the pump motor to degrade much faster than it normally would.

Two years ago the board of the Chupadero Water Association was aware we had this problem and they worked very hard and diligently to get a grant to put in a new well. Our new well is basically dry. It was completed last winter. We used professional hydrologic and engineering experts to install it. It's 500 feet deep and the well basically dried up after two months of use. This was an intense effort by volunteers to install this well and we got a zero result. And just as an aside, our water is tested periodically and the water we're able to pump actually does meet state drinking water standards. So if you would approve this emergency resolution you would help avoid a community water emergency in Chupadero.

We have an immediate problem. Our system was evaluated by the Park Environmental Department and they said, "Look, you've got to get this fixed right away. If

the old well fails, 60 families will be without drinking water and about 200 families will be without water for fire protection. Our new well is dry and this resolution gives us access to County and state experts to find new solutions and to find funds for them. Thank you. Do you have any questions?

CHAIRMAN CAMPOS: Mr. Stupen, the legal effect of the resolution is then to make you eligible for federal and state funding? Is that right?

MR. STUPEN: Is that correct?

COMMISSIONER MONTOYA: Correct. Yes. That's correct, Mr. Chair. Similar to what Chimayo was able to ask for once we approved that resolution last year declaring them in a state of emergency as well.

CHAIRMAN CAMPOS: Who paid for your 500-foot well?

MR. STUPEN: We had a grant, I think it was the New Mexico Finance Authority.

CHAIRMAN CAMPOS: Okay. Do you actually bill your members for services?

MR. STUPEN: We do.

CHAIRMAN CAMPOS: Okay. Any other questions or comments?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Dave, what is the rate per month?

MR. STUPEN: It's I believe \$39 a month.

COMMISSIONER ANAYA: Do you have meters on those connections? Or are they unmetered?

MR. STUPEN: It's basically unmetered. There's a few with meters, but not all.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN CAMPOS: Any other questions? Let me just ask one more question. Do you intend to meter? We think metering is really important to regulate -

MR. STUPEN: Yes, we do intend to meter; we're trying to find the money for it. Our first problem is to get the water.

CHAIRMAN CAMPOS: Do you have the capacity to bond as a mutual water association?

MR. STUPEN: I don't know that.

JACK MILLER: Jack Miller, water master for the company. We do have a meter at the well.

CHAIRMAN CAMPOS: A master meter. But a meter at each user's -

MR. MILLER: No, they've failed through the years and we haven't been able to afford to replace them.

CHAIRMAN CAMPOS: Okay. Thank you very much. Is there a motion to adopt the resolution declaring the water emergency?

COMMISSIONER SULLIVAN: So moved.

CHAIRMAN CAMPOS: Is there a second?  
COMMISSIONER MONTTOYA: Second.

**The motion to approve Resolution 2004-116 passed by unanimous [5-0] voice vote.**

COMMISSIONER MONTTOYA: Mr. Chair, I'd like to thank Jack and Waldo also for being here along with David and Tracy.

CHAIRMAN CAMPOS: Thank you for coming and if we can help in any way please let us know.

**VIII. E. Discussion of Options for Financial Assistance to the El Dorado Water and Sanitation District for Purchase of the El Dorado Utilities Inc. Water System (Commissioner Sullivan)**

COMMISSIONER SULLIVAN: Mr. Chair, I brought this forward for the Commission to review and discuss because just last week a resolution, a jury trial was concluded on the value and condemnation proceedings that have been in process through the Eldorado Water and Sanitation District for some time and the County has supported those efforts. We've also attended the PRC hearings and other hearings that have taken place in support of the purchase of that system by the district to get it into public hands and public ownership. The results of that deliberation were a little surprising I think to say the least and so I've asked Mr. Ray Nichols who's here this morning who is a board member of the district to bring us up to date on that. Ray, could you summarize where things are at present?

RAY NICHOLS: Mr. Chair, Commissioners, my name is Ray Nichols. I'm the president of the Eldorado Area Water and Sanitation District and as Commissioner Sullivan has indicated, we had a trial which culminated about 2 1/2 years of effort to acquire the water system. We had a good case to get a \$6.3 million verdict from the jury. They saw it differently. They came out at \$11 million, something more than \$11 million. So we're in the process now of trying to consider what our options are and I was pleased that Commissioner Sullivan came forward with a suggestion that possibly the County could help. We certainly would appreciate any help that we got from the County to fill that gap between the \$6.3 million judgement we expected and the \$11 million that came forward.

We were prepared on the former. We can handle the total if we have to. Unfortunately, it lays a burden on our constituents in terms of taxes, rates, possibly increases in either. We would like to avoid that if possible. We're already paying some of the highest rates in the state, some of the highest rates in the country, for that matter. So whatever the Commission might feel would be appropriate in terms of assistance we would certainly appreciate.

Now, we do understand that there is a gross receipts tax fund which does contain money for water projects which might be available and I just leave that open to whatever might be considered.



COMMISSIONER SULLIVAN: Thanks, Ray. Commissioners, we've done a little bit of investigation on this issue and I'd like Steve Wust to just make a couple of comments and also Susan Lucero to just give us a little background, Stephen, on perhaps the hydrology out there and what the challenges are that the district has in front of it.

STEPHEN WUST (County Hydrologist): Mr. Chair, Commissioner Sullivan, the issue longstanding out in that area is the uncertainty of the water supply, particularly long term, as is very well seen today in the moratorium, and in the public discussion of the 285 Corridor Plan where water was a pretty important issue. I would summarize it though to say that there's kind of a convergence of events and opportunities here in that I will remind the Commission that the 40-year water plan for the County utility includes the potential for the County to be a water supplier for various smaller utilities surrounding the city, including Eldorado and Seaton Village.

There was a discussion in that plan of running a water line from the large storage tank that's currently not being used for anything basically down the railroad tracks to integrate a more stable and wider supply for various utilities. Another event that's been happening of course is the County is looking at trying to diversify its own water sources and acquire water sources so that we're not 100 percent dependent upon the City nor would we be 100 percent upon the direct diversion when it comes on line so we could have conjunctive use strategy.

So as Commissioner Sullivan asked me for some ideas and one of those would be that this is an opportunity for the County not to just give money to pay for a part of the system but we might be able to discuss some mutual opportunity and arrangement to be a water supplier for the Eldorado Utilities at the same time. Eldorado Utilities has its own water sources and water rights and some large-scale infrastructure such as storage tanks. And the Eldorado Area Water and Sanitation District board met with Doug Sayre and me several months ago and my recollection from that meeting at that time, that board was favorably disposed to discuss the County being a water supplier for Eldorado, the utility itself. If our water and sanitation district happened to acquire that utility, which means that the County should be able to negotiate some arrangement about acquisition of the sources and water rights. It would give us a further advantage in the future that if a regional wastewater treatment plant were to be built that would include a larger area than just the water and sanitation district they would be able to have some opportunity there to have return flow credits and the like that would not be available strictly to the water and sanitation district if they owned all the sources and the water rights, yet the County had the wastewater treatment plant.

Again, these are just some ideas that with convergence of events and with the water and sanitation district now being in a position to be able to acquire with some assistance, able to acquire the utility, there's some opportunity there for the County to have some, again, mutually beneficial arrangement to discuss.

COMMISSIONER SULLIVAN: So, Commissioners, I think what Mr. Wust is saying is there's an opportunity for partnering that we could discuss with the district and regardless of whether it was grants or loans or partnering or arrangements, we would still need to look at the financial options, and Susan could you give us a thumbnail sketch of what you

found out so far.

SUSAN LUCERO (Finance Director): Mr. Chair, members of the Board, there are numerous options the County can contemplate if consideration of assisting Eldorado Utilities with their acquisition as is an option. Currently they have bonded I guess close to \$7 million and they're between three and four million shy of their goal in order to completely acquire the utility company. In looking at various sources the County could consider possibly becoming a partner in terms of investment in which part of the capital could be brought forward through the capital outlay GRT. We're also considering looking into the Environment Department's loan fund. They have a loan fund where the interest rates are between 3.5 and 4 and most organizations that apply for this money don't typically qualify because they aren't large enough, they don't have strong enough financials. This would probably not be the case for a utilities company.

So they could apply for a loan. They could also consider grant funding through the Water Trust Board. These two options are something that Doug Sayre of the Utilities Department is researching through the Environment Department. So these are the options. The other consideration would be in terms of the current bond that they have and not knowing exactly what the interest rate is, if the interest rate is higher than what is currently the market rate, perhaps they could consider completely defeasing their original bond, meaning paying it completely off and then reissuing a new bond under lower market rates, but that's something I'd have to completely study with out bond attorney on to see if they would or wouldn't have to go back to their voters. I don't know what their debt capacity is on their general obligation side. I don't know if their current bond maxes them out and things of this nature.

So there are a few options that they could consider and we are studying three of those options.

CHAIRMAN CAMPOS: Ms. Lucero, could they go back to the voters and ask for more bonding also? Isn't that an option?

MS. LUCERO: Mr. Chair, they could if they have enough capacity and I don't know what their capacity is right now.

CHAIRMAN CAMPOS: So that's unanswered right now.

MS. LUCERO: Yes.

CHAIRMAN CAMPOS: Okay. Any other questions or comments?  
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thanks, Susan. Let me just give Ray a final opportunity. Anything else you'd like to add, Ray?

MR. NICHOLS: Well, Steve Wust is quite right. We were discussing with him and Doug Sayre several months ago about the prospects for importing water. We know that our water system is going to require supplementing and where that water is going to come from we're not sure but we think working with the County is our best bet to develop those sources. Just as an overarching consideration, we have always considered that a regional water system is the way to go. Each community, of course, has to resolve its own problems but we all need to work toward a regional water system and whatever advances that prospect we would certainly

be favorably inclined towards.

CHAIRMAN CAMPOS: Mr. Nichols, a question. You want a water system but you're not going to do wastewater at this point, right?

MR. NICHOLS: It's a water system that we're talking about, yes.

CHAIRMAN CAMPOS: Strictly. No wastewater.

MR. NICHOLS: That's right. We had a study completed I guess a year and a half ago on a wastewater system. And Molsen Corbin did the study. They concluded that if we take care of our septic tanks we don't need a wastewater system per se.

CHAIRMAN CAMPOS: You do not need it for what reason? Because you're not polluting or because - why don't you need it?

MR. NICHOLS: Well, a couple of reasons. We're not polluting, not seriously. But we have such an infrastructure, 75 percent of the cost of a system would be pipes. And we're kind of spread out. And it would be quite expensive to put in a -

CHAIRMAN CAMPOS: But if you have a wastewater system you can reuse your water, right? I mean, you can treat it and reuse it. It's a valuable resource, isn't it?

MR. NICHOLS: Well, yes. It is a valuable resource. But of course you'd have to pipe it back through the system so the customers could acquire or make use of the treated effluent. And that's an expensive proposition. The conclusion by Molsen Corbin was that even though they would make money on engineering the system, we can do without it at least for some years to come.

CHAIRMAN CAMPOS: Okay. Just a comment for Commissioner Sullivan. I'm concerned that we have a lot of large lots out there. If we're going to have a regional system I think we need to have a lot of people on the water system and we need to have a wastewater system. And if we're going to pipe water out to a sprawled out community, there are a lot of people - I think we have to reconsider the zoning out there to really make it an effective use of a water system, that is these are all large lots; we need to have more people in a smaller area. And I think that would certainly be a good argument to expend a lot of money there for a regional system.

COMMISSIONER SULLIVAN: Well, I think those are some options we can certainly look at. A great deal of the area covered by the water and sanitation district is already developed on existing lots and I don't know what the exact percentage is. And of course we do have a new 285 Corridor Plan that consolidates development in certain areas along the corridor, commercial development and some mixed-use development. And I think we've been working for some period of time under the moratorium which limits lot size to 12.5 acres. But that limitation to 12.5 acres is only because of the inadequacies of the EDU water system.

Now, if we can partner in some fashion with the water and sanitation district, however it works out in assisting them with ownership or purchase of their system and we can then upgrade that system and make investment, and when I say we I mean primarily the district because that's who's being served but the County as a partner as a part of a regional system, then we've lifted, hopefully, the concern, the problem, that created the moratorium eight years ago in the first place. Then we can look at what is appropriate zoning and what is the water

service that can provide that and we can avoid future sprawl. We can look at some smarter growth in the newer areas that are developing and that could be served by the water and sanitation district.

So there's a whole lot of possibilities out there but they all hinge on the fact that we have to have a functioning water system that's being built and developed for the future, which the current water system is not. It's been kind of a status quo and they've had a difficult time of course with the district not being the owners being able to correct that problem. I'm not asking the Commission at this point to make a decision one way or the other. I've brought this up for discussion and to hear what thoughts anyone on the Commission might have so that we can have the staff explore the possibilities and when they come up with some specific suggestions along with the district we'll come back and look at them in detail. But I did want to let you know that they do have an issue, a big money issue. There's a humongous opportunity here, 2800 customers, homes, families are on this system. That's close to 6,000 people. It is the largest system other than the City of Santa Fe's system in the area. So it's something we can't ignore.

We have to be able to sit down and work in partnership and I think assist in any way we can. We do have a \$51 million water bond issue on the November ballot. There's certainly potential there for help. We do have the quarter percent gross receipts tax dedicated for water funds, which Ray mentioned. That's a possibility. We do have the ability to assist in possible bond issues and as Mr. Wust said to even look at eventual return flow credits if we were to partner in some future sewer systems. So I just see a lot of potential to develop the community in accordance with our 40-year water plan. And I'd just ask if any other Commissioners have thoughts.

CHAIRMAN CAMPOS: My concern is we've got to go with zoning too. We've got to talk about zoning and water at the same time. We can't separate them. Commissioner Duran has a comment.

COMMISSIONER DURAN: I agree with you entirely, Commissioner Sullivan. Since I've been a Commissioner we've always talked about doing something with the Eldorado Utility. And I was involved in the adoption of the moratorium. But I have a couple questions, Mr. Nichols. When we adopted the moratorium, or put the moratorium into effect, there was some discussion about how AMREP, who was the developer of Eldorado at that time, had overstated the water rights that they had. And when I read the article that they had valued that system at \$11 million and that you had hoped to get it for six, I was quite surprised because at the time that we adopted the moratorium, AMREP offered that system to us for a dollar. And that's a sizable increase.

COMMISSIONER SULLIVAN: Either way you look at it.

COMMISSIONER DURAN: So my question is at the time that we were talking about the moratorium I had raised the question about why we didn't pursue some legal action against AMREP because of the overstatement they made on their water rights. So my question is when you were all discussing the value of this, did that at all come into - come out?

MR. NICHOLS: Oh, yes. Yes. There was a lot of discussion about water

rights. The State Engineer recognizes some 780 acre-feet of water per year. The utility, the current owner has claimed considerably more and of course they made that case during the trial. But the truth is the water system has problems. One of the things we're going to have to address early on is drilling new wells, finding new sources to drill those wells. Maybe not large producers but all the wells are diminishing and they have to be supplemented. So there are problems that we need to pursue.

COMMISSIONER DURAN: So are you then not going to dispute the value that the judge has placed on it?

MR. NICHOLS: We haven't decided totally what course we'll take, but we think with the judgement that came forward with the jury it does need a review. And we have a meeting set up for Thursday of this week to consider what our options are and what direction we'll move in.

COMMISSIONER DURAN: Because at the time we adopted the moratorium Jack Frost was our hydrologist and he was adamant about his analysis that AMREP had overstated their water rights. So I'm in agreement with Commissioner Sullivan and I think we need to do something, but I would also like to offer if the Commission would agree to it some assistance in perhaps disputing that \$11 million value because I think it would be worth our while.

MR. NICHOLS: Well, the handling of that of course we leave to Coppler and Mannick, our attorneys and they've done a good job for us so far and I think they will carry this forward if that's the direction we decide to go in. We would be very appreciative of whatever help the Commission and Steve Ross can give us in that regard.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN CAMPOS: Thank you, sir.

MR. NICHOLS: Thank you for your concern.

COMMISSIONER MONTOYA: I would just say, Mr. Chair, that when these possibilities present themselves and the mutual domestics are seeking assistance from the Commission that we take a look at how we can partner with them because I think the reality is in the short time I've been on the Commission is that it's difficult for these mutual domestics to operate solely on their own essentially volunteers that are part of these associations. So I would welcome the opportunity to partner if that's the desire of any mutual domestic water association. And Mr. Chair I agree also that we should look at, when we do look at these projects, that we always look at wastewater as well, because I think that is a wasted resource, no pun intended, that we should be utilizing in whatever manner we can. So I would encourage that when we look at these we look at this jointly between both water and wastewater.

COMMISSIONER ANAYA: Mr. Chair, Commissioners, I want to thank Commissioner Montoya and Commissioner Sullivan for bringing these issues forward to the County Commission because these are real issues. People, they need our help and I think now that we have the bond issue out there and the GRT monies we can help. We've got issues in Cerrillos, Madrid, and we've got the wastewater issue in Edgewood and I'd like for staff to continue to work with Edgewood to see what we can come up with to help them out. But I

think it's important that we hear these so that we can put them all on the table and I think we'll probably have, we'll hopefully have enough money to at least participate and help in trying to get these communities on the right foot and help them drill new wells or get new water for their community.

We talk about water and wastewater and we just passed a proclamation, resolution on fire prevention. So we need that water to help fight fires. So with that, Mr. Chair, thank you.

CHAIRMAN CAMPOS: My last comment would be that we need coordination. We're having projects coming out of different areas. We have to certainly prioritize, look at our resources, look at the resources of the mutual domestic or of the communities and combine them in a coordinated plan. Okay, any other comments from the Commissioners, starting with Commissioner Anaya?

COMMISSIONER ANAYA: Mr. Chair, yes.

COMMISSIONER SULLIVAN: This is not on Eldorado anymore, right?

CHAIRMAN CAMPOS: No, we're moving on from Eldorado.

COMMISSIONER SULLIVAN: I just wanted to say thanks, Ray, for being here and for all of your efforts. These are volunteers that serve on this district. As you know, they're elected members of the water and sanitation district like they are in the mutuals and they spend a great deal of their personal time in public service. So I appreciate that.

CHAIRMAN CAMPOS: Okay, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, two things. I've had a few calls on abandoned vehicles and I want to know if we have an ordinance, which I don't think we do, but I want to make sure, if we have an ordinance on abandoned vehicles. And if not, can we start looking at something to look at on an ordinance? Steve, do you have anything that you know of?

STEVE ROSS (County Attorney): Mr. Chair, Commissioner Anaya, it seems to me we have a junked vehicle ordinance, don't we? I'm not familiar with the details of the ordinance but I know that our folks go out and ticket folks for having junked, abandoned vehicles.

COMMISSIONER ANAYA: Well, maybe we can look into it to see what the difference is between abandoned and junk.

COMMISSIONER SULLIVAN: I think, Commissioner, just let me butt in a minute because we ran into that out in South Fork, recall our meeting and what I learned from that is that we do have the ability to red-tag these if they're abandoned, untitled and inoperable. And if you recall we had an individual out in that area that had eight or nine vehicles on the property and according to Charlie Gonzales every one of them was titled and every one of them was licensed. So even though some of them were in decrepit condition they could prove that they were operable and they were running and they were licensed. So I think that's where the ordinance makes the distinction. If they're junk, as Mr. Ross mentioned and they're not operable and they're not licensed then they can be declared a nuisance.

COMMISSIONER ANAYA: So what about - the calls that I've received, there's a vehicle on the side of the road that nobody has touched for years. It's not necessarily

in the yard, considered junk. It's just parked on the side of the road and they're concerned about who's car it is. Maybe it's stolen and it's just been parked there.

MR. ROSS: Commissioner Anaya, there's some state statutes on that particular subject. I'll take a look at those and get you a little memo. It seems to me you can seize cars that are abandoned on the highways and there's a procedure for doing it.

COMMISSIONER ANAYA: Okay, you might want to relay that to the Sheriff's Department so they can take care of these vehicles that we do call them on.

MR. ROSS: Sure.

COMMISSIONER ANAYA: And I think about nine months or a year ago, I asked about meals on wheels to the Village of Galisteo. And I'd like for staff to continue to look into what we can do. There's probably about six seniors in the Village of Galisteo, between six and ten, that would like to have maybe a hot lunch. And I'll work with the village people to find out exactly how many and then I'll get back with staff. But I'd like to see if we can - I know we're building a senior center out in Eldorado, and that would help us. But I know they already take food out to Eldorado. Maybe they can continue on out and take a few more meals. So if we could look at that.

MR. ABEYTA: We will, Mr. Chair.

COMMISSIONER ANAYA: Mr. Chair, that's all I had.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, just two quick items. I wanted to mention we had a very productive meeting out in Eldorado concerning traffic concerns that a number of residents had in the ECIA traffic committee, and I want to thank the Public Works Department, particularly Dan Ryberg for attending that meeting on short notice and providing a lot of really good input to the attendees and also taking back with him some suggestions that they had that is going to result hopefully in some traffic control pilot projects out in the area that will slow down speeders and make things safer. So kudos there to the Public Works Department. I appreciate your help in that.

And then lastly compliments also the chef for this month's or this meeting's packet book. It was refreshingly thin, but aside from that, we didn't have a lot of things that were stuffed in the book that we read and then came to the meeting and found that they were tabled or withdrawn or whatever. So they were apparently taken out before if they didn't meet the deadline so that what we got to read was what we were going to be discussing today and I want to thank Gerald and his staff for being very diligent in keeping that packet appropriate to what we're talking about at this meeting. That's all, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, just a couple of items. James Lujan, we have a response officially from the governor from San Ildefonso Pueblo giving us authorization to work on the roads that we have been long trying to improve so if we could get with him and schedule that, that would be great. I know the residents from El Rancho have been clamoring for this type of a response from San Ildefonso for years. So at least they're giving us the authorization to do some improvements on that road.

Mr. Chair, the other thing, and I would ask the Fire Chief and Gerald if we could try and get some resolution on the Española Hospital situation. I received another packet from the administrator there requesting that we again attempt to negotiate and find out what needs to be done. They continuously, I guess reject our offers and I don't know if we need to - I'd hate to hire a mediator. Maybe Steve Ross can get involved and talk to the attorneys or something. But I'd like to resolve this once and for all so that Santa Fe County can be seen in a better light and quit getting bad-mouthed by the trustees board and people in the community over there for us not wanting to do our share. I don't think that's the case at all. So I'd just like to get this resolved as soon as possible.

And just the last thing, Mr. Chair, is that I'll be having another community meeting this evening with the residents of La Puebla and Arroyo Seco and I want to thank the staff that has been going to these meetings. I think they've been very productive and I think we're, as in the case today with Chupadero, starting to address some of the issues that are needing to be addressed.

CHAIRMAN CAMPOS: Commissioner Duran.

COMMISSIONER DURAN: I'd just like to - I have a couple of things. The first one is liked to welcome Dolores Vigil to the Land Use Department. I think you bring another element to this position that is needed and I think while we go through the Code rewrite your input into that is going to be very much appreciated and I'd like to just welcome you aboard.

The other thing is I'd like to ask Tony Flores, when is the Land Use Department going to move into that old personnel space?

TONY FLORES (PFMD Director): Mr. Chair, Commissioner Duran, as soon as the auditors leave.

COMMISSIONER DURAN: When is that?

MR. FLORES: I think by the middle of October, plus or minus. So within the next 30 days.

COMMISSIONER DURAN: Okay. And Gerald, I was wondering if you could give me an update. You sent a letter to the City Council and the mayor concerning our plan, what our goals were on the gross receipts tax or how we were going to spend the money for our water projects. There was some concern from the City that we were moving forward on that without any consideration to their - to a regional plan. And no one went to that meeting. Was that the PUC?

GERALD GONZALEZ (County Manager): That was the PUC, Mr. Chair, Commissioner Duran.

COMMISSIONER DURAN: Have you heard back from them relative to the letter that you sent to them?

MR. GONZALEZ: No, I have not. The letter actually enclosed some of the discussion that was held by the Commission with respect to GRT usage for water purposes. At that point, basically, it was everything that we had in front of us that we could provide to them and in that letter I offered to appear at their - they were holding two meetings for that purpose.



The second meeting was scheduled, I believe, for October 6<sup>th</sup> and in my letter I indicated to them I'd be glad to appear before them after they'd had a chance to look at the material.

COMMISSIONER DURAN: Okay. And relative to our water discussions with the City, is there any plan on meeting them in a joint meeting?

MR. GONZALEZ: I'd defer to the chairman on that, Commissioner Duran, but my understanding is there's a projected date for October 7<sup>th</sup>.

CHAIRMAN CAMPOS: That's right. We have a meeting scheduled between the Commission and the Council for October 7<sup>th</sup> at 5:00 if we have an agreement on principles before that meeting. We're having negotiations now.

COMMISSIONER DURAN: And you sent a letter to the - you and Councilor Coss have drafted points of interest or certain points that he took to the City Council or to the

CHAIRMAN CAMPOS: To the City Council, to the mayor.

COMMISSIONER DURAN: And have you had any feedback from -

CHAIRMAN CAMPOS: We got a little bit of feedback last night.

COMMISSIONER DURAN: And could you tell us what that is?

CHAIRMAN CAMPOS: I haven't even had a chance to read it, but I will distribute copies.

COMMISSIONER DURAN: Who has a copy of that?

CHAIRMAN CAMPOS: I have copies. I can probably get a copy to you today.

COMMISSIONER DURAN: Okay, do you mind if we talk about it? What I would like to do is I'd like to have this information available to the public.

CHAIRMAN CAMPOS: Maybe we should talk about it in executive if that's appropriate. Mr. Ross, would that be appropriate to have the discussion in -

MR. ROSS: I believe so, Mr. Chair. It pertains to water rights, acquisition and disposal of water rights.

COMMISSIONER DURAN: Because I would like to move for a joint City/County meeting on these issues.

CHAIRMAN CAMPOS: Well, there is one set. The mayor and I talked about making sure that it was a meaningful meeting and not just a meeting where we would squabble but that we would have a meaningful agreement before us, based on some principles and I think that's important.

COMMISSIONER DURAN: Well, maybe you can give us a copy of that letter.

CHAIRMAN CAMPOS: The principles?

COMMISSIONER DURAN: No, the response to those.

CHAIRMAN CAMPOS: I'll share that with you.

COMMISSIONER DURAN: Can you do that today?

CHAIRMAN CAMPOS: I will try.

COMMISSIONER DURAN: Okay. When? At recess? You don't mind doing it though, right?

CHAIRMAN CAMPOS: No. Not for you.

COMMISSIONER DURAN: Thank you. That's all I had, Mr. Chair. Thank you.

**IX. Committee Resignations/Appointments/Reappointments**

**A. Road Advisory Committee Reappointments**

CHAIRMAN CAMPOS: I understand this is for Area 6, Mr. Martinez.

ROBERT MARTINEZ (Deputy Public Works Director): That is correct, Mr. Chair. Area 6 of the Road Advisory Committee encompasses the Arroyo Hondo, Seaton Village, and Sunlit Hills Subdivision. Mr. Andrew Swarthout has represented this area for the last six years as an alternate member and his term expires this month. He has volunteered to serve for an additional term. Public Works Department recommends the reappointment of Mr. Swarthout to this area as an alternate member.

CHAIRMAN CAMPOS: Is there any comment or motion?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTOYA: Second.

The motion to reappoint Andrew Swarthout as an alternate to the Road Advisory Committee passed by unanimous [5-0] voice vote.

**X. Consent Calendar**

- A. Request Authorization to Enter into Amendment #6 to Professional Service Agreement #23-31-IN with Edith Powers for Coordination of the Maternal and Child Health Programs to Extend the Term of the Agreement Until June 30, 2005 and Allocate an Additional \$49,376 in Compensation for Services (Health & Human Services Department)**
- B. Request Authorization to Amend Contract #24-0150-CHDD with Community and Family Services, Inc. to Add \$58,123 for Evaluation Services for the Home for Good Program (Health & Human Services Department)**
- C. Resolution No. 2004-117. A Resolution Requesting a Reduction to an Operating Funds Transfer from the 1999 General Obligation Fund (385)/Open Space Program to the General Obligation Debt Service Fund (401) for Expenditure in Fiscal Year 2004/\$114,746 (Finance Department)**
- D. Resolution No. 2004-118. A Resolution Requesting an Increase to the Fire Impact Fees Fund (216)/Hondo Fire District to Budget Fire Impact Fees for Expenditure in Fiscal Year 2005/\$8,100 (Fire Department)**
- E. Resolution No. 2004 - \_\_. A Joint Resolution in Support of Improving the Existing Infrastructure Related to Recycling and the Quantity and Quality**

**of Recycling Generated by Santa Fe County, City of Santa Fe, and the  
Santa Fe Solid Waste Management Agency (Public Works Department)  
ISOLATED FOR DISCUSSION**

- F. Resolution No. 2004-119. A Resolution Requesting a Budget Decrease to the General Fund (101)/HIDTA Grant Program to Realign the Fiscal Year 2005 Budget with the Revised Budget as Approved by the Office of National Drug Control Policy/\$11,550 (Sheriff's Office)**
- G. Request Authorization to Accept and Award a Price Agreement to the Lowest Responsive Bidder for IFB #25-09 for the Equipment for Sheriff's Patrol Cars for the Santa Fe County Sheriff's Office (Sheriff's Office)**
- H. Request Authorization to Amend Contract #24-0067-UT with Sheehan, Sheehan and Stelzer, P.A. to Extend Agreement Term for An Additional Year Through September 30, 2005 and To Increase Compensation by \$100,000 (Utilities Department)**
- I. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:**
  - 1. CDRC CASE #A/V 04-5071 – John Montano Appeal Variance (Approved)**

CHAIRMAN CAMPOS: Is there a motion to approve the Consent Calendar?  
COMMISSIONER ANAYA: So moved.  
COMMISSIONER SULLIVAN: Second.

**The motion to approve the Consent Calendar with the exception of item E passed by unanimous [5-0] voice vote.**

- X. E. Resolution No. 2004-120. A Joint Resolution in Support of Improving the Existing Infrastructure Related to Recycling and the Quantity and Quality of Recycling Generated by Santa Fe County, City of Santa Fe, and the Santa Fe Solid Waste Management Agency (Public Works Department)**

JAMES LUJAN (Public Works Director): Mr. Chair, Commissioner Sullivan, did you have some particular question? I'm sorry, I didn't hear what the question was.

CHAIRMAN CAMPOS: I think my concern was that we didn't – this was on the Consent Calendar yet it's a big policy issue and it has some fiscal implications, and not everybody here is on the SWMA Board, so maybe putting this in context for the entire Commission, if you could do so briefly is what I would like.

COMMISSIONER SULLIVAN: I understand that going to the second phase doesn't entail any financial commitments on the part of the County, according to your memo, but you're planning to reconfigure the City's transfer station into a recycling center.

MR. LUJAN: Materials recovery facility.

COMMISSIONER SULLIVAN: MRF. We have to use the right acronym. That sounds like something you eat in Vietnam.

MR. LUJAN: We call it a smurf but we can call it a murf.

COMMISSIONER SULLIVAN: Isn't that a meal ready – anyway, it's not prepackaged food; it's a recycling center. But there seems to be some potential commitments on maintenance and operation and maybe you could explain that a little better.

MR. LUJAN: Mr. Chair, yes, and I'll turn it over to Aura Lee. The first portion of this is merely the concept to go to the next phase. Right now it's just a concept of possibilities of developing that and then as we stated in phase 2 there's no financial commitment. Down the road there will be and here's where I'll turn it over to Justin Stockdale and Aura Lee.

AURA LEE ASHLEY-MARX (Solid Waste Manager): Mr. Chair, Commissioner, the current state of solid waste management in Santa Fe County is we're currently landfilling about 200,000 tons a year. Of that portion, ten percent or approximately 20,000 tons is recycled. Of the recycled amount, approximately 5,000 tons would be materials suitable to go to a materials recovery facility. The remainder is things like brush and tree waste, green waste and other materials such as scrap that's removable from the station. Our program at the present time is unable to grow any larger than we basically are.

In looking down the road it was determined by the City and the Solid Waste Management Agency to commission a study to investigate various options to potentially improve the infrastructure and allow the recycling program to grow. There's an economically good reason for that. For every ton of waste that the County currently disposes of in the landfill we pay \$25 a ton. We currently pay \$15 a ton to recycle materials. That does not include the transportation costs. So there is a significant savings for every ton we recycle.

In order to grow the program we need a materials recovery facility close by. One, to save transportation costs and also be masters of our own destiny. We do not have a current signed agreement with the City of Albuquerque. Our capacity is limited and because we don't have a signed agreement we could potentially lose that market at any time. There are other markets, however, they aren't economically viable. We have a current contingency contract with Waste Management. If we did get shut out of Albuquerque the current contingency contract the County has is for \$65 a ton if we were to take recyclables to that facility. And that would be cost-prohibitive to keep the program going.

The resolution before you is to conceptually approve of the recommendations of the consultants which were – one of the recommendations found that the best, most cost-effective proposal would be to retrofit a materials recovery facility, the existing City transfer station. It would be divided into both a convenience station and a materials recovery facility. The cost of that option would be \$910,000 and at the present time the County portion of that fee would be limited to no more than \$15 a ton for the recycling materials we deliver there.

The next phase of this project is for a study to be done on how much it would cost to retrofit the transfer station to a MRF and the \$70,000 estimated cost for that retrofit process

would be paid totally by the Santa Fe Waste Management Agency out of their existing funds. The \$910,000 to operate the plant would also be paid out by the Santa Fe Solid Waste Management Agency. The County would not incur any costs for infrastructure upgrades. Our only commitment would be the contractual agreement for the tonnage that is delivered to the facility. Are there any other questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: So Aura Lee, which trucks would be going to the MRF? How would you determine which trucks go over there to be recycled?

MS. ASHLEY-MARX: The same system that we have now. We currently deliver our recyclables to the City transfer station and from there they are delivered by the City to the City of Albuquerque. So it's the bins that we have placed at the transfer station that would continue to be hauled to the same facility. We would not incur any higher costs for hauling than we do now.

COMMISSIONER ANAYA: So you would be taking the recycled material that we collect to the MRF. And from there, if it's already being sorted, we're taking it over there to sort it again?

MS. ASHLEY-MARX: No, it is not currently being sorted at the City. The have to take it. They transport it a second time to the City of Albuquerque that has a materials recovery facility where it is sorted and bailed and then sent to market. The County and the City receive absolutely no revenue for those products.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN CAMPOS: Any other questions, comments? You've recommended that we adopt this resolution.

MS. ASHLEY-MARX: Yes, sir.

CHAIRMAN CAMPOS: You think it's in the best interests of the County of Santa Fe.

MS. ASHLEY-MARX: Yes.

CHAIRMAN CAMPOS: Now, page 2 of the resolution, section 4 says that all three parties shall coordinate, plan and budget appropriate funding and personnel for the planning and design of the MRF. Are you saying that you're going to have additional contributions or investments by the County and the City and the Solid Waste Management Authority? What does that mean?

MS. ASHLEY-MARX: What that means is it's the County's responsibility to provide staff and assistance to encourage the amount of recycling that is done in the county to bring up the economies of scale. We would not be required at this point to put in any other revenues into that process. We may be required to do some additional educational materials and potentially some future infrastructure improvements such as roll-off boxes to increase recycling. But the good point of this is there may potentially be a future agreement where there would be some sort of revenue return to the County for the materials that we do bring to help offset those costs.

CHAIRMAN CAMPOS: Okay. I guess the way I see it is that the SWMA, the regional waste authority, is going to pick up most of the expenses.

MS. ASHLEY-MARX: That's correct.

CHAIRMAN CAMPOS: And you think this is going to be at least a break-even proposition for SWMA?

MS. ASHLEY-MARX: The report that was generated by the consultant felt that this - potentially the cost of this facility would potentially be offset by the tipping fees from the associated convenience center which would also be housed at the same location.

CHAIRMAN CAMPOS: And you find that to be credible?

MS. ASHLEY-MARX: Yes, I do.

CHAIRMAN CAMPOS: Okay. Now as far as the City facility, the City has been trouble, they've been losing money on their transfer station.

MS. ASHLEY-MARX: That is correct.

CHAIRMAN CAMPOS: They have not been able to figure out what to do with that. Now they want us to use it as part of this program. Is this the best place to go right now? As far as location? I know from a value perspective -

MS. ASHLEY-MARX: From a location standpoint there's been an evaluation of distances and access and there is an access entry point from 599. The distances don't change and the convenience is essentially the same. In fact the study showed that it was exactly the same distance as to the Caja del Rio entry point at the gatehouse now. So that the travel distance for customers has not changed.

CHAIRMAN CAMPOS: Was there a suggestion that it would be better to have the transfer station at Caja del Rio?

MS. ASHLEY-MARX: That particular solution or proposal was evaluated and it was determined that that would not be as cost-effective as having it at the existing building.

CHAIRMAN CAMPOS: But as far as location that would be preferable to have it there. Wasn't that the conclusion that was reached. There was a cost-effective element that shifted to the transfer station.

MS. ASHLEY-MARX: I don't recall specifically on that particular point. I apologize.

CHAIRMAN CAMPOS: Okay. Any other questions or comments?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Would having this MRF, and the word I was thinking of before was MRE, meals ready to eat. MRFs are not meals. So I'm up on this terminology now. Would having that capability here in Santa Fe in any way help us in the situation that we've had recently where the private haulers aren't picking up recyclables anymore, yet the residents are separately contracting for trash removal, but they still feel it's important to recycle. Would that help in any way?

MS. ASHLEY-MARX: Commissioner Sullivan, that would provide an additional market outlet for private collectors in the area. That would also potentially, if there

were contracts agreed by the agency and those involved that private contractors come in, that would be additional revenue to also offset costs. So in the long run, yes it should encourage expansion of the markets in the private sector.

COMMISSIONER SULLIVAN: So you think the private haulers would go back to picking up recyclables because they have the station here? They had it there before. They didn't care where it was.

MS. ASHLEY-MARX: They should because of the lessening of the transportation costs.

COMMISSIONER SULLIVAN: The dumped it at \$15 a ton before, right?

MS. ASHLEY-MARX: No, that's the County's price.

COMMISSIONER SULLIVAN: Oh, I see. So would the County get involved in separate recycling permits or anything of that sort that would encourage recycling because we have this MRF?

MS. ASHLEY-MARX: We would potentially come to the Board of Commissioners with potentially some resolution encouraging a certain percentage be recycled. That's one potential ordinance issue that could be addressed, which would essentially I know where I come from we had a resolution that mandated that the material had to be separated and then the private haulers participated. That brought the tonnage up which made it more cost-effective.

COMMISSIONER SULLIVAN: So we don't mandate that the recyclables are separated now. When someone comes into the transfer station, it's up to them.

MS. ASHLEY-MARX: It's a voluntary -

COMMISSIONER SULLIVAN: It's up to them to put recyclables into the bin and other trash into the dumpster.

MS. ASHLEY-MARX: That's correct.

COMMISSIONER SULLIVAN: So if it were mandatory, then we wouldn't have the problem of the gatekeeper having to determine what was recyclables and what wasn't recyclables if someone was only bringing in recyclables.

MS. ASHLEY-MARX: That would be correct.

COMMISSIONER SULLIVAN: So that's at least something -

MS. ASHLEY-MARX: Something to investigate.

COMMISSIONER SULLIVAN: To investigate. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Final question. Does SWMA have the authority to move by itself to create this MFR or does it need City and County authority? Do all three parties have to agree?

MS. ASHLEY-MARX: This was presented, Mr. Chair, this was presented before the Santa Fe Solid Waste Management Authority Joint Powers Board. And the joint resolution was approved on June 8<sup>th</sup> and this has also been to the City and it was approved on September 8<sup>th</sup>. If you would like the specifics of the details I could have -

CHAIRMAN CAMPOS: No, I don't need the specifics. The question is the authority. Do all three bodies have to agree to have this MRF created, or can SWMA proceed

alone.

MS. ASHLEY-MARX: Yes, they do.

CHAIRMAN CAMPOS: Okay, so we have to expand the authority of SWMA then, the County and the City, to do the MRF. Is that right?

MS. ASHLEY-MARX: I would say that's a legal question and I would defer to Justin.

JUSTIN STOCKDALE (Recycling Coordinator at SWMA): Mr. Chair, as I understand the process this resolution gives SWMA the authority to pursue development of the MRF. For capital expenses, I am not certain on whether both the City and the County Commissions and Councils have to authorize that expenditure. It's a sizable expenditure. It's close to a million dollars to capitalize this facility. I would presume that you will see a second resolution or an authorization of that funding.

CHAIRMAN CAMPOS: Could you let us know?

MR. STOCKDALE: Certainly.

CHAIRMAN CAMPOS: Maybe talk to our attorney.

MR. STOCKDALE: Certainly.

CHAIRMAN CAMPOS: Thank you, sir. Is there a motion to adopt Resolution 2004-120?

COMMISSIONER MONTOYA: So moved.

COMMISSIONER SULLIVAN: Second.

**The motion to approve Resolution 2004-120 (Consent Calendar E) passed by unanimous [4-0] voice vote. [Commissioner Duran was not present for this action.]**

**XI. Staff and Elected Officials' Items**

**A. Clerk's Office**

**1. Request Authorization for Previously Unauthorized Expenditures Incurred by the Clerk's Office in Fiscal Year 2004/\$143,000**

MS. LUCERO: Mr. Chair, Commissioners, the item before you is a request to ratify and approve a procurement violation that occurred in the Clerk's office during last fiscal year. Administratively, neither Finance nor the Manager's office have the authority level to approve something of this dollar level. The issue was that ballot supplies were ordered, delivered in mid-April and May and used for the primary election before a procurement authorization was in place. The request for the procurement authorization was given to the Finance Department on the 29<sup>th</sup> of June, after the procurement had actually occurred. And we are requesting ratification of this procurement violation.

CHAIRMAN CAMPOS: Is there any harm done to the County by this action?

MS. LUCERO: The harm is circumventing the process, not following the



procedure. Monetarily, with funds at that time the cost could have been taken care of. Now that it's being addressed during this fiscal year we will have to use contingency funds in order to pay for this item.

CHAIRMAN CAMPOS: Okay, any questions or comments from the Commissioners?

REBECCA BUSTAMANTE (County Clerk): I would like to speak to it. It certainly was not a violation of the procurement code and I take much offense in her putting this in. We tried, and as you know, Commissioner, I went to you on two different occasions that I told you I need to speak with the County Manager. I had sent him memos regarding some election issues. Commissioner Montoya, I met with you in regard to memos that I had sent and had been addressed. I asked you Commissioner, Chairman, you said I've told him and if he doesn't want to meet with you, that's his problem. That's not my problem. I quote you. But these were ballots. We tried to get it in. I have competent staff members who issued and tried to get this done and it was bounced back.

We tried to meet with Ms. Lucero and she was in a jail meeting almost all the month of June. She would not return any calls. Now, had I not come before you last week, we wouldn't even have a response on this. It was, as you can see, I sent it on June 30<sup>th</sup> because we couldn't get her to meet with us or anybody. I take real offense in saying it's a procurement violation. I can bring you many incidents of procurement violations in this County and I'm ready to, but to say that I didn't order ballots properly. If you are saying that you didn't want us to order ballots then you need to let us know that, because that's a violation of federal law.

We've already ordered the ballots this year. We've already tried to put in the request. We don't have the money. It's bounced back. We did meet with the County Manager and I thought it was a good meeting but we've already ordered the ballots. I have no choice. So for her to say that this is a procurement violation, it should be against you guys and also against the Finance Department because I made every effort to work with you. And I didn't get any response. And we had an election to do for the primary and these were ballots that we ordered. And I take offense that now it's written as a procurement violation when we tried.

And I can give you many examples.

CHAIRMAN CAMPOS: That's fine. You've stated your case. Thank you. Are there any questions of Ms. Bustamante?

COMMISSIONER MONTOYA: Mr. Chair, Ms. Bustamante, how do you see that this can be avoided in the future?

MS. BUSTAMANTE: Well, I came before you last week and I think that was pretty good. I came before you and I asked that we need the money, that it was going to cost a lot more. And so you instructed the County Manager to meet with me. He called. We set up a meeting. I think we've got everything, hopefully, outlined for the general election. The only thing is I did order the ballots already. I had no choice. Hopefully the Supreme Court will decide today. We worked out everything but the money hasn't been

put in my budget so maybe I'll be in violation again. But I have no choice.

COMMISSIONER MONTOYA: Okay, so let me just clarify. So we're at the point now where we're not going to have this situation come up again.

MS. BUSTAMANTE: I don't think so. We shouldn't.

COMMISSIONER MONTOYA: And you've already ordered the ballots for the upcoming election.

MS. BUSTAMANTE: Yes, I've ordered 36,000 ballots and let's hope that's enough.

COMMISSIONER MONTOYA: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other comments or questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Yes, I just would hope that the Clerk would work and the County Manager would work together in the future so that we don't have this problem again. And I know that you all are busy on both sides but I think we need to take time and really sit down and work these issues out before they get this far. Thank you.

CHAIRMAN CAMPOS: I agree. It was unfortunate that this happened, had to happen without the -

MS. BUSTAMANTE: Well, I'm not taking any -

CHAIRMAN CAMPOS: I'm making a comment. Let me finish my comment. And the comment's unfortunate. I think there's a problem here and I think you were part of that problem.

MS. BUSTAMANTE: Well, I think you a part of the problem also.

CHAIRMAN CAMPOS: You have to be able to communicate effectively -

MS. BUSTAMANTE: I did.

CHAIRMAN CAMPOS: Professionally.

MS. BUSTAMANTE: I have.

CHAIRMAN CAMPOS: With staff and that's it.

MS. BUSTAMANTE: I think my staff is very competent and I will bring you many violations of the procurement next week.

CHAIRMAN CAMPOS: Thank you.

MS. BUSTAMANTE: And let's see if you address them correctly.

CHAIRMAN CAMPOS: Okay, is there -

MS. BUSTAMANTE: But I don't think that as an elected official you can sit there and try to make me feel like I am incompetent or I'm like one of your workers. I am an elected official and you have a responsibility also.

CHAIRMAN CAMPOS: Thank you.

MS. BUSTAMANTE: No, I'm not finished. And I think that you also have a responsibility. I can bring you violations where a Commissioner hired a person for \$25,000 that worked outside of this office. I can bring you many other violations. And I'm prepared to. To say that I violated the procurement code by ordering ballots is totally,

totally wrong.

CHAIRMAN CAMPOS: You've made your case. Thank you very much.

MS. BUSTAMANTE: I have and I will make it further. Thank you.

CHAIRMAN CAMPOS: Okay, is there a motion authorizing the expenditure incurred by the Clerk's office in fiscal year 2004?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: Discussion?

**The motion to ratify the expenditure passed by unanimous [4-0] voice vote.**  
[Commissioner Duran was not present for this action.]

**XI. B. Project & Facilities Management Department**

**1. Request Authorization to Accept and Award a Professional Services Agreement to the Highest Rated Offeror for RFP #24-54 for the Professional Architectural and Engineering Services for the Vista Grande Senior Center/\$46,696.58**

MR. FLORES: Mr. Chair, we bring before you today a professional service agreement for architectural and engineering services for the Vista Grande senior center which will be located in the community of Eldorado. As many of you know, as our efforts paid off at the last session we received full funding for this facility and we're moving forward with securing and providing the professional services necessary. The Project and Facilities Management Department in conjunction with purchasing solicited these services based upon state procurement requirements. It's a qualification-based solicitation. There are criteria that are set forth in the statute. An evaluation team reviewed the three proposals that were received. Based upon those proposals and those rankings we bring forward today a request to authorize an agreement with the firm of NCA Architects for the services and I stand for any questions.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Flores, how was the – I know we're given here the – are these rated or listed according to the way they were rated?

MR. FLORES: Mr. Chair, Commissioner Montoya, typically, and I don't want to speak for Evelyn, she prepared the memo, but typically, yes. They're listed in the order that the rankings came out without scores. Scores are not public until after an award. So, yes.

COMMISSIONER MONTOYA: Okay. And in determining, what was the determining factor? Was it cost? Was it competence?

MR. FLORES: Mr. Chair, Commissioner Montoya, qualification based proposals for architects, engineers, landscape architects and surveyors, the requirements of the

evaluation are set forth by statute to deal with capacity, capability, in other words, is a firm large enough, does it have a series of work that they could be able to accomplish this? We look at past performance, in other words have they done work with government entities before? What is the percent of the change orders? What is the percent of the contracts, etc? We also look at familiarity with state statutes and local governments. In other words have they worked in the area or worked with state government through the process. We also look for work to be done in the state of New Mexico by themselves as a principle and their subs. We also look at if there's any existing contracts. So there are specific criteria for qualification based proposals set forth by statute.

Each one of those qualifications has a criterion or a point evaluation total, a maximum if you will up to 1000 points. Based upon the evaluations which were completed by County staff as well as an individual from the senior community in Eldorado this firm was the highest rated firm.

COMMISSIONER MONTOYA: So there was representation from Eldorado.

MR. FLORES: Yes. One of the evaluators of the five sat on the team from the senior community of Eldorado. That's an important part when we deal with non-profits or community organizations, that they're part of the evaluation process.

COMMISSIONER MONTOYA: So in looking at past performance, do you just look at it or do you actually talk to some of those past performers?

MR. FLORES: Mr. Chair, typically, I was not on the evaluation team as the department director, typically they look at the information that's provided and their request for proposals. If there are issues within the request for proposals that would warrant further evaluation, either through an interview process or calls to the entities then those are made. I believe in this case they based their evaluation purely on their written proposal.

COMMISSIONER MONTOYA: Okay. That's all I have for right now, Mr. Chair.

CHAIRMAN CAMPOS: Anyone else? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Tony, could you tell us what the qualification categories were?

MR. FLORES: Again, Mr. Chair, capacity and capability, past record of performance, familiarity with contract with governments, amount of work or percentage of work to be done within the state of New Mexico and the last item is any existing contracts with the contracting agency based upon a dollar amount. Those are set forth in the statute.

COMMISSIONER SULLIVAN: And were interviews conducted?

MR. FLORES: Mr. Chair, based upon the written evaluation scores, I determined interviews were not to be conducted and that is at the discretion of the County, specifically the Purchasing Department and the using department.

COMMISSIONER SULLIVAN: Okay, so we didn't conduct interviews and the committee also didn't check references or do any outside evaluation to the best of your knowledge?

MR. FLORES: That's correct, Mr. Chair, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Well, I just have a concern about that process because I feel it's important to do that. I feel that with respect to the situation here that very often very compelling brochures can be developed and of course you always put your best foot forward in doing that but very often those brochures don't convey the ability of the firm to communicate to work with the user to develop a program that's what they want and not what the architect wants to appear on the cover of some architectural magazine. I think those are important issues.

I'm personally not comfortable with the staff's recommendation in this particular instance and not having any further details other than your memo it's hard for me to express it any differently.

CHAIRMAN CAMPOS: Any other comments? Commissioner Montoya.

COMMISSIONER MONTOYA: I share those same concerns. I think - can we ask for interviews to be done?

MR. FLORES: Mr. Chair, Commissioner Montoya, typically based upon the written evaluations is the factor if interviews are necessary. If we get three, four, five firms that are closely ranks, based upon as Commissioner Sullivan indicated their pamphlet or their brochures, then interviews are warranted because there's a close enough point totals that would warrant further information to be divulged out of an interview. Interviews based upon qualifications, in my experience both as a former purchasing director and current Project and Facilities Management Director is interviews, you're looking at those three areas, capacity/capability, past record of performance, and familiarity. Everything else is basic. Those are the three areas that you would look at.

I looked at the tabulation sheet prepared by the Purchasing Division and based upon those there is a large margin from the first to second and from the second to third.

COMMISSIONER MONTOYA: On all three?

MR. FLORES: On all three. So based upon that I am comfortable and it is my recommendation that we proceed forward with this agreement. It is my responsibility to oversee these contracts and work with the architect and the using group which would be the Eldorado or Vista Grande senior community. Based upon the recommendations and the tabulations that were arrived at by the Purchasing Division I stand ready to move forward with this contract.

CHAIRMAN CAMPOS: Any other comments? My feeling - what's the time line here, Mr. Flores?

MR. FLORES: Mr. Chair, we've received the appropriations. We brought those up last month. I was hoping to already be under contract and be under construction in January, February. That has been delayed. The time frame is moving the project forward in an efficient manner that I can have this grant closed out in one year.

CHAIRMAN CAMPOS: Will there be prejudice if we delay this another month? If we delay this to the next meeting?

MR. FLORES: Mr. Chair, no. I do believe though that the process that is outlined in the state procurement code has been followed through the Purchasing Division and I think that would be the only issue that we would have to address.

CHAIRMAN CAMPOS: Okay. I'm comfortable with Mr. Flores and what he's done and he has a lot of experience I believe with all three architectural firms and I think the committee has made a sound decision. I think we should proceed. Is there a motion either way?

COMMISSIONER MONTOYA: Mr. Chair, a motion to table for a month.

CHAIRMAN CAMPOS: To the last meeting of October?

COMMISSIONER MONTOYA: Of October, yes.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN CAMPOS: Okay, there's a motion and a second to table.

**The motion to table the awarding of the professional services agreement passed by majority 3-2 voice vote with Commissioners Campos and Duran voting against the motion.**

MR. FLORES: Mr. Chair, I do want clarification on what direction the Board wants to send for the tabling.

COMMISSIONER MONTOYA: Mr. Chair, my suggestion would be that we really take a look at those three areas and I can expand a little more on those three areas that you mentioned that are of major, critical importance that they're so far ahead of the other bidders, that we in fact are clear that they are going to perform according to what was listed in the proposal. And I'd be glad to talk to you more about it.

CHAIRMAN CAMPOS: Any other comments or directions from the Commission? Okay. Thank you, Mr. Flores.

MR. FLORES: Thank you.

**XI. B. 2. Request Approval of Land Purchase Agreement between Santa Fe County and The Trust for Public Land for Approximately 23 Acres of Land in the Chimayo Area for Inclusion in the Santa Fe Open Space and Trails Program/\$488,700**

PAUL OLAFSON (Open Space and Trails Division Director): Mr. Chair, Commissioners, before you we have a purchase agreement for 23 acres of land and this is divided into a fee purchase of 18.8 acres and a conservation easement purchase of 3.9 acres. This evolved from – we're purchasing the property from the Trust for Public Land and they've coordinated the deal with the current landowners which is the Isabel Vigil family.

The land is situated behind the santuario. I just handed out a brief map. [Exhibit 2] It's not to scale but it gives you a general location of the properties. We have an existing 17-acre parcel there. We're adding these 23 acres on to it. The area under fee we'll own clear. The area under conservation easement, we'll have a conservation easement as well as restrictive covenants that mirror that, and that was part of the settlement in clearing the

estate for the family.

The purchase price is \$488,700 and there will be a contribution of \$24,435 to the five percent maintenance fund. And staff is recommending approval.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Duran.

COMMISSIONER DURAN: Mr. Olafson, do you know what the Trust for Public Land's purchase price is?

MR. OLAFSON: Mr. Chair, Commissioner Duran, it is this. There's no share for them in this agreement to my knowledge.

COMMISSIONER DURAN: So the purchase price that the Trust for Public Land paid for this property is identical to what we pay?

MR. OLAFSON: That's my understanding.

COMMISSIONER DURAN: I don't think that's true.

MR. OLAFSON: Mr. Chair, Commissioner Duran, I understand that they have a business model but I believe in this project they have decided to, because it's actually been on quite a long time and it's an important visible project, my understanding is that they wanted to move it forward and I don't have exact knowledge of their agreement. But this was the appraised price; we're not paying any over the appraised price so that's making me understand that it would be pretty much a wash.

COMMISSIONER DURAN: But you didn't see the underlying purchase agreement?

MR. OLAFSON: No, Mr. Chair, Commissioner Duran.

COMMISSIONER DURAN: Okay. Thank you. Do you have a comment on that question? Good.

CHRISTOPHER GRAESER: Mr. Chair, Commissioner Duran, Christopher Graeser, 200 West Marcy. I represent the seller, Isabel Vigil, the seller to the Trust for Public Land and this is the exact amount she's selling to TPL for.

COMMISSIONER DURAN: Oh, okay, good. Thank you very much. No other questions.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Paul, what kind of land are we looking at? Is this agricultural? Mountain? What is this?

MR. OLAFSON: Mr. Chair, Commissioner Anaya, it's largely pasture land. It's the Potrero behind the santuario. So if you were standing at the back of the church you see there's a bunch of green fields back there. These are the grazing fields out there. And it includes partly some elevated areas with acequia on it but it's largely just flat pasture land, irrigated pasture.

COMMISSIONER ANAYA: And if we purchase it, what are we going to do with it? Are we going to graze it? Are we going to contract out?

MR. OLAFSON: Commissioner Anaya, the idea is to continue using it and to have it in pasture grazing. And we'll have to develop a management plan that's part of

our agreement here and we'll then have a process for determining grazing rights or grazing capacities out there. Capacities and responsibilities.

COMMISSIONER ANAYA: So then somebody can come to us and say We want to lease that piece of property to graze or lease it to set up alfalfa?

MR. OLAFSON: What we'd probably do, what we're focusing on is a management agreement whereby the person who gets the right to graze on there is responsible for all the maintenance and management operation of it. The objective of this is to preserve these pastures as a historic backdrop for the santuario as well as protecting agricultural land within the county and keeping it active and in agriculture. And these are pretty small tracts as well.

COMMISSIONER ANAYA: So it's not for people to come out and walk their dogs on.

MR. OLAFSON: No. Mr. Chair, Commissioner Anaya, the idea of this project is largely to keep it in agricultural function and production and there is opportunity for educational, interpretive things, possibly a trail. We haven't gotten to that point yet.

COMMISSIONER ANAYA: Do we do that in any land that we have now?

MR. OLAFSON: Well, on the adjoining 17 acres we have developed an initial management plan and we're working on getting the acequias going on that piece and there is a trail segment that has a potential for future links to BLM lands.

COMMISSIONER ANAYA: Is that agricultural land too, those 17 acres?

MR. OLAFSON: Yes, largely. About ten acres is ag and about seven is upland.

COMMISSIONER ANAYA: And somebody's leasing it from us?

MR. OLAFSON: Currently, we're working with the acequia association to do some repairs and get the water back on that pasture property.

COMMISSIONER ANAYA: And when you say conservation easement on this other four acres, what do you mean by that?

MR. OLAFSON: What it is it's an agreement that we, the County enters in this agreement with the landowners saying the primary purpose or the only use of this property is for these conservation measures. In this case it's agricultural preservation. So the only way this land can be used is for agriculture. It can't be built. It can't have houses. Basically, it's an easement over the top of the property.

COMMISSIONER ANAYA: So if we were to purchase this four acres then the people that own it now are going to continue to use it?

MR. OLAFSON: That's correct.

COMMISSIONER ANAYA: But the other piece of property, if we were to purchase it then those people don't want to use it anymore for agricultural.

MR. OLAFSON: That's correct.

COMMISSIONER ANAYA: So then we'd go out for bid - to use that piece of property?

MR. OLAFSON: Exactly.



COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Paul, I'm curious about the conservation parcel that Commissioner Anaya was talking about. It seems to be like the right-of-way easement right through the middle of a private parcel of land. Why do we need that? The rest of the parcel on each side is private, right?

MR. OLAFSON: That's correct, and if I might point out for the Commission, it's part of the whole estate, and so we're trying to preserve the entire Potrero area. The area between the existing property and the conservation area is held by one family. The next area over to the right on the paper is another family. This family has proposed putting theirs also into conservation easement. Thus we will be preserving the majority of this. The overall goal is to preserve the Potrero behind the santuario and keep them in production. So it's important to conserve this piece because it's part of the long term of the whole process.

COMMISSIONER SULLIVAN: But as an easement, the title retains – the ownership rather, retains with the current owner, correct?

MR. OLAFSON: That's correct. We do have an option for first refusal if the owner decides to sell and that would be at a dramatically reduced price because the easement would already be on there and restricting it to only agricultural use.

COMMISSIONER SULLIVAN: And they're farming it now. Is that correct?

MR. OLAFSON: Correct.

COMMISSIONER SULLIVAN: So why don't we just do an option to purchase? A first right of refusal to purchase instead of paying \$69,700 to pay people to do what they're doing now?

MR. OLAFSON: Mr. Chair, Commissioner Sullivan, the idea is that we're lining ourselves up to be that next first right of refusal, and we're also ensuring that the land is conserved. The current landowner wants to continue farming and using it and by us buying the easement we're ensuring that that's all he can do on it and we're also lining ourselves up for the first right when and if he doesn't want to do that anymore. Additionally this was part of a fairly complex estate settlement that this was the conditions we were able to work out. Initially, we'd looked at the fee purchase. And this is a slightly less expensive manner to keep the objective of preserving this area still intact.

COMMISSIONER SULLIVAN: Well, would that money be applied towards the purchase price if we purchased it at a later date?

MR. OLAFSON: It would in a sense that a new appraisal of that property would appraise it only for agricultural value because of the easement and the covenants on top of it we would make sure that that would be the only thing it could be used for. So any future appraisal would be only pasture or grazing value.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair.

COMMISSIONER ANAYA: Mr. Chair, from what it looks like is I could

come to the County and say, County, purchase my ranch, but I get to continue grazing cattle. Is that what we're doing here?

MR. OLAFSON: Mr. Chair, Commissioner Anaya, that's correct. And with the goal that then the land is preserved for the use that's identified as an important value for the community and for the County.

COMMISSIONER ANAYA: But then you're not letting anyone on this particular piece of property if it becomes County open space. And how are we going to negotiate with the lessee to let somebody walk their dog, because I know that's going to come up.

MR. OLAFSON: And again, that is a potential. I believe though that the focus and the intent here is not to make it a park or a dog walking area. It's to keep it in agricultural production. If that changes and the focus is away from production and into some kind of passive or active recreation, then we'd have to renegotiate this. But our current aim and focus is to keep it in production. So I don't see that as too much of an issue at this point.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Duran.

COMMISSIONER DURAN: Just as a point of clarification, when we first agreed, or when we went to the public to ask for funds to acquire open space one of the criteria was to acquire property not only for public use and for them to use it but also to preserve it as open space and keep it away from the hands of development. And I understand your concern to allow people to go, to use it to walk on it, but just keeping it open is also of beneficial importance to us.

CHAIRMAN CAMPOS: Yes, I would agree with Commissioner Duran. As a legal mechanism it allows a very critical area to remain open space or used the way it is without further development of homes or businesses, etc. And it sets us up to become the owners if that seller decides at some point not to use it for what they're using it for at this time. So I think it's really a good move.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: And this is a beautiful piece of property to maintain it the way it is. I know the people there in the Potrero area want it that way as well. They've been working with Paul in putting this whole deal together. So I would move for approval.

COMMISSIONER DURAN: Second.

CHAIRMAN CAMPOS: Discussion.

**The motion to approve the purchase of the Potrero land passed by unanimous [5-0] voice vote.**

**XI. C. Matters from the County Manager**

**2. Request Authorization to Publish Title and General Summary of an Ordinance Approving Vista Studios, Inc. for a Workforce Economic Development Project with Santa Fe County**

MR. ABEYTA: Thank you, Mr. Chair. The ordinance will be brought to the Board of County Commissioners on October 26, 2004 pursuant to the BCC authorizing the publishing of title and general summary. This is a requirement pursuant to state statute that the County adopt an ordinance for purposes of local economic development with Vista Studios, which is the company that is wanting to locate within our economic development park off State Road 14.

CHAIRMAN CAMPOS: Mr. Abeyta, does the ordinance have to be specific to a party? Any time there's a party that wants to use this part of the law we have to approve a different ordinance?

MR. ABEYTA: Mr. Chair, yes, that's my understanding.

CHAIRMAN CAMPOS: Okay, is there a motion authorizing publication of title and general summary?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: Any discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: What is a workforce economic development project? What does that mean?

MR. ROSS: Mr. Chair, Commissioner Sullivan, that's the term used in the statute. It's the umbrella of economic development projects. That's basically statutory language.

COMMISSIONER SULLIVAN: And why are we doing this?

MR. ROSS: As Mr. Abeyta said, every single project we do has to have its own specific ordinance authorizing that project. As you recall, we authorized a lease just a meeting or two ago and this is one of the necessary steps to complete this project is to have this specific ordinance on the books with respect to this particular project.

COMMISSIONER SULLIVAN: And we have to do this just for projects in the economic development park or for any project?

MR. ROSS: No, for any project that qualifies as economic development. Any project for which there isn't really a quid pro quo, which would ordinarily be unconstitutional.

COMMISSIONER SULLIVAN: Okay. So we're having to do this because of the anti-donation clause.

MR. ROSS: Right. As you recall a few years ago they amended the anti-donation clause to permit bodies like yourselves to engage in economic development projects under certain specified criteria. One of the criteria, the one that's before you right now, that we have a specific ordinance on each project that's done and this is one of those.

COMMISSIONER SULLIVAN: And are we comfortable with their workforce

plan. I know they have to – or I believe they have to employ a minimum number, I think 15 percent or something like that to qualify for the state tax incentives.

MR. ROSS: Right.

COMMISSIONER SULLIVAN: But beyond that, have they or are they going to be submitting any kind of a workforce plan?

MR. ROSS: We're going to have to put all that stuff together and have it in front of you when the ordinance is adopted. I know they've submitted a lot of material in connection with the sublease of the property and we'll have to put that together in an intelligible package and present it to you in a formal manner.

COMMISSIONER SULLIVAN: There were a lot of side documents and so forth but I really didn't see anything that went into the lease that made those a commitment of any sort on the part of the lessee. Does that then get rolled into this ordinance?

MR. ROSS: I don't know how much of that gets rolled into the ordinance specifically. Some of it obviously will need to be, but obviously a lot of the material is going to have to be presented to you for evaluation in connection with the ordinance. I assume it's going to be the same material we've looked at in connection with the sublease.

COMMISSIONER SULLIVAN: I'm just trying to ask what our vehicle is to ensure that this individual or any subsequent individual that takes it over provides these economic benefits. That's what the park is for of course.

MR. ROSS: Yes. You have to accept their plan.

COMMISSIONER SULLIVAN: So does that – where do they sign on the dotted line, so to speak? Where do we have that comfort level that these commitments are contractually valid? In the ordinance? Or in the lease?

MR. ROSS: There's a plan that they have to – there's an application that they have to submit to us which they have and then of course the supporting materials, you'll have to accept all that.

COMMISSIONER SULLIVAN: Okay, and that plan comes as a part of the ordinance or is that separate?

MR. ROSS: The plan is what leads to the ordinance. The ordinance is a culmination of the application process plus the plan.

COMMISSIONER SULLIVAN: Okay, when we see that ordinance it will be based on a plan that they submit which will be in the record which will be the basis of the ordinance.

MR. ROSS: Exactly.

COMMISSIONER SULLIVAN: Okay. So that seems – does that give us the enforcement that we need?

MR. ROSS: In terms of contractual enforceability, the ordinance is going to be law. So a violation of the ordinance is a violation of the law. So we do have some teeth in enforcing that plan. I think you're right there. It's not a contractual obligation that we're enforcing. It's a different sort of obligation.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTTOYA: Mr. Chair, is this also in response to some of the concerns that were brought about at that hearing?

MR. ROSS: Well, this is one of the things that was on our list of things to do, the to-do list, to complete the transaction. It hadn't been completed and the Board of Finance was uncomfortable with just leaving it undone.

COMMISSIONER MONTTOYA: So we have it completed. Okay.

CHAIRMAN CAMPOS: Okay. Any other questions? Is there a motion to authorize the publication of title and general summary?

COMMISSIONER SULLIVAN: So moved.

COMMISSIONER MONTTOYA: Second.

**The motion to authorize publication of title and general summary of an economic development ordinance passed by unanimous [5-0] voice vote.**

**XI. C. 3. Consideration of Collective Bargaining Agreement with the Santa Fe County Deputy Sheriff's Association, a Subsidiary of the New Mexico Coalition of Public Safety Officers/Communication Workers of America/Local 7911**

CHAIRMAN CAMPOS: Who's taking the lead on that?

MR. GONZALEZ: I'll go ahead, Mr. Chair, members of the Commission. And we also have present Joseph Gutierrez and Jeremy Garcia from the respective bargaining sides I think to answer questions and also to address you as well. But as you know, this is the proposed final resolution of the collective bargaining negotiations going on between CWA and the County and I believe that from the staffing standpoint and the County Manager's standpoint this is a good agreement for the County. It's a good agreement for the citizens of the county. It takes us several steps forward in terms of being able to increase the ability of the Sheriff to recruit for his department and I think also resolves some issues that were hard negotiated but really ended up being a win-win for both sides. So I recommend approval and with that, also offer Joseph Gutierrez and Jeremy Garcia for any additional questions.

CHAIRMAN CAMPOS: Mr. Gonzalez, could you give us a little context, give us a brief outline, and then we may have questions.

MR. GONZALEZ: Basically, as I understand it the proposal calls for a 14 percent/1 percent/ 1 percent increase across three years. The three years from the County's standpoint provide us with budgeting certainty, the ability to predict what our expenses are down the line and at the same time, the way the increases were structured, they were structured in a way that provides additional funding for some of the positions within the Sheriff's office that the Sheriff was having difficulty with retention.

CHAIRMAN CAMPOS: Okay, any questions for Mr. Gutierrez?  
Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just want to thank the staff and the collective bargaining people that set down with CWA and worked together to come up with a solution as you indicated is a win-win situation. And those are the kind of situations I like to be in. I know this will help out the Sheriff and the department and it's a good thing for Santa Fe County and I know we use the Sheriff's Department, we call on the Sheriff's Department and this is a good thing for Santa Fe County. Thank you.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, I just would echo what Commissioner Anaya has said. I know that retention has certainly been a huge issue and a huge problem and I'm hoping that this agreement will help in that because we continue to face a shortage, I think, of officers and that happening having a kind of shortfall in the coverage that we have, particularly in the area that I represent that continues to be a huge issue in all these townhall meetings that I've gone to and I've attempted to address the fact that we're working on negotiating a new contract and I'm just hoping that this certainly does help in that area and I know that the residents of northern Santa Fe County will be very appreciative of seeing more presence of Sheriff's officers and it will be good, as Commissioner Anaya said, for the whole county as well.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'm also very much in favor of being certain that our Sheriff's Department is the number one department of the 33 counties that we have. We want every deputy and every member of that department to have the pride that they should have and will have, I think and the recognition and the esprit de corps that comes with knowing that you have the backing of your elected body in the work that you do every day out on the street and throughout the county.

Following up on Commissioner Montoya's concern, I read in the paper, and I don't know if this comment was correct or not, that this would enable the Sheriff to hire ten more deputies. Is that true?

JOSEPH GUTIERREZ (Deputy Finance Director): Mr. Chair, members of the Commission, Commissioner Sullivan, it's not going to allow the Sheriff to have any additional positions than he has now but he has vacancies and I believe the new case schedule is going to make it more competitive to recruit for those positions, but there are no additional positions coming out of this agreement.

COMMISSIONER SULLIVAN: How many vacancies does he have?

MR. GUTIERREZ: It fluctuates, but while we were negotiating this agreement, it was approximately about seven positions.

COMMISSIONER SULLIVAN: Okay, so with seven vacancies, then making this a more competitive environment, which we want to do and more comparable to other law enforcement agencies. If he were able to fill those seven positions, would that cause a budget problem or is there enough money with the raises to also fill those seven?

MR. GUTIERREZ: The way it's factored for the current fiscal year is we're taking the dollars that were allocated for the negotiations, both for AFSCME, for the non-

County and for CWA, and the dollars that are available for this agreement, plus the Sheriff's salary savings is sufficient to fund the full staffing level for CWA membership through the end of the fiscal year when he fills those positions also.

COMMISSIONER SULLIVAN: So the answer is yes.

MR. GUTIERREZ: Yes, there is.

COMMISSIONER SULLIVAN: Okay, good.

MR. GUTIERREZ: Without going to the other departments and without going

to -

COMMISSIONER SULLIVAN: Without coming back to the Commission.

MR. GUTIERREZ: Right.

COMMISSIONER SULLIVAN: So with this and we do have enough money in reserve, so to speak that you can fill those positions at the new levels so that you can attract people. So possibly then it will result is seven, not ten, but seven at least new deputies on the force.

MR. GUTIERREZ: It definitely should do that. He should have a full force.

We're hoping that we won't have any vacancies as we move forward in the current fiscal year.

COMMISSIONER SULLIVAN: great. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya? Okay my statements - we've been working on this for three years. This is the culmination of a three-year effort to bring the Sheriff's office up to where it is today. This break frees us up to that step where we are going to be able recruit and retain in a big way. So I congratulate you, Mr. Gutierrez and the Sheriff's office for doing this, and the County Commission for working on this for the past three years. We're finally there. It took us a while but we're there and I think our service is going to be greatly improved. And I thank you all for working on it.

MR. GUTIERREZ: Thank you, Mr. Chair, members of the Commission. This is Jeremy Garcia, who is the president of the local CWA here, the Sheriff's office, and I believe he wanted to make a few comments.

CHAIRMAN CAMPOS: Sure.

JEREMY GARCIA (Deputy Sheriff): Mr. Chair, my name is Jeremy Garcia and I'm a representative from Santa Fe's Deputy Association. A couple months ago I came before you guys and I asked you to keep yourself apprised of what's going on with negotiations. That was accomplished. I met with many of you after negotiations began and during the process. You gave us an excellent committee that we worked with to accomplish what we did and we really appreciate the efforts that you as the Commission have taken, not only for ourselves, but for our department, for the citizens of Santa Fe County. We really appreciate that.

This wouldn't have been possible without it as you know. That's the bottom line. We were kind of at a standstill. To quote Mr. Gutierrez we were kind of at a point where a train wreck was inevitable. We were kind of heading down that course where it was looking not very good for the whole negotiation process. And I think you guys stepped in and saved the day. And I certainly would like the citizens to be aware of that and we do appreciate this. I think this

is an excellent agreement, both for the deputies and for the County itself. It's going to do a lot for the Sheriff. Sheriff Solano is going to be able to work with us and accomplish some of the goals that he has for the department. We're looking forward to that.

As you drive around in your districts you can pay particular attention, see the deputies that are driving around and marching. They've got their heads up high now and they're going to be with the department. They'll be with Santa Fe County. And I think this is definitely something that we started three years ago and it was a much needed end and we very much appreciate it. Thank you very much.

CHAIRMAN CAMPOS: Thank you very much. We appreciate your efforts. Okay, Mr. Gonzalez, this asks for consideration. What do you want us to do?

MR. GONZALEZ: I'm actually asking for approval once you've had the opportunity to ask the questions you've asked this afternoon.

COMMISSIONER MONTOYA: Mr. Chair, move for approval.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Discussion?

**The motion to approve the collective bargaining agreement passed by unanimous [5-0] voice vote.**

CHAIRMAN CAMPOS: Thank you very much. A job well done.

**XII. Public Hearings**

**A. Ordinance No. 2004-\_\_\_. An Ordinance Adopting the Antifreeze Safety Ordinance TABLED**

CHAIRMAN CAMPOS: As far as the public hearings, the ordinance, the Antifreeze Safety Ordinance, that's off. That's tabled, right? And there seems to be no one here in the public to testify.

**XI. D. Matters from the County Attorney**

**1. Executive session**

**a. Discussion of pending or threatened litigation**

**b. Limited personnel issues**

**c. Discussion of possible purchase, acquisition or disposal of real property or water rights**

CHAIRMAN CAMPOS: How much time, Attorney Ross, do we need today?

MR. ROSS: Mr. Chair, I think about an hour will do it.

CHAIRMAN CAMPOS: Could we break until 1:30 and have lunch and



come back at 1:30 and go into – and then at that point decide whether we want to go into executive session? Is that okay with everybody? 1:30?

COMMISSIONER SULLIVAN: Are we going to decide or are we just going to go into executive session?

CHAIRMAN CAMPOS: We'll at that time vote and go – we'll have to take a vote.

COMMISSIONER SULLIVAN: Let's take a vote now to go into executive session starting at 1:30.

**Commissioner Duran moved to go into executive session pursuant to NMSA Section 10-15-1-H (2, 7 and 8) to discuss the matters delineated above. Commissioner seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Campos, Duran, Montoya and Sullivan all voting in the affirmative.**

[The Commission met in executive session from 12:05 to 3:35.]

**Commissioner Duran moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Anaya seconded. The motion passed by unanimous voice vote.**

**ADJOURNMENT**

Chairman Campos declared this meeting adjourned at approximately 3:35 p.m.

Approved by:




Board of County Commissioners  
Paul Campos, Chairman

Respectfully submitted:

  
Karen Farrell, Commission Reporter

ATTEST TO:

  
REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK



SFC CLERK RECORDED 12/16/2004



# SANTA FE COUNTY

## Resolution 2004 -

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### A RESOLUTION DECLARING A WATER EMERGENCY IN THE CHUPADERO COMMUNITY WATER ASSOCIATION

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**WHEREAS**, the approximately 2,000 citizens living in the community of Chupadero are served by the Chupadero Mutual Domestic Water Consumers Association (the "Chupadero Water Association");

**WHEREAS**, the Chupadero Water Association is supplied by two wells, one of which went dry last year and one of which is dilapidated and unable to adequately supply the communities' domestic water needs;

**WHEREAS**, the Chupadero Water Association's inability to provide an adequate and reliable source of potable water to the Chupadero community constitutes a water emergency that threatens the health and well-being of that community; and

**WHEREAS**, the citizens of Chupadero have requested that Santa Fe County and the State of New Mexico help them address this water emergency.

**NOW, THEREFORE**, be it resolved by the Board of County Commissioners of the County of Santa Fe ("BCC") that a water emergency exists in the Chupadero community that threatens the health and well-being of that community.

SFC CLERK RECORDED 12/16/2004

**NOW, THEREFORE**, be it further resolved that the BCC requests and urges all relevant New Mexico State Agencies and Departments to take all necessary and appropriate action to address the water emergency in the Chupadero community.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_\_ **DAY OF** \_\_\_\_\_, 2004.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Paul D. Campos, Chairman

**ATTEST:**

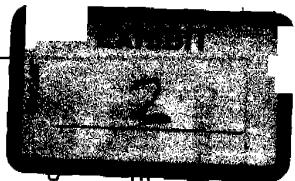
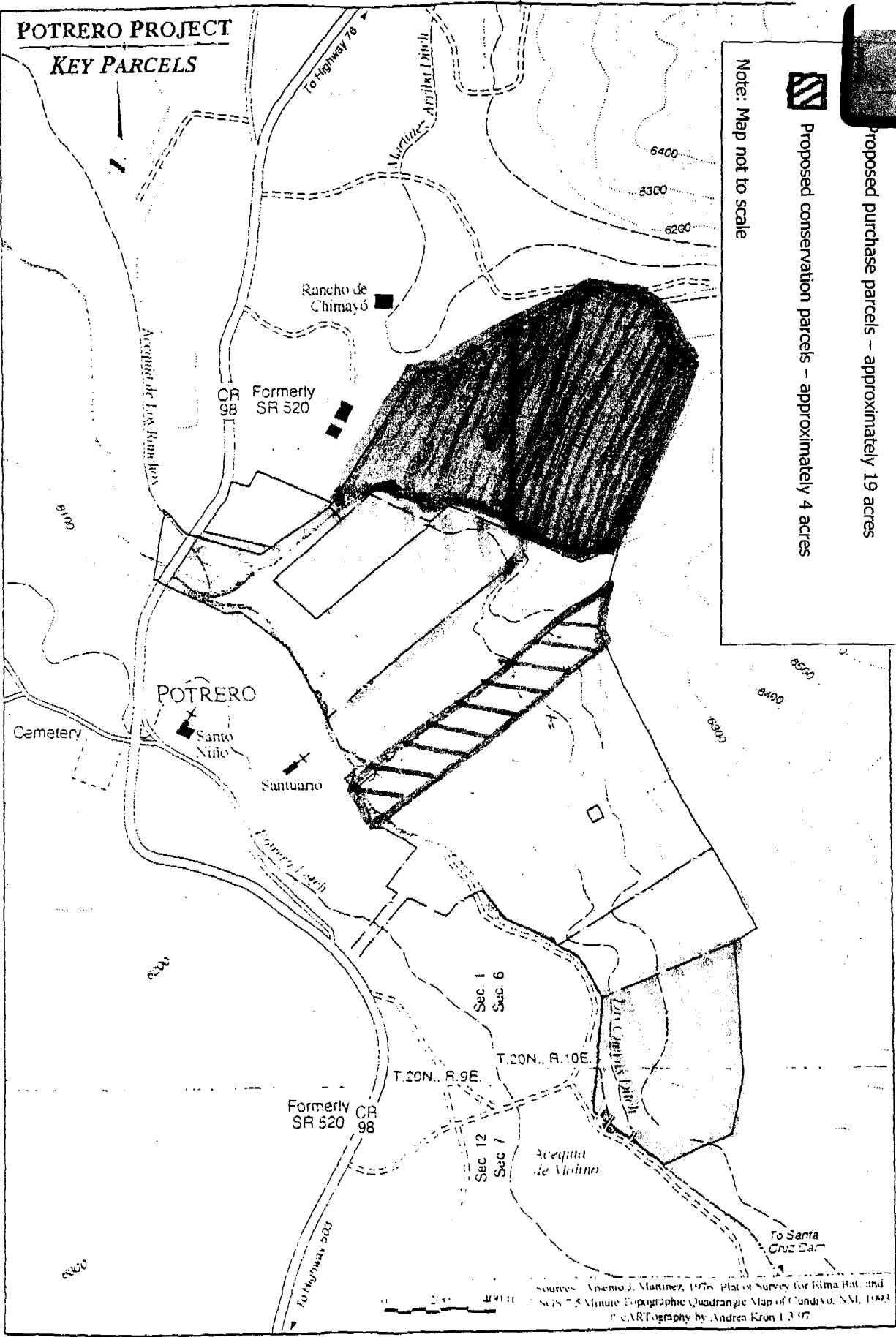
\_\_\_\_\_  
Rebecca Bustamante, Santa Fe County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, Santa Fe County Attorney

SFC CLERK RECORDED 12/16/2004

**POTRERO PROJECT  
KEY PARCELS**



**Potrero Open Space Project Overview Map**

Existing County Open Space Property – approximately 17 acres

Proposed purchase parcels – approximately 19 acres



Proposed conservation parcels – approximately 4 acres

Note: Map not to scale

SFC CLERK RECORDED 12/16/2004

Sources: Arsenio J. Martinez, 1976, Plat of Survey for Gima Ran. and  
 SCS - 5 Minute Topographic Quadrangle Map of Cundiso, NM, 1993  
 © CARTography by Andrea Kron 1.3.07

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made by and between the TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation ("TPL") and THE COUNTY OF SANTA FE, New Mexico, a political subdivision of the State of New Mexico (the "County").

### RECITALS

- A. TPL owns or has the right to acquire by the Closing Date approximately 18.6731 acres, more or less, in fee title to real property, located in Santa Fe County, New Mexico, as more fully described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property").
- B. The County desires to acquire the Property and TPL desires to have the Property conveyed to the County on the terms and conditions set forth below.
- C. TPL's obligation to convey the Property to the County is conditioned upon TPL either acquiring the Property or exercising its control over the Property.

### TERMS

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. **Property and Acquisition Amount.** TPL is or by closing will be the owner of or control the disposition of the Property. The County has determined the need to acquire the Property in that it meets the criteria for The Santa Fe County Open Space, Wildlife, Mountains, Trails and Historic Places Program. The County agrees to acquire the Property for Four Hundred Nineteen Thousand Dollars (\$419,000) (the "Acquisition Amount"), subject to the terms and conditions set forth below. The County has reviewed and approved the appraisal performed by Donnell Appraisal, P.C. and is fully satisfied as to the value of the Property.
2. **No Personal Property.** The parties acknowledge that no personal property is being transferred and that no personal property is located on the Property being transferred.
3. **Risk of Loss for Damage to Improvements.** TPL or its successor shall be responsible for the risk of loss prior to closing.
4. **Conveyance Documents.** TPL shall cause title to the 18.6731 acres, more or less, of fee lands to be transferred to the County by Special Warranty Deed. Title shall be transferred free and clear of liens and encumbrances, except for and subject to those encumbrances set forth on Schedule B-II of the Title Commitment that are acceptable to the County.
5. **Payment and Maintenance Fund.** The Acquisition Amount shall be due in full at closing. At closing, TPL shall also pay to the County five percent (5%) of the

SFC CLERK RECORDED 12/16/2004

Acquisition Amount (\$20,950.00) to the County's Capital Improvement and Maintenance Fund for use by the County in the ownership and management of the Property.

6. **Title.** TPL shall deliver a commitment (the "Commitment") for a standard owner's title insurance policy proposing to insure the County, and issued by a title company reasonably acceptable to County ("Title Company"), along with legible copies of all underlying documents referred to therein no later than October 1, 2004. The Commitment and all matters affecting title to, or use of, the Property shall be subject to the County's approval or disapproval in writing. If the County shall disapprove by written notice to TPL of any particular matter affecting title to the Property, excluding all standard exceptions which are deemed accepted by the County, TPL may, but shall not be obligated to, attempt to satisfy the objections raised by the County. If TPL determines not to satisfy the objection, the County may either terminate this Agreement or accept the Property subject to the exceptions which were objectionable.
7. **Possession and Closing.** Possession shall be given to the County on the date of closing. Closing shall be on or before October 15, 2004 ("Closing Date") or such other date as the parties shall mutually agree to in writing.
8. **Water Rights.** TPL agrees to assign and hereby transfers, effective upon closing, to the County by Quitclaim Water Rights Deed, any and all of its rights to any water appurtenant to the Property owned by TPL. The parties shall execute any additional documents necessary to accomplish the transfer of any such water rights.
9. **Environmental Representations.** TPL hereby represents that, to the best of TPL's actual, specific knowledge, no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used or are located on the Property.
10. **Inspection Rights.** TPL has permitted the County to conduct such inspections of the Property as the County deems necessary to determine the condition and suitability of the Property for acquisition by the County. The County has fully satisfied itself with regard to the condition and suitability of the Property.
11. **No Leases.** TPL represents that to the best of its knowledge there are no oral or written leases on all or any portion of the Property.
12. **Broker's Commission.** No broker has been used by either party in connection with this transaction.
13. **Closing Costs.** Real property taxes on the Property shall be prorated as of the Closing Date. Real property taxes on the Property shall continue to be the exclusive obligation of Vigil as provided for in the Conservation Easement. The County and TPL will each pay one-half of the escrow charges and copy expense charged by the title company. TPL will pay the cost of the title commitment and the title policy. The County will pay the fee for recording the conservation easement and the covenants, conditions and restrictions.

14. **Entire Agreement.** This Agreement shall constitute the entire contract between TPL and the County and no modification hereof shall be binding unless in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective the date of the last signature set forth below.

**THE TRUST FOR PUBLIC LAND**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO**

By: Paul D. Campos, Chairman

Date: \_\_\_\_\_

Approved as to form:

Attest:

\_\_\_\_\_  
Stephen C. Ross  
County Attorney

\_\_\_\_\_  
Rebecca Bustamante  
County Clerk

SFC CLERK RECORDED 12/16/2004

## EXHIBIT A

Two tracts of land identified as:

1. "2331 Tr. 1, 7.0651 Acres" as shown on "Amended Boundary Survey for the Trust for Public Lands. . ." filed in the Office of the County Clerk, Santa Fe County, New Mexico on April 14, 2004 in Plat Book 557, Pages 1-14 as Document No. 1323108

and

2. "Tract 'C' 11.608 Ac± #280 San Juan Medina Road" as shown on that certain plat of survey entitled "Boundary Survey/Lot Line Adjustment Plat Requested by the Rubel Martinez Estate and Isabel Vigil" recorded in the records of Santa Fe County, New Mexico on August 6, 2004 in Plat Book 565, Page 031, as Document No. 1340650.



## CONSERVATION EASEMENT PURCHASE AGREEMENT

This Conservation Easement Purchase Agreement ("Agreement") is made by and between the TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation ("TPL"), and THE COUNTY OF SANTA FE, New Mexico, a political subdivision of the State of New Mexico (the "County")

### RECITALS

WHEREAS, TPL intends to acquire from landowner Isabel Vigil ("Vigil"), a conservation easement on certain real property located in Santa Fe County, State of New Mexico. The property is described in Exhibit A (the "Property").

WHEREAS, the Property includes scenic open space visible from various public vantage points and meets all criteria for The Santa Fe County Open Space, Wildlife, Mountains, Trails and Historic Places Protection Program;

WHEREAS, the parties hereto and Vigil have agreed upon the terms of a conservation easement for the Property ("Conservation Easement") attached hereto as Exhibit B;

WHEREAS, the parties intend that by entering into the Conservation Easement substantially in the form attached as Exhibit B to ensure that the open space and scenic quality values of the subject Property will be perpetually maintained and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected;

WHEREAS, the conservation purposes of the Conservation Easement are recognized by, and the grant of the Conservation Easement will serve, the conservation purposes of The Santa Fe County Open Space, Wildlife, Mountains, Trails and Historic Places Program;

### TERMS

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

- 1. Property and Acquisition Amount.** The County has determined the need to acquire a Conservation Easement on the Property in that it meets the criteria for The Santa Fe County Open Space, Wildlife, Mountains, Trails and Historic Places Program. The County agrees to acquire the Conservation Easement for Sixty-Nine Thousand, Seven Hundred Dollars (\$69,700.00) (the "Acquisition Amount"), subject to the terms and conditions set forth below. The County has reviewed and approved the appraisal performed by Donnell Appraisal, P.C. and is fully satisfied as to the value of the Conservation Easement.
- 2. No Personal Property.** The parties acknowledge that no personal property is being transferred and that no personal property is located on the Property being transferred.

SFC CLERK RECORDED 12/16/2004

3. **Risk of Loss for Damage to Improvements.** TPL or its successor shall be responsible for the risk of loss prior to closing.
4. **Conveyance Documents.** TPL shall cause Vigil to execute the Conservation Easement in a form acceptable to the County at Closing. TPL shall also cause Vigil to execute and deliver Covenants, Conditions and Restrictions, substantially in the form attached as Exhibit C hereto to the County at Closing. The Property shall be free and clear of liens and encumbrances, except for and subject to those encumbrances set forth on Schedule B-II of the Title Commitment that are acceptable to the County.
5. **Payment and Maintenance Fund.** The Acquisition Amount shall be due in full at closing to TPL. At closing, TPL shall also pay to the County five percent (5%) of the Acquisition Amount (\$3,485.00) to the County's Capital Improvement and Maintenance Fund for use by the County in the management of the Property.
6. **Title.** TPL shall deliver a commitment (the "Commitment") for a standard owner's title insurance policy proposing to insure the County, and issued by a title company reasonably acceptable to County ("Title Company"), along with legible copies of all underlying documents referred to therein no later than October 1, 2004. The Commitment and all matters affecting title to, or use of, the Property shall be subject to the County's approval or disapproval in writing. If the County shall disapprove by written notice to TPL of any particular matter affecting title to the Property, excluding all standard exceptions which are deemed accepted by the County, TPL may, but shall not be obligated to, attempt to satisfy the objections raised by the County. If TPL determines not to satisfy the objection, the County may either terminate this Agreement or accept the Property subject to the exceptions which were objectionable.
7. **Closing.** The executed Conservation Easement and the executed Covenants, Conditions and Restrictions shall be provided to the County on the date of closing. Closing shall be on or before October 15, 2004 ("Closing Date") or such other date as the parties shall mutually agree to in writing.
8. **Environmental Representations.** TPL hereby represents that, to the best of its knowledge, no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used or are located on the Property.
9. **Inspection Rights.** The County has been permitted to conduct such inspections of the Property as the County deems necessary to determine the condition and suitability of the Property for acquisition of a Conservation Easement by the County. The County has fully satisfied itself with regard to the condition and suitability of the Property.
10. **No Leases.** TPL represents that there are no oral or written leases on all or any portion of the Property.
11. **Broker's Commission.** No broker has been used by either party in connection with this transaction.

12. **Closing Costs.** Real property taxes on the Property shall continue to be the exclusive obligation of Vigil as provided for in the Conservation Easement. The County and TPL will each pay one-half of the escrow charges and copy expense charged by the Title Company. TPL will pay the cost of the Title Commitment and the Title Policy. The County will pay the fee for recording the Conservation Easement and the Covenants, Conditions and Restrictions.

13. **Entire Agreement.** This Agreement shall constitute the entire agreement between TPL and the County and no modification hereof shall be binding unless in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective the date of the last signature set forth below.

**TRUST FOR PUBLIC LAND**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO**

By: Paul D. Campos, Chairman

Date: \_\_\_\_\_

Approved as to form:

Attest:

\_\_\_\_\_  
Stephen C. Ross  
County Attorney

\_\_\_\_\_  
Rebecca Bustamante  
County Clerk

SFC CLERK RECORDED 12/16/2004

## **EXHIBIT A**

Two tracts of land identified as "5689 Tr. 4, 2.2881 Acres" and "5789 Tr. 3, 1.6454 Acres," as shown on "Amended Boundary Survey for the Trust for Public Lands. . . within Section 1 and 12, T20N, R9E, NMPM. . .," filed in the office of the County Clerk, Santa Fe County, New Mexico on April 14, 2004 in Plat Book 557, pages 1-14 as Document No. 1323108.

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Conservation Easement") is granted on this \_\_\_ day of \_\_\_\_\_, 2004, by ISABEL VIGIL, a widowed woman dealing in her sole and separate property, having an address at HCR 64, Box 11-B, Chimayo, NM 87522 ("Grantor") to THE COUNTY OF SANTA FE, a political subdivision of the State of New Mexico, having an address at 102 Grant Avenue, Santa Fe, New Mexico 87501 ("Grantee") for the purpose of forever conserving the scenic and open space values of the subject property.

WITNESSETH THAT:

WHEREAS, the Grantor is the sole owner in fee simple of certain real property, more particularly described and shown in **Exhibit 1** attached hereto and incorporated herein by reference, located in The County of Santa Fe, State of New Mexico (hereinafter the "Property").

WHEREAS, the Property includes scenic open space visible from various public vantage points and meets all criteria for The County of Santa Fe Open Space, Wildlife, Mountains, Trails and Historic Places Program.

WHEREAS, the parties intend by this Conservation Easement to ensure that the open space and scenic quality values (hereinafter the "Conservation Values") of the subject Property will be perpetually maintained (hereinafter the "Conservation Purposes"), and that uses of the land that are inconsistent with these Conservation Purposes will be prevented or corrected. The parties agree, however, that the current uses of the Property as well as the improvements to the Property described in this Conservation Easement are consistent with the Conservation Purposes of this Conservation Easement.

WHEREAS, the Conservation Purposes of this Conservation Easement are recognized by, and the grant of this Conservation Easement will serve, the conservation purposes of The County of Santa Fe Open Space, Wildlife, Mountains, Trails and Historic Places Program.

WHEREAS, County of Santa Fe Resolution No. 2000-60 adopted The County of Santa Fe Open Land and Trails Plan which seeks to protect and preserve open space land in the County, and provides, in part, that the County will:

- (1) Maintain the unique, diverse rural character of the County through its archaeological, historical, cultural and sacred properties that contribute to community identity, history and connection with each other;
- (2) Protect tracts of open land and trails using a combination of methods including voluntary conservation easements, acquisition and existing regulations;
- (3) Where public ownership of the land itself is not essential to the public interest, the County may acquire an interest through a deed of conservation easement;

WHEREAS, Sections 47-12-1 to 47-12-6 NMSA 1978 (1995 Repl.), the "Land Use Easement Act" aids the Grantor who wishes voluntarily to convey a conservation easement

intended to restrict the use of a specific parcel of land, thus preventing its development in ways prohibited by the conservation easement, so as to maintain in perpetuity the agricultural or open space character of the parcel of land.

WHEREAS, Sections 47-12A-1 to 47-12A-6 NMSA 1978 (1995 Repl.), the "Cultural Properties Preservation Easement Act" aids the Grantor who wishes voluntarily to convey a Conservation Easement intended to restrict the use of a specific parcel of land, thus preventing its development in ways prohibited by the Conservation Easement, so as to maintain in perpetuity the significant archeological or historical character of the parcel of land.

WHEREAS, there is a significant public benefit for this Property to be preserved, because:

- (1) The Property possesses significant natural, scenic, cultural and open space values of great importance to Grantor, to The County of Santa Fe, to the State of New Mexico, and to the people of this nation;
- (2) Grazing of livestock has been an integral part of the way of life in The County of Santa Fe for centuries and should be preserved in order to protect the area's cultural traditions, way of life and community identity;
- (3) Open space has been an integral part of The County of Santa Fe for centuries and should be preserved in order to protect the area's great natural beauty, cultural traditions, community identity and scenic vistas;
- (4) The Property exists in an area where development is occurring and is expected to occur at an accelerated rate in the future;
- (5) The Property includes an acequia, long important to the irrigated farmland, agricultural productivity, traditional way of life, community identity and culture of the Chimayo area and northern New Mexico;
- (6) The use of the Property as stated in this Conservation Easement is intended to be consistent with public programs for conservation in the area, including programs for irrigation, soil protection and agricultural uses;
- (7) The development of the Property would impair the scenic character of the local rural landscape and would contribute to the degradation of the natural character, agricultural productivity, riparian ecology and wildlife habitat of the area;
- (8) The Property has been evaluated for scenic quality using The County of Santa Fe's Open Space Committee review process and found to be scenic and easily seen by the public.

WHEREAS, the Grantor agrees to refrain forever from any action that would be inconsistent with this Conservation Easement's Conservation Purposes.

WHEREAS, Grantor acknowledges that the Property is subject to agricultural access pursuant to that certain Stipulated Judgment entered in Orlando F. Vigil vs. Seledon Martinez and Josephine Martinez, Santa Fe District Court Cause No. SF 95-1590(C) on June 18, 1996 and that certain Grant of Easement recorded on \_\_\_\_\_ in the records of The County of Santa Fe at Book \_\_\_\_\_, Pages \_\_\_\_\_.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants set forth herein, the parties agree to be bound as follows:

1. Purposes.
  - A. The purposes of this Conservation Easement are to ensure that the Property will be retained predominately in its scenic, open space, and agricultural use and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. The Grantor intends that this Deed will confine the use of the Property to specified activities that are not inconsistent with the Conservation Purposes of this Conservation Easement. This Conservation Easement is intended to preserve the Property as agriculturally productive by the continuation of livestock grazing. The Property may not be used for activities except those expressly permitted by this Deed, and shall not be used for activities that significantly diminish the Conservation Values or which significantly impair the ability of the Property to be used for livestock grazing, open space and/or scenic values
  - B. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property to be kept on file in the offices of the Grantee and incorporated by this reference ("Baseline Documentation"), which consists of a report, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the condition of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with terms of this grant.
2. Rights of Grantee. To accomplish the purposes of the Conservation Easement, the following rights are conveyed to the Grantee by this Deed:
  - A. To preserve and protect the Conservation Values of the Property;
  - B. To enter upon the Property at reasonable times in order to monitor the Grantor's or then-current Grantor's (hereinafter "Grantor") compliance with and otherwise enforce the terms of this Deed; provided that such entry shall, except in the event of an emergency, be upon prior reasonable notice to the Grantor, and the Grantee shall not unreasonably interfere with the Grantor's use and quiet enjoyment of the Property; and
  - C. To prevent any activity on or use of the Property that is significantly inconsistent with the purposes of the Conservation Easement and to require the restoration of

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such areas or features of the Property that may be damaged by inconsistent activity or use pursuant to Paragraph 3 below.

3. Prohibited Uses and Management of the Property. Any activity on or use of the Property inconsistent with any of the purposes of the Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- A. Construction of Buildings and Other Structures. The construction or maintenance of any building or other structure or improvement, temporary or permanent is prohibited, including but not limited to houses, towers, commercial satellite dishes, sheds, mobile homes, and communication equipment except if currently located and existing on the Property or as otherwise stated herein. Grantor is prohibited from locating any utility rights-of-way or other private rights-of-way within the Property after the date of this instrument, except as otherwise permitted herein or as may be imposed pursuant to a valid power of condemnation or other process of law. Notwithstanding anything herein to the contrary, Grantor shall have the right, upon review and approval by Grantee, to erect structures of a temporary or permanent nature for the proper care and feeding of livestock on the Property and for the unloading of livestock on the Property.
- B. Feedlot. No confined animal feeding operation or commercial feedlot shall be established or maintained on the Property. For purposes of this Conservation Easement, a commercial feed lot is defined as a permanently constructed, confined area or facility, within which the land is not grazed or cropped annually, used for purposes of engaging in the business of receiving and feeding poultry or livestock for hire.
- C. Fences. The Grantor may repair or replace existing fences, and new fences may be built for purposes of reasonable and customary management of riparian habitat, cropland, livestock, and wildlife. Gates wide enough for emergency access may be installed where necessary for cropland, pastureland, and wildlife habitat maintenance vehicles.
- D. Paving and Road Construction. The paving or otherwise covering with concrete, asphalt, or any other paving material of any existing roads on the Property is prohibited. No new roads or access gates shall be constructed regardless of the material, without the prior written consent of the Grantee, which consent shall not be unreasonably withheld or except as permitted herein.
- E. Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process, or the taking of any action which would create an actual or de facto sub-grantee of the Property is prohibited. The transfer of development rights from the Property to another property or area, person or political subdivision is prohibited. Nothing in this subparagraph shall be construed to prohibit joint ownership of the Property or ownership of the Property by an entity consisting of more than one member.



- F. Land Management. The Property shall be operated and managed in accordance with a Land Management Plan prepared and accepted with the mutual consent of the Grantor and the Grantee, which plan shall be updated as necessary to reflect improved knowledge of conservation of the Property and the Conservation Values or substantial, new or changed conditions. The Grantor shall provide to Grantee each year on or before the anniversary date of this Conservation Easement a report describing the status of operations and management of the Property in relation to the approved Land Management Plan, and advising Grantee of any changes in the management of the Property or issues that the Grantor has identified or anticipates may reasonably arise with regard to the Property and the preservation of the Conservation Values. The parties acknowledge and agree that seeding and planting on the Property with other than native grasses or other native plants, shall be prohibited with the exception of hay plantings, wildlife plantings (non-native tree and shrub species must be approved by the Grantee). The Grantor shall be required to maintain the condition of the Property in a manner consistent with the Land Management Plan, including but not limited to keeping the property properly and sufficiently irrigated, and otherwise consistent with generally accepted management practices for conservation and sustenance of agricultural and open space land.
- G. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and as necessary to prevent personal injury and property damage. Commercial timber harvesting on the Property shall be prohibited.
- H. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance on or below the surface of the Property is prohibited.
- I. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited. This subparagraph shall not be construed to preclude the storage or disposal of agricultural products and byproducts on the Property, provided such storage or disposal is performed in accordance with all applicable governmental laws and regulations.
- J. Commercial or Industrial Activity. No industrial, residential or commercial uses or facilities including, but not limited to, any apartment building, restaurant, night club, campground, trailer park, bed and breakfast, motel, hotel, lodge, swimming pool, gas station, service station, commercial office, wholesale or retail outlet, auction house, exhibition hall, or facility for the manufacture or distribution of any non-agricultural product, shall be allowed on the Property, except that the breeding and selling of livestock owned by Grantor and showing of livestock of Grantor for sale are permitted, in accordance with all local and federal regulations. Nothing in this Deed shall be construed to prohibit the Grantor from leasing a portion of the Property for crop production, or for the grazing of livestock owned by others, provided that the lease is subject to the terms of this Conservation

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Easement and provided further that any such lease shall be approved in advance by the County and such approval shall not be unreasonably withheld.

- K. Hunting and Recreational Use. No hunting, shooting, or trapping of any animals is allowed on the Property with the exception of (1) trapping of prairie dogs for relocation and live-trapping for research purposes, (2) hunting or trapping as required and conducted by the New Mexico Department of Game and Fish for nuisance, dangerous, or diseased animals, or (3) predator management and control by Grantor, provided that any and all such measures shall be in compliance with all applicable law.
- L. Pest and Weed Control; Signage. Requirements for the control and eradication of weeds, prairie dogs, and other pests, and for the placement of signage on the Property, shall be in accordance with the Land Use Code of The County of Santa Fe, except as expressly set forth herein. Only billboards or advertisements identifying the agricultural operation and consistent with the character of other signage in the area are allowed on the property. A sign identifying the site as a Conservation Easement is required and will be supplied by the Grantee. Noxious weeds will be controlled on the property by the Grantor through various techniques, which may include herbicides, mowing, or introduction of biological control measures (c.g., thistle-eating insects). The use of chemicals for weed and pest control shall be addressed in the Land Management Plan for the Property, and Grantor agrees to cooperate with the Grantee in order to investigate and consider the use of possible mutually beneficial alternatives for control of weeds and pests on the Property, taking into account the environmental impacts as well as effectiveness of such alternatives. The aerial spraying of chemical pesticides, herbicides and fungicides for crop production shall be prohibited to avoid wind drift that could cause damage to nearby properties. In any event, the application of any fungicide, insecticide, herbicide, rodenticide, or other chemicals shall be conducted strictly in accordance with any applicable local, state, or federal laws, and shall be subject to advance written notice to the Grantee as follows: the Grantor shall notify the designated representative of Grantee at least ten (10) business days in advance of any spraying or other application of said chemicals (other than herbicides) on the Property, and of the specific time, place and manner of said application. The Grantee may object to any such application after notice from the Grantor. In the event of an objection, the Grantor shall not proceed with the application. At the time of this Agreement, the Grantee has designated the County Open Space Director as its representative for the purpose of the foregoing notice. The Grantee may, from time to time, change its designated representative for the purpose of said notice by notifying Grantor in writing of said new designation.
- M. Change of Topography. The changing, disturbing, altering, excavating, or impairing of watercourse or wetland or the topography of the ground on the Property is prohibited, except to the extent permitted herein. Removal of groundwater for use off the Property including, but not limited to the sale, removal, or transfer of water rights and shares for use off the Property is not

allowed. Grantor shall not allow uses of the Property that would alter the topography, water systems, wetlands or habitat on the Property, except to the extent permitted herein. Grantor will not allow uses of the Property that would be detrimental to water quality or that would permanently alter the normal water level and/or flow except as is reasonable to carry out the permitted activities of the Property.

N. Water Rights. The separation of water rights from the land of the Property is strictly prohibited. The Grantor shall take all prudent measures, including but not limited to timely payment of acequia association assessments, beneficial use of irrigation water and participation in an acequia conservation program, to avoid forfeiture of water rights. Should the Grantor be notified for any reason regarding possible forfeiture of water rights, the Grantor must notify the Grantee in writing in accordance with paragraph 20 herein, and arrange for the land to be irrigated. Should the Grantor for any reason be required to forfeit water rights, the Grantor agrees to sign a transfer of such forfeited water rights to the acequia association serving the Property or to the local water bank, but the Grantor is not obligated in any way to do more than sign the application for transfer. The above stipulations apply to all of the water rights associated with the Property. The Grantor shall not divert or change the course of the acequia. The Grantor shall notify the Grantee in accordance with Paragraph 20 herein as to any additional water rights that come under Grantor's Grantorship or to which she obtains title after the signing of this Conservation Easement. Grantor shall ensure that the water rights associated with the Property are used for the purpose of irrigating the Property.

4. Reserved Rights. The Grantor reserves unto herself, and to her beneficiaries, trustees, successors, and assigns, all rights accruing from their Grantorship of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are permitted hereunder and are not inconsistent with any of the purposes of the Conservation Easement or with the conditions, restrictions or other terms of this Conservation Easement. Expressly permitted are agricultural activities, including livestock grazing, and also including the operation of machinery used in farm production. For the purposes of this Conservation Easement, the term "livestock" shall mean: cattle, horses, sheep, goats and bison. Grantor shall retain the right to graze no more than fifteen (15) adult animals and their unweaned off-spring on the Property at any one time.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring the Grantor to notify the Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with all the terms and purposes of the Conservation Easement and the Conservation Values of the Property. Except as otherwise expressly provided, whenever notice is required, the Grantor shall notify the Grantee in writing not less than thirty (30) days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of the Conservation Easement.

6. Grantee's Approval. Where the Grantee's approval is required hereunder, the Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of the Grantor's written notice therefore. The Grantee's approval may be withheld upon a reasonable determination by the Grantee that the action as proposed would be inconsistent with any term or purpose of the Conservation Easement. Failure of Grantee to advise Grantor of its determination within said thirty (30) days shall be deemed an approval of Grantor's activities by Grantee, unless such activities are contrary to the express provisions of this Conservation Easement.

7. Enforcement. The Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and the purposes of the Conservation Easement. The Grantee may enter the Property for the purpose of inspecting for violations but is not required to do so. If the Grantee finds what it believes is a violation, the Grantee shall notify the Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, the Grantor shall within ten (10) days of receipt of the notice, either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to the Grantee of the reason why the alleged violation should be permitted. In the event that the parties are in dispute as to the actions required of the Grantor hereunder, both parties agree to meet as soon as possible to resolve the difference. If either party determines that mediation would be advantageous in connection with such meeting, or if a resolution of this difference cannot be achieved at the meeting, both parties agree to make a reasonable effort to work through and with a mutually acceptable mediator to attempt to resolve the dispute. Notwithstanding the foregoing, when, in the Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property or will not otherwise be resolved in a sufficiently prompt and effective manner, the Grantee may, at its discretion, take such legal action and seek such legal or equitable remedies as it determines to be appropriate or necessary. Such remedies may include, without limitation, an injunction to stop an alleged violation, temporarily or permanently, or an order requiring the Grantor to restore the Property to its condition prior to the alleged violation. The Grantor shall discontinue any activity, which could increase or expand the alleged violation during any mediation process or any legal proceeding pertaining to the alleged violation.

8. Costs of Enforcement. Any costs incurred by the Grantee in enforcing a breach of the terms of this Deed against the Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Grantor's violation of the terms of this Deed, shall be borne by the Grantor.

9. Grantee's Discretion. Enforcement of the terms of this Deed shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Deed in the event of any breach of any term of this Deed by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Deed of any of the Grantee's rights under this Deed. No delay or omission by the Grantee in the exercise of any right of remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. The Grantor hereby waives any defense of laches or prescription.

11. Acts Beyond Grantor's Control. Nothing contained in this Deed shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, drought, storm, landslides and seismic activity, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Deed.

13. Costs and Liabilities. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, repair, and maintenance of the Property, including all responsibility and liability for any and all activities occurring on the Property including but not limited to livestock grazing and related activities. The Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantor.

14. Taxes. The Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by any governmental authority having jurisdiction (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, the Conservation Easement, and shall furnish the Grantee with satisfactory evidence of payment upon request. Grantor, its successors, and assigns hereby irrevocably assign to Grantee any right of redemption of the Property in the event that Grantee acquires title to the Property through a Treasurer's deed as a result of failure to pay any taxes due on the Property.

15. Hold Harmless. The Grantor shall hold harmless, indemnify, and defend the Grantee and its elected officials, employees, successors, and assigns, (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property; regardless of cause, except to the extent such injury, death, or damage is attributable to the negligence or fault of any of the Indemnified Parties; (2) the obligations specified in paragraphs 13 and 14 above; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance, which is regulated under any federal, state or local law.

16. Extinguishment. If circumstances arise in the future so as to render the purposes of the Conservation Easement impossible to accomplish, the Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, or as otherwise permitted by law. Each party shall promptly notify the other when it first learns of any such circumstances.

17. Condemnation. If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, the Grantee shall be entitled to compensation in

accordance with applicable law for the value of the Property or the portion of the Property so taken, together with the same share of any damages awarded to the Grantor.

18. Assignment. The Conservation Easement is transferable to the extent allowed by law, but the Grantee may assign its rights and obligations under this Deed only to an organization that is: (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; (b) authorized to acquire and hold Conservation Easements in gross under New Mexico law; or (c) a governmental entity. In the event that the Grantee seeks to assign this Conservation Easement, Grantee agrees that it will make reasonable efforts to identify two or three potential conservation organizations that meet the requirements of this Paragraph, to be presented to the Grantor or his successors-in-interest, from which the Grantor will select the organization to which Grantee may assign this Conservation Easement. The parties acknowledge and agree that Grantor intends to and shall convey the fee interest in the Property to Victor Vigil subsequent to the recordation of this Deed of Conservation Easement. The parties hereto approve said conveyance, and by his acknowledgment and acceptance of this Deed of Conservation Easement as shown by his signature below, Victor Vigil evidences his receipt, review and acceptance of the terms of this Deed of Conservation Easement.

19. Recordation/Subsequent Transfers. The Grantee shall record this instrument within ten (10) days of full execution by the parties hereto, or concurrently with the sale of other property held by Grantor in the same transaction, in the official records of each Grantee in which the Property is situated, and may re-record it at any time as maybe required to preserve its rights in this Deed. The Grantor agrees to incorporate the terms of the Deed in any deed, Conservation Easement, or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Grantor hereby gives written notice to the Grantee of the proposed transfer of all of the Grantor's remaining interest in the Property to Victor Vigil, her son. The Grantor shall give written notice to the Grantee of any further proposed transfer of any interest in the Property at least sixty (60) days prior to recordation of the deed carrying out such transfer. The failure of the Grantee or Grantor to perform any act required by this Paragraph shall not impair the validity of the Conservation Easement or this Deed or limit their enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other under this Deed shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows and shall be deemed given when personally served or on the third business day after being so mailed:

If to the Grantor:

Isabel Vigil  
HCR 64, Box 11-B  
Chimayo, NM 87522

If to the Grantee:

Santa Fe County Manager  
The County of Santa Fe  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276  
Facsimile Number 505-995-2740

With Copies to:

The County of Santa Fe Attorney  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

The County of Santa Fe Open Space and Trails Program Director  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

or to such other address as either party from time to time shall designate by written notice to the other.

21. General Provisions.
  - A. Controlling Law. The interpretation and performance of the Conservation Easement and this Deed shall be governed by the laws of the State of New Mexico.
  - B. Liberal construction. Any general rule of construction to the contrary notwithstanding, the Conservation Easement and this Deed shall be liberally construed in favor of the grant to effect the purpose of the Conservation Easement and the policy and purpose of Section 47-12-1, et seq. NMSA 1978. If any provision in this Deed is found to be ambiguous, an interpretation consistent with the purposes of the Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
  - C. Severability. If any provision of this Deed or application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  - D. Entire Agreement. This Deed sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein.

- E. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of the Grantor's fee title to the Property.
- F. Joint Obligation. The obligations imposed by this Deed upon the Grantor shall be joint and several.
- G. Successors. The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, beneficiaries, trustees, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. References to the "Grantor" or "Grantee" include all persons or entities who may succeed to any interest in the Property or to this Deed of Conservation Easement.
- H. Termination of Rights and Obligations. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in the Conservation Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- I. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- J. Amendment. If the circumstances arise under which an amendment to or modification of this Deed would be appropriate, the Grantor and the Grantee are free to jointly amend this Deed; provided that no amendment shall be allowed that will affect the qualifications of this Deed under any applicable laws. Any amendment must be consistent with the conservation purposes of this Deed and may not affect its perpetual duration. Any amendment must be in writing, signed by the duly authorized officials of each party, and recorded in the records of the Clerk and Recorder of the Grantee in which the Property is located.

23. Right of First Refusal. Grantor hereby grants to Grantee an irrevocable right of first refusal to purchase the fee estate underlying the Property covered by this Deed of Conservation Easement in the event the Property is ever sold or conveyed by Grantor to another person; provided, however, that this right of first refusal shall not be exercisable as against any bequest, devise or gift of the Property to another member of the Grantor's lineal descendants. Lineal descendant shall mean a family relationship up to the third degree, i.e., a grandparent, parent, child, including step relationships, so long as the step relationship is legally existent at the time of the transfer, and also including legal guardians who have performed the function of a grandparent, or parent to the person who is receiving the Property. If the event of receipt by Grantor of a bona fide offer to acquire or other possible conveyance of the fee estate which is not excepted herefrom as set forth above, then Grantor shall give notice of same to Grantee and Grantee shall have sixty (60) days in which to review, consider and exercise or refuse to exercise its right of first refusal. If Grantee gives notice of its exercise of its right of first refusal, it shall close on the conveyance of the fee within thirty (30) days after the expiration of the sixty (60) day notice period at a place mutually agreeable to the parties.





STATE OF NEW MEXICO )  
 ) SS  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
by Paul D. Campos, Chairman, Board of County Commissioners of Santa Fe County, New  
Mexico, a political subdivision of the State of New Mexico.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGED, ACCEPTED AND AGREED:**

By: \_\_\_\_\_  
VICTOR VIGIL

STATE OF NEW MEXICO )  
 ) SS  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
by Victor Vigil.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT 1**

Two tracts of land identified as "5689 Tr. 4, 2.2881 Acres" and "5789 Tr. 3, 1.6454 Acres," as shown on "Amended Boundary Survey for the Trust for Public Lands. . . within Section 1 and 12, T20N, R9E, NMPM. . .," filed in the office of the County Clerk, The County of Santa Fe, New Mexico on April 14, 2004 in Plat Book 557, pages 1-14 as Document No. 1323108.

SFC CLERK RECORDED 12/16/2004

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
TRACT 3 AND TRACT 4, ISABEL VIGIL PROPERTY**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by ISABEL VIGIL, a widowed woman dealing in her sole and separate property, having an address at HCR 64, Box 11-B, Chimayo, NM 87522 (the "Declarant") for the purpose of forever conserving the scenic and open space values of the subject property.

**WITNESSETH:**

WHEREAS, the Declarant is the sole owner in fee simple of certain real property located in The County of Santa Fe, State of New Mexico more particularly described as: Two tracts of land identified as "5689 Tr. 4, 2.2881 Acres" and "5789 Tr. 3, 1.6454 Acres," as shown on "Amended Boundary Survey for the Trust for Public Lands. . . within Section 1 and 12, T20N, R9E, NMPM. . .," filed in the office of the County Clerk, The County of Santa Fe, New Mexico on April 14, 2004 in Plat Book 557, pages 1-14 as Document No. 1323108 (the "Property"); and

WHEREAS, the Property includes scenic open space visible from various public vantage points and meets all criteria for The County of Santa Fe Open Space, Wildlife, Mountains, Trails and Historic Places Program; and

WHEREAS, the Declarant intends by this Declaration to ensure that the open space and scenic quality values (hereinafter the "Conservation Values") of the Property will be perpetually maintained (hereinafter the "Conservation Purposes"), and that uses of the land that are inconsistent with these Conservation Purposes will be prevented or corrected. The Declarant agrees, however, that the current uses of the Property as well as the improvements to the Property described in this Declaration are consistent with the Conservation Purposes of this Declaration; and

WHEREAS, the Conservation Purposes of this Declaration are recognized by, and this Declaration will serve, the conservation purposes of The County of Santa Fe Open Space, Wildlife, Mountains, Trails and Historic Places Program; and

WHEREAS, The County of Santa Fe Resolution No. 2000-60 adopted The County of Santa Fe Open Land and Trails Plan which seeks to protect and preserve open space land in the County, and provides, in part, that the County will:

(1) Maintain the unique, diverse rural character of the County through its archaeological, historical, cultural and sacred properties that contribute to community identity, history and connection with each other;

(2) Protect tracts of open land and trails using a combination of methods including voluntary deeds, acquisition and existing regulations;

(3) Where public ownership of the land itself is not essential to the public interest, the County may acquire an interest through a deed of conservation easement; and

WHEREAS, Declarant seeks to grant a conservation easement on the Property to be held by The County of Santa Fe; and

WHEREAS, there is a significant public benefit for this Property to be preserved, because:

(1) The Property possesses significant natural, scenic, cultural and open space values of great importance to Declarant, The County of Santa Fe, the State of New Mexico, and the people of this nation;

(2) Grazing of livestock has been an integral part of the way of life in The County of Santa Fe for centuries and should be preserved in order to protect the area's cultural traditions, way of life and community identity;

(3) Open space has been an integral part of The County of Santa Fe for centuries and should be preserved in order to protect the area's great natural beauty, cultural traditions, community identity and scenic vistas;

(4) The Property exists in an area where development is occurring and is expected to occur at an accelerated rate in the future;

(5) The Property includes an acequia, long important to the irrigated farmland, agricultural productivity, traditional way of life, community identity and culture of the Chimayo area and northern New Mexico;

(6) The use of the Property as stated in this Declaration is intended to be consistent with public programs for conservation in the area, including programs for irrigation, soil protection and agricultural uses;

(7) The development of the Property would impair the scenic character of the local rural landscape and would contribute to the degradation of the natural character, agricultural productivity, riparian ecology and wildlife habitat of the area;

(8) The Property has been evaluated for scenic quality using The County of Santa Fe's Open Space Committee review process and found to be scenic and easily seen by the public; and

WHEREAS, the Declarant agrees to refrain forever from any action that would be inconsistent with this Declaration's Conservation Purposes.

NOW, THEREFORE, for the reasons given the Declarant declares and imposes this Declaration as follows:

1. Purposes.

A. The purposes of this Declaration are to ensure that the Property will be retained

predominately in its scenic, open space, and agricultural use and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. The Declarant intends that this Declaration will confine the use of the Property to specified activities that are not inconsistent with the Conservation Purposes of this Declaration. This Declaration is intended to preserve the Property as agriculturally productive by the continuation of livestock grazing. The Property may not be used for activities except those expressly permitted by this Declaration, and shall not be used for activities that significantly diminish the Conservation Values or which significantly impair the ability of the Property to be used for livestock grazing, open space and/or scenic values

- B. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property to be kept on file in the offices of The County of Santa Fe and incorporated by this reference (“Baseline Documentation”), which consists of a report, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the condition of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with terms of this Declaration.

2. Rights of The County of Santa Fe. To accomplish the purposes of the Declaration, the following rights of enforcement of this Declaration are granted to The County of Santa Fe by this Declaration:

- A. To preserve and protect the Conservation Values of the Property;
- B. To enter upon the Property at reasonable times in order to monitor the Declarant’s or then-current fee Owner’s (the “Owner’s”) compliance with and otherwise enforce the terms of this Declaration; provided that such entry shall, except in the event of an emergency, be upon prior reasonable notice to the Owner, and The County of Santa Fe shall not unreasonably interfere with the Owner’s use and quiet enjoyment of the Property; and
- C. To prevent any activity on or use of the Property that is significantly inconsistent with the purposes of the Declaration and to require the restoration of such areas or features of the Property that may be damaged by inconsistent activity or use pursuant to Paragraph 3 below.

3. Prohibited Uses and Management of the Property. Any activity on or use of the Property inconsistent with any of the purposes of the Declaration is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- A. Construction of Buildings and Other Structures. The construction or maintenance of any building or other structure or improvement, temporary or permanent is prohibited, including but not limited to houses, towers, commercial satellite dishes, sheds, mobile homes, and communication equipment except if currently located and

existing on the Property or as otherwise stated herein. Declarant is prohibited from locating any utility rights-of-way or other private rights-of-way within the Property after the date of this instrument, except as otherwise permitted herein or as may be imposed pursuant to a valid power of condemnation or other process of law, is prohibited. Notwithstanding anything herein to the contrary, the Owner shall have the right, upon review and approval by The County of Santa Fe, to erect a temporary, minimal, open structure for hay storage, during such times that such storage is necessary for the proper care and feeding of livestock on the Property and for the unloading of livestock on the Property.

- B. Feedlot. No confined animal feeding operation or commercial feedlot shall be established or maintained on the Property. For purposes of this Declaration, a commercial feed lot is defined as a permanently constructed, confined area or facility, within which the land is not grazed or cropped annually, used for purposes of engaging in the business of receiving and feeding poultry or livestock for hire.
- C. Fences. The Owner may repair or replace existing fences, and new fences may be built for purposes of reasonable and customary management of riparian habitat, cropland, livestock, and wildlife. Gates wide enough for emergency access may be installed where necessary for cropland, pastureland, and wildlife habitat maintenance vehicles.
- D. Paving and Road Construction. The paving or otherwise covering with concrete, asphalt, or any other paving material of any existing roads on the Property is prohibited. No new roads or access gates shall be constructed regardless of the material, without the prior written consent of The County of Santa Fe, which consent shall not be unreasonably withheld, or except as permitted herein.
- E. Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process, or the taking of any action which would create an actual or de facto sub-grantee of the Property is prohibited. The transfer of development rights from the Property to another property or area, person or political subdivision is prohibited. Nothing in this subparagraph shall be construed to prohibit joint ownership of the Property or ownership of the Property by an entity consisting of more than one member.
- F. Land Management. The Property shall be operated and managed in accordance with a Land Management Plan prepared and accepted with the mutual consent of the Owner and The County of Santa Fe, which plan shall be updated as necessary to reflect improved knowledge of conservation of the Property and the Conservation Values or substantial, new or changed conditions. The Owner shall provide to The County of Santa Fe each year on or before the anniversary date of this Declaration a report describing the status of operations and management of the Property in relation to the approved Land Management Plan, and advising The County of Santa Fe of any changes in the management of the Property or issues that the Owner has identified or anticipates may reasonably arise with regard to the Property and the preservation of

the Conservation Values. The parties acknowledge and agree that seeding and planting on the Property with other than native grasses or other native plants shall be prohibited with the exception of hay plantings and wildlife plantings (non-native tree and shrub species must be approved by The County of Santa Fe). The Declarant shall be required to maintain the condition of the Property in a manner consistent with the Land Management Plan, including but not limited to keeping the property properly and sufficiently irrigated, and otherwise consistent with generally accepted management practices for conservation and sustenance of agricultural and open space land.

- G. Timber Harvesting. Trees may be cut to control insects and disease, to control invasive non-native species, and as necessary to prevent personal injury and property damage. Commercial timber harvesting on the Property shall be prohibited.
- H. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance on or below the surface of the Property is prohibited.
- I. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited. This subparagraph shall not be construed to preclude the storage or disposal of agricultural products and byproducts on the Property, provided such storage or disposal is performed in accordance with all applicable governmental laws and regulations.
- J. Commercial or Industrial Activity. No industrial, residential or commercial uses or facilities including, but not limited to, any apartment building, restaurant, night club, campground, trailer park, bed and breakfast, motel, hotel, lodge, swimming pool, gas station, service station, commercial office, wholesale or retail outlet, auction house, exhibition hall, or facility for the manufacture or distribution of any non-agricultural product, shall be allowed on the Property, except that the breeding and selling of livestock owned by Owner and showing of livestock of Owner for sale are permitted, in accordance with all local and federal regulations. Nothing in this Declaration shall be construed to prohibit the Owner from leasing a portion of the Property for crop production, or for the grazing of livestock owned by others, provided that the lease is subject to the terms of this Declaration and provided further that any such lease shall be approved in advance by The County of Santa Fe and such approval shall not be unreasonably withheld.
- K. Hunting and Recreational Use. No hunting, shooting, or trapping of any animals is allowed on the Property with the exception of (1) trapping of prairie dogs for relocation and live-trapping for research purposes, (2) hunting or trapping as required and conducted by the New Mexico Department of Game and Fish for nuisance, dangerous, or diseased animals, or (3) predator management and control by Owner, provided that any and all such measures shall be in compliance with all applicable law.



- L. Pest and Weed Control; Signage. Requirements for the control and eradication of weeds, prairie dogs, and other pests, and for the placement of signage on the Property, shall be in accordance with the Land Use Code of The County of Santa Fe, except as expressly set forth herein. Only billboards or advertisements identifying the agricultural operation and consistent with the character of other signage in the area are allowed on the property. A sign identifying the site as a Conservation Easement is required and will be supplied by The County of Santa Fe. Noxious weeds will be controlled on the property by the Owner through various techniques, which may include herbicides, mowing, or introduction of biological control measures (e.g., thistle-eating insects). The use of chemicals for weed and pest control shall be addressed in the Land Management Plan for the Property, and Owner agrees to cooperate with The County of Santa Fe in order to investigate and consider the use of possible mutually beneficial alternatives for control of weeds and pests on the Property, taking into account the environmental impacts as well as effectiveness of such alternatives. The aerial spraying of chemical pesticides, herbicides and fungicides for crop production shall be prohibited to avoid wind drift that could cause damage to nearby properties. In any event, the application of any fungicide, insecticide, herbicide, rodenticide, or other chemicals shall be conducted strictly in accordance with any applicable local, state, or federal laws, and shall be subject to advance written notice to The County of Santa Fe as follows: the Owner shall notify the designated representative of The County of Santa Fe at least ten (10) business days in advance of any spraying or other application of said chemicals (other than herbicides) on the Property, and of the specific time, place and manner of said application. The County of Santa Fe may object to any such application after notice from the Owner. In the event of an objection, the Owner shall not proceed with the application. At the time of this Agreement, The County of Santa Fe has designated the County Open Space Director as its representative for the purpose of the foregoing notice. The County of Santa Fe may, from time to time, change its designated representative for the purpose of said notice by notifying the Owner in writing of said new designation.
- M. Change of Topography. The changing, disturbing, altering, excavating, or impairing of watercourse or wetland or the topography of the ground on the Property, is prohibited, except to the extent permitted herein. Removal of groundwater for use off the Property including, but not limited to the sale, removal, or transfer of water rights and shares for use off the Property is not allowed. Owner shall not allow uses of the Property that would alter the topography, water systems, wetlands or habitat on the Property, except to the extent permitted herein. Owner will not allow uses of the Property that would be detrimental to water quality or that would permanently alter the normal water level and/or flow except as is reasonable to carry out the permitted activities of the Property.
- N. Water Rights. The separation of water rights from the land of the Property is strictly prohibited. The Owner shall take all prudent measures, including but not limited to timely payment of acequia association assessments, beneficial use of irrigation water and participation in an acequia conservation program, to avoid forfeiture of water

rights. Should the Owner be notified for any reason regarding possible forfeiture of water rights, the Owner must notify The County of Santa Fe in writing in accordance with paragraph 19 herein, and arrange for the land to be irrigated. Should the Owner for any reason be required to forfeit water rights, the Owner agrees to sign a transfer of such forfeited water rights to the acequia association serving the Property or to the local water bank, but the Declarant is not obligated in any way to do more than sign the application for transfer. The above stipulations apply to all of the water rights associated with the Property. The Owner shall not divert or change the course of the acequia. The Owner shall notify The County of Santa Fe in accordance with Paragraph 19 herein as to any additional water rights that come under Owner's ownership or to which he obtains title after the signing of this Declaration. Owner shall ensure that the water rights associated with the Property are used for the purpose of irrigating the Property.

4. Reserved Rights. The Declarant reserves unto herself, and to her beneficiaries, trustees, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are permitted hereunder and are not inconsistent with any of the purposes of the Declaration or with the conditions, restrictions or other terms of this Declaration. Expressly permitted are agricultural activities including livestock grazing, and also including the operation of machinery used in farm production. For the purpose of this Declaration, the term "livestock" shall mean: cattle, horses, sheep, goats and bison. Owner shall retain the right to graze no more than fifteen (15) adult animals and their unweaned off-spring on the Property at any one time.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring the Owner to notify The County of Santa Fe prior to undertaking certain permitted activities is to afford The County of Santa Fe an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with all the terms and purposes of the Declaration and the Conservation Values of the Property. Except as otherwise expressly provided, whenever notice is required, the Owner shall notify The County of Santa Fe in writing not less than thirty (30) days prior to the date the Owner intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit The County of Santa Fe to make an informed judgment as to its consistency with the purposes of the Declaration.

6. County of Santa Fe Approval. Where The County of Santa Fe's approval is required hereunder, The County of Santa Fe shall grant or withhold its approval in writing within thirty (30) days of receipt of the Declarant's written notice therefore. The County of Santa Fe's approval may be withheld upon a reasonable determination by The County of Santa Fe that the action as proposed would be inconsistent with any term or purpose of the Declaration. Failure of Owner to advise The County of Santa Fe of its determination within said thirty (30) days shall be deemed an approval of Owner's activities by The County of Santa Fe, unless such activities are contrary to the express provisions of this Declaration.

7. Enforcement. The County of Santa Fe shall have the right to prevent and correct or require correction of violations of the terms of this Declaration and the purposes of

the Declaration. The County of Santa Fe may enter the Property for the purpose of inspecting for violations. If The County of Santa Fe finds what it believes is a violation, The County of Santa Fe shall notify the Owner in writing of the nature of the alleged violation. Upon receipt of this written notice, the Owner shall within ten (10) days of receipt of the notice, either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to The County of Santa Fe of the reason why the alleged violation should be permitted. In the event that the parties are in dispute as to the actions required of the Owner hereunder, both parties agree to meet as soon as possible to resolve the difference. If either party determines that mediation would be advantageous in connection with such meeting, or if a resolution of this difference cannot be achieved at the meeting, both parties agree to make a reasonable effort to work through and with a mutually acceptable mediator to attempt to resolve the dispute. Notwithstanding the foregoing, when, in The County of Santa Fe's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property or will not otherwise be resolved in a sufficiently prompt and effective manner, The County of Santa Fe may, at its discretion, take such legal action and seek such legal or equitable remedies as it determines to be appropriate or necessary. Such remedies may include, without limitation, an injunction to stop an alleged violation, temporarily or permanently, or an order requiring the Owner to restore the Property to its condition prior to the alleged violation. The Owner shall discontinue any activity, which could increase or expand the alleged violation during any mediation process or any legal proceeding pertaining to the alleged violation.

8. Costs of Enforcement. Any costs incurred by The County of Santa Fe in enforcing a breach of the terms of this Declaration by the Owner, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Owner's violation of the terms of this Declaration, shall be borne by the Owner.

9. Grantee's Discretion. Enforcement of the terms of this Deed shall be at the discretion of The County of Santa Fe, and any forbearance by The County of Santa Fe to exercise its rights under this Declaration in the event of any breach of any term of this Declaration by the Owner shall not be deemed or construed to be a waiver by The County of Santa Fe of such term or of any subsequent breach of the same or any other term of this Declaration of any of The County of Santa Fe's rights under this Declaration. No delay or omission by The County of Santa Fe in the exercise of any right of remedy upon any breach by the Owner shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. The Owner hereby waives any defense of laches or prescription.

11. Acts Beyond Owner's Control. Nothing contained in this Declaration shall be construed to entitle The County of Santa Fe to bring any action against the Owner for any injury to or change in the Property resulting from causes beyond the Owner's control, including, without limitation, fire, flood, drought, storm, landslides and seismic activity, or from any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Declaration.

13. Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, repair, and maintenance of the Property, including all responsibility and liability for any and all activities occurring on the Property, including but not limited to livestock grazing and related activities. The Owner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Owner.

14. Taxes. The Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by any governmental authority having jurisdiction (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, the conservation easement, and shall furnish The County of Santa Fe with satisfactory evidence of payment upon request. Owner, his successors, and assigns hereby irrevocably assign to The County of Santa Fe any right of redemption of the Property in the event that The County of Santa Fe acquires title to the Property through a Treasurer's deed as a result of failure to pay any taxes due on the Property.

15. Hold Harmless. The Owner shall hold harmless, indemnify, and defend The County of Santa Fe and its elected officials, employees, successors, and assigns, (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property regardless of cause, except to the extent such injury, death or damage is attributable to the negligence or fault of any of the Indemnified Parties; (2) the obligations specified in paragraphs 13 and 14 above; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance, which is regulated under any federal, state or local law.

16. Extinguishment. If circumstances arise in the future so as to render the purposes of the Declaration impossible to accomplish, the Declaration can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, or as otherwise permitted by law. Each party shall promptly notify the other when it first learns of any such circumstances.

17. Assignment. The right to enforce this Declaration is transferable to the extent allowed by law, but The County of Santa Fe may assign its rights under this Declaration only to an organization that is: (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; (b) authorized to acquire and hold easements in gross under New Mexico law; or (c) a governmental entity. In the event that The County of Santa Fe seeks to assign its rights to enforce this Declaration, The County of Santa Fe shall make reasonable efforts to identify two or three potential conservation organizations that meet the

requirements of this Paragraph, to be presented to the Owner or his successors-in-interest, from which the Owner may select the organization to which The County of Santa Fe may assign its rights under this Declaration.

18. Recordation/Subsequent Transfers. The Declarant shall record this instrument concurrently with the sale of other property held by Declarant in the same transaction, in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Declaration. The Owner agrees to incorporate the terms of the Declaration in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Declarant hereby gives written notice to The County of Santa Fe of the proposed transfer of all of the Declarant's remaining interest in the Property to Victor Vigil, her son. The Owner shall give written notice to The County of Santa Fe of any further proposed transfer of any interest in the Property at least sixty (60) days prior to recordation of the deed carrying out such transfer. The failure of The County of Santa Fe or the Owner to perform any act required by this Paragraph shall not impair the validity of the Declaration or limit its enforceability in any way.

19. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other under this Declaration shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows and shall be deemed given when personally served or on the third business day after being so mailed:

If to the Declarant:

Isabel Vigil  
HCR 64, Box 11-B  
Chimayo, NM 87522

If to The County of Santa Fe:

Santa Fe County Manager  
The County of Santa Fe  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276  
Facsimile Number 505-995-2740

With Copies to:

The County of Santa Fe Attorney  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

Santa Fe County Open Space and Trails Program Director  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

or to such other address as either party from time to time shall designate by written notice to the other.

20. General Provisions.
  - A. Controlling Law. The interpretation and performance of the Declaration shall be governed by the laws of the State of New Mexico.
  - B. Liberal construction. Any general rule of construction to the contrary notwithstanding, the Declaration shall be liberally construed in favor of the grant to effect the purpose of the Declaration and the policy and purpose of Section 47-12-1 et seq., NMSA 1978. If any provision in this Declaration is found to be ambiguous, an interpretation consistent with the purposes of the Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.
  - C. Severability. If any provision of this Declaration or application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  - D. Entire Agreement. This Declaration sets forth the entire agreement of the parties with respect to the Declaration and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Declaration, all of which are merged herein.
  - E. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of the Owner's fee title to the Property.
  - F. Joint Obligation. The obligations imposed by this Declaration upon the Owner shall be joint and several.
  - G. Successors. The covenants, terms, conditions, and restrictions of this Declaration shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, beneficiaries, trustees, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
  - H. Termination of Rights and Obligations. A party's rights and obligations under this Declaration terminate upon transfer of the party's interest in the Declaration or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
  - I. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.



**GRANT OF EASEMENT**

**PROPERTY OF ISABEL S. VIGIL  
TOWNSHIP 20 NORTH, RANGE 9 EAST, SECTIONS 1 and 12  
and  
TOWNSHIP 20 NORTH, RANGE 10 EAST, SECTIONS 6 and 7  
N.M.P.M.**

This easement is granted by Isabel S. Vigil ("Grantor"), owner of that certain parcel of real property in Santa Fe County, New Mexico known as "Tract 'C' 11.608 Ac. ± #280 Juan Medina Road" as shown on that certain plat of survey entitled, "Boundary Survey\Lot Line Adjustment Plat Requested by The Rubel Martinez Estate & Isabel Vigil" recorded in the records of Santa Fe County, New Mexico on August 6, 2004 in Plat Book 565, Page 031 (The "Burdened Property") and is for the benefit of those certain parcels of real property known as "5789 TR. 3 1.6454 Acres" and "5689 TR. 4 2.2881 Acres" as shown on that certain plat of survey entitled, "Amended Boundary Survey for The Trust For Public Lands" recorded in the records of Santa Fe County, New Mexico on April 14, 2004 at Plat Book 557, Pages 13-14 (the "Benefited Property").

1. **Grant of Easement.** Grantor hereby grants a perpetual ingress and egress easement (the "Easement") for the Grantor across portions of the Burdened Property described as follows:
  - A. The Easement is granted only for the purpose of tending to, and transporting, cattle and for no other purpose.
  - B. The Easement shall have a width of twelve (12) feet.
  - C. The location of the Easement shall be in a location to be fixed and approved by the holders of the Burdened Property and the Benefited Property. The Easement may be improved as necessary to allow the passage of vehicles necessary to transport cattle but any such improvements will be paid for solely by the Grantee and any improvements must be approved, in writing, by the Grantor based upon sufficient written plans for the same. Approval of the location and improvement of the Easement shall not be unreasonably withheld by the County.
  - D. The Easement includes the right to transport cattle.
  - E. The holder of the Benefited Property shall secure the gates and fences in a manner which assures that the livestock will not be able to enter or graze the land of the holder of the Burdened Property.
  - F. Neither the holder of the Burdened Property nor the holder of the Benefited Property shall cut fences, install gates, install locks on gates, or block any easement without the prior written consent of the other party.

SFC CLERK RECORDED 12/16/2004



