

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
NEW MEXICO OUTDOOR PROPERTIES  
FOR REAL ESTATE MARKETING AND SALES SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this 25<sup>th</sup> day of August 2017, by and between Santa Fe County a political subdivision of the State of New Mexico ("County") and New Mexico Outdoor Properties, a sole proprietorship, Lee Scholes, Qualifying Broker, whose principal address is PO Box 1112, Magdalena, New Mexico ("Contractor").

WHEREAS, on or around September 11, 1991, the County purchased 55.893 acres of real property ("Property") located near Lemitar, New Mexico, in Socorro County, as depicted on Exhibits "A1" and "A2;" and

WHEREAS, the Santa Fe County Board of County Commissioners approved Resolution No. 2015-158 authorizing the County Manager to offer the Property for sale, first to state educational institutions, then local governments in Socorro County, and lastly to private persons or entities; and

WHEREAS, no state educational institution or local government has expressed an interest in purchasing the Property, therefore the County Manager has been delegated the authority to dispose of the Property through a negotiated sale to a private person or entity; and

WHEREAS, the County requires the services of a qualified and licensed REALTOR® to market and locate a willing buyer to purchase the Property and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

**1. SCOPE OF WORK**

The Contractor shall provide, without limitation, the following services:

- A. Contractor agrees to use his or her best efforts to find a buyer who is willing to purchase the Property.
- B. The list price of the Property shall be no less than the fair market value Property.
- C. Marketing. Contractor is authorized to:
  - 1) Signs. To place "For Sale," "Under Contract," "Sale Pending," or other similar signs on the Property (where permitted by law and relevant covenants) and to remove such signs.
  - 2) Listing Service. To submit pertinent information concerning the Property to any listing service of which Contractor is a member or in which any of

Contractor's agents participate and to furnish to such listing service notice of all changes of information concerning the Property authorized in writing by County. County authorizes Contractor, upon execution of a sales contract for the Property by the County, to notify the listing service of the pending sale and the expiration date of any due diligence period, and upon closing of the sale, to disseminate sales information, including sales price, to the listing service, appraisers and real estate brokers.

- 3) Non-Internet Advertising. At Contractor's sole cost, Contractor may advertise the Property in non-Internet media and permit other listing agencies to advertise the Property in non-Internet media to the extent and in such manner as Contractor may decide.
- 4) Internet Advertising. At Contractor's sole cost, Contractor may display information about the Property on the Internet either directly or through a program of any listing service of which the Contractor is a member or in which any of Contractor's agents participate, and authorizes other agents who belong to any listing service of which the Contractor is a member or in which any of Contractor's agents participate to display information about the Property on the Internet in accordance with the listing service rules and regulations.

## 2. EXCLUSIVE RIGHT

This Agreement grants to Contractor the exclusive right to list and sell the Property during the term of this Agreement.

## 3. ADDITIONAL SERVICES

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

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

## 4. COMPENSATION

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

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed. Compensation shall be paid out of the proceeds of the sale of the Property through a qualified title company agreed upon by both the County and buyer of the Property.
- 2) The total compensation payable by the County under this Agreement shall

not exceed 6% of the gross sale price, **inclusive** of New Mexico gross receipts tax.

B. Cooperation with or compensation to other firms. Contractor may offer Compensation to other real estate brokers, including sub-agents, buyer agents, brokers who do or do not participate in a listing service and brokers who may or may not be licensed realtors.

C. Compensation Earned. The compensation shall be deemed earned under any of the following circumstances:

- 1) If a willing buyer is procured by the Contractor, a cooperating real estate firm or anyone else cooperating with the Contractor during the term of this Agreement at the price and on the terms set forth herein, or at any price and upon any terms acceptable to the County;
- 2) If the Property is sold, conveyed or transferred, or the County agrees, during the term of this Agreement to sell the Property at any price and upon terms acceptable to the County;
- 3) If the circumstances set out in 1 or 2 above have not occurred, and if, within 90 days after the termination or expiration of this Agreement ("Protection Period"), the County either directly or indirectly sells or transfers, or agrees to sell, convey or transfer the Property upon terms acceptable to the County, to any person with whom Contractor or any cooperating real estate firm communicated regarding the Property during the term of this Agreement, provided that the names of such persons are delivered or postmarked to the County within 15 days after the expiration or termination of the term of this Agreement. The County shall not be obligated to pay the compensation to the Contractor if a valid listing agreement is entered into between the County and another real estate broker and the Property is subsequently sold during the Protection Period.
- 4) Compensation Due and Payable. Once earned as set forth above, the Compensation will be due and payable at the earlier of:
  - (i) Closing on the Property; or
  - (ii) The County's failure to sell the Property including the County's refusal to sign an offer to purchase the Property, the County's default on an executed sales contract for the Property, or the County's agreement with a buyer to unreasonably modify or cancel an executed sales contract for the Property.

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

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

## 5. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate 180 days later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement in 60 day increments not to exceed one year in total.

## 6. TERMINATION

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

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

## 7. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

## 8. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may

be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

## **9. ASSIGNMENT**

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

## **10. SUBCONTRACTING**

Except as provided for in Sections 1 and 4 above, Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

## **11. PERSONNEL**

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

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

## **12. RELEASE**

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

## **13. CONFIDENTIALITY**

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

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

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

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

#### **15. CONFLICT OF INTEREST**

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

#### **16. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

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

#### **17. ENTIRE AGREEMENT; INTEGRATION**

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

#### **18. NOTICE OF PENALTIES**

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

#### **19. NON-DISCRIMINATION, EQUAL OPPORTUNITY**

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

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

#### **20. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

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

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

## **21. RECORDS AND INSPECTIONS**

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

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

## **22. INDEMNIFICATION**

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

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

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

### 23. SEVERABILITY

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

### 24. NOTICES

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

To the County: Santa Fe County  
Attn: Santa Fe County Manager  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

Santa Fe County Public Works Dept.  
Attn: Real Property Specialist  
P.O. Box 276  
Santa Fe, New Mexico 87504-0276

To the Contractor: New Mexico Outdoor Properties  
P.O. Box 1112  
Magdalena, New Mexico 87825-1112

### 25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.



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

## 26. FACSIMILE SIGNATURES

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

## 27. NO THIRD-PARTY BENEFICIARIES

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

## 28. PERMITS, FEES, AND LICENSES

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

## 29. NEW MEXICO TORT CLAIMS ACT

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

## 30. SURVIVAL

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

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

**SANTA FE COUNTY**

  
Katherine Miller  
County Manager


8.25.17  
Date

Approved as to form

  
Gregory S. Shaffer  
County Attorney

8-4-17  
Date

Finance Department

  
Don D. Moya  
Finance Director


8-8-17  
Date

**NEW MEXICO OUTDOOR PROPERTIES:**

\_\_\_\_\_  
Lee Scholes  
Qualifying Broker

\_\_\_\_\_  
Date

Approved as to form

  
\_\_\_\_\_  
Gregory S. Shaffer  
County Attorney

8-4-17  
Date

Finance Department

  
\_\_\_\_\_  
Don D. Moya  
Finance Director

8-8-17  
Date

NEW MEXICO OUTDOOR PROPERTIES:

  
\_\_\_\_\_  
Lee Scholes  
Qualifying Broker

8/9/17  
Date



Exhibit "A1"

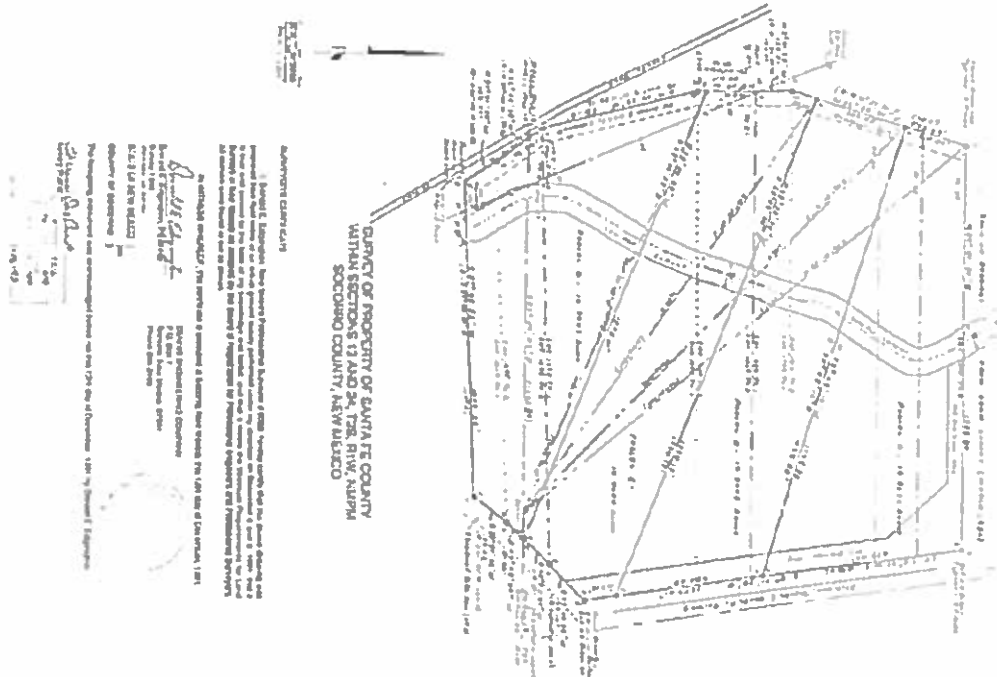
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Exhibit "A2"

