

MANAGEMENT AGREEMENT

GRANDVIEW WATER TANK

PROPERTY – JOINT USE

THIS AGREEMENT made and entered into this _____ day of May, 2019 by, and between, the City of Gallup, a New Mexico a municipal corporation existing by and under the authority of the laws of the New Mexico, hereinafter referred to as CITY, and SACRED WIND ENTERPRISE, a New Mexico for-profit corporation, hereinafter referred to as SWE.

WHEREAS, CITY owns property located at 1400 S. Grandview Dr., in the City of Gallup, County McKinley and State of New Mexico that is for water storage and communications, and

WHEREAS, CITY wants to allow the use of SWE’s equipment on one wooden telephone pole on the East side of the property (owned by Electronic Center, Inc) by a communications facility within the property to provide communication services to the City of Gallup and local businesses, and

WHEREAS, SWE needs approval from Electronic Center to mount SWE’s equipment on their pole, and

WHEREAS, CITY and SWE are desirous of entering into a contractual arrangement for SWE to provide internet services to the CITY.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained it is agreed and between the parties hereto as follows:

1. **TERM.** The term of this Agreement shall commence on signing hereof and end on day the 14th day of May 2024, or after a written 30-day notice is given by either party.

2. OCCUPANCY. CITY does hereby give and grant unto SWE rights of access to the property during normal business hours with prior notice and escort. The Water Department will unlock the property within one hour after notice is given. If an emergency arises outside of normal business hours, it will be the Water Department's discretion if/when they can open the property to SWE.

3. OPERATIONS AND EXCLUSIVE USE. CITY and SWE agree that during the term of this agreement SWE shall not have the exclusive use of the GRANDVIEW TANK PROPERTY. SWE will manage their equipment and provide contract related services. SWE agrees to conform and comply with all applicable city, state and federal ordinances, laws, rules and regulations in using the said premises; and not to use or suffer to be used the premises in any manner in contravention of any applicable county, state or federal ordinances, laws, rules and regulations or so as to create any nuisance.

4. PAYMENTS. In consideration for allowing the SWE to operate their equipment and provide internet services to the CITY and local businesses, the SWE agrees to provide internet services to the CITY at a reduced cost for duration of this agreement.

(a) CITY to pay the SWE for the transport, internet, and public IP addresses. The CITY reserves the right to add/remove any of the following locations as deemed necessary for the term of the agreement with no penalty. SWE agrees to allow the addition of sites to this agreement with established prices per bandwidth speed if the new site is reachable by point-to-point wireless from this location. If adding a site increases the need for more City Hall transport bandwidth, the CITY agrees to pay for that increase as well as the site addition:

- City Hall Transport – 2 ea (100 Mbps) - \$129.95 ea, for \$259.90/mo
- City Hall Internet – 1 ea (100 Mbps) - \$129.95 ea, for \$129.95/mo
- Public IPV4 addresses – 1 ea - \$50.00 ea, for \$50/mo
- Solid Waste Point-to-Point Wireless (100 Mbps) – 1 ea - \$129.95 ea, for \$129.95/mo
- Skate Park Point-to-Point Wireless (50 Mbps) – 1 ea - \$89.95 ea, for \$89.95/mo

- Non-Potable Water Station Point-to-Point Wireless (25 Mbps) – 1 ea - \$54.95 ea, for \$54.95/mo
 - Potable Water Station Point-to-Point Wireless (25 Mbps) – 1 ea - \$54.95 ea, for \$54.95/mo
 - Harold Runnels Recreation Point-to-Point Wireless (25 Mbps) – 1 ea - \$54.95 ea, for \$54.95/mo
 - Downtown Plaza Point-to-Point Wireless (25 Mbps) – 1 ea - \$54.95 ea, for \$54.95/mo
- (b) SWE agrees to abide by the franchise agreement signed in November 2017, section 2.3.1 *Franchise Fees* for fees collected by providing internet services to City of Gallup businesses.

5. UTILITY AND OTHER CHARGES AND COSTS. SWE shall be responsible for obtaining their own meter and paying for all electricity charges associated with that meter.

6. HOLD HARMLESS. SWE agrees to assume and hold harmless CITY from any and all liability occasioned by its operation of their equipment within the Grandview property and agrees to maintain liability insurance in an amount set by CITY.

7. COMPLIANCE WITH LAWS AND REGULATIONS. SWE agrees to comply with any and all State, Federal, County, or local regulations regarding operation of communications.

8. DUTIES OF THE PARTIES. As part of the consideration for this contract, Owner and Operator further specifically agree as follows:

(a) CITY shall be responsible for maintenance of the grounds within the Grandview property. SWE shall be responsible for the maintenance, upkeep of all areas within five feet of their equipment.

(b) SWE shall and will keep the premises in a safe, sanitary and clean condition and shall dispose of all debris and other waste matter which may accumulate within their area.

9. SWE'S LIABILITY AND INSURANCE. The SWE shall and will be liable for every claim and demand of whatsoever nature made on behalf of or by any person, persons, firms, partnership, corporation, or otherwise for any wrongful act or omission on the part of SWE, its

agents, servants, and/or employees, and from all loss and damage for reasons of such actions or omissions of SWE'S business activities. SWE shall provide suitable insurance coverage pertaining to its specific activity and provide the following:

(a) To name the CITY on policies as an additional insured.

(b) To require insurance company to provide CITY with fifteen (15) days minimum notice, in writing prior to cancellation or discontinuance of any insurance coverage.

(c) The insurance company shall also provide the CITY with a certificate of insurance.

(d) SWE shall provide the following coverage: General liability policy of not less than \$1,000,000.00, to cover all aspects of SWE'S activities including but not limited to property damage, bodily injury, negligence and all other aspects of the intended use and operation of their equipment within the Grandview property.

10. CITY'S LIABILITY AND INSURANCE. CITY shall maintain insurance coverage upon building and property owned by it, insuring said buildings and property against loss by fire, wind and other hazards as CITY determines as necessary.

11. DAMAGE OR DESTRUCTION TO BUILDING OR IMPROVEMENTS. In the event of damage or destruction of the facility by fire or otherwise, which shall cause substantial injury or undue hardship upon either party by reason of any of the provisions of this contract which either party would not have made had they known such changes would have occurred during the term of this contract or any extension provided herein, then such party, so injured may request a renegotiation of the rights, privileges and obligations under this contract. CITY reserves the right to cancel this contract, if it determines in its sole discretion, the damage or destruction to too severe to warrant the repair or reconstruction of the facility.

12. ASSIGNMENT. SWE, except to a successor company, shall not and will not at any time during the terms of this contract assign or transfer this Agreement or any interest therein, without the prior written consent of CITY.

13. NOTICE. Any notice, request or instruction to be given hereunder by either party to the other shall be in writing and mailed to them by certified mail, postage prepaid, duly posted to the

addresses set forth below:

CITY: City Manager
City of Gallup
110 West Aztec
Gallup, New Mexico 87301

SWE: Sacred Wind Enterprises
c/o John Badal, CEO
875 US-491
Yatahey, New Mexico 87375

14. SEVERABILITY. Should any section, paragraph, clause or provision of this agreement, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this agreement.

15. CONTROLLING LAW. This Lease shall be construed and enforced in accordance with the laws of the State of New Mexico, and venue shall lie in any dispute in the Eleventh Judicial District for the State of New Mexico.

16. THIS AGREEMENT EMBODIES ALL AGREEMENTS BETWEEN THE PARTIES. It is covenanted and agreed by and between the parties hereto that this Management Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and that all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

THIS AGREEMENT entered the date first written above.

CITY OF GALLUP

Jackie McKinney, Mayor

Attest

SACRED WIND ENTERPRISES

John Badal, CEO

Attest

Nectarios Nicolaou, GM/Assistant Secretary