

**CITY OF SANTA FE LEASE AGREEMENT FOR
GOVERNMENTAL LIQUOR LICENSE AT FORT MARCY PARK**

THIS LEASE AGREEMENT (hereinafter "Agreement") is made and entered into this 16 day of May, 2023, by and between the Pecos League of Professional Baseball Clubs, P.O. Box 271489, Houston, TX 77277, (hereinafter "Lessee"), and the City of Santa Fe, a municipal corporation (hereinafter "Lessor").

WHEREAS Lessee has an agreement to Lease the Fort Marcy Park Baseball Field from Lessor in a separate agreement ("City of Santa Fe Public Works Department Facility Rental and Operating Agreement," known here as "Facility Lease") for the use of Fort Marcy Park Field for Santa Fe Fuego Baseball Games; and

WHEREAS in the Facility Lease, Lessee agrees to pay Lessor 10% of gross amounts charged and collected from all sales for the sales of beer and/or wine under that lease; and

WHEREAS Lessor is entering into this Agreement so that Lessee may use the City of Santa Fe Governmental Liquor License to sell alcoholic beverages during Santa Fe Fuego Baseball Games.

THEREFORE The parties agree as follows:

WITNESSETH:

In consideration of the mutual covenants and Leases hereinafter contained, the parties hereto agree as follows:

1. LEASED PROPERTY

Lessor does hereby lease to the Lessee Lessor's Governmental Liquor License, for use on days with scheduled Santa Fe Fuego Baseball Games between June 2 and August 15, 2023, during the hours of one hour before scheduled game time until the end of the sixth inning, for use within the licensed premises at Fort Marcy Park as shown in Attachment A.

1. USE OF GOVERNMENTAL LIQUOR LICENSE

Under the terms of this Lease, Lessee shall:

A. ALCOHOL SALES

- a. Be allowed to use Lessor's Governmental Liquor License to sell beer and/or wine during Santa Fe Fuego Baseball games during the term of this Agreement. Lessee shall not sell beer and/or wine under this Agreement at any place or time other than at the licensed premises during Santa Fe Fuego Baseball Games.

B. PERSONNEL

- (1) Provide adequate levels of staffing for events.
- (2) Provide staff that is properly certified and licensed by the State of New Mexico to serve alcoholic beverages.

C. LICENSING AND COMPLIANCE

(1) Comply with all rules and regulations of the New Mexico Department of Health, New Mexico Environment Department, the Alcohol and Gaming Division of the Regulation and Licensing Department, and all applicable laws, statutes and ordinances of the State of New Mexico and the City of Santa Fe, including health and safety codes.

(2) Obtain and maintain at Lessee's expense all permits and licenses required by such laws and regulations.

(3) Assist the Lessor in obtaining and preparing any applications and supporting documents to renew the Liquor License.

(4) Possess a current City Registration License and a Gross Receipts Tax Identification (CRS) Number. The Lessee shall provide the Lessor with evidence of its compliance with this requirement as a condition prior to performing services under this Lease.

(5) At Lessee's expense, ensure that the interior, exterior and all supplies, equipment and funds are adequately secured.

(6) Ensure that all food and beverages kept for sale shall be subject to inspection by the Lessor and/or appropriate governmental agencies.

D. Agree that it has inspected the facilities and equipment and thoroughly understands the area and equipment that is being provided by the Lessor. No other verbal indication of additional City facilities, equipment or improvements are authorized or binding.

- E. Acknowledges that the Lessor is not responsible for any financial losses claimed by the Lessee.
- F. Install a Point of Sale system to Lessor's specifications, for keeping track of alcohol sales by price and number of units sold. Access to this Point of Sale system shall be granted to Lessor.

2. RESPONSIBILITIES OF LESSEE

- A. All beverages, alcoholic and non-alcoholic, are to be provided by the Lessee.
- B. All sales and service of alcoholic beverages are to be made only within those areas of the Liquor License Premises that are shown and designated as the authorized area in the Lessor's application for the Liquor License ("Authorized Area") and are to be tracked on Lessee's Point of Sale system, access to which shall be granted to Lessor. Lessee may sell and dispense alcoholic beverages under the Liquor License (i) by trained alcohol servers; and (ii) during hours consistent with the conditions of the Liquor License for all events where alcoholic beverages are served.
- C. Lessee shall assist the Lessor in obtaining and preparing any applications and supporting documents to renew the Liquor License as required by the State of New Mexico. Lessee shall pay to the Alcohol and Gaming Division all application and licensing fees for the Liquor License, as well as any fees for renewals of the Liquor License, and any other fees associated with the Liquor License. Lessee shall satisfy all requirements of the State of New Mexico in order to qualify as a user to operate under the Lessor's Liquor License.

3. RIGHTS OF THE LESSOR

- A. The Lessor reserves the right to inspect the premises, sale of alcoholic beverages, or point of sale software and receipts at any point.
- B. Lessor representatives, as authorized by the Administrative Manager, shall have the right to enter upon and have access to all spaces occupied by the Lessee during events and at all other times.

C. The Lessor reserves the right to direct the Lessee to partially or completely suspend sales during any events at which the Lessee's services may be unsatisfactory to the Lessor.

4. STANDARD OF PERFORMANCE; LICENSES

A. The Lessee must possess and maintain the personnel, experience, and knowledge necessary to perform the services described under this Agreement.

B. The Lessee shall obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

5. COMPENSATION

A. Rent - As rent for the use of the Governmental Liquor License during the Santa Fe Fuego Baseball Games during June, July, and possibly August of 2023, the Lessee shall pay the Lessor the sum of one thousand and five hundred dollars (\$1,500). This amount shall be paid withing fifteen (15) days of the full execution of this lease agreement.

B. The Lessee shall provide documentation for the following to the Lessor within fifteen (15) days of the end of each month of the lease: Total sales of alcohol as recorded by the Point of Sale system that Lessee has installed according to this Agreement.

C. Nothing in this section shall change the amount of money owed to Lessor by Lessee for sales of alcoholic beverages under the Facilities Lease.

D. Lessee shall be responsible for payment of gross receipts taxes levied by the State of New Mexico.

6. CASH HANDLING REPORTING

Lessee shall submit on a monthly basis to the Lessor, an accounting of all food and beverage sales.

7. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Lessor and the Lessee and shall terminate on August 15, 2023, unless sooner pursuant to Article 9 below. Lessee shall notify the State Licensing Board of the Suspension of the Lease as of the end of the term.

8. OPTION TO RENEW

Lessee is granted, upon a satisfactory performance on August, 2023, an option to renew this Agreement for an additional two seasons. Contractor and the City shall renegotiate the terms and conditions prior to renewal. The option shall be exercised by the parties by October 1, 2023.

9. . TERMINATION

A. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party in writing at least upon 60 days prior to the intended date of termination.

B. The Lessee shall render a final report of alcoholic beverage sales up to the date of termination and shall submit this report to the Lessor.

C. The Lessee shall pay the Lessor for any alcoholic beverage sales rendered through the effective date of such termination for which compensation has not already been paid.

10. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvement to the premises for the uses described hereinabove without the prior, written consent of Lessor, which consent shall not be unreasonably withheld. Any alteration, addition or improvement made by Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall become the property of the Lessor upon the termination of this Lease, unless Lessee elects to remove them and restore the premises to the condition existing prior to the installation of such fixtures, ordinary wear and use excepted; provided, however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee's expense, upon the termination of this Lease.

11. . STATUS OF LESSEE; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Lessee and its agents and employees are independent Contractors performing professional services for the Lessor and are not employees of the Lessor. The Lessee, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Lessor vehicles, or any other benefits afforded to employees of the Lessor as a result of this Lease.

B. Lessee shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Lessee in the performance of the services under this Lease.

12. . CONFIDENTIALITY

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

13. . CONFLICT OF INTEREST

The Lessee warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Lease. Lessee further agrees that in the performance of this Lease no persons having any such interests shall be employed.

14. ASSIGNMENT; SUBCONTRACTING

The Lessee shall not assign or transfer any rights, privileges, obligations or other interest under this Lease, including any claims for money due, without the prior written consent of the Lessor. The Lessee shall not subcontract any portion of the services to be performed under this Lease without the prior written approval of the Lessor.

15. RELEASE

The Lessee, upon acceptance of final payment of the amount due under this Lease, releases the Lessor, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Lease. The Lessee agrees not to purport to bind the Lessor to any obligation not assumed herein by the Lessor unless the Lessee has express written authority to do so, and then only within the strict limits of that authority.

16. INSURANCE

A. The Lessee shall, at its own cost and expense, be required to carry and maintain in full force and effect comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum amount which the Lessor could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Lessor is named as an additional insured and the Lessor is notified no less than 30 days in advance of cancellation for any reason. The Lessee will be required to furnish the Lessor with a copy of the Certificate of Insurance or other evidence of compliance with the provisions of this section prior to performing services under this Lease.

B. The Lessee shall obtain and maintain Workers' Compensation insurance required by law, to provide coverage for Lessee's employees throughout the term of this Lease. The Lessee shall provide the Lessor with evidence of its compliance with such requirement.

C. The Lessee shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage the amount required under the New Mexico Tort Claims Act.

D. The Lessee shall obtain a Liquor Liability insurance policy with liability limits in amounts not less than one million (\$1,000,000) combined single limit of liability for bodily injury, including death, and property damage in anyone occurrence. The Lessee shall provide the Lessor with evidence of its compliance with this requirement as a condition prior to performing services.

17. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's performance under this Agreement as well as the performance of Lessee's employees, agents, representatives and subcontractors.

18. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Lease is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Lessor and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Lease modifies or waives any provision of the New Mexico Tort Claims Act.

19. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Lessor and the Lessee. No person shall claim any right, title or interest under this Lease or seek to enforce this Lease as a third party beneficiary of this Lease.

20. RECORDS AND AUDIT

The Lessee shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Lessor and internal Auditor. The Lessor shall have the right to audit the billing both before and after payment. Payment under this Lease shall not foreclose the right of the Lessor to recover excessive or illegal payments.

21. APPLICABLE LAW; CHOICE OF LAW; VENUE

Lessee shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Lessor. In any action, suit or legal dispute arising from this Lease, the Lessee agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Lease shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

22. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

23. SCOPE OF AGREEMENT

This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior Agreement for Governmental Liquor Licenses or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless Agreement throughout embodied in this Lease.

24. . NON-DISCRIMINATION

During the term of this Agreement, Lessee shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Lessee hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

25. SEVERABILITY

In case anyone or more of the provisions contained in this Lease or

any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

26. NOTICE

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five (5) days after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

Any captions to or headings of the paragraphs of this Lease are solely for the convenience of the parties, are not a part of this Lease and shall not be used for the interpretation or determination of validity of this Lease or any provisions hereof.

To Lessor:

City of Santa Fe,
200 Lincoln Ave
PO Box 909,
Santa Fe, NM 87504-0909

To Lessee:

Pecos League
P.O. Box 271489
Houston, TX 77277

27. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

28. ENTIRE AGREEMENT

The foregoing constitutes the entire Agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein.

29. BINDING EFFECT

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is specifically enforceable.

IN WITNESS WHEREOF, the parties have executed this Lease on the date

set forth below.

CITY OF SANTA FE (LESSOR):

LESSEE:

John Blair

John Blair (May 16, 2023 12:26 MDT)

JOHN BLAIR, CITY MANAGER

Yvonne Encinias

YVONNE ENCINIAS,
SANTA FE FUEGO GENERAL MANAGER

Date: May 16, 2023

Date: 5/10/2023

CRS #

City of Santa Fe Business

Registration No

ATTEST:

Kristine Mihelcic

KRISTINE BUSTOS-MIHELICIC, CITY CLERK

XIV

APPROVED AS TO FORM:

Patricia Feghali

PATRICIA FEGHALI, ASSISTANT CITY ATTORNEY

APPROVED:

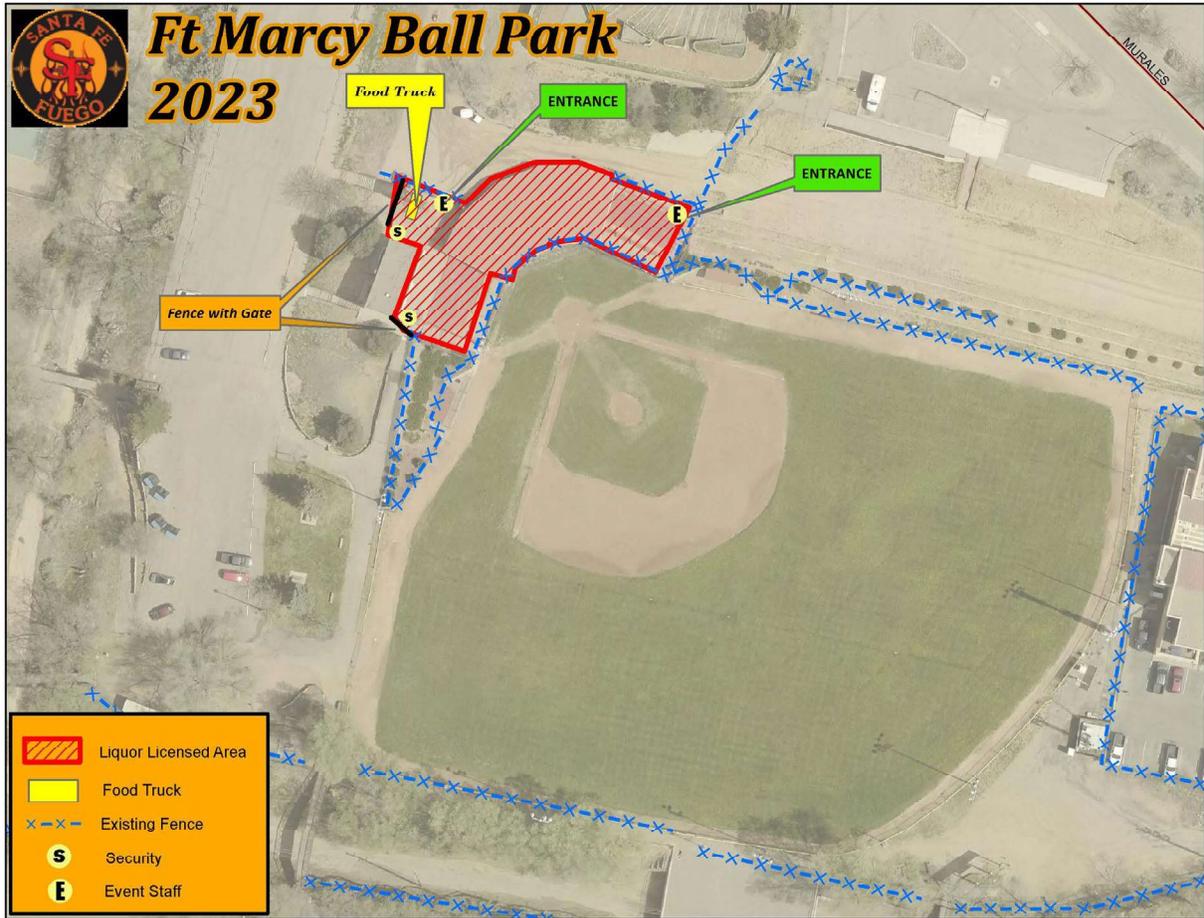
Emily K. Oster

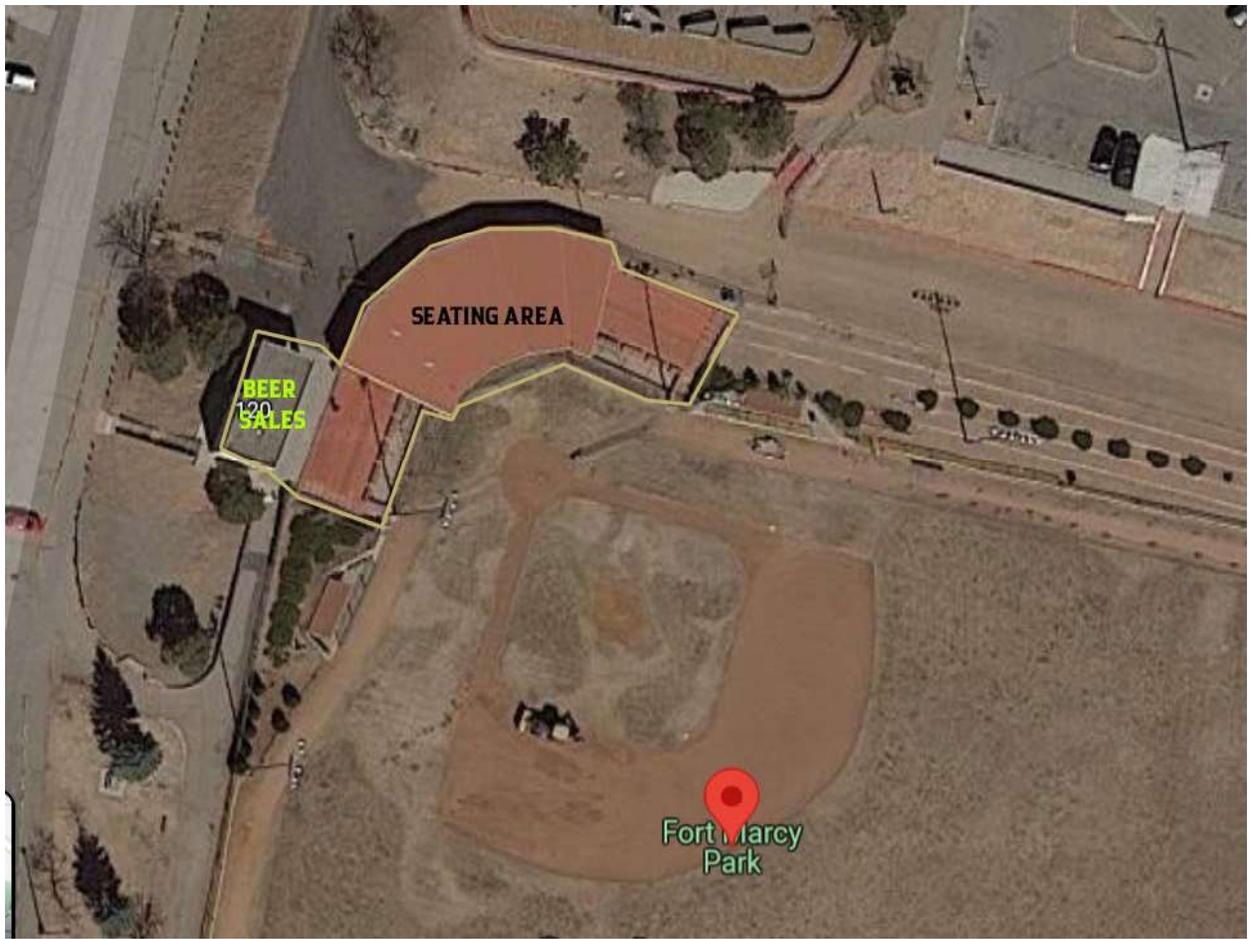
Emily K. Oster (May 12, 2023 18:17 MDT)

EMILY OSTER, DIRECTOR
FINANCE DEPARTMENT

BUSINESS UNIT/LINE ITEM

EXHIBIT A – Liquor Licensed Area and Alcohol Sales Area





23-0227 Pecos League

Final Audit Report

2023-05-16

Created:	2023-05-12
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFPt33jpB1nZjChA-4psW5rtnak6hUmri

"23-0227 Pecos League" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)
2023-05-12 - 8:00:08 PM GMT- IP address: 63.232.20.2
-  Document emailed to ekoster@santafenm.gov for signature
2023-05-12 - 8:01:12 PM GMT
-  Email viewed by ekoster@santafenm.gov
2023-05-13 - 0:15:40 AM GMT- IP address: 104.47.65.254
-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster
2023-05-13 - 0:17:38 AM GMT- IP address: 63.232.20.2
-  Document e-signed by Emily K. Oster (ekoster@santafenm.gov)
Signature Date: 2023-05-13 - 0:17:40 AM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to jwblair@santafenm.gov for signature
2023-05-13 - 0:17:41 AM GMT
-  Email viewed by jwblair@santafenm.gov
2023-05-16 - 6:25:34 PM GMT- IP address: 174.240.17.134
-  Signer jwblair@santafenm.gov entered name at signing as John Blair
2023-05-16 - 6:26:11 PM GMT- IP address: 174.240.17.134
-  Document e-signed by John Blair (jwblair@santafenm.gov)
Signature Date: 2023-05-16 - 6:26:13 PM GMT - Time Source: server- IP address: 174.240.17.134
-  Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature
2023-05-16 - 6:26:15 PM GMT
-  Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)
2023-05-16 - 6:50:29 PM GMT- IP address: 104.47.64.254





Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2023-05-16 - 6:50:52 PM GMT - Time Source: server- IP address: 63.234.242.126



Agreement completed.

2023-05-16 - 6:50:52 PM GMT

