



Agenda Item Number: _____

**SANDOVAL COUNTY
BOARD OF COUNTY COMMISSIONERS**

Date of Commission Meeting: December 30, 2010
Special Meeting

Division / Elected Office: Juan R. Vigil, County Manager
Stephanie Lopez, Interim County Attorney
Michael Springfield, Dir. County Development

Staff Contact: Juan R. Vigil, County Manager

Title of Item: Settlement Agreement – RECORP and Sandoval County

Action Requested: Discussion and motion to approve the Settlement Agreement between Sandoval County and Recorp/Aperion, Petitioner and Respondents, respectively, in condemnation litigation in Sandoval County, New Mexico identified as Case No. D-1329-CV-2009-2408 ("Lawsuit") pursuant to Court ordered mediation, Sandoval County, New Mexico, a statutorily created County (the "County") and Tesoro Properties, LLC, a New Mexico Limited Liability Company; Butera Properties, LLC, A New Mexico Limited Liability Company; Carinos Properties, LLC, A New Mexico Limited Liability Company; Recorp, A New Mexico Limited Partnership; Recorp-New Mexico Associates Limited Partnership I, A New Mexico Limited Partnership; Recorp-New Mexico Associates Limited Partnership II, A New Mexico Limited Partnership; and Recorp-New Mexico Associates Limited Partnership III, A New Mexico Limited Partnership.

Summary:

Sandoval County and David Maniatis, Recorp, entered into a Memorandum of Understanding (MOU) on April 19, 2007. The purpose of the MOU was to establish a public/private entity for the purpose of water development. On July 17, 2007 the Board adopted the Development Agreement, incorporating the MOU. The Development Agreement delineated actions which needed to be performed by both the County and Recorp. The County pursued the development of the water resource by having two exploratory wells



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drilled on Recorp property. Recorp had signed an easement agreement as part of the Development Agreement. The County also hired consultant engineers to perform water tests and to develop recommendation on treatment alternatives. On October 1, 2009 the Board authorized condemnation of the well sites and an easement to the Northwest Loop referred to as "Alice King Way". On April 12 2010 a hearing was held where the Honorable Judge Eichwald held that the County's notice was not properly provided to the Recorp, and others, as to the two well sites, however, that notice was properly provided as to Alice King Way. The County's condemnation was granted in part and denied in part. At the April 12, 2010 hearing the County and Mr. Maniatis commented that they wanted to find a mutually acceptable solution to the situation at hand and that a proper course of action would be found in a mediated resolution of the dispute. The Settlement Agreement proposes that the Desalination Project will continue under private sector development. The County's goal of promoting economic development within the County and the land development in the Recorp/Aperion Master Plan are acknowledged in the agreement

The County accepts that Recorp or successors may form a privately owned water utility and the County will not oppose such a utility being established, (S.A. page 2, #2). To date, Sandoval County has secured funds totaling approximately \$6,000,000.00 (6 million dollars) and has expended those funds on the drilling two exploratory wells and for researching the quality and quantity of the water in the aquifer. In the Settlement Agreement (S.A.) before the Board, Recorp will; in return for this investment, provide to Sandoval County \$6,000,000.00, (6 million dollars) which may be in the form of either real property, currency or a combination of the two. Additionally the County agrees to disclaim all interest in ownership and control over the two well sites; the County also agrees not to compete or engage any other party to compete with the Recorp in the development or sale of water to the public within their service area for a limited period of time, (S. A. Page 2 and 3, #5.) If land is exchanged for the \$6 million the land has to be developable, the County will obtain the appraisal, and if that land is not valued at \$6 million, Recorp will either make up the difference with additional land or pay the remaining differenced. Also, the land must not be subject to any conditions which would impair development. As a result of the Settlement Agreement, the Parties forever release each other from any and all causes of action, claims, demands, damages, costs, expenses, compensation, etc. arising



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from or relating to those matters relating to the Lawsuit and all operative documents. The Settlement Agreement, including Attachments A, B, C and D, have been attached and incorporated herein for reference."

Attachments:

FISCAL IMPACT

STAFF ANALYSIS SUMMARY

County Manager:

**Initiating Elected Official /
Division Director:**

Legal:

Finance: