

**DRAFT**

**AGREEMENT BETWEEN  
THE INTERSTATE STREAM COMMISSION AND  
INTEL CORPORATION**

DRAFT

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**DRAFT AGREEMENT**

This Agreement (“Agreement”) is entered into by and between the NEW MEXICO INTERSTATE STREAM COMMISSION (“ISC”), an agency of the State of New Mexico with its principal address at 407 Galisteo Street, Santa Fe, New Mexico 87501, and INTEL CORPORATION (“Intel”), a Delaware corporation with its principal address at 2200 Mission College Boulevard, Santa Clara, California 95052. ISC and Intel are collectively referred to herein as the “Parties.”

**WHEREAS**, ISC is a statutory agency of the State of New Mexico authorized by NMSA 1978, § 72-14-3 (1935) to do any and all things necessary to protect, conserve and develop the waters of the State;

**WHEREAS**, ISC may acquire water rights, including permits and licenses issued by the Office of the State Engineer (“OSE”), that are necessary or proper to fulfill its statutory mandate to do any and all things necessary to protect, conserve and develop the waters of New Mexico under NMSA 1978, § 72-14-10 (1955);

**WHEREAS**, pursuant to the Strategic Water Reserve Act, NMSA 1978, § 72-14-3.3 (2007), ISC may accept funds and water rights for use in assisting the State in complying with interstate stream compacts and court decrees, and for the benefit of threatened or endangered species, or in a program intended to avoid additional listings of species;

**WHEREAS**, ISC may accept funds pursuant to legislative authorization to fulfill its statutory mandate to do any and all things necessary to protect, conserve and develop the waters of the State including, in particular, providing support for endangered and threatened species in the Rio Grande basin and for other environmental purposes consistent with ISC’s statutory authority;

**WHEREAS**, Intel’s operations in New Mexico depend critically on groundwater pumped pursuant to a license issued by OSE on August 16, 1999 (“License”) under OSE File No. RG-57125 et al. (“RG-57125”);

**WHEREAS**, stream depletion effects to the Rio Grande occur as the result of Intel’s pumping under RG-57125;

**WHEREAS**, Intel must offset depletion effects to the Rio Grande of pumping under RG-57125;

**WHEREAS**, Intel's operations in New Mexico contribute significantly to the economy of the State;

**WHEREAS**, it is in the public interest of the State of New Mexico to protect the economy of the State by supporting the creation and preservation of job opportunities for New Mexicans;

**WHEREAS**, it is in the public interest of the State of New Mexico to protect, conserve and develop the waters of the State; and

**WHEREAS**, a conveyance of water rights and financial resources by Intel to ISC, in exchange for ISC's assumption of certain of Intel's obligations to offset Intel's pumping depletion effects to the Rio Grande, and relief of Intel from such obligations, will promote economic development in New Mexico while providing support for both endangered and threatened species in the Rio Grande basin and ISC Strategic Water Reserve Act initiatives statewide.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and subject to the terms and conditions specified below, the Parties hereby agree as follows:

- 1. Purposes of the Agreement.** This Agreement is intended to:
  - A. Enhance ISC's ability, through the Strategic Water Reserve and otherwise, to comply with interstate stream compacts and court decrees, to assist in the protection of endangered and threatened species, and for other purposes within ISC's statutory authority;
  - B. Relieve Intel of certain of its offset obligations resulting from its ground water pumping, specifically its continuing need to accumulate and retire senior water rights in the middle Rio Grande for future offsets, thereby improving the competitive position of Intel's Rio Rancho plant operations while supporting the economy of the state;
  - C. Ensure that ISC's assumption of certain of Intel's offset obligations is recognized by OSE and that Intel thereby is relieved of those certain offset obligations to the extent provided for in this Agreement;
  - D. Permanently reduce groundwater depletions in the Middle Rio Grande Valley by 3,248.6 acre-feet per annum, once Intel has ceased pumping under RG-57125;
  - E. Reduce the demand in the Middle Rio Grande Valley for the acquisition and transfer of pre-1907 surface water rights; and

F. Provide to ISC 740.9 acre-feet per annum consumptive use pre-1907 Rio Grande surface water rights and Ten Million Dollars (\$10,000,000).

**2. Definitions**

- A. Accelerated Payment: See Paragraph 3.B.v.
- B. Anniversary Payments: See Paragraph 3.B.i.b.
- C. Application: See Paragraph 11.A.iii.
- D. Approval: See Paragraph 11.B.
- E. Assign: See Paragraph 16.D.
- F. Augmentation Pumping: Pumping pursuant to RG-57125 in an amount necessary to offset depletion effects to the Rio Grande not otherwise offset by other offsets provided for in the approved Offset Plan. Augmentation pumping shall not cause the pumping pursuant to RG-57125 to exceed the licensed amount. Augmentation pumping is further subject to the restrictions in Paragraph 11.A.i.c.
- G. Cessation: Initiation by Intel, in Intel's sole discretion, of the process of reducing its pumping pursuant to RG-57125, which reduction will be completed (i.e. all pumping shall have permanently ceased) within two (2) years. See Paragraphs 8.D through 8.F.
- H. Closing: See Paragraph 12.
- I. Closing Anniversary Date: See Paragraph 3.B.i.b.
- J. Closing Payment: See Paragraph 3.B.i.a.
- K. Consumer Price Index for All Urban Consumers (CPI-U): The Consumer Price Index for All Urban Consumers for all items less food and energy as published by the United States Bureau of Labor Statistics in its monthly CPI Detailed Report, at the Special Indexes section of Table 1 (Consumer Price Index for All Urban Consumer (CPI-U): U.S. city average, by expenditure category and commodity and service group).
- L. Effective Date: The date on which this Agreement becomes fully executed by entry of the final signature below.

- M. License: That certain license of August 16, 1999 granted to Intel by OSE under OSE File No. RG-57125.
- N. Offset: A source of water that replaces or makes up for stream depletions.
- O. Offset Obligations: Those obligations of Intel to offset depletion effects to the Rio Grande under RG-57125 that are being assumed by ISC pursuant to Paragraph 3.C.
- P. Offset Plan: See Paragraph 11.A.
- Q. Paragraph: Paragraph of this Agreement.
- R. Partial Interest in License: See Paragraph 3.D.
- S. Permit: See Paragraph 11.B.ii.
- T. Return Flow Plan: Method of measurement and calculation of return flow credit from exercise of RG-57125 approved by the State Engineer by letter of June 29, 1995.
- U. Rio Rancho Plant Operations: Any industrial or related processes at the Intel Rio Rancho, New Mexico site, located within the exterior boundaries of the Town of Alameda Grant, Sandoval County, New Mexico.
- V. Water Rights: 740.9 acre-feet per annum consumptive use pre-1907 Rio Grande surface water rights approved for transfer by OSE into RG-57125. Water Rights excludes any and all groundwater rights and any additional Rio Grande surface water rights owned, leased or pending acquisition and/or transfer into RG-57125 by Intel in excess of the 740.9 acre-feet per annum consumptive use.

**3. Obligations of the Parties**

- A. At Closing, Intel shall convey to ISC the Water Rights.
- B. Intel shall pay to ISC Ten Million Dollars (\$10,000,000) adjusted for Inflation from the Effective Date, as follows:
  - i. Payments
    - a. At Closing, Intel shall pay to ISC One Million Dollars (\$1,000,000) subject to increase for inflation from the Effective Date pursuant to Paragraph 3.B.iii (Closing Payment).

- b. On each of the next nine (9) consecutive anniversaries of Closing (each, a Closing Anniversary Date) Intel shall pay to ISC an additional One Million Dollars (\$1,000,000) subject to increase for inflation from the Effective Date pursuant to Paragraph 3.B.iv (each, an Anniversary Payment), except as provided in the next paragraph.
- c. The number of Anniversary Payments will be reduced to the extent that any Accelerated Payment makes one or more Anniversary Payments unnecessary in order to complete payment of the Ten Million Dollars (\$10,000,000). The final Anniversary Payment, less that portion that represents an inflation increase, shall be in the amount of the remaining balance of the Ten Million Dollars (\$10,000,000).

ii. Inflation Adjustment Index

For purposes of protection against inflation, the Closing Payment, the Anniversary Payments, and the Accelerated Payments, if any, to ISC shall be adjusted for inflation using the Consumer Price Index for All Urban Consumers (CPI-U), as provided below.

iii. Closing Payment

The Closing Payment, increased as necessary to reflect inflation, shall be computed as follows:

- a. The latest value of the CPI-U reported or otherwise available on the thirtieth (30<sup>th</sup>) calendar day before the Effective Date will be the initial CPI-U (CPI<sub>initial</sub>).
- b. The latest value of the CPI-U reported or otherwise available on the thirtieth (30<sup>th</sup>) calendar day before the date of Closing will be the closing CPI-U (CPI<sub>closing</sub>).
- c. The Closing Payment, increased as necessary to reflect inflation, shall be the product of \$1,000,000 times the ratio of CPI<sub>closing</sub> to CPI<sub>initial</sub>, i.e., Closing Payment = \$1,000,000 x (CPI<sub>closing</sub>/CPI<sub>initial</sub>).
- d. Notwithstanding the foregoing, if the value of the ratio of CPI<sub>closing</sub> to CPI<sub>initial</sub> is less than one, the Closing Payment shall be \$1,000,000.

iv. Anniversary Payments

Each of the Anniversary Payments, increased as necessary to reflect inflation, shall be computed as follows:

- a. The latest value of the CPI-U reported or otherwise available on or before the thirtieth (30<sup>th</sup>) calendar day before each Closing Anniversary Date will be the Anniversary CPI-U (CPI<sub>closing + 1</sub> through CPI<sub>closing + 9</sub>).
- b. The Anniversary Payment on each Closing Anniversary Date, increased as necessary to reflect inflation, shall be the product of \$1,000,000 times the ratio of CPI<sub>closing + x</sub> to CPI<sub>initial</sub> (where x is the number of the respective anniversary), i.e., Anniversary Payment = \$1,000,000 x (CPI<sub>closing + x</sub> / CPI<sub>initial</sub>).
- c. Notwithstanding the foregoing, if the value of the ratio of CPI<sub>closing + x</sub> to CPI<sub>initial</sub> is less than one, the Anniversary Payment shall be \$1,000,000.

v. Accelerated Payment

With the consent of ISC, Intel may, but cannot be required to, prepay any or all of the unpaid balance of the Ten Million Dollars (\$10,000,000) that Intel is required to pay ISC. Without the consent of ISC, Intel may prepay as follows: if inflation between the previous and current Anniversary Payments is equal to or greater than ten percent (CPI<sub>closing+x</sub>/CPI<sub>closing+x-1</sub> is greater than or equal to 1.10), Intel may pay, in addition to the current Anniversary Payment, up to One and a Half Million Dollars (\$1,500,000). Any payment made in accordance with either of the two preceding sentences shall be known as an “Accelerated Payment.” In addition to any Accelerated Payment, Intel also shall make a payment in the amount necessary to reflect inflation, calculated by multiplying the amount of the Accelerated Payment by the ratio of CPI<sub>closing+x</sub> to CPI<sub>initial</sub> (where x is the number of the respective anniversary). The unpaid balance of the Ten Million Dollars (\$10,000,000) shall be reduced by the amount of the Accelerated Payment but not by the amount of the payment reflecting the increase for inflation.

vi. Payments Intended for ISC’s Exclusive Use

All payments made by Intel to ISC pursuant to Paragraph 3.B or otherwise pursuant to this Agreement are for ISC’s exclusive use for Strategic Water Reserve purposes, and to support endangered and threatened species and



for related environmental purposes in the Rio Grande consistent with ISC's general statutory authority.

C. From the date of Closing, ISC shall offset Intel's depletion effects to the Rio Grande under RG-57125 not otherwise offset by Intel's return flow credits, subject to the following:

- i. Intel shall offset all stream depletions to the Rio Grande resulting from any and all pumping under RG-57125 that Intel undertakes 100 years or more after Closing.
- ii. In any given calendar year prior to Cessation, Intel shall offset all stream depletions on the Rio Grande that result from its pumping under RG-57125, but only to the extent that such depletions result from pumping in excess of 3,248.6 acre-feet per annum. For two (2) years after Cessation, Intel shall offset all stream depletions on the Rio Grande that result from its pumping under RG-57125, but only to the extent that such depletions result from pumping in excess of 974.6 acre-feet per annum.
- iii. Prior to Cessation, in any given calendar year, Intel shall offset all stream depletions under RG-57125 that exceed the sum of return flow credits under RG-57125 plus 250 acre-feet.

D. At Closing, Intel shall convey to ISC by Special Warranty Deed a partial interest in the License, consisting of exclusive ownership of the Offset Obligations ("Partial Interest in License"). Intel shall expressly retain exclusive ownership of all other rights and obligations of the License.

E. After Closing, to the extent necessary to perform ISC's obligations under this Agreement, ISC shall maintain control of (1) the Water Rights and (2) a sufficient amount of the waters identified in Paragraph 11.A.i.b.

#### **4. Representations and Warranties of Intel**

Intel hereby represents and warrants to ISC the following:

A. Authority. Intel has the full right and authority to enter into this Agreement and to fulfill its obligations under this Agreement. No other consent to do so is required. The persons executing this Agreement on behalf of Intel have unconditional authority to execute and deliver this Agreement on behalf of Intel.

B. Title to Water Rights. At Closing, Intel shall have good and merchantable fee simple title to the Water Rights. The Water Rights shall be free and clear of

all liens, security interests, mortgages, pledges, encumbrances, ditch fees, taxes and assessments, and charges or claims of whatever nature and shall not be subject to judgment, suit, lien, receivership or any other encumbrance whatsoever. Intel represents in good faith that the Water Rights shall be in good standing with OSE and shall have not been forfeited or abandoned.

C. Judgments, Litigation and Claims. At Closing, to Intel's knowledge, there shall be no outstanding judgments or orders against it that would in any manner affect the consummation of this transaction or constitute any cloud upon the title to the Water Rights, other than as specified in this Agreement. Also at Closing, to Intel's knowledge, there shall be no litigation, proceedings, or investigations pending, or any threats of litigation, proceedings or investigations, which might result in any cloud upon the title to the Water Rights, or in any material change in the value of the Water Rights.

D. No Breach. The execution and performance of this Agreement by Intel is not in violation of any other agreement to which Intel is a party and does not violate any law.

E. Enforceability. This Agreement constitutes a valid, binding and legal obligation of Intel and is enforceable against Intel according to its terms and conditions.

## **5. Covenants of Intel**

A. Satisfaction of Conditions Precedent. Intel shall make a good faith effort to satisfy all Conditions Precedent specified in Paragraph 9 prior to or at Closing.

B. No Further Sale or Assignment. Upon and after the execution of this Agreement, Intel shall not sell, offer to sell, pledge, encumber, alter, assign, convey or otherwise affect in any way any interest in the Water Rights, except as provided in this Agreement.

C. Intel's Cooperation. Intel shall cooperate with ISC to effect the transactions and to satisfy the obligations of the Parties contemplated in this Agreement including, without limitation, the execution of any documents or the taking of any action (or the restraining from taking of any action) necessary or desirable to achieve the intended results herein, and including, without limitation, Intel's full cooperation and participation in any filings with OSE or any court relating to the transactions contemplated in this Agreement, and participation in any formal or informal administrative or judicial meetings or hearings on the Application(s) contemplated herein. Intel shall bear its own costs associated with such filings and proceedings.

## **6. Representations and Warranties of ISC**

ISC hereby represents and warrants to Intel the following:

A. Authority. ISC has the full right and authority to enter into this Agreement and to fulfill its obligations under this Agreement. No other consent to do so is required. The person executing this Agreement on behalf of ISC has unconditional authority to execute and deliver this Agreement on behalf of ISC.

B. Control of Water. At Closing, ISC shall have control of the waters necessary to perform ISC's obligations under this Agreement.

C. Judgments, Litigation and Claims. At the Effective Date, to ISC's actual knowledge, there shall be no outstanding judgments or orders against it that would in any manner affect the consummation of this transaction other than as specified in this Agreement. Also at the Effective Date, to ISC's actual knowledge, there shall be no litigation, proceedings, or investigations pending, or any threats of litigation, proceedings or investigations, which might affect ISC's ability to perform its obligations under this Agreement.

D. No Breach. The execution and performance of this Agreement by ISC is not in violation of any other agreement to which ISC is a party and does not violate any law.

E. Enforceability. This Agreement constitutes a valid, binding and legal obligation of ISC and is enforceable against ISC according to its terms and conditions.

**7. Covenants of ISC**

A. Satisfaction of Conditions Precedent. ISC shall make a good faith effort to satisfy all Conditions Precedent specified in Paragraph 9 prior to or at Closing.

B. ISC's Cooperation. ISC shall cooperate with Intel to effect the transactions and to satisfy the obligations of the Parties contemplated in this Agreement including, without limitation, the execution of any documents or the taking of any action (or the restraining from taking of any action) necessary or desirable to achieve the intended results herein, and including, without limitation, ISC's full cooperation and participation in any filings with OSE or any court relating to the transactions contemplated in this Agreement, and participation in any formal or informal administrative or judicial meetings or hearings on the Application(s) contemplated herein. ISC shall bear its own costs associated with such filings or proceedings.

**8. Additional Terms and Conditions**

- A. Intel retains its licensed groundwater rights and obligations under RG-57125 not transferred to ISC pursuant to this Agreement, including the right to pump and beneficially use up to 3,248.6 acre-feet per annum and any and all return flow credits associated with RG-57125.
- B. Intel will use any and all of its return flow credits originating from exercise of RG-57125 for the exclusive purpose of offsetting depletion effects to the Rio Grande under RG-57125.
- C. Intel will retain ownership of any and all obligations associated with all physical wells under RG-57125.
- D. Intel, at the written request of ISC, will commence Augmentation Pumping within ten (10) days of such request; provided i) such request shall not be made by ISC if less than 10 days remain in the calendar year; and ii) Intel shall not be required to commence or continue such pumping if, prior to Cessation, in Intel's sole discretion, such pumping would cause the total RG-57125 pumping to exceed the limit under the License, or if, after Cessation, in Intel's sole discretion, such pumping would cause the total RG-57125 pumping to exceed 974.6 acre-feet per annum.
- E. Upon Cessation, Intel will pump not more than 974.6 acre-feet per annum for a period not to exceed two (2) years.
- F. Within two (2) years and six months of Cessation, Intel will permanently plug and abandon all wells under RG-57125 in accordance with 19.27.4.30 NMAC (2005).
- G. Upon plugging and abandoning of all wells under RG-57125 pursuant to Paragraph 8.F, Intel and ISC will jointly request that the OSE cancel the right to pump and appropriate any and all groundwater pursuant to RG-57125.
- H. Until the wells are permanently plugged and abandoned pursuant to Paragraph 8.F, Intel will provide ISC all flow meter data for RG-57125, including all groundwater pumping and return flow data, on a monthly basis and in a manner acceptable to the Parties.
- I. Intel is responsible for any and all OSE reporting requirements under RG-57125 until the wells are permanently plugged and abandoned pursuant to Paragraph 8.F except to the extent provided in the Offset Plan.
- J. Until one calendar year after Intel permanently plugs and abandons all wells under RG-57125 pursuant to Paragraph 8.F, ISC will submit to Intel an annual depletion accounting summary report for the preceding calendar year

within six weeks of its receipt of the flow meter data for December of the preceding year, as described in Paragraph 8.H.

K. ISC staff and Intel will meet in May of each calendar year until one calendar year after Cessation, to discuss and to make a good faith effort to resolve any issues that may arise with respect to this Agreement.

L. At least one (1) year prior to the projected date of Cessation, Intel will provide ISC staff with verbal notice of Cessation.

M. Should Intel acquire pre-1907 Rio Grande surface water rights in addition to the Water Rights, Intel in its discretion, may make those water rights available to ISC by separate agreement.

**9. Conditions Precedent to Closing.** The obligations of the Parties at Closing are contingent upon satisfaction of each of the following conditions precedent:

A. Approval by OSE of the transfer of the Water Rights into RG-57125.

B. Delivery of a copy of this Agreement, as executed, to the New Mexico Attorney General.

C. Determination by ISC to its satisfaction that the Water Rights constitute, at minimum, 740.9 acre-feet per annum, more or less, consumptive use, valid pre-1907 Rio Grande surface water rights owned by Intel under RG-57125. Notice of any objection shall be given by ISC to Intel within 30 days of written notice by Intel to ISC that OSE has approved the Water Rights for transfer into RG-57125.

D. Issuance by OSE of an order, or an alternative form of approval acceptable to the Parties, by OSE approving the Offset Plan.

E. Approval by OSE of the Application.

**10. Condition Precedent to Execution.** At least fifteen (15) days prior to the execution of this Agreement by both Parties:

A. Intel shall deliver to ISC a letter from counsel for Intel opining that Mr. John Painter and Ms. Sharon W. Anderson have the authority to execute and deliver this Agreement on behalf of, and to bind, Intel, and, by executing and delivering this Agreement, Mr. Painter and Ms. Anderson are binding Intel to the terms and conditions of this Agreement; and

B. ISC shall deliver to Intel an opinion from counsel for ISC opining that ISC has the ability to bind the State and to delegate the authority to Mr. Estevan R. López to execute and deliver this Agreement on behalf of ISC, and, by executing

and delivering this Agreement, Mr. López is binding the State to the terms and conditions of this Agreement.

**11. Office of the State Engineer Application and Approval**

**A. Submittals to OSE**

- i. No later than 45 days after execution of this Agreement, ISC and Intel shall jointly submit to OSE an Offset Plan. The Offset Plan shall include, at a minimum, the following provisions:
  - a. The Water Rights shall be used by ISC pursuant to this Agreement to offset Intel's depletion effects on the Middle Rio Grande;
  - b. Waters under the control of ISC, including but not limited to credit water available under the Rio Grande Compact and/or any other water available to ISC, may be used by ISC pursuant to this Agreement to offset depletion effects on the Rio Grande Compact at Elephant Butte Reservoir;
  - c. Augmentation Pumping is allowed for the sole purpose of offsetting stream depletion impacts to the Rio Grande pursuant to RG-57125 during periods of temporary reduction in return flows, such as during plant retooling and maintenance events and for up to, but not to exceed, two (2) years following Cessation;
  - d. Any overpumping shall be Intel's sole responsibility;
  - e. Compliance with the Return Flow Plan shall be Intel's sole responsibility;
  - f. The Offset Obligations shall be ISC's sole responsibility;
  - g. Return flow credits for pumping under RG-57125 shall be used exclusively by Intel to offset stream depletion effects to the Rio Grande that occur as a result of Intel's pumping under RG-57125;
  - h. A joint request that OSE's Middle Rio Grande Administrative Area Model, Barroll (2001) OSE Technical Services Unit Hydrology Bureau Report 99-3, be used as the basis for administration of RG-57125; and

- i. A joint request that the order, or an alternative form of OSE approval acceptable to the Parties, approving the Offset Plan be effective upon the filing of changes of ownership with OSE showing conveyance from Intel to ISC of the Partial Interest in License and full interest in the Water Rights.
- ii. Upon submission of the Offset Plan to OSE, the Parties shall request OSE approval of the Plan in the form of a State Engineer order, or an alternative form of OSE approval acceptable to the Parties.
- iii. No later than 45 days after (1) Intel has provided ISC written notice that OSE has approved the Water Rights for transfer into RG-57125 pursuant to Paragraph 9.A and (2) OSE has issued an order, or an alternative form of approval acceptable to the Parties, approving the Offset Plan, whichever occurs later, the Parties shall, as co-applicants, file an application (“Application”) with OSE to obtain approval of changes to the place and/or purpose of use of the Water Rights to include ISC’s place and purpose of use. Intel shall provide written notice to ISC within forty-five (45) days of Intel’s receipt of OSE approval under Subsection (1) of this Paragraph.
- iv. No later than ten (10) days after Closing, ISC shall file with the OSE changes of ownership reflecting the conveyance by Intel to ISC of the Partial Interest in License and the conveyance by Intel to ISC of the Water Rights.

**B.** Approval by OSE shall consist of OSE’s having:

- i. Issued an order, or an alternative form of approval acceptable to the Parties, approving the Offset Plan recognizing ISC’s assumption of Intel’s Offset Obligations to the extent provided by this Agreement; and
- ii. Issued a permit approving the transfer of no less than 740.9 acre-feet consumptive use pre-1907 Rio Grande surface water rights to ISC’s proposed place and purpose of use (“Permit”) and:
  - a. The time to appeal the issuance of the Permit shall have lapsed without appeal being taken, making such action final and non-appealable; or

- b. If the State Engineer's action on the Application has been appealed, a final non-appealable order shall have been issued approving the Application.

All conditions of approval imposed by the State Engineer or court on appeal upon the permit shall be acceptable to the Parties. If Approval includes a term or condition unacceptable to either of the Parties, the Parties shall together move to have the Approval set aside. If the unacceptable condition(s) of Approval cannot be resolved to the satisfaction of both Parties within sixty (60) days from the date of Approval or such other time period mutually agreed to by the Parties in writing, the Parties shall cancel the Permit and this Agreement shall terminate and be null and void and neither party shall be subject to any further obligation hereunder; *provided*, however, that the only terms or conditions that may be designated as unacceptable by a Party shall be terms that are (1) inconsistent with or requiring a change in the License; (2) inconsistent with ISC's offset methodology; or (3) inconsistent with the fundamental purposes of this Agreement.

**12. Closing**

- A. Date of Closing shall be not more than sixty (60) days after fulfillment of all Conditions Precedent specified in Paragraph 9.
- B. Place of Closing shall be the offices of Montgomery and Andrews, 325 Paseo de Peralta, Santa Fe, New Mexico, unless otherwise agreed to by the Parties.
- C. Actions required at Closing are as follows:
  - i. Intel shall pay to ISC One Million Dollars as set forth in Paragraph 3.B.i.a.
  - ii. Intel shall convey to ISC by Special Warranty Deed the Partial Interest in License, executed and acknowledged by Intel, in a form sufficient to effect the transfer from Intel to ISC of the Partial Interest in License.
  - iii. Intel shall convey to ISC by Special Warranty Deed the Water Rights, executed and acknowledged by Intel, in a form sufficient to effect the transfer from Intel to ISC of the Water Rights.

- 13. Term of This Agreement.** This Agreement shall expire by its terms upon fulfillment by the Parties of their respective Offset Obligations to the extent provided for in this Agreement.



**14. Termination**

A. Before Closing, ISC shall be entitled, but not obligated, to elect to terminate this Agreement:

- i. if, within two (2) years of the Effective Date, Intel has failed to acquire and successfully transfer the Water Rights into RG-57125. ISC shall provide Intel written notice of termination of this Agreement within sixty (60) days of the second anniversary of the Effective Date. Upon termination by ISC, this Agreement shall be null and void, the terms contained herein shall be without force and effect and neither Party shall be subject to any further obligation hereunder; or
- ii. in the event of Cessation by Intel prior to Closing. ISC shall provide Intel written notice of termination of this Agreement within sixty (60) days upon receipt by ISC of written notice from Intel that Intel has ceased pumping prior to Closing. Upon termination by ISC, this Agreement shall be null and void, the terms contained herein shall be without force and effect and neither Party shall be subject to any further obligation hereunder.

B. Before Closing, either Party shall be entitled, but not obligated, to elect to terminate this Agreement:

- i. if any Condition Precedent has not been fulfilled within five years of the filing of the Application. The party receiving notice of termination shall have ninety (90) days from date of receipt of the notice to fulfill the unsatisfied Condition(s) Precedent specified in the notice, or the party giving notice may agree in writing to extend the time for compliance. If the Party receiving notice has not fulfilled the unsatisfied Condition Precedent within ninety days of receiving notice, and the Party giving notice has not agreed to extend the time for compliance, then this Agreement shall be null and void, the terms contained herein shall be without force and effect and neither Party shall be subject to any further obligation hereunder; or
- ii. if the Application, or any other application required by the State Engineer and subject to public notice, is protested, and the Parties have made a reasonable, but unsuccessful, effort to resolve the protests. The terminating party shall provide written notice of termination to the other Party on or before the sixtieth (60<sup>th</sup>) day following receipt of notice of the protest. Upon termination, this

Agreement shall be null and void, the terms contained herein shall be without force and effect and neither Party shall be subject to any further obligation hereunder.

C. In the event of termination, the Parties shall cooperate in the withdrawal of any pending matters based on this Agreement.

**15. Remedies and Damages.** In the event of any breach of this Agreement, the non-breaching Party shall be entitled to all remedies available at law or equity under New Mexico law including, without limitation, specific performance and damages.

**16. Miscellaneous Provisions**

A. Additional Documentation. Any and all further or other documentation that may be required to close and consummate the transaction after the signing of this Agreement shall be made and delivered by the parties as required.

B. Payment of Brokerage and Other Fees. ISC shall pay all fees and charges for services provided to ISC and all filing, recording and advertising fees incurred in connection with the Application and transfer of title to the Water Rights. No brokerage commissions are related to this transaction. ISC shall pay all other fees and charges for services provided to ISC or other parties at ISC's request. Each party shall pay its own legal fees and other professional services fees required by either party in connection with the Application and transfer of title to the Water Rights.

C. Notices and Communications. Except as otherwise provided in this Agreement, all notices and other communications, required or permitted to be given hereunder, shall be in writing and shall be deemed to have been duly given and delivered, if placed in the U.S. Mail, postage prepaid and certified return receipt requested, as specified:

If to ISC:

Estevan R. López  
Director, New Mexico Interstate Stream  
Commission  
P.O. Box 25102  
Santa Fe, New Mexico 87504-5102  
Certified return receipt requested

and

Amy I. Haas, Esq.  
General Counsel, New Mexico Interstate Stream  
Commission  
P.O. Box 25102

Santa Fe, NM 87504-5102  
Certified return receipt requested

If to Intel: Intel Corporation  
Frank R. Robinson  
Mail Stop RR5-465  
Albuquerque, New Mexico 87124-1025  
Certified return receipt requested

and

Montgomery and Andrews, P.A.  
John B. Draper, Esq.  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
Certified return receipt requested

The date of receipt of notice shall be the date shown by the return receipt. The parties and addresses specified above may be changed by notice in accordance with this Paragraph 16.C.

D. Assignment. Neither Party shall assign or delegate its rights or obligations under this Agreement or convey its interest in the License (“Assign”) without the written consent of the other Party; provided, however, that Intel may Assign, upon notice to ISC, to any entity for the purpose of continuing Rio Rancho Plant Operations provided Intel demonstrates to the reasonable satisfaction of ISC that the assignee: 1) will maintain a return flow credit equivalent to that of Intel under its Return Flow Plan; and 2) will have a net worth immediately subsequent to such assignment at least equal to that of Intel immediately prior to such assignment; and provided further that ISC may Assign to a successor agency.

E. Assignment of Return Flow Agreement. Prior to plugging and abandoning all wells under RG-57125 pursuant to Paragraph 8.F. , Intel shall not assign or delegate its rights or obligations under the November 29, 1993 Agreement For Sewer Services between Intel and the City of Albuquerque, and any amendments thereto, without the prior written consent of ISC.

F. Indemnification: Intel shall defend, indemnify and hold harmless ISC and the State of New Mexico from all actions, proceedings, claims, losses, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise from, or relate to, the License except to the extent that they arise from, or relate to, ISC’s Offset Obligations.

G. Amendment: This Agreement shall not be amended, altered or modified except by a writing executed by the Parties.

H. Applicable Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of New Mexico.

I. Binding Effect. All of the agreements between the Parties shall be binding upon and inure to the benefit of the Parties, their successors, court-appointed Trustee, or assigns. All of the covenants and promises contained within this Agreement shall be binding upon the assigns of the Parties and their successors.

J. Captions. The captions of any articles, sections, or paragraphs hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

K. Entire Agreement. This Agreement merges all previous negotiations between the Parties hereto and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof.

L. Survival of this Agreement After Closing. This Agreement shall survive Closing with respect to the obligations specified in Paragraph 3.B (subsequent Intel payments), Paragraph 3.C (ISC offset of certain depletion effects on the Rio Grande), and Paragraph 8 (Additional Terms and Conditions).

**WHEREFORE**, on the day indicated below by our signatures, we agree to be bound by the terms and conditions contained in this Agreement:

**New Mexico Interstate Stream  
Commission**

**Intel Corporation**

**[DRAFT]**  
Estevan Lopez, Director

**[DRAFT]**  
John Painter, Corporate Services  
Manager-Rio Rancho, New Mexico site

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**[DRAFT]**  
Sharon W. Anderson, Utilities Purchasing  
Manager

\_\_\_\_\_  
Date

**ACKNOWLEDGMENTS**

STATE OF NEW MEXICO )  
 )  
COUNTY OF \_\_\_\_\_ ) ss

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by Estevan López as Director of the New Mexico Interstate Stream Commission.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF NEW MEXICO )  
 )  
COUNTY OF \_\_\_\_\_ ) ss

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by John Painter as Corporate Services Manager, Rio Rancho, New Mexico site, of Intel  
Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF NEW MEXICO )  
 )  
COUNTY OF \_\_\_\_\_ ) ss

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by Sharon W. Anderson as Utilities Purchasing Manager of Intel Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: