



SANTA FE COUNTY SHERIFF'S OFFICE



Robert A. Garcia
Sheriff
986-2455
ragarcia@santafecounty.org

Ron E. Madrid
Undersheriff
986-2455
rmadrid@santafecounty.org

35 Camino Justicia – Santa Fe, New Mexico 87508

MEMORANDUM

To: Board of County Commissioners

Fr: Undersheriff Ron Madrid *Ron Madrid*

Date: October 30, 2013

Re: Resolution 2013 – A resolution requesting a budget increase to the Law Enforcement Operations Fund (246) to budget three (3) grants awarded through the New Mexico Department of Transportation for Highway Safety Projects / \$48,400.00 .

Issue:

The Santa Fe County Sheriff's Office has been awarded funding from New Mexico Department of Transportation (NMDOT), Traffic Safety Division. The purpose of this Agreement is to provide funding to New Mexico law enforcement agencies or government agencies through state and federal programs to reduce traffic related injuries and deaths.

Background:

Goals of NMDOT is to:

- Reduce the number fatalities involving driver/motorcycle operators with a BAC of .08 or higher from 105 in CY2011 to 104 by the end of CY2013.
- Reduce the number of unrestrained occupant fatalities (all seat positions) from 109 in CY2011 to 108 in CY2013.
- Increase the observed seat belt use percentage for front-seat occupants from 91.4% in CY2012 to 91.5% in CY2013.
- Reduce the number of speeding-related fatalities from 147 in CY2011 to 140 in CY2013.

With this, NMDOT has awarded the Sheriff's Office the following three (3) grants to use from October 1, 2013 through September 30, 2014.

- Operation Driving While Intoxicated (ODW) - \$37,120.00
 - Funding for Driving While Impaired (DWI) sobriety checkpoints, saturation patrols, and other DWI-related activities aimed at reducing alcohol-related crashes, injuries, and deaths.
- Operation Buckle Down (OBD) / Click It or Ticket (CIOT) - \$8,400.00

- Funding to enforce seatbelt and child restraint laws, to participate in child restraint training, and clinics. Agencies receiving OBD funds are required to participate in CIOT national mobilization and conduct, at minimum, one (1) nighttime seatbelt operation.
- Selective Traffic Enforcement Program (STEP) - \$2,880.00
 - Funding to enforce traffic laws and activities aimed at reducing traffic-related injuries and fatalities.

Action Requested:

The Santa Fe County Sheriff's Office requests approval to budget funding from the three (3) grants listed above in the amount of \$48,400 awarded by the NMDOT – Traffic Safety Division (TSD), in which funding from this program is focused on law enforcement activities that are committed to preventing injuries and saving lives on New Mexico public roadways.

SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013 did request the following budget adjustment:

Department / Division: Country Sheriff Fund Name: Law Enforcement Operations Fund (LEOF-246)

Budget Adjustment Type: Budget Increase Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	1222	372	0904	Operation Driving While Intoxicated (ODWI)	\$37,120	
246	1229	371	0900	Operation Buckle Down (OBD)/Click It or Ticket (CIOT)	\$8,400	
246	1221	371	0900	Selective Traffic Enforcement Program (STEP)	\$2,880	
TOTAL (if SUBTOTAL, check here)					\$48,400	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	1222	424	1025	ODWI: Salary & Wages / Overtime	\$36,581.76	
246	1222	424	2002	ODWI: Employee Benefits / FICA-Medicare	\$538.24	
246	1229	424	1025	OBD/CIOT: Salary & Wages / Overtime	\$8,278.20	
246	1229	424	2002	OBD/CIOT: Employee Benefits / FICA-Medicare	\$121.80	
246	1221	424	1025	STEP: Salary & Wages / Overtime	\$2,838.24	
246	1221	424	2002	STEP: Employee Benefits / FICA-Medicare	\$41.76	
TOTAL (if SUBTOTAL, check here)					\$48,400.00	

Requesting Department Approval: _____ Title: Chief Sheriff Date: 11/21/13

Finance Department Approval: [Signature] Date: 11/21/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Undersheriff Ron Garcia Dept/Div: Sheriff's Office Phone No.: (505) 986-2457

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.
Request for increases to the following budgets for overtime/personal services awarded to the Sheriff's Office by NMDOT/Programs Divisions, Traffic Safety Bureau:
 - PA# 14-AL-64-091 / Operation DWI
The purpose of ODWI is to provide funding to New Mexico law enforcement agencies for Driving While Impaired (DWI) sobriety checkpoints, saturation patrols, and other DWI-related activities aimed at reducing alcohol-related crashes, injuries, and deaths.
 - PA# 14-OP-RF-091: Operation Buckle Down (OBD) / Click It or Ticket (CIOT)
The purpose of OBD and CIOT programs are to provide funding to New Mexico law enforcement agencies to enforce seatbelt and child restraint laws, to participate in child restraint training, and clinics. Agencies receiving OBD funds are required to participate in the CIOT national mobilization and conduct, at minimum, one (1) nighttime seatbelt operation.
 - PA# 14-RF-01-091/Selective Traffic Enforcement Program (STEP)
The purpose of S.T.E.P. is to provide funding to New Mexico law enforcement agencies to enforce traffic laws and activities aimed at reducing traffic-related injuries and fatalities.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title
ODWI / 10.25	Salary & Wages / Overtime	Existing/Permanent	Patrol/Deputy
OBD / 10.25	Salary & Wages / Overtime	Existing/Permanent	Patrol/Deputy
S.T.E.P. / 10.25	Salary & Wages/Overtime	Existing/Permanent	Patrol/Deputy

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount

• 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Undersheriff Ron Madrid Dept/Div: Sheriff's Office Phone No.: (505) 986-2457

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

• 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
• a) If this is a state special appropriation, YES _____ NO X
If YES, cite statute and attach a copy.

• b) Does this include state or federal funds? YES X NO _____

If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.

Operation Driving While Impaired (ODWI)

Project No.: 14-AL-64-091
Award Period: October 1, 2013 to September 30, 2014
Amount Awarded: \$37,120.00

Operation Buckle Down (OBD) / Click It or Ticket (CIOT)

Project No.: 14-OP-RF-091
Award Period: OBD: October 1, 2013 to September 30, 2014
CIOT: May 19, 2013 to June 1, 2014
Amount Awarded: \$8,400.00

Selective Traffic Enforcement Program (S.T.E.P.)

Project No.: 14-RF-01-091
Award Period: October 1, 2013 to September 30, 2014
Amount Awarded: \$2,880.00

• c) Is this request is a result of Commission action? YES _____ NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).

• d) Please identify other funding sources used to match this request.
N/A

SANTA FE COUNTY
RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

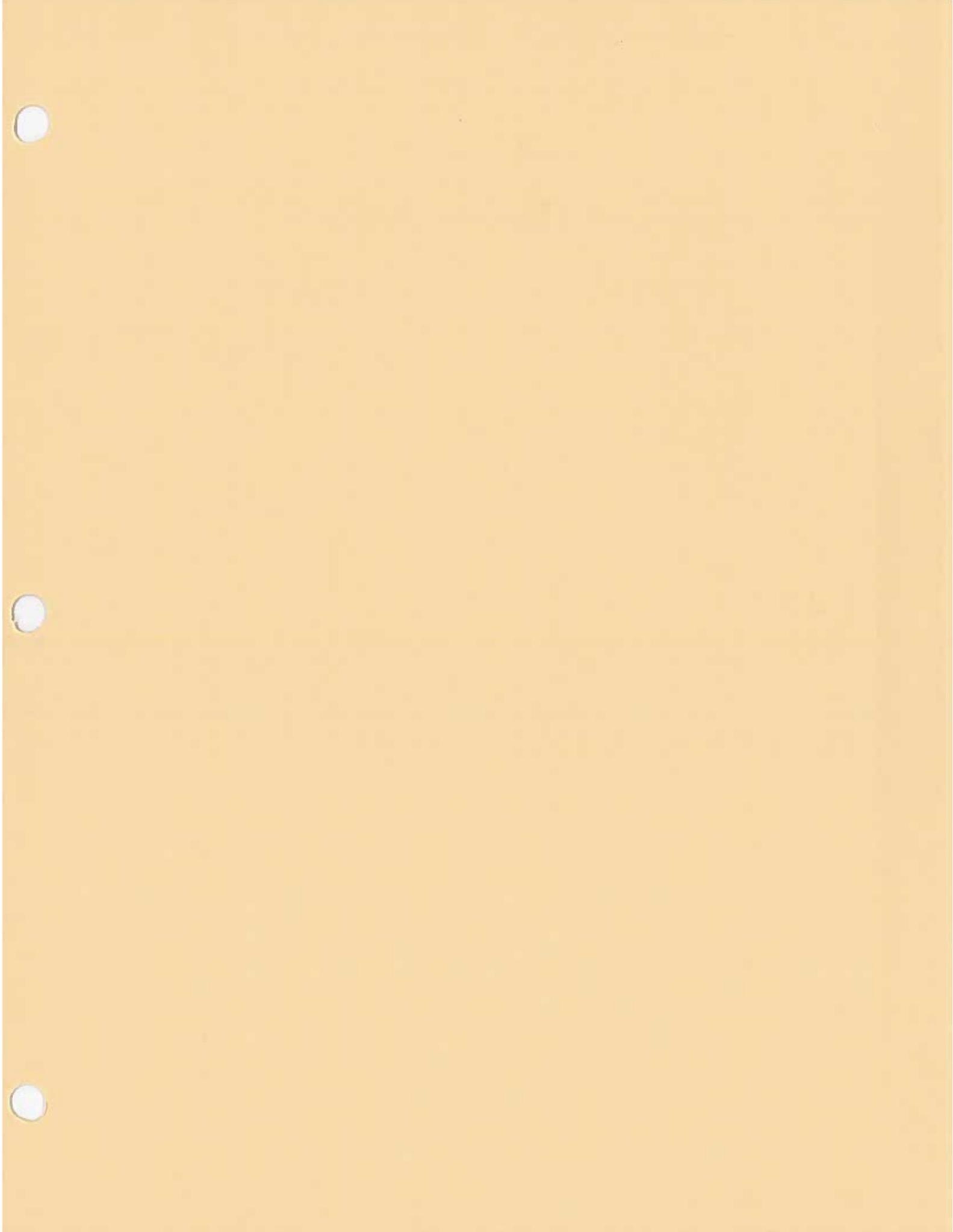
Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Chairperson

ATTEST:

Geraldine Salazar, County Clerk





Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief *DS*
Pablo Sedillo, Public Safety Director *PS*
Katherine Miller, County Manager *KM*

Date: November 6, 2013

Re: A Resolution Requesting A Budget Increase To The Fire Operations Fund (244) / Hazmat Grant To Budget Cash Carryover In The Amount Of \$22,114. (Public Safety/Fire)

BACKGROUND:

The Santa Fe County Fire Department is requesting BCC approval to carry forward the available cash balance from FY-2013 to be expended in the current fiscal year. This grant funding will be expended in accordance with the WIPP JPA expenditure specifications which state that this funding shall be utilized to enhance the County's response capability as it pertains to the transportation of hazardous materials. This funding can be utilized for both training and equipment.

SUMMARY:

Please approve this request for a budget increase to the Fire Operations Fund (244) for the Hazmat Grant in the amount of \$22,114.

100



SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Emergency Management Fund Name: Hazmat Grant (244)

Budget Adjustment Type: Budget Increase Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0806	385	03-00	Budgeted Cash/Hazmat Grant	22,114	
TOTAL (if SUBTOTAL, check here)					22,114	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0806	422	30-02	Travel/Out of State Travel Mileage & Fares	1,279	
244	0806	422	30-04	Travel/Out of State Travel Meals & Lodging	2,445	
244	0806	422	60-02	Supplies/Safety Supplies	770	
244	0806	422	60-07	Supplies/Operational Supplies	859	
TOTAL (if SUBTOTAL, check here X)					5,353	

Requesting Department Approval: *[Signature]* Title: Chief Date: 11-7-13

Finance Department Approval: *[Signature]* Date: 11/26/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
TOTAL (if SUBTOTAL, check here)						

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0806	422	70-33	Other Operating Costs/Seminars & Workshops	3,520	
244	0806	422	80-09	Capital Purchases/Vehicle	6,000	
244	0806	422	80-99	Capital Purchases/Inventory Exempt	7,241	
TOTAL (if SUBTOTAL, check here)					22,114	

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget increase to the Hazmat Grant (244) Fund to budget the FY-2013 available cash balance of \$22,114 to be expended in FY-2014 in accordance with the WIPP JPA expenditure specifications.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclash, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-09	Emergency Lights and Equipment for EM Truck	6,000
80-99	Satellite receiver/equipment for the CBRNE	7,241

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY
RESOLUTION 2013 -

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Morris Dept/Div: Fire Department Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES NO X
If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES X NO
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
WIPP Isolation Pilot Project Joint Powers Agreement.
 - c) Is this request a result of Commission action? YES NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.
Not Applicable.

SANTA FE COUNTY

RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Madam Chair

ATTEST:

Geraldine Salazar, County Clerk







Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief *DS*
Pablo Sedillo, Public Safety Director *PS*
Katherine Miller, County Manager *KM*

Date: November 6, 2013

Re: A Resolution Requesting A Budget Decrease To The Fire Operations Fund (244) / 2011 Homeland Security Grant To Realign The FY-2014 Budget With The Available Grant Balance / -\$21,430. (Public Safety/Fire)

BACKGROUND:

The FY-2014 2011 Homeland Security Grant budget was based on the annualized expenditure and cash balance available at the time of the budget preparation in Feb/March to ensure that there would be sufficient budget to cover expenditures at the start of the fiscal year. Also at this time a Sub-Grant Amendment had been submitted to the Homeland Security Office requesting an extension on the term of the grant. The Sub-Grant Amendment was received back from the Department of Homeland Security in June with the grant termination date of June 30, 2013. This budget resolution will reconcile the original FY-2014 budget balance to reflect zero as the grant termination date was June 30, 2013. This resolution will not impact staffing levels.

SUMMARY:

Please approve this request for a budget decrease to the Fire Operations Fund (244) for the 2011 Homeland Security Grant in the amount of \$21,430.



SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Emergency Management Fund Name: 2011 Homeland Security Grant (244)

Budget Adjustment Type: Budget Decrease Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0873	372	00-00	Federal Grants/2011 Homeland Security Grant		21,430
TOTAL (if SUBTOTAL, check here)						21,430

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0873	422	30-02	Travel/Out of State Travel Mileage & Fares		1,437
244	0873	422	30-04	Travel/Out of State Travel Meals & Lodging		1,438
244	0873	422	60-01	Supplies/Non-Consumable Supplies		3,270
244	0873	422	60-05	Supplies/Non-Capital Med & Lab		4,320
TOTAL (if SUBTOTAL, check here X)						10,465

Requesting Department Approval: [Signature] Title: Chief Date: 11-7-13

Finance Department Approval: [Signature] Date: 11/15/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
TOTAL (if SUBTOTAL, check here)						

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0873	422	60-07	Supplies/Operational Supplies		3,750
244	0873	422	60-12	Supplies/Rehab/Program/Facility Food		240
244	0873	422	70-33	Other Operational Supplies/Seminars & Workshop		2,875
244	0873	422	80-09	Capital Purchases/Vehicles		4,100
TOTAL (if SUBTOTAL, check here)						
						21,430

**SANTA FE COUNTY
RESOLUTION 2013 - _____**

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (if applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget decrease to the 2011 Homeland Security Grant (244) Fund to reduce the budget in FY-2014 to zero as Amendment 1 to this grant number EMW-2011-SS-00094-S01 CFDA No. 97.067 only extended the grant period through June 30, 2013. This grant amendment was received after the budget preparation period for FY-2014.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Morris Dept/Div: Fire Department Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (if applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES _____ NO X
If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES X NO _____
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
2011 State Homeland Security Grant Program. 2011 Federal grant No. EMW-2011-SS-00094-S01 CFDA No. 97.067 Amendment 1 attached.
 - c) Is this request a result of Commission action? YES _____ NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.
Not Applicable.

SANTA FE COUNTY

RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Madam Chair

ATTEST:

Geraldine Salazar, County Clerk

The following table shows the results of the experiment. The data is presented in a table with columns for the different variables and rows for the different trials. The table is rotated 90 degrees clockwise.

Trial	Variable 1	Variable 2	Variable 3	Variable 4
1	1.2	2.5	3.8	4.1
2	1.5	2.8	4.1	4.4
3	1.8	3.1	4.4	4.7
4	2.1	3.4	4.7	5.0
5	2.4	3.7	5.0	5.3
6	2.7	4.0	5.3	5.6
7	3.0	4.3	5.6	5.9
8	3.3	4.6	5.9	6.2
9	3.6	4.9	6.2	6.5
10	3.9	5.2	6.5	6.8

The data shows a clear trend where the values of all variables increase as the trial number increases. The relationship between the variables appears to be linear.

The following table shows the results of the experiment. The data is presented in a table with columns for the different variables and rows for the different trials. The table is rotated 90 degrees clockwise.

Trial	Variable 1	Variable 2	Variable 3	Variable 4
1	1.2	2.5	3.8	4.1
2	1.5	2.8	4.1	4.4
3	1.8	3.1	4.4	4.7
4	2.1	3.4	4.7	5.0
5	2.4	3.7	5.0	5.3
6	2.7	4.0	5.3	5.6
7	3.0	4.3	5.6	5.9
8	3.3	4.6	5.9	6.2
9	3.6	4.9	6.2	6.5
10	3.9	5.2	6.5	6.8

The data shows a clear trend where the values of all variables increase as the trial number increases. The relationship between the variables appears to be linear.





Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief *DS*
Pablo Sedillo, Public Safety Director *PS*
Katherine Miller, County Manager *KM*

Date: November 6, 2013

Re: A Resolution Requesting A Budget Decrease To The Fire Operations Fund (244) / SAFER Grant To Realign The FY-2014 Budget With The Available Grant Balance / -\$33,827. (Public Safety/Fire)

BACKGROUND:

The FY-2014 SAFER Grant budget was based on the annualized expenditure and cash balance available at the time of the budget preparation in Feb/March to ensure that there would be sufficient budget to cover salaries and benefits as well as operational expenditures at the start of the fiscal year. The expenditures in FY-2013 continued through June resulting in an overstated FY-2014 budget due to the grants remaining balance at the end of FY-2013 being over estimated. This budget resolution will reconcile the original FY-2014 budget balance to reflect the actual available cash balance as of June 30, 2013 for this fund and will not impact staffing levels.

SUMMARY:

Please approve this request for a budget decrease to the Fire Operations Fund (244) for the SAFER Grant in the amount of \$33,827.

SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: SAFER Grant (244)

Budget Adjustment Type: Budget Decrease Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0814	372	00-00	Federal Grants/SAFER Grant		33,827
TOTAL (if SUBTOTAL, check here)						33,827

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0814	422	10-26	Salary & Wages/Term Employees		17,768
244	0814	422	20-01	Employee Benefits/FICA Regular		1,092
244	0814	422	20-02	Employee Benefits/FICA Medicare		255
244	0814	422	20-03	Employee Benefits/Ret. Contributions		3,322
TOTAL (if SUBTOTAL, check here X)						22,437

Requesting Department Approval: _____ Title: Chief Date: 11-7-13

Finance Department Approval: _____ Date: 11/21/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASICS/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
TOTAL (if SUBTOTAL, check here)						

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASICS/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0814	422	20-05	Employee Benefits/Healthcare		287
244	0814	422	20-06	Employee Benefits/Retirement Healthcare		353
244	0814	422	60-09	Supplies/Educational Supplies		3,135
244	0814	422	70-33	Other Operating Expenses/Seminars & Workshops		410
244	0814	422	70-37	Other Operating Expenses/Printing/Publishing/Ads		7,204
244	0814	422	80-09	Capital Purchases/Vehicles		1
TOTAL (if SUBTOTAL, check here)						
						33,927

**SANTA FE COUNTY
RESOLUTION 2013 - _____**

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.
Requesting BCC approval for a budget decrease to the FEMA SAFER Grant (244) Fund to reconcile the FY-2014 budget to reflect the actual FY-2013 end of year available grant balance.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclash, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Doana Morris Dept/Div: Fire Department Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES NO If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES NO If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
FEMA SAFER Grant EMW-2009-FF-00453.
 - c) Is this request a result of Commission action? YES NO If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.
Not Applicable.

SANTA FE COUNTY

RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Madam Chair

ATTEST:

Geraldine Salazar, County Clerk









Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief *DS*
Pablo Sedillo, Public Safety Director *PS*
Katherine Miller, County Manager *KM*

Date: November 6, 2013

Re: A Resolution Requesting A Budget Decrease To The Fire Operations Fund (244) / CFRP Forest Restoration Grant To Realign The FY-2014 Budget With The Available Grant Balance / -\$28,152. (Public Safety/Fire)

BACKGROUND:

The FY-2014 Forest Restoration Grant budget was based on the annualized expenditure and cash balance available at the time of the budget preparation in Feb/March to ensure that there would be sufficient budget to cover salaries and benefits as well as operational expenditures at the start of the fiscal year. The expenditures in FY-2013 continued through June resulting in an overstated FY-2014 budget due to the grants remaining balance at the end of FY-2013 being over estimated. This budget resolution will reconcile the original FY-2014 budget balance to reflect the actual available cash balance as of June 30, 2013 for this fund and will not impact staffing levels.

SUMMARY:

Please approve this request for a budget decrease to the Fire Operations Fund (244) for the CFRP Forest Restoration Grant in the amount of \$28,152.

SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: Forest Restoration (244)

Budget Adjustment Type: Budget Decrease Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0809	372	00-00	Federal Grants/CFPR/Forestry	28,152	28,152

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0809	422	20-05	Employee Benefits/Health Care	28,152	28,152

Requesting Department Approval:  Title: Chief Date: 11-7-13

Finance Department Approval:  Date: 11/21/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY
RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget decrease in the amount of \$28,152 to the Fire Department Forestry Fund (244) to reflect the actual FY-2013 end of year available cash balance.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES NO If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES NO If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.

CFRP Grant 10-DG-11031000-030 and Forestry Revenue.
 - c) Is this request a result of Commission action? YES NO If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.

Not Applicable.

**SANTA FE COUNTY
RESOLUTION 2013 - _____**

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Madam Chair

ATTEST:

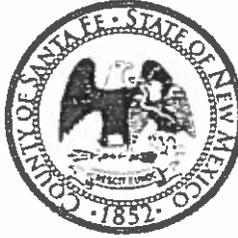
Geraldine Salazar, County Clerk



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Santa Fe County Board of County Commissioners

From: Teresa C. Martinez, Finance Division Director

Via: Katherine Miller, County Manager

Date: November 26, 2013

Re: Request Authorization Of The Use Of District 5 Capital Funds, Per Capital Outlay Policy, Allocating \$6,000 For A Roundabout Study On Richards Avenue at College Drive West in the Santa Fe Community College District in Santa Fe County.

BACKGROUND

The Board of County Commissioners previously reviewed and approved the Capital Improvement Plan. The Plan allocated \$200,000 to each commission district to be used for capital projects within each respective district.

ISSUE

In FY 2014, the funds were directly budgeted into a unique cost center for each commission district. The budget established includes the annual allocation of \$200,000 and the carryover of any unspent funds from the previous fiscal year. The Finance Division will continue to maintain a separate spreadsheet that details each capital project by commission district.

SUMMARY

The Public Works Department is requesting funding for traffic engineering services, to include but not limited to, design recommendations to mitigate presumed operational issues/deficiencies at Richards Avenue and the College Drive roundabout in Santa Fe County. This study shall determine the feasibility of a right slip lane on southbound Richards Avenue into College Drive west. This modern roundabout intersection is located on Richards Avenue, north of the Santa Fe Community College at College Drive.

The Finance Department requests BCC authorization for the use of District 5 capital funds, per Capital Outlay policy allocating \$6,000 for engineering services at the existing roundabout on Richards Avenue at College Drive West in the Santa Fe Community College District in Santa Fe County.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Board of County Commissioners

Via: Katherine Miller, County Manager *KM*
Bernadette Salazar, Human Resources Director *BS*

Date: November 13, 2013

Re: A Resolution Authorizing Legal Holidays and the 2014 Santa Fe County Employee Calendar

Issue:

The Santa Fe County Employee Calendar requires approval by the Santa Fe County Board of County Commissioners.

Background:

Annually, the HR Division presents the Board of County Commission with an Employee Calendar. The annual employee calendar delineates pay period ending dates, pay days and observed holidays. The Board of County Commissioners considers approval of the resolution authorizing legal holidays, closing of County offices and the Employee Calendar annually. The observed holidays requested have remained the same for many years and are consistent with many other federal, state and local governmental offices.

Recommendation:

The Human Resources Division is requesting approval of the attached resolution and the 2014 Santa Fe County Employee Calendar.

Attachments:

- 1) Resolution authorizing legal holidays, closing of County Offices, and the 2014 Santa Fe County Employee Calendar
- 2) The 2014 Santa Fe County Employee Calendar

Your consideration is greatly appreciated. If you have any questions, I can be contacted at 992-9886. Thank you.

SANTA FE COUNTY
RESOLUTION NO. 2013-

**A RESOLUTION AUTHORIZING LEGAL HOLIDAYS
AND THE 2014 EMPLOYEE CALENDAR**

WHEREAS, the Board of County Commissioners proposes to allow certain legal holidays to be observed as non-working days for employees of Santa Fe County; and

WHEREAS, it is incumbent upon all employees to be allowed the opportunity to celebrate these historic events; and

WHEREAS, it is beneficial for employees to have an Employee Calendar that reflects observed holidays as well as a calendar that reflects dates that the pay period ends and pay days.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that:

1. The following dates shall be observed as legal holidays and non-working days by the employees of Santa Fe County. Employees subject to the 29 U.S.C. § 207(k) partial exemption will observe holidays on the actual holiday.

<u>Holiday/Event</u>	<u>Actual Holiday</u>	<u>Observed Holiday</u>
New Year's Day	Wednesday, January 1, 2014	Wednesday, January 1, 2014
Martin Luther King, Jr. Day	Monday, January 20, 2014	Monday, January 20, 2014
President's Day	Monday, February 17, 2014	Friday, November 28, 2014
Memorial Day	Monday, May 26, 2014	Monday, May 26, 2014
Independence Day	Friday, July 4, 2014	Friday, July 4, 2014
Labor Day	Monday, September 1, 2014	Monday, September 1, 2014
Columbus Day	Monday, October 13, 2014	Monday, October 13, 2014
Veteran's Day	Tuesday, November 11, 2014	Tuesday, November 11, 2014
Thanksgiving Day	Thursday, November 27, 2014	Thursday, November 27, 2014
Christmas Day	Thursday, December 25, 2014	Thursday, December 25, 2014

2. The 2014 Employee Calendar, attached hereto as Exhibit A, shall be used as the official Santa Fe County Employee Calendar unless otherwise stated in collective bargaining agreements.

BOARD OF COUNTY COMMISSIONERS

Commissioner Kathleen Holian, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Stephen C. Ross, County Attorney



2014 Santa Fe County Employee Calendar



January						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

March						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

April						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

June						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

July						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

October						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

December						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Approved:



Pay Period Ending



Pay Day



Observed Holiday



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 6, 2013

TO: Board of County Commissioners

FROM: Wayne Dalton, Building & Development Services Supervisor *WD*

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director *PEG*
Vicki Lucero, Building & Development Services Manager *VL*

RE.: Resolution No. 2013-____, A Resolution Amending Resolution No. 2013-62 By Adding A Code Enforcement Officer To The List Of Those Authorized To Issue Citations For Violations Of County Ordinances

Background:

On March 28, 2006, Resolution No. 2006-53 was adopted which authorized certain County staff to issue citations of violations of County Ordinances.

On June 25, 2013, Resolution No. 2013-62 was adopted which authorized certain Growth Management staff, and the Enforcement Officer for the Solid Waste Division to issue citations for violations of County Ordinances

All provisions of Resolution No. 2013-62 not herein amended remain in full force and effect.

Issue:

On October 21, 2013, the Building and Development Services Department hired a new Code Enforcement Officer to issue citations of County Ordinances. This proposed amended resolution includes the newly hired Code Enforcement Officer.

Exhibits:

1. Resolution No. 2013-62

SANTA FE COUNTY

RESOLUTION NO. 2013- _____

A RESOLUTION AMENDING RESOLUTION NO. 2013-62 BY ADDING A CODE ENFORCEMENT OFFICER TO THE LIST OF THOSE AUTHORIZED TO ISSUE CITATIONS FOR VIOLATIONS OF COUNTY ORDINANCES

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (1993), County Ordinances may be enforced by prosecution for violations of such Ordinances in any Court of competent jurisdiction of the County;

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (B) (1993), citations for violations of County Ordinances may be commenced by the issuance of a citation charging the violation;

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (B) (1993), citations may be issued by County Code Enforcement Officers or other County employees who are authorized by the Board of County Commissioners to issue citations;

WHEREAS, Resolution No. 2013-62 designated the Code Enforcement Officers authorized by the Board of County Commissioners to issue citations; and

WHEREAS, that resolution must now be amended to add an additional Code Enforcement Officer to the list of those authorized to issue citations.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that:

- A. Daniel Diaz is added to the list of officers authorized and commissioned to issue citations charging violations of County ordinances, as set forth in Resolution 2013-62.
- B. All provisions of Resolution No. 2013-62 not herein amended remain in full force and effect.

APPROVED, ADOPTED AND PASSED this ____ day of _____, 2013.

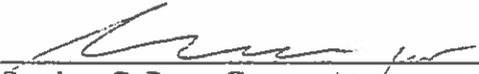
BOARD OF COUNTY COMMISSIONERS

Kathy Holian, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to Form:



Stephen C. Ross, County Attorney

SANTA FE COUNTY
RESOLUTION NO. 2013- 62

A RESOLUTION TO AUTHORIZE CERTAIN GROWTH MANAGEMENT
DEPARTMENT STAFF AND THE ENFORCEMENT OFFICER FOR THE SOLID
WASTE DIVISION TO ISSUE CITATIONS FOR VIOLATIONS OF COUNTY
ORDINANCES AND ASSOCIATED WAIVER OF REQUIREMENTS OF RESOLUTION
NO. 2013-026.

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (1993), County Ordinances may be enforced by prosecution for violations of such Ordinances in any Court of competent jurisdiction of the County;

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (B) (1993), citations for violations of County Ordinances may be commenced by the issuance of a citation charging the violation;

WHEREAS, pursuant to NMSA 1978, Section 4-37-3 (B) (1993), citations may be issued by County Code Enforcement Officers or other County employees who are authorized by the Board of County Commissioners to issue citations; and

WHEREAS, pursuant to Ordinance 2013-026 resolutions must be placed on an agenda for review and discussion at least one BCC meeting prior to being placed on a BCC agenda as an action item unless that procedure is waived by the BCC.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that:

- A. The requirements of Ordinance 2013-026 are hereby waived;
- B. Code Enforcement Officers of the County Growth Management Department and the Enforcement Officer for the Solid Waste Division are commissioned and authorized to issue citations for violations of Santa Fe County Ordinances;
- C. This Resolution repeals and replaces all previous relevant resolutions, including Resolution 2006-53;
- D. The following officers are authorized and commissioned to issue citations charging violations of County ordinances:
 - Wayne Dalton
 - John Lovato
 - Miguel "Mike" Romero
 - Rick Lovato
 - Arthur "Gene" Portillo



2013/02/28 DECEMBER 28 15/25/2013

- o Eloy Griego
- c Joe Martinez

APPROVED, ADOPTED AND PASSED this 25th day of June, 2013.

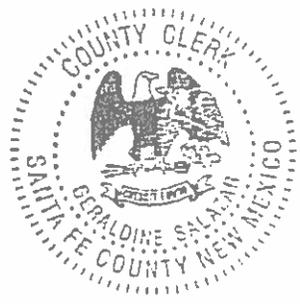
BOARD OF COUNTY COMMISSIONERS

Kathy Holian
Kathy Holian, Chairman

Attest:
Geraldine Salazar
Geraldine Salazar, County Clerk

Approved as to Form:

Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 2

I Hereby Certify That This Instrument Was Filed for Record On The 26TH Day Of June, 2013 at 11:41:55 AM And Was Duly Recorded as Instrument # 1710207 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Marcella Salazar
Deputy _____ Geraldine Salazar
County Clerk, Santa Fe, NM

BCC CLERK RECORDED 06/26/2013

SANTA FE COUNTY
FISCAL IMPACT REPORT (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed ordinance or resolution as to its direct impact upon the County's operating budget and is intended for use by staff of the Human Resources and Finance Divisions, the County Manager and the governing body of Santa Fe County. Ordinances/resolutions with no fiscal impact still require a completed FIR. Ordinances/resolutions with a fiscal impact must be reviewed by the Finance Division Director or the Budget Administrator. Ordinances/resolutions with proposed staffing increases must be reviewed and approved by the Human Resources staff and approved by the County Manager before presentation to the Board of County Commissioners (BCC).

Section A. General Information

(Check) Ordinance: _____ Resolution: X _____

A single FIR may be used for related ordinances and/or resolutions.

Short Title(s): Code Enforcement

Reviewing Division(s): Legal, Finance

Person Completing FIR: Wayne Dalton

Date: 11/18/13 Phone: 995-2716

Reviewed by Department Director: [Signature]

Date: 11/18/13 (Signature)

Reviewed by Finance Director: [Signature] Date: 11/18/13
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the ordinance/resolution.

A Resolution Amending Resolution No. 2013-62 by adding a Code Enforcement Officer to the list of those authorized to issue citations for violations of County Ordinances.

=====

Section C. Fiscal Impact

NOTE: Financial information on this FIR does not directly translate into a Santa Fe County budget increase.

- a. The item must be presented to the Finance Division for analysis and recommendation as a potential request to increase the existing budget for the county.

- b. Detailed budget information must be included, such as funding source, amounts and justification.
- c. Detailed salary and benefit for new full-time equivalents (FTE's) must be included. The request must be approved by the staff of the Human Resources Division for each new FTE request.
- 1. **Projected Expenditures:**
 - a. Indicate Fiscal Year(s) affected – the current fiscal year and the following three fiscal years, where applicable
 - b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
 - c. Indicate: "R" if recurring annual costs
Indicate: "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
 - d. Attach additional projection schedules if four years does not adequately project revenue and costs patterns
 - e. Costs may be netted or show as an offset if some cost savings are projected (please explain further in Section 3 Narrative)
 - f. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.

Column#: 1 2 3 4 5 6 7 8

Exp. Classification	FY_14__	"A" or "N"	"R" or "NR"	FY_15__	"A" or "N"	"R" or "NR"	Fund Affected
Salary and Benefits	\$	A	NR	\$	A	NR	
Maintenance	\$	A	NR	\$	A	NR	
Other Operating	\$	A	NR	\$	A	NR	
Contractual Services	\$	A	NR	\$	A	NR	
Capital Requirements	\$	A	NR	\$	A	NR	
TOTAL	\$	0		\$	0		

*Any indication that additional staffing would be required must be reviewed and approved in advance by the County Manager by attached memo before release of FIR to the Board of County Commissioners (BCC).

** For salary and benefit information contact the Finance Division.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.
- c. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.

Column#: 1	2	3	4	5	6
Type of Revenue	FY_14__	"R" or "NR"	FY_15__	"R" or "NR"	Fund Affected
	\$	NR	\$	NR	
	\$	NR	\$	NR	
	\$	NR	\$	NR	
	\$	NR	\$	NR	
	\$	NR	\$	NR	
TOTAL	\$	0	\$	0	

3. Expenditure/Revenue Narrative:

Explain expenditures, grant match requirements, justify salary and benefit costs for new FTE request, detail capital and operating uses, etc. Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. (Attach supplemental page, if necessary). Also, provide expanded information for fiscal year three and four impact for both revenue and expenditures.

__N/A__

Section D. General Narrative

- 1. Conflicts:** Does this proposed ordinance/resolution duplicate/conflict with/companion to/relate to any County code, approved ordinance or resolution, other adopted policies and legislation? Include details of county adopted ordinances/resolutions and dates. Summarize the relationships, conflicts or overlaps.

N/A

- 2. Consequences of Not Enacting This Ordinance/Resolution:**

Are there consequences of not enacting this ordinance/resolution? If so, describe.

The New Code Enforcement Officer will not be able to issue citations of County Code and Ordinances.

- 3. Technical Issues:**

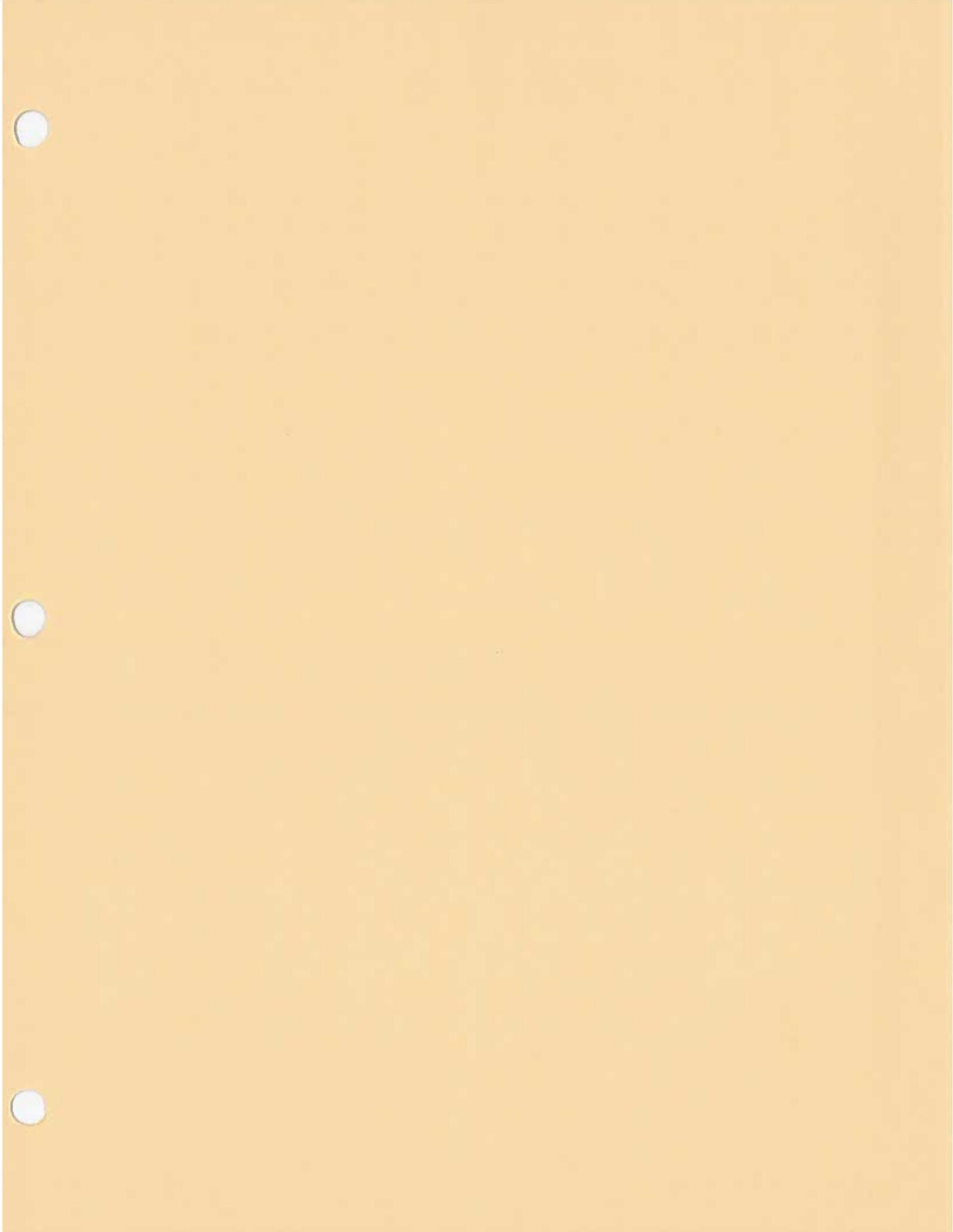
Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

N/A

- 4. Community Impact:**

Briefly describe the major positive or negative effects the ordinance/resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

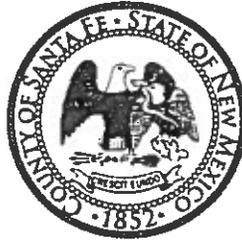
N/A



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *November 19, 2013*

TO: *Board of County Commissioners*

FROM: *Katherine Miller, Santa Fe County Manager*

ITEM AND ISSUE: *BCC Meeting November 26, 2013*

RESOLUTION 2013-___ A RESOLUTION DETERMINING REASONABLE PUBLIC NOTICE FOR PUBLIC MEETINGS OF THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY AND FOR BOARDS AND COMMITTEES APPOINTED OR ACTING UNDER THE AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS; RESCINDING RESOLUTION 2013-03.

BACKGROUND AND SUMMARY:

Members of the Board of County Commissioners have requested that staff examine the Open Meetings Act requirements and review our expenditures for public notice for meetings. Santa Fe County currently provides significantly more public notice of meetings than is required by law. In some instances, events out of our control (failure of a newspaper to properly publish, for example) have required the county to cancel meetings that did not meet the requirements of our current noticing resolution (Resolution 2013-03). This becomes inconvenient and burdensome on the committee members and the public who are notified and planning to attend.

Attached is a proposed resolution that will ensure that meetings are properly noticed in conformance with the Open Meetings Act. At the same time, by modifying the County's noticing resolution, it will help to minimize cancellations of meetings due to minor defects in noticing. By enacting this resolution, the intention is to modify our noticing resolution to the statutory requirements. We still intend to provide online, posted and published noticing that is best suited to reach the citizens of the county.

ACTION REQUESTED:

This draft resolution was discussed at the November 12, 2013 BCC meeting. Please consider approval of this resolution.

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, NEW MEXICO**

RESOLUTION NO. 2013-___

A RESOLUTION

DETERMINING REASONABLE NOTICE FOR PUBLIC MEETINGS OF THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY AND FOR BOARDS AND COMMITTEES APPOINTED BY OR ACTING UNDER THE AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS; RESCINDING RESOLUTION 2013-03.

WHEREAS, NMSA 1978, Section 10-15-1(A) and -1(B) (1999) (the "Open Meetings Act")(hereinafter referred to as "the Act") provides that "... meetings of a quorum of members of any board, commission or other policymaking body of any ... county ... held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the ... Act ..."

WHEREAS, the Act further provides that "(a)ny meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public ...;"

WHEREAS, the Act further requires a public body to determine in a public meeting at least annually what notice is reasonable when applied to that body; and

WHEREAS, the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the Board") desires to determine what constitutes reasonable notice to the public of its meetings and for meetings of boards and committees appointed by or acting under the authority of the Board as required by the Act, and to otherwise specify important elements of its continuing compliance with the Act.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, AS FOLLOWS:

1. Regular Meetings.

A. Board Meetings.

i. Time and Place, Annual Schedule. A regular meeting of the Board will be held beginning at 2:00 p.m. on the second Tuesday of each month, and an Administrative Meeting will be held beginning at 1:00 p.m. on the last Tuesday of each month. A copy of the complete calendar of meetings of the Board beginning January 1, 2014 is attached to this

resolution as Appendix 1.

ii. Notice. This resolution and Appendix 1 shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building; so long as the meetings are held on the days specified in Appendix I, posting of this resolution and Appendix 1 shall constitute reasonable and appropriate notice of each meeting of the Board.

iii. Notice of Rescheduled Regular Meeting. If a meeting is rescheduled from the date specified on Appendix 1, notice of the rescheduled meeting shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least ten (10) days prior to the date of the meeting.

iv. Notice to Radio, Television and Print Media. Notice of a regular meeting shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notice.

B. Other Meetings Requiring Notice.

i. Time and Place. A regular meeting of a board or committee appointed by or acting under the authority of the Board shall be held at a time and place to be specified in the resolution creating such board or committee or, if not specified, upon a decision of the board or committee.

ii. Notice, Annual Schedule. Notice of a regular meeting of each board or committee shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least ten (10) days before such meeting. Alternatively, a regular meeting schedule of a board or committee may be developed for the calendar year 2014 and posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building; if so posted and so long as meetings are held on the days and times specified, posting of the annual meeting schedule shall constitute reasonable and appropriate notice of the each meeting of the board or committee.

iii. Notice of Rescheduled Regular Meeting. If a meeting is rescheduled from the date specified on the annual schedule, notice of the rescheduled meeting shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least ten (10) days prior to the date of the meeting.

iv. Notice to Radio, Television and Print Media. Notice of a regular meeting of a board or committee shall also be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notices.

2. Special Meetings.

A. When Held. A special meeting of the Board may be called by the Chair or by

a majority of the members of the Board at such time and place as the Chair or a majority of the members of the Board deem appropriate. A special meeting of a board or committee appointed by or acting under the authority of the Board may be called by the chair of that board or committee or by a majority of the members of that board or committee at such time or place as the chair of that board or committee or a majority of members of the board or committee deem appropriate.

B. Notice of Special Meeting. Notice of a special meeting shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least three (3) days before such meeting.

C. Notice to Radio, Television and Print Media. Notice of a special meeting shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notice.

3. Emergency Meetings.

A. Board Emergency Meeting, When, Where Held. An emergency meeting of the Board may be called by the Chair or by a majority of the members of the Board to consider unforeseen circumstances that, if not addressed immediately, will likely result in injury or damage to persons or property or substantial financial loss. An emergency meeting may be conducted at a time and place as the Chair or a majority of the members of the Board deem appropriate.

B. Board or Committee, When, Where Held. An emergency meeting of a board or committee appointed by or acting under the authority of the Board may be called by the chair of that board or committee or by a majority of the members of that board or committee to consider unforeseen circumstances that, if not addressed immediately, will likely result in injury or damage to persons or property or substantial financial loss, to be held at such time or place as the chair of that board or committee or a majority of members of the board or committee deem appropriate.

C. Notice. If possible given the emergency circumstances, notice of an emergency meeting shall be posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least twenty-four (24) hours prior to the meeting. If twenty-four (24) hours advance notice cannot be given, notice shall be posted as soon as possible.

D. Notice to Radio, Television and Print Media. Notice of an emergency meeting shall be provided to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made written request for such notice.

E. Required Report. Any action taken at an emergency meeting shall be reported to the Attorney General's office as described in paragraph 4 of this resolution.

4. **Agendas.** Meeting notices shall include a preliminary agenda or information how the public may obtain a copy. If not posted at the time of the posting of the notice of meeting, a preliminary agenda may be prepared and posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building and on the County's internet web site prior to the meeting. A final agenda shall be prepared and posted in a conspicuous and appropriate place at the Santa Fe County Administrative Building at least seventy-two (72) hours before the meeting. Except for emergency matters, action shall be taken only on items appearing on the agenda. An emergency matter is an unforeseen circumstance that, if not addressed immediately, will likely result in injury or damage to persons or property or substantial loss to the public body. Within ten (10) days of taking action on an emergency matter, the County shall report to the Attorney General's office the action taken and the circumstances creating the emergency, except in the event of a declared state or federal emergency.

5. **Recessed Meetings.** A meeting may be recessed to a later day, if, prior to recessing, the date, time and place for continuation of the meeting is specified, and, immediately following the recessed meeting, notice of the date, time and place for the reconvened meeting is posted on or near the door of the place where the original meeting was held. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting unless notice of the reconvened meeting is provided as otherwise set forth herein.

6. **Cancelled Meetings.** A meeting may be cancelled by posting a notice of cancellation in a conspicuous and appropriate place at the Santa Fe County Administrative Building and posting notices of the cancelled meeting on the doors of the building where the meeting was to be held as soon as practicable prior to the time and date of the cancelled meeting.

7. **Participation by Conference Telephone.** A member of the Board of County Commissioners may participate in a meeting of the Board by means of conference telephone or other similar communications equipment when it is difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the Board who speaks during the meeting.

8. **Closed Meetings.** A meeting of the Board of County Commissioners may be closed in the following manner:

a. If the Board is in an open meeting when a closed meeting is desired and authorized by the Open Meetings Act, then the closed meeting shall be approved on motion by a majority of a quorum of the Board and the authority for the closure shall be stated in the motion. The votes of the members on the motion shall be recorded in the minutes.

b. If the Board is not in a public meeting and a closed meeting is desired and authorized, public notice of the closed meeting, appropriate under the circumstances, shall be given stating the authority for the closure.

c. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

9. **Application to County Boards, Committees.** This Resolution shall apply to each meeting of a board or committee whose members are appointed by the Board or which is acting under the authority of the Board, except the Extraterritorial Land Use Authority, the Extraterritorial Land Use Commission, the Buckman Direct Diversion Board ("BDDDB"), the Regional Planning Authority ("RPA"), the Regional Emergency Communications Committee ("RECC"), the Northern Central Regional Transit District ("NCRTD"), and the Solid Waste Management Authority ("SWMA").

10. **Definition: "Meeting."** For purposes of this Resolution, the term "meeting" shall be defined as a meeting of a quorum of the members of the Board and each meeting of a board or committee whose members are appointed by the Board held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of the Board or a Committee.

11. **Prior Resolution Rescinded.** Resolution No. 2013-03 is hereby rescinded.

12. **Effective Date.** This resolution shall become effective on January 1, 2014.

APPROVED AND ADOPTED this ___ day of November , 2013.

**THE BOARD OF COUNTY
COMMISSIONERS OF SANTA FE COUNTY**

Kathleen Holian, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



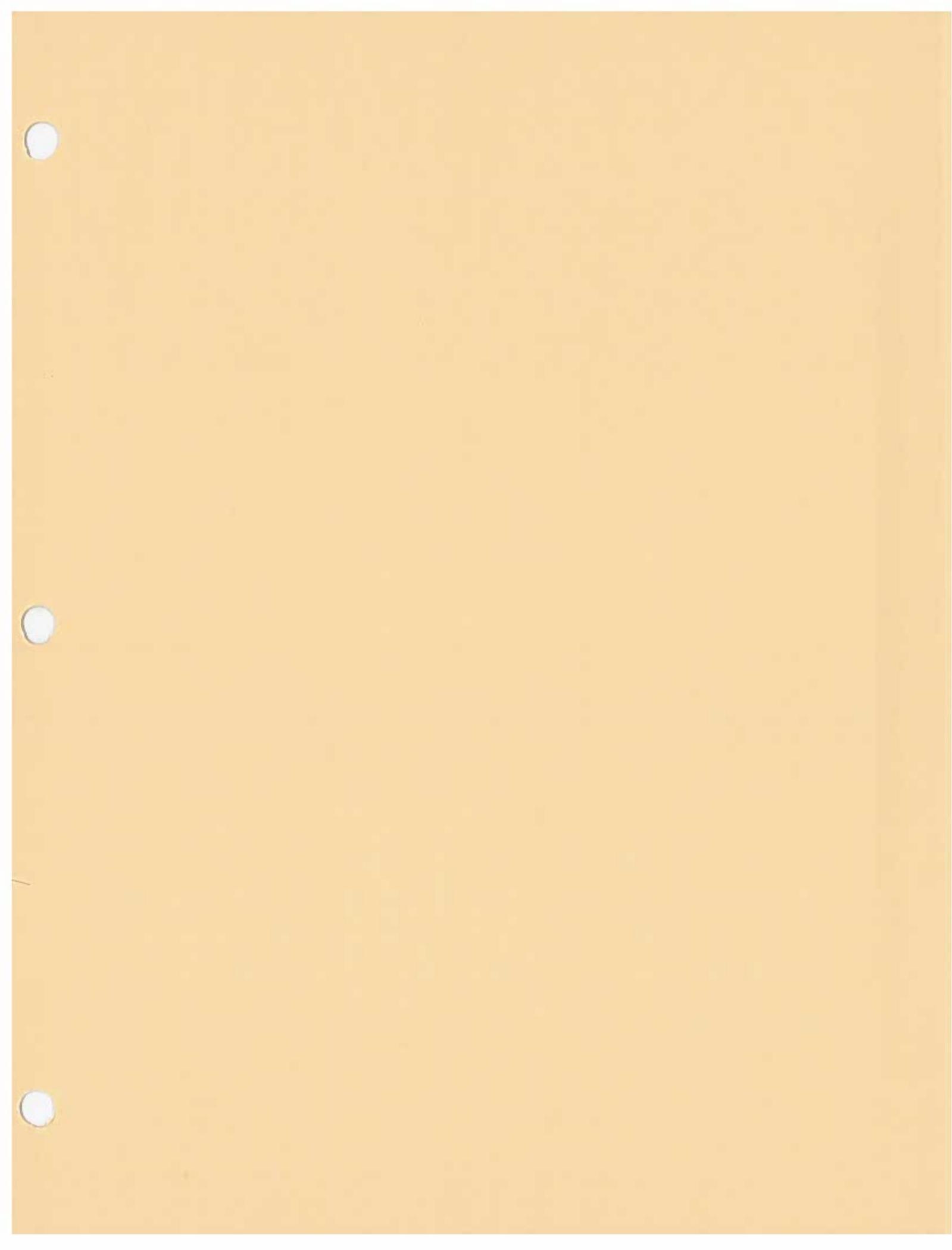
Stephen C. Ross, County Attorney

Appendix 1

2014 Meetings of the Santa Fe Board of County Commissioners

January 14, 2014	2:00 PM
January 28, 2014	1:00 PM
February 11, 2014	2:00 PM
February 25, 2014	1:00 PM
March 11, 2014	2:00 PM
March 25, 2014	1:00 PM
April 8, 2014	2:00 PM
April 29, 2014	1:00 PM
May 13, 2014	2:00 PM
May 27, 2014	1:00 PM
June 10, 2014	2:00 PM
June 24, 2014	1:00 PM
July 8, 2014	2:00 PM
July 29, 2014	1:00 PM
August 12, 2014	2:00 PM
August 26, 2014	1:00 PM
September 9, 2014	2:00 PM
September 30, 2014	1:00 PM
October 14, 2014	2:00 PM
October 28, 2014	1:00 PM
November 11, 2014	2:00 PM
November 25, 2014	1:00 PM
December 9, 2014	2:00 PM

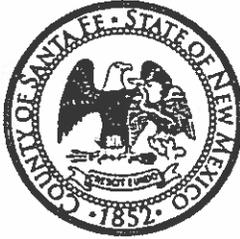
All meeting will be held in the Commission Chambers on the second floor of 102 Grant Avenue.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Santa Fe County Board of County Commissioners

From: Teresa C. Martinez, Finance Division Director

Via: Katherine Miller, County Manager

Date: November 18, 2013

Re: **RESOLUTION 2013- ____ Request Authorization To Reallocate and Budget \$1,540,500 Of Capital Outlay GRT Funds For The La Cienega Fire Station #2/Community Center Project, Ken and Patty Adam Senior Center, Nambe Park, and the Pojoaque Sports Field In Commission District 1, 3, & 5. (Finance/Teresa Martinez)**

BACKGROUND

The Commission approved and allocated Capital Outlay GRT for various projects throughout the County in July of 2012. As the Public Works Department moved forward and completed some of the projects, some priorities and schedules have changed. The Public Works Department would like to reallocate some of the funds to projects that are moving forward or are ready for construction.

ISSUE

Currently there is \$250,000 of Capital Outlay GRT allocated for the Edgewood Fire Training Center. Public Works is recommending that these funds allocated in District 3 be moved to fund the construction of the La Cienega Fire Station #2/Community Center. The architects estimate for the project is \$450,000. Currently there is a state grant allocating \$142,500 and fire has contributed \$70,000 for the project. With the funds from the Edgewood Fire Training Center, the project budget for the La Cienega Fire Station #2/Community Center will be \$462,500. The Edgewood Training Center will remain on the County's CIP list to be eligible for future capital funding.

The Vista Grande Library is near completion and has a balance that can be reallocated to the Ken & Patty Adam Senior Center. Public Works is requesting that \$450,000 from the Vista Grande Library be moved to the Ken & Patty Adam Senior Center. The Senior Center design is complete and construction is ready to be bid.

The Pojoaque Sports Fields and the Nambe Park improvements are projects that are ready to be implemented. Staff would like to utilize the funds allocated for the Northern Santa Fe County Recreational Fields. Public Works is requesting that \$350,000 be moved to the Nambe Park Improvements Project and \$490,000 be moved to the Pojoaque Sports Field Project from the Northern Santa Fe County Recreational Fields Project.

SUMMARY

The Public Works Department is requesting authorization to budget and reallocate \$1,540,500 in Capital Outlay GRT for the construction of the La Cienega Fire Station #2/Community Center, Ken & Patty Adam Senior Center, Pojoaque Sports Fields and Nambe Park.

SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Public Works/Project Development Fund Name: Capital Outlay GRT (313)

Budget Adjustment Type: Budget Increase Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
313	0000	385	0200	Budgeted Cash	\$1,540,500	
TOTAL (if SUBTOTAL, check here)					\$1,540,500	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
313	8008	422	8001	Capital Purchases/Buildings & Structures	\$250,000	
313	0753	481	8001	Capital Purchases/Buildings & Structures	\$450,000	
313	7723	481	8010	Capital Purchases/ Roadways (Bridge/Culvert)	\$350,000	
313	0736	481	8010	Capital Purchases/ Roadways (Bridge/Culvert)	\$490,500	
TOTAL (if SUBTOTAL, check here)					\$1,540,500	

Requesting Department Approval: _____ Title: _____ Date: _____
 Finance Department Approval: *[Signature]* Date: 11/14/13 Entered by: _____ Date: _____
 County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Agnes Leyba-Cruz Dept/Div: Public Works/Project Development Phone No.: 995-6516

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.
 The Public Works department is requesting the budgeting and reallocating of Capital Outlay GRT funds for the construction of the remodel of the La Cienega Fire Station #2/Community Center, the construction of the addition to the Ken & Patty Adam Senior Center, the improvements to Nambe Park including drainage and road improvements, and the purchase of land and construction of the Pojoaque Sports Fields in the amount of \$1,540,500.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
8001	Construction of the remodel of the La Cienega Fire Station #2/Community Center.	\$250,000
8001	Construction of the Ken & Patty Adam Senior Center.	\$450,000
8010	Construction of the improvements to Nambe Park including drainage & road improvements.	\$350,000
8010	Purchase of land and construction of the Pojoaque Sports Fields	\$490,500

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X_____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Agnes Leyba-Cruz Dept/Div: Public Works/Project Development Phone No.: 995-6516

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

The Public Works department is requesting the budgeting and reallocating of Capital Outlay GRT funds for the construction of the remodel of the La Cienega Fire Station #2/Community Center, the construction of the addition to the Ken & Patty Adam Senior Center, the improvements to Nambe Park including drainage and road improvements, and the purchase of land and construction of the Pojoaque Sports Fields in the amount of \$1,540,500.

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES _____ NO X
If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES _____ NO X
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
 - c) Is this request is a result of Commission action? YES _____ NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.

NA

SANTA FE COUNTY
RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

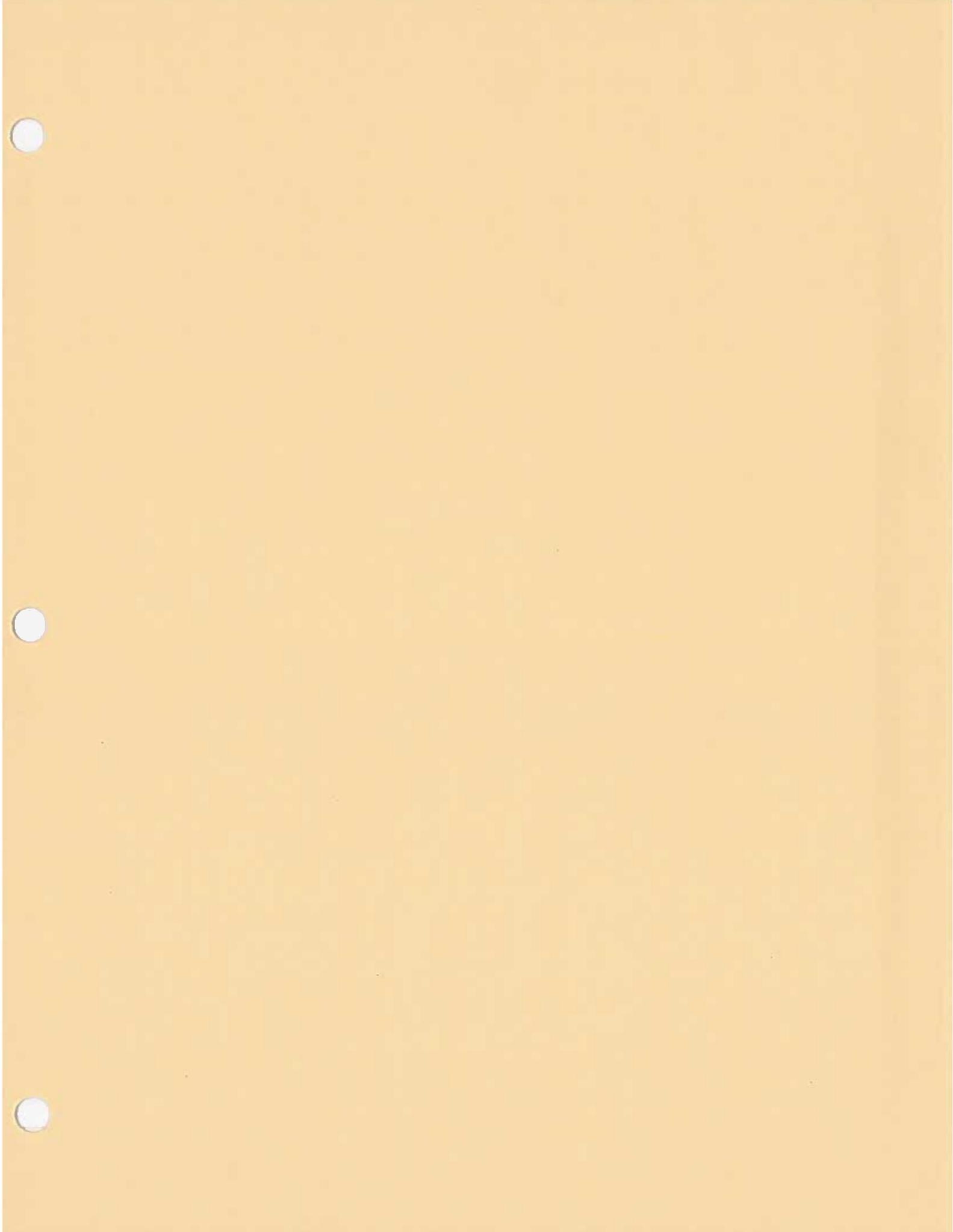
Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Chairperson

ATTEST:

Geraldine Salazar, County Clerk





Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief *DS*
Pablo Sedillo, Public Safety Director *PS*
Katherine Miller, County Manager *KM*

Date: November 6, 2013 *KM*

Re: A Resolution Requesting A Budget Increase To The Fire Impact Fees Fund (216) / La Cienega Station 2 To Budget Impact Fees In The Amount Of \$70,000. (Public Safety/Fire)

BACKGROUND:

The Santa Fe County Fire Department is requesting BCC approval to budget \$70,000 of Impact Fees for the La Cienega Fire District to be utilized on construction/renovation of the La Cienega Fire Station 2. The La Cienega Station 2 is attached to the La Cienega Community Center and the use of impact fees will benefit the La Cienega Fire District and the Community of La Cienega.

SUMMARY:

Please approve this request for a budget increase to the Fire Impact Fees Fund (216) for the La Cienega Station 2 in the amount of \$70,000.



SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: La Cienega Impact Fees (216)

Budget Adjustment Type: Budget Increase Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
216	8008	385	06-00	Budgeted Cash/Impact Fees	70,000	
					70,000	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
216	8008	422	30-01	Capital Purchases/Buildings & Structures	70,000	
					70,000	

Requesting Department Approval: [Signature] Title: Chief Date: 1.7.13

Finance Department Approval: [Signature] Date: 11/26 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (if applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.
Requesting BCC approval for a budget increase to the La Cienega Impact Fees to be allocated for the construction/remodel of the La Cienega Station 2 project to be expended in FY-2014.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclash, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-01	La Cienega Station 2 construction/remodel	70,000

- 2) Is the budget action for **RECURRING** expense _____ or for **NON-RECURRING** (one-time only) expense X _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES _____ NO X
 - b) Does this include state or federal funds? YES _____ NO X
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
 - c) Is this request is a result of Commission action? YES _____ NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request. *N/A*

SANTA FE COUNTY

RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

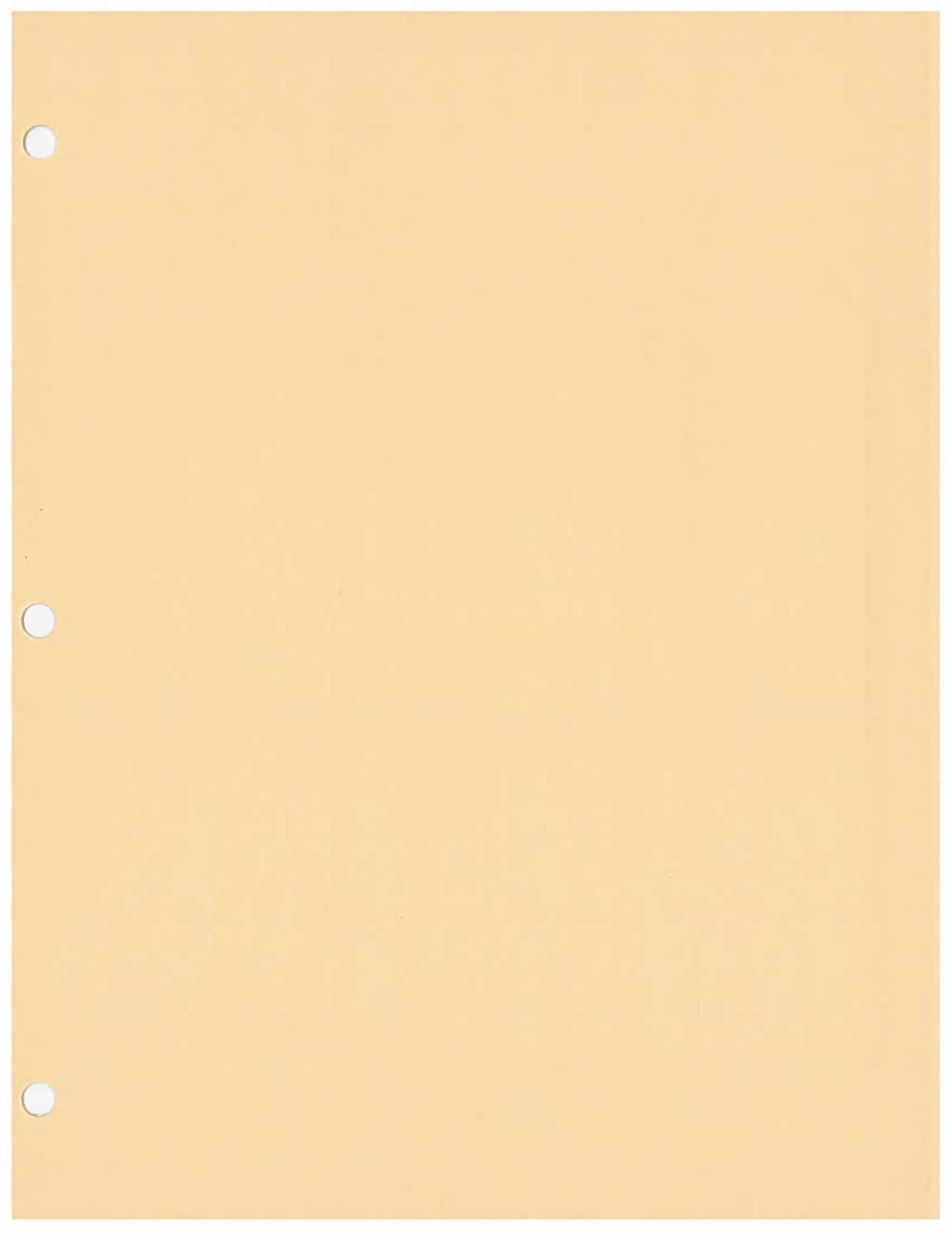
Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Madam Chair

ATTEST:

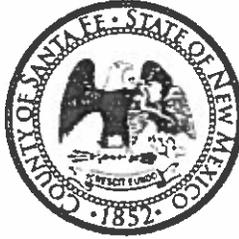
Geraldine Salazar, County Clerk



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Santa Fe County Board of County Commissioners

From: Teresa C. Martinez, Finance Division Director

Via: Katherine Miller, County Manager

Date: November 13, 2013

Re: RESOLUTION 2013 - A Resolution Requesting A Budget Increase To The GOB Series 2013 Fund (351) To Budget Cash Carryover For Design And Construction of Road Projects In Commission District 1 / \$1,000,000. (Finance/Teresa Martinez)

BACKGROUND

The Public Works Department has identified roads in northern Santa Fe County through their PASER system, a method of evaluating and rating the condition of roads. The Public Works Department is ready to move forward on the road projects listed below.

ISSUE

The 2013 GOB Series allocated funds for improvements to roads in northern Santa Fe County. The cash to improve these roads is available and Public Works is requesting to budget them for the following road projects.

- County Road 89 and County Road 89 C: Design drainage and roadway improvements: \$90,000
- County Road 84 D: Design drainage and paving improvements: \$80,000
- County Road 105: Design and construct pavement improvements: \$400,000
- County Road 109 S: Design and construct drainage and pavement improvements: \$260,000
- County Road 89 D: Construct pavement improvements for bike lanes: \$170,000

SUMMARY

The Public Works Department is requesting authorization of the use of 2013 Series GOB Capital Funds allocating \$1,000,000 for the design and construction of Roads Projects in Commission District 1, as outlined above.

SANTA FE COUNTY

RESOLUTION 2013 - _____

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on November 26, 2013, did request the following budget adjustment:

Department / Division: Public Works/Project Development

Fund Name: GOB Series 2013 (351)

Budget Adjustment Type: Budget Increase

Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
351	0000	385	0400	Budgeted Cash	\$1,000,000	
TOTAL (if SUBTOTAL, check here)						

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
351	6198	453	8011	Rdwy Capitalized Cont Svc	\$55,000	
351	6199	453	8011	Rdwy Capitalized Cont Svc	\$35,000	
351	6202	453	8011	Rdwy Capitalized Cont Svc	\$80,000	
351	6203	453	8010	Roadways (Bridge/Culvert)	\$400,000	
351	6204	453	8010	Roadways (Bridge/Culvert)	\$260,000	
351	6205	453	8010	Roadways (Bridge/Culvert)	\$170,000	
TOTAL (if SUBTOTAL, check here)					\$1,000,000	

Requesting Department Approval: _____ Title: _____ Date: _____

Finance Department Approval: *[Signature]* Date: 11/13/13 Entered by: _____ Date: _____

County Manager Approval: _____ Date: _____ Updated by: _____ Date: _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Agnes Leyba-Cruz Dept/Div: Public Works/Project Development Phone No.: 995-6516

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.
 The Public Works Department has determined that the following roads in northern Santa Fe County are in need of repair or improvements based on the PASER rating. The bike lanes are needed to connect the DOT bikes lanes on either side of the County's right of way. The funds used for the improvements are from the 2013 GOB Capital Funds allocated for roads in Santa Fe County.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
8011	Design drainage and roadway improvements on County Road 89	\$55,000
8011	Design drainage and roadway improvements on County Road 89 C	\$35,000
8011	Design drainage and paving improvements on County Road 84 D	\$80,000
8010	Design and construct drainage and pavement improvements for County Road 105	\$400,000
8010	Design and construct drainage and pavement improvements for County Road 109 S	\$260,000
8010	Construct pavement improvements for bike lanes on County Road 89 D	\$170,000

- 2) Is the budget action for RECURRING expense _____ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Agnes Leyba-Cruz Dept/Div: Public Works/Project Development Phone No.: 995-6516

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

The Public Works Department is ready to proceed on the needed improvements to roads in the northern area of the County. The funds are from the 2013 GOB allocated for road improvements in Santa Fe County.

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
 - a) If this is a state special appropriation, YES _____ NO X
If YES, cite statute and attach a copy.
 - b) Does this include state or federal funds? YES _____ NO X
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
 - c) Is this request is a result of Commission action? YES _____ NO X
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
 - d) Please identify other funding sources used to match this request.

NA

SANTA FE COUNTY
RESOLUTION 2013 - _____

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of November, 2013.

Santa Fe Board of County Commissioners

Kathy Holian, Chairperson

ATTEST:

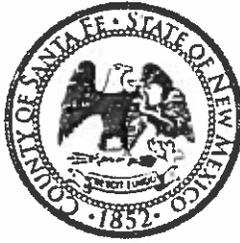
Geraldine Salazar, County Clerk



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: November 12, 2013
To: Santa Fe County Board of County Commissioners
From: Bill Taylor, Procurement Manager *BT 11/13/13*
Via: Katherine Miller, County Manager *KM*
Pablo Sedillo, Public Safety Director *PS*
Mark Gallegos, Warden

ITEM AND ISSUE: BCC MEETING NOVEMBER 26, 2013

REQUEST APPROVAL OF AGREEMENT NO. 2014-0069-CORR/IC WITH PUEBLO ELECTRIC, INC. FOR ELECTRICAL SERVICES FOR EXTERNAL AND INTERNAL LIGHTS AT ADF AND YDP IN THE AMOUNT OF \$335,875 EXCLUSIVE OF GRT AND REQUEST SIGNATURE AUTHORITY FOR COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER / BILL TAYLOR-PROCUREMENT

Issue:

The Purchasing Division requests approval of Agreement No. 2014-0069-CORR/IC with Pueblo Electric, Inc. to provide and install exterior light poles and LED fixture heads at the Santa Fe County Adult Detention Facility (ADF), secure existing exterior light poles with new concrete bases as well as retrofit LED fixture heads to the existing poles at the Santa Fe County Youth Development Program (YDP) Facility and to provide and install corrections-grade fixtures for use at the ADF. The contract amount is \$335,875 exclusive of New Mexico Gross Receipts Tax.

Background:

Santa Fe County issued Invitation for Bid (IFB) No. 2014-0069-CORR/IC on October 6, 2013. The solicitation was advertised in the Santa Fe New Mexican and the Albuquerque Journal.

A pre-bid conference was held on October 18, 2013, and bids were received from the following seven (7) companies:

Sanbros Corporation, Alcalde, NM
Great Western Electrical, Albuquerque, NM

RG Construction Services, Rio Rancho, NM
B & D Industries Inc., Albuquerque, NM
Pueblo Electric Inc., Los Alamos, NM
Builders Electric Inc., Santa Fe, NM
Atlas Electric and Construction Inc., Albuquerque, NM

All bids received were reviewed by the Purchasing staff and Pueblo Electric, Inc. was deemed the lowest, responsive bid received.

Action Requested:

The Purchasing Division requests approval of Agreement No. 2014-0069-CORR/IC with Pueblo Electric, Inc. to provide electrical services for exterior and interior lights at ADF and YDP in the amount of \$335,875 exclusive GRT and requests signature authority for the County Manager to execute the purchase order.

**AGREEMENT
BETWEEN SANTA FE COUNTY AND PUEBLO ELECTRIC, INC.
TO PROVIDE ELECTRICAL SERVICES TO INSTALL EXTERIOR AND INTERIOR
LIGHTS AT THE SANTA FE ADULT DETENTION FACILITY AND YOUTH
DEVELOPMENT PROGRAM**

THIS AGREEMENT is made and entered into on this ____ day of November, 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **PUEBLO ELECTRIC, INC.** (hereinafter referred to as the "Contractor").

WHEREAS, in order to meet requirements of NMAC for accreditation, new electrical exterior and interior lighting for the Adult Detention Facility and the Youth Development Program Facility will replace nonfunctional fixtures to resolve security issues and enhance poor/inadequate lighting;

WHEREAS, the County procured the services of the Contractor through IFB 2014-0069-CORR/IC in conformity with the Santa Fe County Procurement Regulations; and

WHEREAS, Contractor submitted the lowest bid and is capable of and willing to perform the electrical work requiring a licensed professional.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall provide the following materials and services:

The contractor shall:

- A. Exterior light poles to include LED fixture heads and concrete bases at the Santa Fe County Adult Detention Facility (ADF).
 1. Utilize existing light poles in the-perimeter of the facility to install/retrofit LED fixture heads to existing poles.
 2. Use existing wires (277v) for fixture heads.
 3. Provide and install six (6) wall packs (250 watt metal halide) throughout exterior walls of facility; light fixtures to be activated off of existing wall packs.
 4. Provide and install eighteen (18) CREE ARE-EHO-3 M-AA-24-D-UH-BZ-700 high output area luminaire-Type III Medium distributions, adjustable arm mount on perimeter poles, 3 heads per existing poles in perimeter area.
 5. Provide one (1) new concrete base based on engineer's specifications that comply with NEC and ICC.
 6. Provide drawings for concrete bases stamped by a Registered Professional Engineer.

7. Contractor will provide and install one (1) 30' pole (or equal height of existing poles) with 3 fixture heads (CREE ARE-EHO-3M-AA-24-D-UH-BZ-700). Power to be provided from loading dock light pole to outside of northeast corner of loading dock area (approx. 185 feet from existing pole to new pole).
8. Responsible for all excavation, backfilling, line locates (811) and installation of appropriate size conduit, wires and depth for new light poles. Contractor must trench underneath driveway of north loading dock gate for power.

B. Correctional-grade fixtures at the Adult Detention Facility (ADF)

1. Provide 230 (two hundred-thirty) Kenall # WCB-2-3/3-25L40K-DCC-DV-1/B-1-DLN fixtures and install 216 in Alpha, Bravo and Charlie units. Remaining 14 will be provided as reserve.
2. Provide 46 (forty-six) SDSA-2-3/3-50L40K-DCC-DV-1/B-1-WL fixtures and install 36 in showers located in Alpha, Bravo and Charlie units. Remaining 10 will be provided as reserve.
3. Provide 34 (thirty-four) Kenall # SSA-2-3/3-25L40K-DCC-DV-1/B-1 fixtures and install 24 in Delta dorm areas. Remaining 10 will be provided as reserve.
4. Provide 58 (fifty-eight) Kenall SSA -4-3/3-50L40K-DCC-DV-1/B-1 fixtures and install 48 in Delta dorms and bathroom areas. Remaining 10 will be provided as reserve.
5. Provide 24 (twenty-four) Kenall WCB-1-3/3-25L40K-DCC-DV-1/B-1 fixtures and install over sinks in Delta pods. Remaining 12 will be provided as reserve.
6. Provide 230 (two hundred-thirty) Kenall # WCB-1-3/3-25L40K-DCC-DV-1/B-1 fixtures and install 144 in Bravo and Charlie. Remaining 86 will be provided as reserve.

C. Contractor shall install concrete bases for light poles and install the following fixtures:

1. Install new concrete bases for five (5) existing poles in the parking lot areas. Existing poles will be re-used for this application and new fixtures will be installed; four (4) poles will have single head fixtures and one (1) pole will have two (2) fixture heads.
 - a. Excavate existing concrete bases for removal with minimal patch work. A 5'X5' square for excavation will be allowed. Contractor is responsible for backfilling, padding, tamping and asphalt.
2. Install additional conduit and feeders for new concrete bases. Underground junction boxes will not be acceptable. All junction boxes must be accessible.
3. Concrete bases and rebar must be installed according to NEC and ICC.
4. Provide drawings stamped by a registered Professional Engineer.
5. Responsible for excavation, backfilling, line locates (811), installing junction boxes for electrical wiring and installing additional wires for the new light poles.

D. Correctional-grade fixtures at the Youth Development Program Facility (YDP).

1. Provide 14 (fourteen) HUBBEL # LMC – 30LU-5K-3-1 Full cut – off exterior wall pack and install 10 with the remaining 4 to be provided as reserve.
 2. Provide 27 (twenty-seven) Spaulding # CL1-A-60L-U-5K-3-DB fixtures and install in parking lot, perimeter and recreational areas or equivalent.
- E. Contractor shall possess the appropriate licensure issued by the State Construction Industries Division (CID) to cover the type of work described below.
- F. Provide all clean-up for its operations and control of construction debris. All construction debris shall be removed from the work areas and disposed of at an approved waste disposal site before the end of each work day. The ADF or YDP trash containers shall not be used for disposal of construction debris.
- G. Obtain any and all permits and/or certifications required by all appropriate regulatory agencies for the work performed and for any equipment installed. It is the Contractor's responsibility to research permitting and regulatory requirements and obtain any and all permits, certifications or other regulatory approvals/requirements prior to installation of equipment. This may include, but is not limited to, any engineered systems, building codes, construction permits and product warranties or certifications. Copies of all permits must be submitted to Santa Fe County prior to start of work.
- H. Contractor will be responsible for all necessary paper work to obtain any and all rebates PNM offers for efficient lighting.

2. **EFFECTIVE DATE; DATE OF COMMENCEMENT AND COMPLETION**

The effective date of this Agreement is the date indicated above and the services under this Agreement shall be completed within ninety (90) calendar days from the date the County issues a notice to proceed, unless earlier terminated pursuant to Section 6 (Termination) or Section 7 (Appropriations and Authorizations). The Contractor shall commence the services and work on the date indicated on the Notice to Proceed issued by the County.

3. **COMPENSATION AND PAYMENT**

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows. In no event shall the total compensation paid to Contractor by County under this Agreement exceed **Three Hundred Thirty Five Thousand Eight Hundred Seventy Five dollars (\$335,875.00)**, exclusive of New Mexico gross receipts tax.
- B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial

acceptance or rejection of the contractual items or services for which payment is sought.

- C. Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. The County shall issue payment of all undisputed amounts within twenty-one (21) days after the County receives an undisputed request for payment from the Contractor. In the event the County fails to tender payment within twenty (21) days after receipt of an undisputed request for payment, the County shall pay interest to the Contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until the payment is issued.
- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. LIQUIDATED DAMAGES

- A. Liquidated damages in the amount of one hundred dollars (\$100.00) per each calendar day shall be assessed after the completion date (as adjusted by change orders) until the issuance of a Certificate of Substantial Completion for the entire project for ADF and YDP.

5. ADDITIONAL SERVICES

- A. The parties agree that all work and services set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County
- 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.

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 twenty (20) 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 twenty (20) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) 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 ten (10) days from the Contractor's receipt of the notice.

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 are independent contractors and 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

The 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

- A. Contractor shall be wholly responsible for the entire performance of the work whether or not subcontractors are used. The County will make payments directly to the Contractor. Contractor is wholly responsible for making any and all payments to its subcontractors in conformity with the Prompt Payment Act, NMSA 1978, § 57-28-5.

- B. 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. CONTRACTOR AND CONTRACTOR'S PERSONNEL OR SUBCONTRACTORS

- 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 licensed and qualified to perform such work or services.
- C. Contractor shall not employ any employees, personnel, or subcontractors who have not completed a County-approved security clearance or background check for the completion of the work under this Agreement. Any such employees, personnel or subcontractors that Contractor may employ after the effective date of this Agreement shall not begin any work until the County provides clearance or a background check is completed for that employee or subcontractor.
- D. The County may provide an escort or full time supervision of the Contractor and its employees during any or all phases of this work should the County determine that it is in the County's interest to do so.
- E. The County and the Corrections Department reserves the right to escort Contractor or any of Contractor's employees or subcontractors off the premises or facility for any inappropriate conduct or actions that jeopardize the safety, security or well-being of the facility. Inappropriate behavior by the Contractor, its employees, or subcontractors shall immediately cancel this Agreement. Any violation of any law by the Contractor, its employees or subcontractors will be prosecuted.

12. RELEASE

Upon the County's issuance of the final payment to Contractor or any termination that may occur earlier than the termination date of 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. 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.

15. 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 Section 1 (Scope of work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. 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.

17. 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.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- 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 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.

19. 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. 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 the state district court of New Mexico, located in Santa Fe County.

20. 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 three (3) 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 three (3) 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.

21. 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.

22. 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.

23. 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
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Pueblo Electric, Inc.
 200 DP Road
 Los Alamos, NM 87544

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES; CORRECTION OF WORK

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. It has provided a performance bond and payment bond as required by the County, each for 100% of the contract sum.
- C. Contractor is licensed by the State Construction Industries Division (CID) to complete the type of work described in Section 1 herein. Contractor also represents and warrants that all its subcontractors, if any, are fully licensed by CID to complete the work described in Section 1 herein.
- D. The Contractor warrants to the County that the materials and equipment furnished by the Contractor will be new and of good quality and that the completed work will be free from defects and the work will conform to the Scope of Work specified in Section 1 herein.
- E. Contractor shall correct any work rejected by the County, without cost to the County, if the work does not conform to the specifications indicated in Section 1 herein. Contractor shall for a period of one (1) year after final completion of the work, correct any work that does not conform to the specifications in Section 1 herein.

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

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. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

- B. **General Liability Insurance, Including Automobile.** The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

- C. **Workers' Compensation Insurance.** The Contractor shall comply with the provisions of the Workers' Compensation Act.

29. PERMITS, FEES, AND LICENSES

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

30. 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.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. SURVIVAL

The provisions of following Sections shall survive termination of this Contract; LIQUIDATED DAMAGES; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; LIMITATION OF LIABILITY; NEW MEXICO TORT CLAIMS ACT; NO THIRD-PARTY BENEFICIARIES; AND SURVIVAL.

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

SANTA FE COUNTY:

Kathleen S. Holian, Chair
Santa Fe County Board of Commissioners

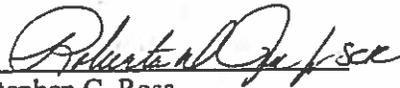
Date

ATTEST:

Geraldine, Salazar
Santa Fe County Clerk

Date

Approved as to Form



Stephen C. Ross
Santa Fe County Attorney

11/8/13

Date

Finance Department Approval:



Teresa C. Martinez
Santa Fe County Finance Director

11/12/13

Date

PUEBLO ELECTRIC, INC.

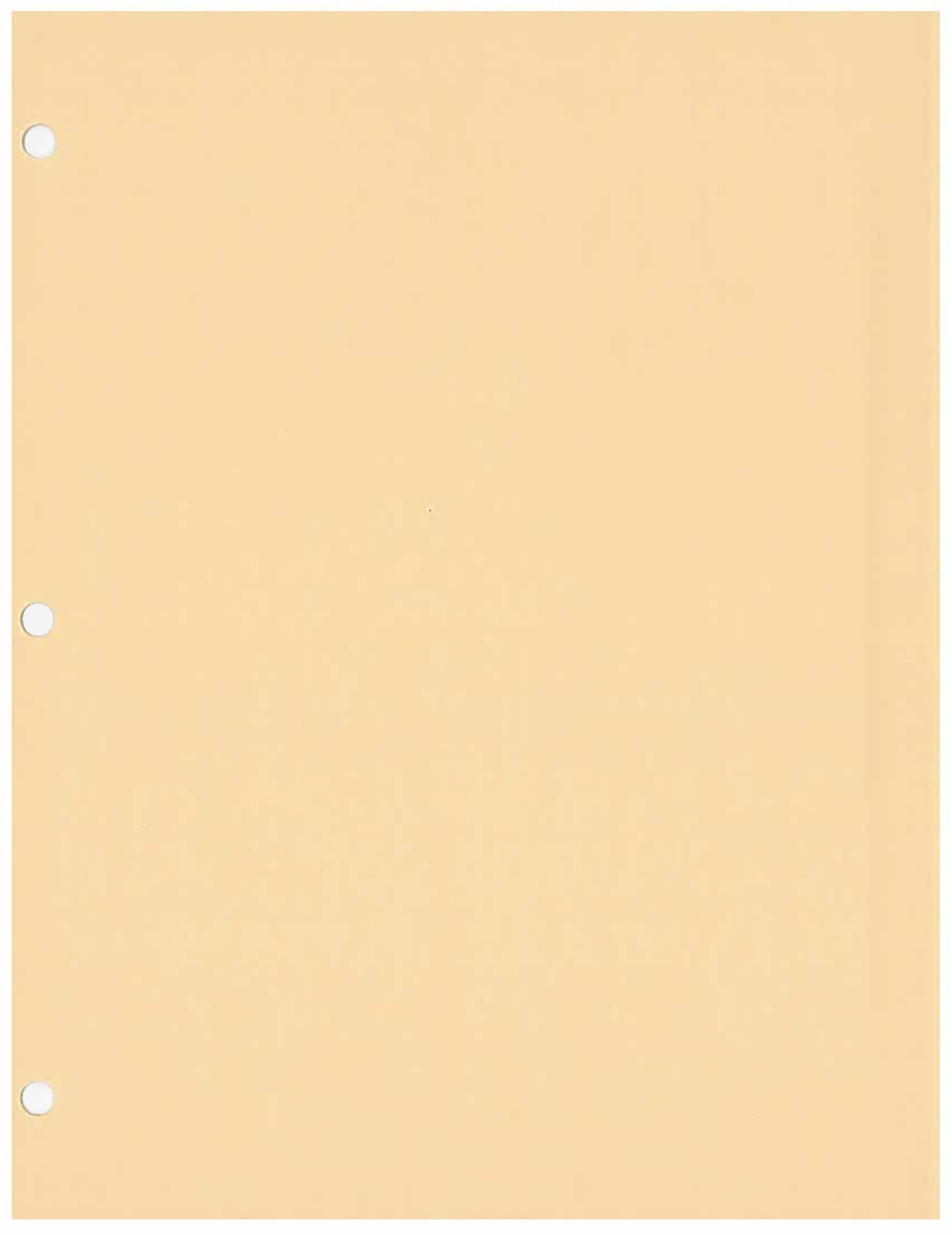
(Signature)

Date

By: _____
(Print Name)

Its: _____
(Print Title)

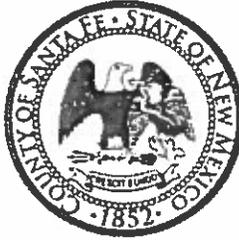
FEDERAL TAX I.D. NUMBER: 85-0200446



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: November 12, 2013
To: Santa Fe County Board of County Commissioners
From: Bill Taylor, Procurement Manager *BT 11/12/13*
Via: Katherine Miller, County Manager
Pablo Sedillo, Public Safety Director *PS*
Mark Gallegos, Warden

ITEM AND ISSUE: BCC MEETING NOVEMBER 26, 2013

REQUEST APPROVAL OF AGREEMENT NO. 2014-0123-CORR/IC WITH INDUSTRIAL COMMERCIAL COATINGS, LLC. FOR THE APPLICATION OF POLYUREA TO THE SHOWER AREAS AT THE ADULT DETENTION FACILITY IN THE AMOUNT OF \$287,066 EXCLUSIVE OF GRT AND REQUEST SIGNATURE AUTHORITY FOR COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER/ BILL TAYLOR-PROCUREMENT

Issue:

The Purchasing Division requests approval of Agreement No. 2014-0123-CORR/IC with Industrial Commercial Coatings, LLC. to provide and apply polyurea in the shower areas at the Santa Fe County Adult Detention Facility (ADF). The work also includes removing existing flooring and subflooring in order to prepare the area properly for the application of this high-tensile, high elongation, fast set polyurea sealer. The contract amount is \$287,066 exclusive of New Mexico Gross Receipts Tax.

Background:

Santa Fe County issued Invitation for Bid (IFB) No. 2014-0123-CORR/IC on October 13, 2013. The solicitation was advertised in the Albuquerque Journal.

A pre-bid conference was held on October 24, 2013, and a bid was received from one (1) company:

Industrial Commercial Coatings, LLC, Albuquerque, NM

The bid received was reviewed by the Purchasing staff and Industrial Commercial Coatings, LLC. was deemed a fully responsive bidder.

Action Requested:

The Purchasing Division requests approval of Agreement No. 2014-0123-CORR/IC with Industrial Commercial Coatings, LLC to provide and apply polyurea in the shower areas at the Adult Detention Facility in the amount of \$287,066 exclusive GRT and requests signature authority for the County Manager to execute the purchase order.

**AGREEMENT
BETWEEN SANTA FE COUNTY AND
INDUSTRIAL COMMERCIAL COATINGS, LLC
TO PROVIDE AND INSTALL A POLYUREA APPLICATION TO
THE SHOWER AREAS AT THE SANTA FE ADULT DETENTION FACILITY**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **INDUSTRIAL COMMERCIAL COATINGS, LLC**. (hereinafter referred to as the "Contractor").

WHEREAS, in order to meet requirements of NMAC for accreditation, shower areas within the Adult Detention Facility (ADF) were required to be rehabilitated to enhance health and safety requirements for the residents;

WHEREAS, the County procured the services of the Contractor through IFB 2014-0123-CORR/IC in conformity with the Santa Fe County Procurement Regulations; and

WHEREAS, Contractor submitted the lowest bid and is capable of and willing to perform the application of polyurea work requiring a licensed professional.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall provide the following materials and services:

The contractor shall:

- A. Provide all necessary services to provide and install application of a high-tensile, high elongation, fast set, spray applied polyurea sealer with an anti-bacterial additive that is compliant with FDA 21 CFR 175 300 (c) (d) on approximately twenty-eight thousand eight hundred and eighty (28,880) square feet in the shower areas at ADF.
- B. Prepare all areas to be sprayed including demolition and removal of subfloor to expose the concrete floor.
- C. All areas to be cleared of existing paint, glue or mildew using water abrasive blasting equipment with self-containment, such as a Geoblaster, to ensure that dust and mildew particles due not inhibit the living conditions of the residents.
- D. The contractor will ensure the proper measures for containing the showers before spraying, i.e. providing plastic covers, and taping off area.

- E. Product shall be applied with the manufacturer's recommended surface preparation and shall be installed in a gray color with a minimum thickness of 120 mils.
- F. Product shall turn up the walls for an approximate 3" cove base and shall be installed with a final fog coat application for a non-slip surface
- G. Contractor will add a bondo application at all edges of showers to create a 45 degree profile and shall be installed with a final fog coat application for a non-slip surface. Contractor will spray floor and three sides of shower. Contractor will ensure the polyurea application will be sloped to allow for proper drainage.
- H. It will be the responsibility of the contractor to provide and hire a National Association of Corrosion Engineers (NACE) inspector to ensure proper thickness (mils) and application. There will be a test for the first, three completed showers and then all showers after completion by the NACE inspector.
- I. Surface areas to be sprayed include:

Bravo and Charlie Units

- 1. Twenty-four (24) showers in Bravo and Charlie Units on approximately nine thousand two hundred (9,200) shower areas (floor, ceiling, three walls and pony walls).
- 2. One thousand four hundred forty (1,440) square feet beyond the shower to encompass the entire lavatory area flooring with an eight (8) inch curb.
- 3. Include the walls and ceilings of the lavatory area, approximately three thousand seven hundred (3,700) square feet.

Alpha and Delta Units; One (1) shower in Medical Unit; and, two (2) showers in booking area

- 1. Twenty-four (24) showers in Alpha and Delta Units; one (1) shower in Medical Unit; and, two (2) showers in booking area on approximately nine thousand four hundred (9,400) shower areas (floor, ceiling, three walls and pony walls).
- 2. Approximately one thousand four hundred forty (1,440) square feet beyond the shower to encompass the entire lavatory area flooring.
- 3. Approximately three thousand seven hundred (3,700) square feet the walls of the lavatory area.

*Product Recommendation: Specialty Products, Inc. Ultra Bond HT-FC or equivalent

- J. Contractor shall possess the appropriate licensure issued by the State Construction Industries Division (CID) to cover the type of work described below. Provide current certification for application/installation of polyurea.

- K. Provide all clean-up for its operations and control of construction debris. All construction debris shall be removed from the work areas and disposed of at an approved waste disposal site before the end of each work day. The ADF trash containers shall not be used for disposal of construction debris.
- L. Obtain any and all permits and/or certifications required by all appropriate regulatory agencies for the work performed and for any equipment installed. It is the Contractor's responsibility to research permitting and regulatory requirements and obtain any and all permits, certifications or other regulatory approvals/requirements prior to installation of equipment. This may include, but is not limited to, any engineered systems, building codes, construction permits and product warranties or certifications. Copies of all permits must be submitted to Santa Fe County prior to start of work.

2. EFFECTIVE DATE; DATE OF COMMENCEMENT AND COMPLETION

The effective date of this Agreement is the date indicated above and the services under this Agreement shall be completed within ninety (90) calendar days from the date the County issues a notice to proceed, unless earlier terminated pursuant to Section 6 (Termination) or Section 7 (Appropriations and Authorizations). The Contractor shall commence the services and work on the date indicated on the Notice to Proceed issued by the County.

3. COMPENSATION AND PAYMENT

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows. In no event shall the total compensation paid to Contractor by County under this Agreement exceed two hundred eighty-seven thousand and sixty-six dollars (\$287,066.00) exclusive of New Mexico gross receipts tax.
- B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.
- C. Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. The County shall issue payment of all undisputed amounts within twenty-one (21) days after the County receives an undisputed request for payment from the Contractor. In the event the County fails to tender payment within twenty (21) days after receipt of an undisputed request for payment, the County shall pay interest to the Contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until the payment is issued.

- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. LIQUIDATED DAMAGES

- A. Liquidated damages in the amount of one hundred dollars (\$100.00) per each calendar day shall be assessed after the completion date (as adjusted by change orders) until the issuance of a Certificate of Substantial Completion for the entire project for ADF and YDP.

5. ADDITIONAL SERVICES

- A. The parties agree that all work and services set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County
- 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.

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 twenty (20) 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 twenty (20) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) 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 ten (10) days from the Contractor's receipt of the notice.

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 are independent contractors and 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

The 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

- A. Contractor shall be wholly responsible for the entire performance of the work whether or not subcontractors are used. The County will make payments directly to the Contractor. Contractor is wholly responsible for making any and all payments to its subcontractors in conformity with the Prompt Payment Act, NMSA 1978, § 57-28-5.
- B. 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. CONTRACTOR AND CONTRACTOR'S PERSONNEL OR SUBCONTRACTORS

- 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 licensed and qualified to perform such work or services.

- C. Contractor shall not employ any employees, personnel, or subcontractors who have not completed a County-approved security clearance or background check for the completion of the work under this Agreement. Any such employees, personnel or subcontractors that Contractor may employ after the effective date of this Agreement shall not begin any work until the County provides clearance or a background check is completed for that employee or subcontractor.
- D. The County may provide an escort or full time supervision of the Contractor and its employees during any or all phases of this work should the County determine that it is in the County's interest to do so.
- E. The County and the Corrections Department reserves the right to escort Contractor or any of Contractor's employees or subcontractors off the premises or facility for any inappropriate conduct or actions that jeopardize the safety, security or well-being of the facility. Inappropriate behavior by the Contractor, its employees, or subcontractors shall immediately cancel this Agreement. Any violation of any law by the Contractor, its employees or subcontractors will be prosecuted.
- F. Contractor shall abide by SFCADF's tool and material controls and requirements

12. RELEASE

Upon the County's issuance of the final payment to Contractor or any termination that may occur earlier than the termination date of 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. 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.

15. 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 Section 1 (Scope of work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. 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.

17. 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.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- 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 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.

19. 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. 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 the state district court of New Mexico, located in Santa Fe County.

20. 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 three (3) 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 three (3) 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.

21. 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.

22. 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.

23. 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
 Office of Attorney
 102 Grant Ave.
 Santa Fe, NM 87504

To the Contractor: Industrial Commercial Coatings, LLC
 Attn: Chris Perea, President
 9025 4th Street NW
 Albuquerque, NM 87114

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES; CORRECTION OF WORK

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. It has provided a performance bond and payment bond as required by the County, each for 100% of the contract sum.
- C. Contractor is licensed by the State Construction Industries Division (CID) to complete the type of work described in Section 1 herein. Contractor also represents and warrants that all its subcontractors, if any, are fully licensed by CID to complete the work described in Section 1 herein.
- D. The Contractor warrants to the County that the materials and equipment furnished by the Contractor will be new and of good quality and that the completed work will be free from defects and the work will conform to the Scope of Work specified in Section 1 herein.
- E. Contractor shall correct any work rejected by the County, without cost to the County, if the work does not conform to the specifications indicated in Section 1 herein. Contractor shall for a period of one (1) year after final completion of the work, correct any work that does not conform to the specifications in Section 1 herein.

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

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. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.
- C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

29. PERMITS, FEES, AND LICENSES

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

30. 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.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. SURVIVAL

The provisions of following Sections shall survive termination of this Contract; LIQUIDATED DAMAGES; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; LIMITATION OF LIABILITY; NEW MEXICO TORT CLAIMS ACT; NO THIRD-PARTY BENEFICIARIES; AND SURVIVAL.

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

SANTA FE COUNTY:

Kathleen S. Holian, Chair
Santa Fe County Board of Commissioners

Date

ATTEST:

Geraldine, Salazar
Santa Fe County Clerk

Date

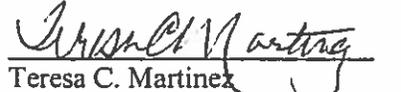
APPROVED AS TO FORM:


Stephen C. Ross
Santa Fe County Attorney

11/12/13

Date

FINANCE DEPARTMENT APPROVAL:


Teresa C. Martinez
Santa Fe County Finance Director

11/14/2013

Date

INDUSTRIAL COMMERCIAL COATINGS, LLC.

(Signature)

Date

By: _____
(Print Name)

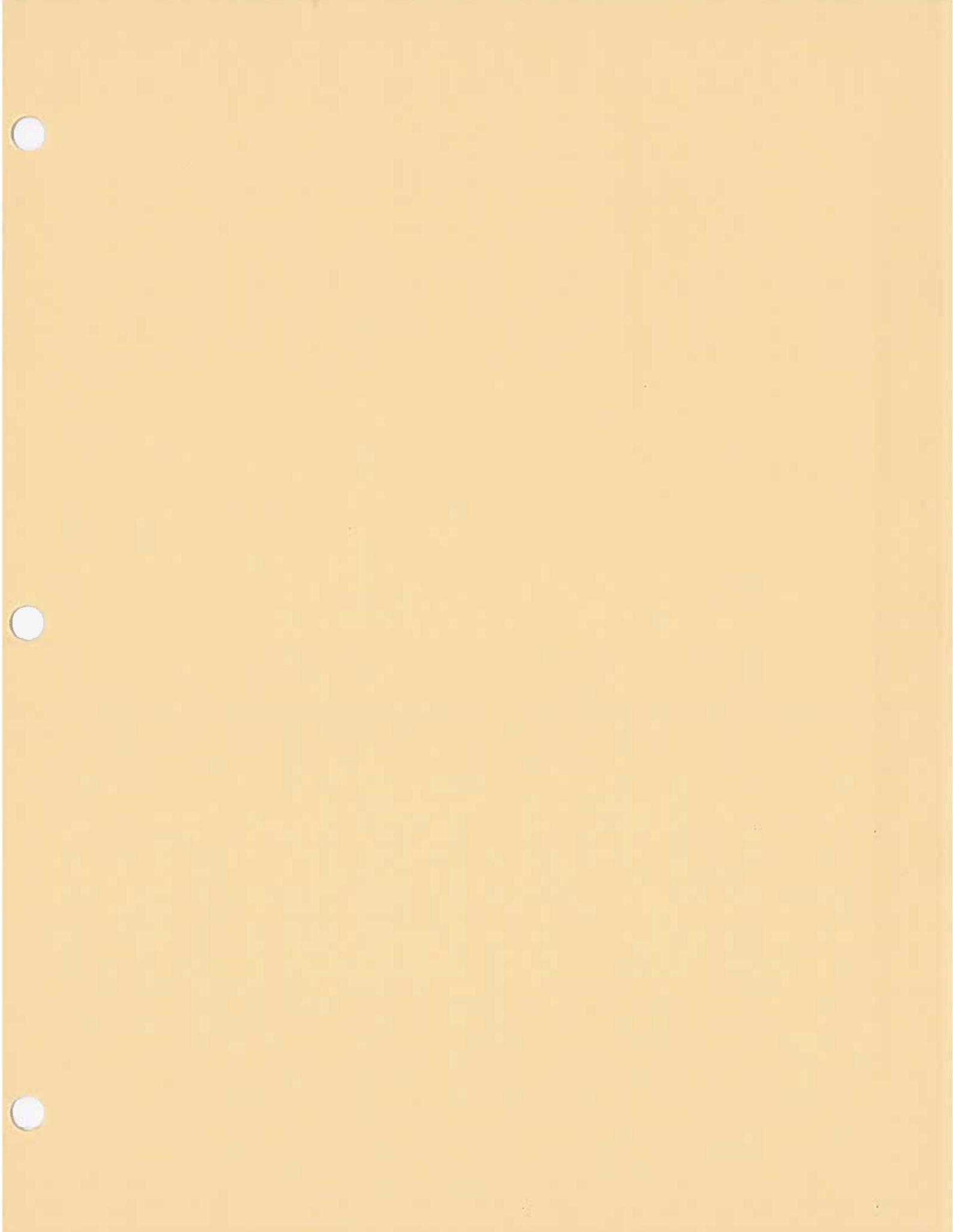
Its: _____
(Print Title)

FEDERAL TAX I.D. NUMBER: 85-0453652



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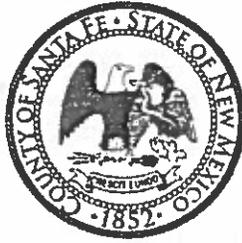
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Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: November 12, 2013
To: Santa Fe County Board of County Commissioners
From: Bill Taylor, Procurement Manager BT 11/18/13
Via: Katherine Miller, County Manager
Adam Leigland, Public Works Director AL 11/14/13
Mark Hogan, Projects & Facilities Director MH 11/15/13

ITEM AND ISSUE: BCC MEETING NOVEMBER 26, 2013

REQUEST APPROVAL OF AGREEMENT NO. 2014-0099-PW/PL WITH CENTURY CLUB CONSTRUCTION, LLC. FOR THE INFRASTRUCTURE CONSTRUCTION OF THE STANLEY WELLNESS CENTER IN THE AMOUNT OF \$305,000 EXCLUSIVE OF GRT AND REQUEST SIGNATURE AUTHORITY FOR COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER / BILL TAYLOR-PROCUREMENT

Issue:

The Purchasing Division requests approval of Agreement No. 2014-0099-PW/PL with Century Club Construction, LLC to construct the infrastructure for the administrative offices of the Stanley Wellness Center located off N.M. Highway 41 at 22 West Kinsell Avenue (County Road 31A) in Stanley, New Mexico. The work includes road and parking lot paving, grading & drainage, stairs and ramps for handicap access to the existing building, underground power, potable water well and septic system. The contract amount is \$305,000 exclusive of New Mexico Gross Receipts Tax.

Background:

Santa Fe County issued Invitation for Bid (IFB) No. 2014-0099-PW/PL on September 28, 2013. The solicitation was advertised in the Santa Fe New Mexican, Albuquerque Journal, Mountain View Telegraph and The Independent as well as the Edgewood Chamber of Commerce.

The bid opening was held on October 23, 2013, and bids were received from the following five (5) construction companies:

Century Club Construction, LLC, Albuquerque, NM
TLC Plumbing & Utility, Albuquerque, NM
R.L. Leeder Company, Santa Fe, NM
Longhorn Construction, Albuquerque, NM
Randy Sena Construction, Albuquerque, NM

All bids received were reviewed by the Purchasing staff and after applying the New Mexico State Veterans Preference, Century Club Construction, LLC was deemed the lowest, responsive bid received.

Action Requested:

The Purchasing Division requests approval of Agreement No. 2014-0099-PW/PL with Century Club Construction, LLC for the infrastructure construction of the Stanley Wellness Center in the amount of \$305,000 exclusive GRT and requests signature authority for the County Manager to execute the purchase order.

**SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Santa Fe County (“Owner”) and
Century Club Construction, LLC, 8201 Golf Course Rd. NW, Albuquerque, N.M. 87120 (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

Contractor shall complete all Work as specified or indicated in the Bid Documents. The Work is generally described as follows: Construction of road and parking lot paving, grading and drainage, stairs and ramps for handicap access to the existing building, utility construction to include underground power, potable water well and septic systems.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Construct infrastructure at the administrative offices for the Stanley Wellness Center located off NM 41 at 22 West Kinsell Avenue (County Road 31A), Stanley, NM.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by RME Santa Fe Engineering and Survey, LLC, 1220 Parkway Drive, Suite B, Santa Fe, NM 87597 (Engineer), which is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents and the Contract between Owner and Engineer (#2013-0285-PW/PL) in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The construction at the Stanley Wellness Center shall be completed in accordance with applicable New Mexico building codes, the New Mexico Construction Industries Division (CID), the New Mexico State Department of Transportation Standard Specifications, 2007 Edition, and the New Mexico Standard Specifications for Public Works Construction, 1987 Edition, as supplemented by the Special Provisions except where revised or amended by the Supplemental

General Provisions, Special Provisions and Supplemental Specifications, and are hereby made part of the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence in this Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

The Work will be substantially completed within ninety (90) consecutive working days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. The parties agree that the liquidated damages provided herein represent the Owner's probable damages, not a penalty. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.
- B. Contractor agrees the liquidated damages herein provided are reasonable and represent the amount of damages reasonably anticipated to the Owner in the event the Work is not completed as provided in Paragraph 4.02.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work a lump sum of: Three hundred five thousand dollars \$305,000.00 exclusive of New Mexico Gross Receipts Tax (GRT).

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as indicated in Exhibit A (Contractor's Bid) (Refer to IFB# 2014-0099-PW/PL BID SHEETS)

The Bid prices for Unit Price Work are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

B. The New Mexico Public Works minimum Wage Act requires: the Construction Contractor to submit certified weekly payrolls records for all their employees; and, requires the Contractor to ensure that all tiers of Subcontractors submit certified weekly payrolls records for all their employees, working this Public Works project to the County and the Engineer (RME Santa Fe Engineer and Survey, LLC, 1220 Parkway Drive, Suite B, Santa Fe, NM 87597) on a biweekly basis.

6.02 *Progress Payments;*

A. Owner shall make progress payments subject to the Owner's withholding of liquidated damages in accordance with Article 4.03 of the Contract and 14.02 of the General Condition on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work. All such payments will be measured in the

case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made based on the number of units completed, but in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor for work completed, less liquidated damages and such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less the Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed (i.e. value of items on the punch list) or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of one and one half (1.5%) percent per month.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any.

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement
 - 2. Performance bond for 100% of Project Sum
 - 3. Payment bond for 100% of Project Sum
 - 4. General Conditions
 - 5. Supplementary Conditions
 - 6. Specifications as listed in the table of contents of the Project Manual including Engineer's Supplemental Technical Specifications
 - 7. Drawings listed on attached sheet index

8. Addenda Number 1 to IFB # 2014-0099-PW/PL
9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A - Contractor's Bid Proposal
 - b. Exhibit B - Documentation submitted by Contractor prior to Notice of Award (insurance certification, bonds, etc.)
 - c. Exhibit C - Engineer's Design and Drawings for this Project
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

Santa Fe County

By: Kathleen S. Holian
Chair, Santa Fe Board of County
Title: Commissioners

CONTRACTOR

Century Club Construction, LLC

By: _____
Title: President

Date: _____

Date: _____

Attest: Geraldine Salazar

Attest: _____

Title: Santa Fe County Clerk

Title: _____

Date: _____

Address for giving notices:

Santa Fe County

Office of the Attorney

102 Grant Avenue

Santa Fe, NM 87501

Address for giving notices:

8201 Golf Course Rd. NW

Albuquerque, NM 87120

License No.: _____

APPROVED AS TO FORM

 11/4/13
Date: _____
Stephen C. Ross
Santa Fe County Attorney

 11/6/13
Date: _____
Teresa C. Martinez
Santa Fe County Finance Director

EXHIBIT
A
BID SHEETS

**BID ITEMS FOR THE
STANLEY WELLNESS CENTER INFRASTRUCTURE CONSTRUCTION**

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
1	Construction Mobilization Unit Cost Written in Words <u>thirty thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>30,000.⁰⁰</u> Dollars & Cents	Extended Price Written in Numbers <u>30,000.⁰⁰</u> Dollars & Cents
2	Construction Surveying/Staking Unit Cost Written in Words <u>ten thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>10,000⁻</u> Dollars & Cents	Extended Price Written in Numbers <u>10,000⁻</u> Dollars & Cents
3	Traffic Control and Management Unit Cost Written in Words <u>one thousand three hundred twenty five</u> Dollars & Cents	LS <i>hr</i>	1	Unit Cost Written in Numbers <u>1,325⁻</u> Dollars & Cents	Extended Price Written in Numbers <u>1,325⁻</u> Dollars & Cents
4	Materials Testing/Quality Control Unit Cost Written in Words <u>sixty five hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>6,500⁻</u> Dollars & Cents	Extended Price Written in Numbers <u>6,500⁻</u> Dollars & Cents
5	NPDES/SWPPP Preparation & Implementation Unit Cost Written in Words <u>thirty five hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>3,500⁻</u> Dollars & Cents	Extended Price Written in Numbers <u>3,500⁻</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
6	Clear & Grubb Unit Cost Written in Words <u>one thousand five hundred</u> Dollars & Cents	AC	1	Unit Cost Written in Numbers <u>1500-</u> Dollars & Cents	Extended Price Written in Numbers <u>1500-</u> Dollars & Cents
7	Unclassified Excavation Unit Cost Written in Words <u>ten</u> Dollars & Cents	CY	170	Unit Cost Written in Numbers <u>10-</u> Dollars & Cents	Extended Price Written in Numbers <u>1700-</u> Dollars & Cents
8	8" Subgrade Preparation (95% Compaction) Unit Cost Written in Words <u>one dollar & fifty cents</u> Dollars & Cents	SY	2,926	Unit Cost Written in Numbers <u>1.50</u> Dollars & Cents	Extended Price Written in Numbers <u>4,389-</u> Dollars & Cents
9	4" Aggregate Basecourse (95% Compaction) Unit Cost Written in Words <u>five</u> Dollars & Cents	SY	2,926	Unit Cost Written in Numbers <u>5-</u> Dollars & Cents	Extended Price Written in Numbers <u>14,630-</u> Dollars & Cents
10	3" Type "B" Hot Mix Asphalt Unit Cost Written in Words <u>fifteen</u> Dollars & Cents	SY	2,926	Unit Cost Written in Numbers <u>15-</u> Dollars & Cents	Extended Price Written in Numbers <u>43,890-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
11	Embankment w/Select Fill (Place & Compact to Grade) Unit Cost Written in Words <u>512</u> Dollars & Cents	CY	150	Unit Cost Written in Numbers <u>6-</u> Dollars & Cents	Extended Price Written in Numbers <u>900-</u> Dollars & Cents
12	6" Thick Concrete Vehicular Paving (C.I.P.) Unit Cost Written in Words <u>Seventy</u> Dollars & Cents	SY	67	Unit Cost Written in Numbers <u>70-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,690-</u> Dollars & Cents
13	Pre-Cast Parking Bumper Unit Cost Written in Words <u>one hundred</u> Dollars & Cents	EA	40	Unit Cost Written in Numbers <u>100-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,000-</u> Dollars & Cents
14	H/C Parking Marking & Graphics Unit Cost Written in Words <u>three hundred sixty</u> Dollars & Cents	EA	2	Unit Cost Written in Numbers <u>360-</u> Dollars & Cents	Extended Price Written in Numbers <u>720-</u> Dollars & Cents
15	Retroflective Pavement Stripe, 4" Wide; White Unit Cost Written in Words <u>nine</u> Dollars & Cents	LF	448	Unit Cost Written in Numbers <u>9-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,032-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
16	Vehicular, Regulatory & Misc. Panel Sign (C.I.P. Includes Posts and Bases) Unit Cost Written in Words <u>fifty seven</u> Dollars & Cents	SF	16	Unit Cost Written in Numbers <u>57-</u> Dollars & Cents	Extended Price Written in Numbers <u>912-</u> Dollars & Cents
17	Preformed Patterned Retroflective Pavement Stripe; White, 24" Wide Stop Bar Unit Cost Written in Words <u>forty one</u> Dollars & Cents	LF	48	Unit Cost Written in Numbers <u>41-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,968-</u> Dollars & Cents
18	Concrete Valley Gutter Unit Cost Written in Words <u>thirty six</u> Dollars & Cents	LF	24	Unit Cost Written in Numbers <u>36-</u> Dollars & Cents	Extended Price Written in Numbers <u>864-</u> Dollars & Cents
19	4" Concrete Sidewalk Unit Cost Written in Words <u>forty five</u> Dollars & Cents	SY	59	Unit Cost Written in Numbers <u>45-</u> Dollars & Cents	Extended Price Written in Numbers <u>2,655-</u> Dollars & Cents
20	Metal Ramps, Stairs & Landings, C.I.P. Per Plan Unit Cost Written in Words <u>fourteen thousand five hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>14,500-</u> Dollars & Cents	Extended Price Written in Numbers <u>14,500-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
21	Well Equipment Shelter Per Plan Unit Cost Written in Words <u>Thirty five thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>35,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>35,000-</u> Dollars & Cents
22	Potable Water Well (Inc. Drilling & Geophysical Logging) Unit Cost Written in Words <u>Forty two</u> Dollars & Cents	LF	400	Unit Cost Written in Numbers <u>42-</u> Dollars & Cents	Extended Price Written in Numbers <u>16,800-</u> Dollars & Cents
23	Wellhead (Inc. Sanitary Seal, Pitless Adapter & Appurtenances) Unit Cost Written in Words <u>four thousand</u> Dollars & Cents	EA	1	Unit Cost Written in Numbers <u>4,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,000-</u> Dollars & Cents
24	6" Steel Well Casing Unit Cost Written in Words <u>thirty one</u> Dollars & Cents	LF	320	Unit Cost Written in Numbers <u>31-</u> Dollars & Cents	Extended Price Written in Numbers <u>9,920-</u> Dollars & Cents
25	Well Mill Slot Screen Unit Cost Written in Words <u>thirty six</u> Dollars & Cents	LF	60	Unit Cost Written in Numbers <u>36-</u> Dollars & Cents	Extended Price Written in Numbers <u>2,160-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
26	Well Development & Aquifer Testing Unit Cost Written in Words <u>thirteen thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>13,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>13,000-</u> Dollars & Cents
27	Well Grouting Unit Cost Written in Words <u>forty</u> Dollars & Cents	LF	15	Unit Cost Written in Numbers <u>40-</u> Dollars & Cents	Extended Price Written in Numbers <u>600-</u> Dollars & Cents
28	Pea Gravel Unit Cost Written in Words <u>two hundred seventy five</u> Dollars & Cents	CY	5	Unit Cost Written in Numbers <u>275-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,375-</u> Dollars & Cents
29	1 1/2" Sch 80 PVC Drop Pipe Unit Cost Written in Words <u>Six</u> Dollars & Cents	LF	315	Unit Cost Written in Numbers <u>6-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,890-</u> Dollars & Cents
30	15 GPM Constant Pressure Pump, Motor Controller, VFD Unit Cost Written in Words <u>six thousand nine hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>6900-</u> Dollars & Cents	Extended Price Written in Numbers <u>6,900-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
31	1" Well Meter Unit Cost Written in Words <u>four hundred fifteen</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>415-</u> Dollars & Cents	Extended Price Written in Numbers <u>415-</u> Dollars & Cents
32	35 Gallon Pressure Tank Unit Cost Written in Words <u>six hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>600-</u> Dollars & Cents	Extended Price Written in Numbers <u>600-</u> Dollars & Cents
33	Disinfectant Proportional Injection System & Solution Tank Unit Cost Written in Words <u>two thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>2,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>2,000-</u> Dollars & Cents
34	40 Gallon Contact Tank Unit Cost Written in Words <u>six hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>600-</u> Dollars & Cents	Extended Price Written in Numbers <u>600-</u> Dollars & Cents
35	0-160 PSI Pressure Indicator Unit Cost Written in Words <u>thirty</u> Dollars & Cents	EA	2	Unit Cost Written in Numbers <u>30-</u> Dollars & Cents	Extended Price Written in Numbers <u>60-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
36	1 1/4" Sch 40 PVC Water Line Unit Cost Written in Words <u>fourteen</u> Dollars & Cents	LF	350	Unit Cost Written in Numbers <u>14-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,900-</u> Dollars & Cents
37	3/4" Frost-Free Yard Hydrant Unit Cost Written in Words <u>five hundred</u> Dollars & Cents	EA	2	Unit Cost Written in Numbers <u>500-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,000-</u> Dollars & Cents
38	Well Equipment Shelter Drainfield (C.I.P.) Unit Cost Written in Words <u>four thousand</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>4,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>4,000-</u> Dollars & Cents
39	Well Equipment Mounting Hardware Unit Cost Written in Words <u>nine hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>900-</u> Dollars & Cents	Extended Price Written in Numbers <u>900-</u> Dollars & Cents
40	Septic Tank & Absorption Field, Complete Per Plan Unit Cost Written in Words <u>Six thousand five hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>6,500-</u> Dollars & Cents	Extended Price Written in Numbers <u>6,500-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
41	4" 3034 PVC DWV Waste Line w/Cleanout Unit Cost Written in Words <u>twenty five</u> Dollars & Cents	LF	100	Unit Cost Written in Numbers <u>25-</u> Dollars & Cents	Extended Price Written in Numbers <u>2500-</u> Dollars & Cents
42	Class "A" Seeding Unit Cost Written in Words <u>three thousand</u> Dollars & Cents	AC	2	Unit Cost Written in Numbers <u>3,000-</u> Dollars & Cents	Extended Price Written in Numbers <u>6,000-</u> Dollars & Cents
43	300 AMP Electric Service to Well & Building Unit Cost Written in Words <u>eighteen thousand four hundred</u> Dollars & Cents	LS	1	Unit Cost Written in Numbers <u>18,400-</u> Dollars & Cents	Extended Price Written in Numbers <u>18,400-</u> Dollars & Cents
44	7 1/2" Thk. Concrete Well Equipment Building Pad Unit Cost Written in Words <u>three hundred fifty</u> Dollars & Cents	SY	17.5	Unit Cost Written in Numbers <u>350-</u> Dollars & Cents	Extended Price Written in Numbers <u>6,125-</u> Dollars & Cents
45	21" x 15" CMPA (C.I.P.) Unit Cost Written in Words <u>forty seven</u> Dollars & Cents	LF	80	Unit Cost Written in Numbers <u>47-</u> Dollars & Cents	Extended Price Written in Numbers <u>3,760-</u> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
46	21" x 25" CMPA End Sections (C.I.P.) Unit Cost Written in Words <u>Four hundred</u> Dollars & Cents	EA	4	Unit Cost Written in Numbers <u>400-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,600-</u> Dollars & Cents
47	8" ADS Pipe (C.I.P.) Unit Cost Written in Words <u>twenty two</u> Dollars & Cents	LF	60	Unit Cost Written in Numbers <u>22-</u> Dollars & Cents	Extended Price Written in Numbers <u>1,320-</u> Dollars & Cents
BASE BID TOTAL WRITTEN IN NUMBERS				<u>305,000-</u> Dollars & Cents	
BASE BID TOTAL WRITTEN IN WORDS			three hundred five thousand and zero cents		

Note: All bid amounts are exclusive of Gross Receipts Tax

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EJCDC C-520 Suggested Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)

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EJCDC C-520 Suggested Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Order of Preference of Documents, Resolving Discrepancies and Conflicts.

(1) With respect to matters pertaining to contract management and administration procedures including change orders, the provisions of Contract 2014-0099-PW/PL, Standard General Conditions of the Construction Contract (as modified by Santa Fe County), and the Supplementary Conditions shall govern. In conflicts or discrepancies between these documents, the most restrictive, specific and otherwise most beneficial to the County shall take precedence.

B. The terms used in these Supplementary Conditions have the meanings stated in Article 1 of the General Conditions. Additional terms used in these Supplemental Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer* - RME Santa Fe Engineer and Survey, LLC, 1220 Parkway Drive, Suite B, Santa Fe, NM 87597.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof. Not Applicable to this Project.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Progress Schedule* A schedule, prepared and maintained by Contractor and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight. "Working Day" means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Engineer will determine (between the end of the day and noon of the next day) if the Owner will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Engineer may Charge a Working Day.

D. Defective:

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05);

E. Furnish, Install, Perform, Provide:

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

Contractor shall start to perform the Work on the date indicated in the Notice to Proceed issued by the Owner.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Progress Schedule to serve as the basis for progress payments during performance of the Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. The Progress Schedule required to be submitted by the Contractor shall include the Contractor's preparation and completion of thorough and accurate "As-Built" or "Red Lines" to be submitted no later than Contractor's submission to the Engineer of the Application for Final Payment as provided in 14.07.
3. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
4. Contractor's Progress Schedule will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" may be identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If the Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order may be issued to reflect and document such consequences. An equitable adjustment may be made in the Contract Sum or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. The allowance for the combined overhead (general administration overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders and Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

Entity Performing Work	Value of Work to be performed	
	\$0- \$5,000.00	\$5,000.00 or more
Contractor for work performed by own forces	15%	12%
Contractor for work performed by subcontractor	5%	3%
Subcontractor for work performed by own forces	10%	7%
Subcontractor for work performed by sub-subcontractor	5%	3%

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions may identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement

to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's

authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- 5.04.A. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the

Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations;
8. claims involving contractual liability insurance applicable to the Contractor's obligations under 6.20 of this Agreement, and
9. Builder's Risk insurance for the full value of the Construction Contract.

5.04.B. The insurance required by Paragraph 5.04.A shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

5.04.C. The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:

1. Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal (e.g. Longshoremen's): Statutory
2. Employer's Liability:
 - \$500,000 per Accident
 - \$500,000 Disease, Policy Limit
 - \$500,000 Disease, Each Employee

5.04.D. The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

- i. \$1,050,000 Each Occurrence
- ii. \$2,100,000 General Aggregate
- iii. \$2,100,000 Personal and Advertising Injury
- iv. \$2,100,000 Products-Completed Operations Aggregate

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.
2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 6.20.
3. Products Completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

5.04.E. Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$2,000,000, Each Accident

5.04.F. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this 5.04.A through E shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Paragraph 14.07. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

5.05 *Owner's Liability Insurance*

A. Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

5.06 *Property Insurance*

A. Owner shall be responsible for purchasing and maintaining the Owner's usual property insurance as is typically required for this type of construction project. Owner's insurance shall protect only the interests of Owner in the Project.

5.07 *Waiver of Rights*

A. Contractor waives all rights against Owner, Owner's officers, employees, agents and consultants for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by Contractor's insurance policies required by 5.04, except such rights as Contractor may have to proceeds of such insurance held by the Owner as fiduciary.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall distribute any money so received in accordance with such agreement as the parties in

EJCDC C-520 Suggested Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)

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interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be

responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of person or the work or property at the site or adjacent thereto, and except as otherwise stated in the contract documents, all work at the site shall be performed during regular work hours for forty-five (45) consecutive days.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
- 3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that

named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor,

Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not Owner, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process,

product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses including obtaining and paying for any necessary temporary work permits to perform the Work outside or beyond the limits of any right-of-way. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner. Record documents shall include final and accurate "As-Built" or "Red Lines" acceptable to Engineer and Owner.

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other

individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show

Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.

- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
 3. or to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.
- C. The Contractor will coordinate the Work with the Owner's Engineer as provided in this Agreement. The Owner's Project will be managed and inspected by the Engineer who will act as Owner's representative on the Site and have the construction and contract administration duties as provided in this Agreement. The duties and obligations of the Engineer are also as stated in Agreement No. 2013-0285-PW/PL between the Owner and the Engineer,
- D. The Engineer will determine the days that will be charged by the Owner as a working day based on the Project Manager's review of the weather and actual work performed by the Contractor. The Project Manager's determination of a working day will be made between the end of a day and noon of the next day. A working day will be charged if the Contractor was able to perform on a critical path item for six (6) or more hours on a Saturday, Sunday or holiday recognized by Santa Fe County.
- E. The Engineer identified in this Agreement will have oversight of the Project design documents and specifications and will complete the record documents, including the final "as built" for the Project. The duties and obligations of the Engineer are as stated in this Agreement and Agreement No. 2013-0285-PW/PL between the Owner and the Engineer.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.
- B. Engineer will complete the record documents including the final "As-Builts" for the Project. Engineer's duties during the construction phase of this Project are as stated in Agreement No. 2014-0099-PW/PL between the Owner and Engineer.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.04 *Rejecting Defective Work*

- A. ~~Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.~~

9.05 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between

Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph.
- C. The allowance for the combined overhead (general administration, overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders or Work Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

Entity Performing Work	Value of Work to be performed	
	\$0- \$5,000.00	\$5,000.00 or more
Contractor for work performed by own forces	15%	12%
Contractor for work performed by subcontractor	5%	3%
Subcontractor for work performed by own forces	10%	7%
Subcontractor for work performed by sub-subcontractor	5%	3%

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on

Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer
- B. *Contingency Allowance:*
 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. ~~The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:~~
 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* Any fees for overhead and profit, including the Contractor's, shall be determined according to the schedule in 10.01.C.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- C. If Contractor's defective Work results in a monetary fine or penalty assessed against the Owner by a state or federal governing agency or authority having jurisdiction to assess a fine or penalty, the amount of such fine or penalty shall be passed on to the Contractor. Contractor shall pay the fine or penalty within the time required by the governing agency or authority that assessed the fine and Owner shall be entitled to a decrease in the Contract Price in an amount equal to the fine or penalty. Owner and Engineer shall immediately notify Contractor in writing of such defective Work, the amount of the fine or penalty assessed and the deadline by which Contractor must pay the fine or penalty.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
- F. The Engineer may determine beginning and end of a warranty period that is longer than the period of time of one (1) year established in 13.07.A above. The Engineer shall formally submit a letter so notifying the Contractor and Owner of such warranty period.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend

Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Progress Schedule*

- A. The Progress Schedule established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If,

after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 10 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 10 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages and any fee or penalty assessed against the County as provided at 13.06.C, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.

- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for ~~30~~ 60 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer fails to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 60 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be completed within 60 days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the Public Works Mediation Act.
- C. If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

