

SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

January 9, 2018

Henry Roybal, Chair - District 1

Anna Hamilton - District 4

Ed Moreno - District 5

Robert A. Anaya - District 3

Anna Hansen, Vice Chair - District 2 [excused]

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REGULAR MEETING
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January 9, 2018

I. A. This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:25 p.m. by Chair Henry Roybal in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

B. Roll Call

Roll was called by Deputy County Clerk Vicki Trujillo and indicated the presence of a quorum as follows:

Members Present:

Commissioner Henry Roybal, Chair
Commissioner Robert A. Anaya
Commissioner Anna Hamilton
Commissioner Ed Moreno

Members Excused:

Commissioner Anna Hansen

C. Pledge of Allegiance

D. State Pledge

E. Moment of Reflection

The Pledge of Allegiance was led by Estrella Martinez, the State Pledge by Theresa Atencio and the Moment of Reflection by Steve Fresquez of the Clerk's Office.

I. F. Approval of Agenda

1. Amendments

2. Tabled or Withdrawn Items

KATHERINE MILLER (County Manager): Mr. Chair, just a couple of amendments to captions. On page 1, under Approval of the Minutes, item I. G. 1, that just had a correction to add the word Commissioners. And then under Consent, item II. A. 1, a resolution authorizing the donation. That was a correction as well. Other than that, we do not have any added or amended or withdrawn or tabled items.

CHAIR ROYBAL: Okay. So we don't have any more amendments or

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tabled or withdrawn items. What's the pleasure of the Board?

COMMISSIONER HAMILTON: Move to approve the agenda as amended in the handout.

CHAIR ROYBAL: Okay, we have a motion by Commissioner Hamilton. So I hear a second?

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: And a second from Commissioner Moreno.

The motion passed by unanimous [3-0] voice vote. [Commissioner Anaya was not present for this action.]

I. G. Approval of Minutes

1. Approval of the November 28, 2017, Regular Board of County Commission Meeting Minutes

COMMISSIONER HAMILTON: Move to approve the minutes.

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: We have a motion and a second.

The motion passed by unanimous [3-0] voice vote. [Commissioner Anaya was not present for this action.]

II. CONSENT AGENDA

A. Resolutions

1. Resolution No. 2018-1, a Resolution Authorizing the Donation of Fixed Assets in Accordance with State Statutes (Public Works Department/Erik Aaboe)

B. Miscellaneous

- 1. Requesting an Increase to the Allocation of Certain Capital Projects with Revenues from Remaining Budgets of Completed Projects (Public Works/Erik Aaboe)**
- 2. Request Approval of an Indefinite Quantity Price Agreement No. 2018-0043-FD/IC with Kaufman's West, LLC for Uniforms for the Fire Department and Grant Signature Authority to the County Manager to Sign the Purchase Orders (Purchasing Division/Bill Taylor)**
- 3. Request Approval of Multiple Source Award, Multiple Year Contracts Nos. 2018-0071-A, B, C, D-PW/MM for On-Call Road Construction and Maintenance Services for Existing County Road Infrastructure Improvements and Maintenance and Granting Authority to the County Manager to Finalize Negotiations and Execute the Contracts and Purchase Orders (Purchasing Division/Bill Taylor)**

CHAIR ROYBAL: Is there anything on the Consent Agenda that needs

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further explanation from the Board? If there's not I will entertain a motion to approve.

COMMISSIONER MORENO: Move to approve.

CHAIR ROYBAL: So we have a motion.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: And a second.

The motion passed by unanimous [3-0] voice vote. [Commissioner Anaya was not present for this action.]

III. ACTION ITEMS

B. Appointments/Reappointments

1. **Appointment of Santa Fe County Commissioners and Staff to Boards and Committees of the following entities: Buckman Direct Diversion, Santa Fe Metropolitan Planning Organization, North Central New Mexico Economic Development District, North Central Regional Transit District, Regional Coalition for LANL Communities, Santa Fe Solid Waste Management Agency, Santa Fe County Investment Committee, Santa Fe County Audit Committee, the Estancia Valley Economic Development Association, and the New Mexico Association of Counties Multi-line and Worker's Compensation Pool Boards**

TONY FLORES (Deputy County Manager): Good afternoon, Commissioners, Mr. Chair. Before you we have the annual appointments for those various committees that you just read off per the memo. We have received word from Commissioner Hansen since she's out ill today that she would consider having her existing appointments that carried over from 2017.

MS. MILLER: Mr. Chair, I spoke with her this morning, she, and I think Commissioner Anaya need to be here to follow up on what Tony was saying. She said she was good with keeping positions that she's currently been appointed to this year but she also expressed an interest in being the alternate to the LANL Communities. I think that's something that Commissioner Anaya is the alternate and she just wanted to request that if that's something he doesn't want to continue to do she would like to be considered for that.

MR. FLORES: So, Mr. Chair, so based upon the new information, what we've done in the past is we've gone down each of the committees individually and then I've provided you – it's also in the packet in Exhibit A – what the existing Commission appointments are by board, and then the Board takes action. So we can either do it where each board is acted upon as an action item, or I can go through them, you can give me your recommendations, and then we can call for an action item to approve them all as restated by myself. So I'll leave that up to you.

CHAIR ROYBAL: Okay. Thank you, Mr. Flores. I'd like to state also for the record that I'm okay on staying on the boards that I'm currently on right now and I don't know how the other Commissioners – Commissioner Hamilton.

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COMMISSIONER HAMILTON: I actually would like to say the same. I'm happy to stay on and would like to on the committees I'm currently on.

CHAIR ROYBAL: Commissioner Moreno, are you –

COMMISSIONER MORENO: Mr. Chair, I feel like I've just dipped my big toe in the water and I'd like to keep my assignments.

CHAIR ROYBAL: Okay. So it seems like everybody is comfortable with keeping their assignments but I don't know if we've heard from Commissioner Anaya.

MR. FLORES: Mr. Chair, he's in. He's actually meeting with a constituent. They've gone to get him again. Mr. Chair, so currently on the BDD Board, you're the primary. Commissioner Hamilton is a primary member and Commissioner Hansen is an alternate.

CHAIR ROYBAL: That's correct.

MR. FLORES: So if that's –

[Commissioner Anaya joined the meeting.]

COMMISSIONER ANAYA: Sorry, Mr. Chair. The one I wanted to ask my colleagues – I wanted to ask the Chairman if he wanted to take on was the Workman's Comp. I thought I wanted to do it, but I really don't have the time. I know you'd expressed an interest at one point in serving on the Association of Counties and I told you if I ever got off it I would recommend that. I'd like to see if you want to take that one on for me.

CHAIR ROYBAL: Can you tell me when the meetings are scheduled?

COMMISSIONER ANAYA: They've got to where they schedule just a couple meetings a year, right, Ms. Miller?

MS. MILLER: Yes. Mr. Chair, they do one during the winter conference, so there'll be one general membership of both pool boards. That's next week. And they usually do that. And then they have for Worker's Comp it's probably about four meetings a year. The Multi-Line one is a little more often. And they publish the – it's not any set time. They publish the calendar for the year and they try to keep them in the same months. They do one in June at the annual conference. They usually do one in December and I think they may have one more in like October timeframe. And then the Multi-Line they usually add another one or two throughout the year, depending on how many cases they have come forward. So it's probably about four a year, two of them being their general Association of Counties meeting and then two others. I think, Commissioner Moreno, that's been pretty consistent this year, hasn't it? The Worker's Comp? Because you're currently the –

COMMISSIONER MORENO: Alternate.

MS. MILLER: And have you gone? You haven't gone to them? Okay. So I think it's about four a year.

COMMISSIONER ANAYA: Yes. And I would add, Mr. Chair, that we're a Class A county so we get an automatic appointment and there's a lot of – when there are decisions to be had they're very impactful for the State of New Mexico, all the counties and in particular Class A counties. So respecting that Commissioner Moreno is the alternate you had asked me at one point and I would just respectfully ask my colleagues to consider you for that. It's a good board to be on.

CHAIR ROYBAL: Yes. I would accept as long as everybody's okay with

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that. Commissioner Moreno.

MR. FLORES: Mr. Chair, so for the Worker's Comp Board we'd have you as the primary and Commissioner Moreno would stay as the alternate to that board.

CHAIR ROYBAL: Yes.

MR. FLORES: Okay. So then, Mr. Chair, the next one – I'll go from the bottom up. The next one is the Multi-Line Board and the past few appointment cycles we've ensured that the County Manager is the primary member on that board as the Santa Fe County rep due to the budget implications. So I'm recommending to her dissatisfaction that she remain as the primary member, and currently Commissioner Moreno sits as the alternate on that board. So that recommendation would be that the County Manager retain the primary member and Commissioner Moreno would be the alternate.

CHAIR ROYBAL: I'm okay with that. Is there any other feedback from the Commission?

COMMISSIONER HAMILTON: I think that sounds like a great idea.

COMMISSIONER ANAYA: Mr. Chair, I have some experience. Just the two members work closely together on just various issues. It's very crucial to have someone with the knowledge base that our Manager has on there and those decisions as well have a big impact, not only for us as a County but on a statewide basis. So I think that's a prudent recommendation.

CHAIR ROYBAL: And do we get reports from these meetings from Katherine?

MS. MILLER: Mr. Chair, we have their budgets and things like that. I can't give reports. A lot of what is discussed is – and I give you the update of what we're doing relative to the overall policy when we renew our insurance policy. I can't discuss what happens at the meetings, the majority of the meeting because it's executive session related to litigation across the state. But you hear about everything that is relative to Santa Fe County.

CHAIR ROYBAL: So everything that pertains to Santa Fe County is disclosed to us in executive session?

MS. MILLER: If it's litigation, yes. You hear about any of our litigation that goes before that board or to the pool itself, and then relative to the changes of the policy or anything in the insurance policy that the pool puts forward, that's presented to you when we receive our proposals about insurance policies.

CHAIR ROYBAL: Okay. I'm okay with that.

MR. FLORES: So Mr. Chair, the next one is the Estancia Valley Economic Development Association. Historically, Commissioner Anaya has been the primary member to that board and I'm recommending that he remain on that as the primary member.

COMMISSIONER ANAYA: Yes, Mr. Chair. This is just our economic development regional committee. It's in District 3.

MR. FLORES: And Mr. Chair, just as a point of clarification for this board, we also have an alternate non-voting member, and that typically has been our Economic Development Division Director that comes back before the Board. We make that appointment.

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COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner.

COMMISSIONER ANAYA: This is one area, if it's okay with the Manager, but I think that for the same reason it's good for you to stay on Multi-Line, I think it would be good to have Mr. Flores as the alternate on this particular board. And I say that for many reasons. There's several things in the pipeline in District 3 that are going to have regional impact. We have all the wind turbines that are going in in the region. We have a potential transmission line, is my understanding, that's going to go in the region, and so Mr. Flores is familiar with that area. Unless he would object or you would object, I would just ask for you to consider that, to sit on that board. Not that you're going to take anything away from the Economic Development Director. He could still be there as well, but I would respectfully ask if you would consider allowing him to serve on that. And many times you're going to be the primary person, if you're okay with it.

MR. FLORES: Absolutely, Mr. Chair, Commissioner Anaya.

COMMISSIONER ANAYA: That would be my recommendation, Mr. Chair, if the Manager's okay.

CHAIR ROYBAL: I would agree with that, Commissioner Anaya. Is there any other comment from the Board?

COMMISSIONER HAMILTON: I think it's a well judged suggestion.

CHAIR ROYBAL: Okay. We're all good with that.

MR. FLORES: So Mr. Chair, the next one up is the Santa Fe County Audit Committee. We ask that two Board members sit on that and currently that's Commissioner Hansen and Commissioner Hamilton. So it's my understanding that based upon the previous discussion those two would remain as the members of that committee, unless I'm mistaken.

CHAIR ROYBAL: That's correct.

MR. FLORES: Mr. Chair, the next one is the Investment Committee and since we won't elect the Chair and the Vice Chair until later on in the agenda, if the County Attorney, Mr. Frederick is okay with it, what I would suggest is that the Board give me the name of the alternate. It's currently Commissioner Hamilton, and that the motion indicate that the Chair and the Vice Chair that are elected at this meeting would serve in the capacity of the Investment Committee so we wouldn't have to readdress that item.

COMMISSIONER ANAYA: Makes sense.

CHAIR ROYBAL: Manager Miller.

MS. MILLER: Except if Commissioner Hamilton is the alternate and she is elected as Chair or Vice Chair we would need another alternate.

COMMISSIONER HAMILTON: Can we come back to it?

MR. FLORES: So we'll defer, Mr. Chair – all these nuances to these boards and committees – so we'll defer on that appointment till later.

The next one is the SWMA which requires three primary members and one alternate. Currently Commissioner Roybal sits as an alternate and Commissioners Hansen, Hamilton and Moreno sit as primaries. We're good?

Mr. Chair, the next one up is the Regional Coalition of LANL Communities. That

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requires a primary member and alternate member. Currently, Commissioner Roybal, you serve as the primary member, and Commissioner Anaya sits as the alternate member. And there's been a request by Commissioner Hansen to have her considered as the alternate member.

MS. MILLER: That is if Commissioner Anaya does not want to be the alternate. She said if you wanted to continue as the alternate she's fine with that but if either one of you did not want to continue on it she wanted to be considered for either the alternate or the primary position.

COMMISSIONER ANAYA: So I enjoy – this is one of the few that I have been able to attend and sit on. I'd like to continue to sit on it. I don't know what your pleasure is, Mr. Chair. Do you want to stay the same as it is?

CHAIR ROYBAL: Yes, I'm fine with that.

COMMISSIONER ANAYA: Okay.

COMMISSIONER HAMILTON: Sounds good.

MR. FLORES: So, Mr. Chair, you'd be the primary, and Commissioner Anaya, you'd be the alternate.

CHAIR ROYBAL: That's correct.

MR. FLORES: The next one on the list is the North Central Regional Transit district. Again, we have one primary member who is currently Commissioner Moreno and one alternate member who is currently Commissioner Hansen, and based upon the discussion and the information, that would stay as it currently stands unless there's changes by the Board.

COMMISSIONER ANAYA: Good. Have you guys both been going together?

COMMISSIONER MORENO: No, but we do communicate if one of us is sick or not available. We have managed to be there for the Board meetings and in addition, I'm the chair of the Finance Subcommittee and I'd like to keep that as well.

COMMISSIONER ANAYA: That sounds fine with me. This was one that I may have wanted to be the alternate but I think it's working fine and if I have concerns, Commissioner Moreno, I think we've had some discussions on the bench relative to – it's not even my district, Commissioner Hamilton, it's Commissioner Hamilton's area. Glorieta, expanding the route that goes from Santa Fe to Golden and figuring out if we could make that a commuter route. I know we had it as a pilot route and it was running periodically but I think that's one that I'm hopeful we can continue to keep it on discussion as a commuter route to Golden or at least maybe to Madrid.

COMMISSIONER MORENO: I'll bring it up at the next meeting.

COMMISSIONER ANAYA: So I'm okay.

MR. FLORES: Thank you, Mr. Chair, Commissioner Anaya. So the next Board up is the North Central New Mexico Economic Development District. The primary member is currently Commissioner Hansen, which she's indicated she'd like to remain on that board, and the alternates are Commissioner Moreno and Commissioner Hamilton. So I'd be looking for one primary, who's currently Commissioner Hamilton and then two alternates.

COMMISSIONER HAMILTON: So let me just say I think holding that the same is great, but I have not been required as an alternate and given all my other

commitments so if – I'm happy to continue as an alternate but if Commissioner Anaya was really interested and has a lot to bring to that or anybody else, I'm happy to trade, or not trade.

COMMISSIONER ANAYA: Yes, I'd happily be an alternate on that particular one.

COMMISSIONER HAMILTON: That might be a good idea because I have not really contributed substantially to that and while I'm happy to keep it on I think it would be great for Commissioner Anaya to take that.

MR. FLORES: Thank you, Commissioner Hamilton. So Mr. Chair, Commissioner Moreno, would you desire to stay as an alternate on that board?

COMMISSIONER MORENO: Yes. I would be willing.

MR. FLORES: So, Mr. Chair, is that acceptable?

CHAIR ROYBAL: That's acceptable.

MR. FLORES: So the next board, we're looking for three primary members and one alternate is the MPO. Currently, Commissioner Roybal, you serve as the alternate and the primary members are Commissioner Hansen, Commissioner Anaya, and Commissioner Moreno.

CHAIR ROYBAL: I'm fine with that if everybody wants to hold on to those positions.

MR. FLORES: Thank you, Mr. Chair. The next board, or the last board, I should say, with the exception of the Investment Committee is BDD. And currently we have two primary members – Commissioners Roybal and Hamilton, and the alternate is Commissioner Hansen.

CHAIR ROYBAL: Okay. I think we're fine with leaving that the same.

MR. FLORES: Okay. Thank you, Mr. Chair. So what I'm going to do is run through the boards with the exception of the Investment Committee and unless Bruce says otherwise, we'll take a motion for those items and then we can defer the one on the Investment Committee.

BRUCE FREDERICK (County Attorney): Sounds good.

MR. FLORES: So Mr. Chair, the motion that I'd be seeking is the motion to approve Board and staff recommendations as follows: For BDD, Commissioner Roybal would be our primary and Commissioner Hamilton would be primary, with Commissioner Hansen as an alternate. For MPO, Commissioners Hansen, Anaya and Moreno would be primary members, and Commissioner Roybal would be the alternate. For the North Central New Mexico Economic Development District the primary member would be Commissioner Hansen with alternates Commissioners Anaya and Moreno.

For NCRTD the primary member would be Commissioner Moreno; the alternate would be Commissioner Hansen. For the Regional Coalition of LANL Communities, Commissioner Roybal is a primary; Commissioner Anaya is the alternate. For SWMA, Commissioners Hansen, Hamilton and Moreno would be primary and Commissioner Moreno would be the alternate. For the Audit Committee, Commissioner Hamilton and Commissioner Hansen would serve on that committee. For EVEDA, Commissioner Anaya is the primary voting member, and the Deputy County Manager is the alternate member – non-voting.

For the Association of Counties Multi-Line Pool, Manager Miller is the primary

and Commissioner Moreno is the alternate, and for the Association of Counties Worker's Compensation Pool Board, Commissioner Roybal is the primary and Commissioner Moreno is the alternate.

COMMISSIONER HAMILTON: I would move to accept the committee assignments for the Commissioners as just read by Deputy County Manager Flores, noting that we are holding aside the decision on the Investment Committee.

CHAIR ROYBAL: So we have a motion from Commissioner Hamilton.

COMMISSIONER MORENO: I would second.

CHAIR ROYBAL: And we have a second from Commissioner Moreno.

The motion passed by unanimous [4-0] voice vote.

III. B. 2. Appointment/Re-appointment of Three Members to the Santa Fe County Planning Commission

VICKI LUCERO (Growth Management Department): Thank you, Mr. Chair. The SLDC gives the BCC the authority to appoint members of the Planning Commission. The Planning Commission consists of seven members. The terms of three of the current Planning Commission members expired now in January. One of those members represents Commission District 2 and the other two are at large positions.

In November of 2017 the County sent out a press release seeking interested members of the general public to serve on the Planning Commission. We received responses from 13 individuals which includes two of the three current members who have requested reappointment. Four of the applicants that submitted a letter of interest to serve on the Planning Commission reside in Commission District 2. This includes the current member, Mr. Charlie Gonzales who is interested in serving another term.

The applicants for District 2 are Charlie Gonzales, Martha Brett Holliday, George Shoup, and Felix Moeker. We also received letters of interest from applicants who have requested to serve as the at-large members and reside in different areas of the county. From District 1 we have Susan Martin, Richard Reinders, David Neal. District 2 is as listed above and any of the candidates from District 2 who were not chosen to serve as the District 2 representative are eligible for that at-large positions. From District 3 we have Steve Shepherd, District 4 Peter Dodds and Patrick Murphy, and from District 5, Cedric Page, Gail Odom, and John Nitzel.

The applicants' letters of interest and résumés are included in the packet in Exhibit B. Staff recommends the reappointment of Charlie Gonzales for the District 2 member and the reappointment of Susan Martin as an at-large member to serve two-year terms beginning January 2018 until January 2020. And in order to provide diversity within the Planning Commission staff recommends appointment of Gail Odom to serve as the second at-large member on the Planning Commission for a two-year term beginning January 2018 until January 2020.

Thank you, Mr. Chair. I stand for questions.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I appreciate the work and the

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résumés and the people, all of the people, I want to just say that I appreciate their collective interest, especially on a committee like this one. All our committees are very important but this one's very important, very active within the community. I respect very much the recommendations of staff. However, I do have one adjustment that I'm going to move on because the particular individual that I want to nominate, I'm going to go with a motion to approve Charlie Gonzales and Susan Martin but I'm going to reflectively, respectively digress from the recommendation on Gail Odom, not because I have anything whatsoever against Ms. Odom but I do believe Mr. Steve Shepherd, the representative that's put his hat in the ring, if you will, from Madrid, is a very responsive, responsible individual that's served the Madrid community and Santa Fe County as a whole, helping people across the whole county.

And so I would, Mr. Chair, move for Charlie Gonzales for District 2, Susan Martin, and then I'm going to move Steve Shepherd for the alternate position, Mr. Chair.

CHAIR ROYBAL: Okay, so we have a motion.

COMMISSIONER HAMILTON: I have a question.

CHAIR ROYBAL: I think we have to see if there's a second.

COMMISSIONER HAMILTON: I'll second.

CHAIR ROYBAL: Okay. We'll go ahead and hear your question.

COMMISSIONER HAMILTON: It's a simple question in regard to your motion. I guess I misunderstood. I thought Steve Shepherd was already serving in District 3? Got it. Thank you. Got the answer. I'll second.

CHAIR ROYBAL: Okay, we have a motion and a second.

The motion passed by unanimous [4-0] voice vote.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Just another additional comment. Like I said, I appreciate those continuing members. Appreciate Ms. Odom and hopefully she'll maintain her interests and there are always opportunities that come down the line to serve. But I just want to emphasize, one of the comments you made was relative and I say this respectfully. In fact Mr. Shepherd is sitting right back there. If you want diversity, and you're talking about Madrid, that's about as diverse as you can get. So Mr. Shepherd I know will be a fair and impartial individual that will sit on that board responsibly to provide recommendations along with the rest of the Planning Commission. Mr. Shepherd, why don't you stand since you're here. That's Mr. Shepherd right there. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya.

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III. 3. Miscellaneous

1. **Approval of Construction Contract No. 2018-0143-PW/KE Between Santa Fe County and G M Emulsion, LLC in the Amount of \$376,353.13, Exclusive of NM GRT, for the Piñon Hills All-Weather Crossing Project; Authorizing the County Manager to Sign the Purchasing Order**

BILL TAYLOR (Purchasing Director): Thank you, Mr. Chair, Commissioners. We have a contract before you. We did an invitation to bid. We received ten bids on this solicitation that ranged from an amount of \$807,664 to the low bid of \$376,353. And we're before you to ask for approval to award that construction contract to GM emulsion for that amount. And with that, Mr. Chair, I'll stand for questions.

CHAIR ROYBAL: Do we have any questions from the Board?

Commissioner Hamilton.

COMMISSIONER HAMILTON: I have a general question. The range of bids was pretty large. Like the high bid was more than twice as high. Do you have any reflections on taking the lowest bid. I read the things. I know they were all qualified, which means they all met whatever specs, but do you have any insights into the reasons that some of the bidders bid more than twice as much for what is spec'ed out work?

MR. TAYLOR: Mr. Chair, Commissioner Hamilton, there was some discrepancies about the application of the all-weather crossing and solution. The engineer reviewed the bids and didn't find anything that was outstandingly a red flag. I'd have to look at that and provide you with the notes from the engineer regarding that diversity between the high bid and the low bids. They tend to do that with some of the mobilization from out of the city to that area. Did you have anything to add, Mark, on that? Mr. Hogan may have some additional information.

MARK HOGAN (Public Works): Mr. Chair, I think it also had to do a lot with the fact that it was a local contract who is very familiar with the conditions and available materials.

COMMISSIONER HAMILTON: Thank you. That's helpful. And knowing – I would have made the assumption but I felt it was not unreasonable to ask also here that there might have been inputs that really caused that difference that you guys looked into that.

MR. TAYLOR: Mr. Chair and Commissioner, we do look into that, not only the range but when there's a bid that low we look and make sure they have all the conditions covered and all the specifications to meet that solution there for that all-weather crossing. So the engineer of record has verified that with us.

COMMISSIONER HAMILTON: Thank you. Thank you, Mr. Hogan.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair and Commissioner Hamilton, I really appreciate you asking the question and I know Manager Miller and many other people in this room have had experience in dealing with bids and bidders and that internally, you guys work hard to make sure that we are awarding the lowest responsive

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bid. But frankly, I'm just going to be brutally candid, I think there is many times a tendency, especially the larger it seems an entity gets, a governmental entity in particular, there seems to be more and more of a tendency in the bidding and the practices for us to get gouged at times.

And so I know you guys are always on guard to make sure that that doesn't happen, but it does seem straight up that the costs for similar work in the private sector get escalated just because they're government and what's anticipated to be a cost or the rule of thumb of ten percent for a particular professional service or not, and I think it's always good, as Commissioner Hamilton asked the question, to at some point figure out and go back and take a look at our bids and kind of where we've been over time to make sure, right? And I know you guys are doing this due diligence all the time, but I think the counties, or the larger counties in particular and state entities sometimes get taken advantage of and that's why it's important that we have yourselves and other mechanisms.

I mean I had many occasion not as a government employee but as a private employee having a particular individual say, well, I'm going to charge you for this architectural and engineering cost because that's the norm. And it's like, no, I want you to give me a cost for a service based on the work that you're going to do, not because it's supposed to be apparently ten percent of the total construction cost. Many times, trust me, it's not ten percent of the actual work to get a particular job done.

I say my comments in no malice towards staff but always we should have that error of caution to do as Commissioner Hamilton is suggesting, make sure that low bid isn't well underbid – right? First and foremost, but also make sure that there's some respect associated with those estimates that we provide and that we're not being put in a bad position. And I know you're working doing estimates and all those other things, Mark and others, but I know sometimes governmental entities – let me just say it with a broad brush – get taken advantage of. Go ahead and respond, Mark. I think it was a good question and it's a good little discussion that we're having here.

MR. HOGAN: I appreciate the opportunity, Mr. Chair and Commissioner Anaya, because I think you're absolutely right. A lot of times people just say – especially now that the bidding climate is more competitive, they tend to take, if they don't really want the job, they'll throw a higher number at it and just see if anybody else is more desperate than they are. I do know in this case that's not the situation, which is why we see such a gap between the high and the low bid. This is a contractor that we work with all the time that does really good quality work and they're very cooperative to work with and so we know that they're not one that gouges. So when they come in with a bid like this it kind of helps us understand what else is going on in the market. Thank you.

COMMISSIONER ANAYA: Appreciate the question, Commissioner Hamilton. Appreciate the feedback and I guess we always are continually review and revision framework and constantly watching out for it. I know that's where the Manager spent most of her early years and career was in procurement and construction, so she definitely has been there and done that. Did you have any thoughts, Manager Miller?

MS. MILLER: Mr. Chair, one of the things I was going to ask Bill was did you have a fairly good competitive range, or was this one just drastically lower than the core of the bidders. Because you can always have an outlier top bidder, and whether you

had the contractor verify they had no mistakes in their bid.

MR. TAYLOR: Well, the bid that came in, the low bid, was under the engineer's original cost estimate of the project, so the outlier, the \$807,000 was above. All the others were around the range of the estimate. And keep in mind that this contractor, as Diego Gomez pointed out, is five miles from the construction site, which is considerable. They historically have been able to bring projects in under budget for us.

MS. MILLER: Mr. Chair, Bill, what was the next lowest bidder? Do you remember?

MR. TAYLOR: I'd have to get that. I didn't bring that with me, Katherine.

MS. MILLER: I think it would be helpful for the Board, when you in future memos that you put all the bids so they can get a good sense of what the competitive pricing was on it. Because, like I said, you might have an outlier like the high bidder but it really depends on where the chunk of your bids are as to whether it's likely to have had a mistake or not.

MR. TAYLOR: And I could provide that too.

ROBERT MARTINEZ (Deputy Public Works Director): Mr. Chair, County Manager, I was at the bid opening. I believe the next lowest bid was about \$100,000 above the low bid.

COMMISSIONER ANAYA: Thank you, Mr. Chair, and thank you for the question, Commissioner Hamilton, and the discussion. I think it was a beneficial one. Especially given the volume and the large amount of resources that we allocate and expend on projects like this annually. A lot.

CHAIR ROYBAL: Thank you, Commissioner Anaya. Did we have any questions or comments from the Board? If not, what's the pleasure of the Board?

COMMISSIONER HAMILTON: I would move to approve.

CHAIR ROYBAL: We have a motion from Commissioner Hamilton.

COMMISSIONER MORENO: Second.

COMMISSIONER ANAYA: Second.

CHAIR ROYBAL: And multiple seconds.

The motion passed by unanimous [4-0] voice vote.

- III. C. 2. Request Approval of Amendment No. 1 to Agreement No. 2017-0120-SO/IC with Santa Fe Animal Shelter and Humane Society for Animal Care and Sheltering Services to Extend the Agreement for a Term of Three Years and Increase Compensation for a Not to Exceed Amount of \$796,722.12 inclusive of GRT and Grant Signature Authority to the County Manager to Sign the Purchase Order**

MR. TAYLOR: Thank you, Mr. Chair and Commissioners. As you stated, we have before you an amendment to the existing contract agreement with Santa Fe Animal Shelter and Humane Society to provide animal care and sheltering services. This amendment will extend the agreement out to a three-year term to 2020. And with that compensation of an additional \$796,722. Approximately a little over \$16,000 per month

for services that we'll be providing. With that, Mr. Chair, I can stand for any questions regarding the amendment.

CHAIR ROYBAL: Okay, do we have any questions from the Board?

COMMISSIONER MORENO: Mr. Chair.

CHAIR ROYBAL: Commissioner Moreno.

COMMISSIONER MORENO: What is the volume of pets that are treated at the facility?

MR. TAYLOR: Mr. Chair, Commissioner Moreno, I'm sorry I don't have that information. I was hoping that somebody from Animal Control would answer that but I can get that information to you.

COMMISSIONER MORENO: That would be good. Thanks.

CHAIR ROYBAL: Okay, any other questions from the Board? Seeing none, what's the pleasure of the Board?

COMMISSIONER MORENO: I move approval.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: A motion and a second.

IV. MATTERS OF PUBLIC CONCERN

CHAIR ROYBAL: Is there anybody from the public that would like to address the Board today? Once again, is there anybody from the public that would like to address the Board? Okay, seeing none, I'm going to close Matters of Public Concern.

V. MATTERS FROM THE COUNTY MANAGER

A. Miscellaneous Updates

MS. MILLER: Mr. Chair, I have a couple of – we have a legislative update and some updates on two of our ordinances that we have working groups working on on the Ethics Ordinance. We have the Ethics Board and then also on animal control we have a task force that's been working on amendments to the animal control ordinance. But before they start the legislative update I was going to remind people we do have meetings tomorrow night and Thursday night in Pojoaque for the Nambe proposed agreement with Nambe tomorrow night on the County maintained roads in Nambe and then for Thursday night for the proposed agreement with Pojoaque on County maintained roads within the pueblo boundaries of Pojoaque. And both of those meetings are at 6:00 at the middle school gymnasium.

Also next week is the midwinter conference for the New Mexico Association of Counties. I believe some of you have signed up for that but they also have EDGE classes on Monday and Tuesday for Commissioners, and they still have availability if you're interested in participating in those classes and had not originally signed up for them. The EDGE program just notified us that they have availability and you could sign up the day of. We just need to make sure that we have a purchase order that's in place for you. So if you're interested in that please just let Tessa Jo or your liaison know and we'll make sure that we get you signed up and get a purchase order with the program to cover the costs of the class. It's \$50 per class. And those are on Monday and Tuesday before the conference

starts. Additionally, for those of you who just got appointed to the Worker's Comp Board, and that would be Chair Roybal, that we need to let you know that Tuesday morning is the general membership meeting – I'm pretty sure it's Tuesday – for the Worker's Comp Board. If you won't be able to make that, Commissioner Roybal, then we would need to have Commissioner Moreno, because I did tell the Association of Counties that we would let them know as soon as the appointments were made to those two boards who would be attending on Tuesday for the general membership meeting.

And so those are the only updates I had for you and with that I'll turn it over to Tony and Rudy for the legislative update.

V. A. 1. 2018 Legislative Session Update [Exhibit 1: 2018 Legislative Report]

MR. FLORES: So it kicks off next Tuesday, Mr. Chair, and there's one meeting that the County Manager – I was going to bring it up later – we're actually going to attend the Representative Trujillo listening meeting on Monday evening the 15th at the Nambe Community Center at 7:00 regarding roads in the north. So that's another meeting that we had on the list.

We provided for you the legislative report. This will be one of many. We do have a 30-day session quickly approaching. There was a large flurry of pre-files at the end of the calendar year, right as soon as the pre-file came in, the middle of December to the end of December and through this morning. We've listed out in the back part of the presentation, starting on page 8, we've indicated or provided all the related resolutions that this Board has passed in support of certain things. The ICIP, the Senior Services ICIP, Resolution 2017-106, which supported the five priorities for the New Mexico Association of Counties. We passed Resolution 2017-140 which deals with the state tax stabilization as it relates to the labs up north; that was Commissioner Roybal's piece of legislation.

We also have recently passed the New Mexico Grown Fresh Fruits and Vegetables for School Meals program. That's Ms. Roy's annual piece of legislation, and then we also passed a resolution to support the 2018 farm bill.

Those are items we've actually acted on and received direction from the Board to take starting next Wednesday, not necessarily Tuesday but next Wednesday. It will take them a little bit of time after the opening session.

The pre-file legislation that Mr. Miller provided on page 9 goes through quite a few of the bills that we've already got in the tracking list on pre-file. So they've been assigned a House or Senate bill, memorial or resolution number, and those will come and be turned into a bill once the session starts. Quite a few of them deal with law enforcement protection fund, the inmate recidivism reduction transition program at the local and state levels. That, believe it or not, actually applies to jails that the County runs or the counties run, so we'll have an analysis done on that and what that means, the fiscal impact to us as a county. All the way down for the increased elected county officials and salary caps for Class A counties. They're proposing an increase to both commissioners and other elected officials if this is enacted at the next start of the term. So that is one that we'll be watching.

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The planning fund tax reform package, we've been through the interim process since last may. Tax reform may or may not go. There's still some discussions on that, so it should be one of the most interesting sessions I've ever been involved in to say the least. There have been a couple of bills that have been discussed that are in draft form that Director Martinez from the RECC is watching. One of them is to set up a statewide organization for the 911 center's board basically, and the other one is the transition from the 911 fund from the Department of Finance and Administration over to the Department of Information Technologies.

So those are some interesting pieces of legislation that are not pre-filed but we do anticipate them dropping either before the Tuesday or sometime shortly after the session starts. So this is just the first report of many. Every BCC meeting we'll have an update as well as communications going out via email to the Commissioners to let them know where committee meetings are on those resolutions that you have adopted, either in support or against, and we will provide kind of a roadmap as we start hitting the ground next Tuesday afternoon. So, Mr. Chair, that's the only update I have on the legislative session, other than Santa Fe County Day at the session – I apologize – January 25th, and we ask the Commissioners be present for that as they will be reading the memorials on both the Senate and the House side, and then has been the custom in the past three years, we will have staff set up in the East Rotunda, I believe, demonstrating what Santa Fe County is and what it does.

MS. MILLER: Mr. Chair, I just wanted to add to that what we've done in the past, and I would anticipate we'll do this throughout the session is bring you a list of bills that have been introduced that we think are relevant to the County and have the ability for you to direct us as a Board whether you support or oppose the legislation so that you would vote and tell us whether or not you would want us to stand up and speak in favor or in opposition to a piece of legislation. On this list I believe House Bill 35, Senate Bill 17 and possibly Senate Bill 49, based on the resolutions you've already passed relative to the Association of Counties' priorities would fall under categories of bills that we could potentially support. I say Senate Bill 49 because of course we need to look at whether that has anything in it that would be negative for the County revenues, but resolutions that you already passed indicated support for House Bill 35 and Senate Bill 17. I don't know if there's any others on there, Tony, on this list.

MR. FLORES: Not on this list, Mr. Chair, Manager Miller.

MS. MILLER: But at our next meetings, including if we have any special meetings this month, which we're likely to talk about later this evening, and when we might have those, we would add a caption for you to give us direction on legislation if you would like us to speak in support or in opposition of anything that's been proposed.

CHAIR ROYBAL: Okay.

MR. FLORES: Thank you, Mr. Chair.

V. A. 2. Update on Revisions to the Santa Fe County Ethics Ordinance

MR. FLORES: So the next item on the updates is a couple of updates on the revisions to both the Ethics Ordinance. As you recall, there was an effort between 2010 and 2012, sometime around 2015 as well, to bring back amendments to the Ethics

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Ordinance or the Code of Conduct. The board termed out. We brought back recommendations last January to the Commission for appointments to the Ethics Board. Their first meeting after the January 31st appointments was March 6th and they have been working – not bi-weekly; every third week, basically to try to bring forward a listing of proposed changes at the Board's direction, to clarify certain provisions of that, to deal with what anything of value or benefit is quantifies as, etc.

And they've been working through the whole calendar year, basically, from March of 2017 through December. At the January 30th meeting we will bring forward a request to publish title and general summary, all the changes that the Ethics Board committee has recommended that the Board consider for revisions for clarity in the ordinance. So the plan is to bring, at the end of this month, the regular meeting, the last meeting of the month, the request to publish title and general summary changes to that ordinance. And at that time we will have a comparative document that outlines all the different reiterations and iterations of the ordinance as has been proposed by various boards and committees. And I'll stand for questions on that one.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: So Mr. Chair, I have a simple recommendation relative to that and that's that before it gets published for title and general summary I would suggest an overview of the proposed changes to the Commission before it gets to that point.

MR. FLORES: Okay.

COMMISSIONER ANAYA: And then maybe subsequent to that, recommendations that would come to publish title. By the time we get to the publishing title I would think it would be good for us to have a better understanding of what those changes are and see where they're at before we publish right away. If that sounds okay. Does that sound all right? Does that sound reasonable?

MS. MILLER: Mr. Chair, Commissioner Anaya, I think that's a good idea. I don't know if you recall but one of the last times, I don't think the Board did actually adopt, because there were so many changes and really didn't have a good opportunity to vet those and have discussion back and forth and to change any of them. And it was significant. It was kind of a rewrite of the whole thing, almost. And so I think that's really appropriate to bring forward some of the recommendations and have some dialogue back and forth and in particular to be able to give staff some input back to the Ethics Board if there's things you want them to continue to review and make recommendations on.

COMMISSIONER ANAYA: Thank you. Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair and Ms. Miller, thank you for that feedback. The other thing I guess, we probably wouldn't be able to do it. In fact I don't know – are they going to pursue the statewide Ethics Board in this session, or not necessarily or they might?

MR. FLORES: Mr. Chair, Commissioner Anaya, I have not seen that as a pre-file piece of legislation.

COMMISSIONER ANAYA: So the reason I put that forward is because

I've always been vocal and supportive of that initiative on a statewide basis because what's happened is we took it on ourselves as a county and were one of a few counties that actually took it very seriously and said we're going to do this, but I've always been supportive of a more comprehensive placeholder for an Ethics Board as opposed to having numerous boards all over the state of New Mexico. So I think that – and I don't know that we had a resolution at some point in the past, but if you could look, Ms. Miller, I think it's something that we could get our hands around as a Commission and support would be a comprehensive Ethics Board that would deal with the issues statewide, which I know was one of the concepts many people are pushing and supporting. So if you can get us more information about where that is. I know there's a lot of people that are pushing that but I have no idea where it is within the legislature.

MR. FLORES: Mr. Chair, Commissioner Anaya, it may make sense that based upon those suggestions, which we can definitely take a look at that is I wouldn't bring forward the publish title and general summary till February and that would allow us to have a presentation at the last meeting of the month and also answer any of those questions. Because at that time we won't know what the status is on any statewide Ethics Board. It may make sense timing-wise to have that information first.

COMMISSIONER ANAYA: And if I could, Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya, go ahead.

COMMISSIONER ANAYA: I wouldn't even set a date, right? Because what we have found – land use is a good example – is that we don't want to be premature, roll something out, and then come back and try and revamp it right away. I'd rather make sure that we're comprehensive and ready and if the Commission is ready as a majority to advance it, so be it. But as opposed to –

MR. FLORES: So we do a presentation, Mr. Chair, Commissioner Anaya, first?

COMMISSIONER ANAYA: A presentation, see where the feedback goes relative to feedback from the Commission if there's any. Maybe there's not going to be any. And feedback from the staff and then let that process evolve through the feedback, I think instead of just maybe laying out the whole publish title and general summary process. That's my thought.

MR. FLORES: Thank you, Mr. Chair, Commissioner Anaya.

V. A. 3. Update on Revisions to the Santa Fe County Animal Control Ordinance

MR. FLORES: So the next item is an update on the revisions to the Animal Control Ordinance. Last March this Board established the Animal Control Ordinance Advisory Committee. It's a long – I couldn't even come up with a correct acronym and say it right. And the purpose of that committee was to take a look at two provisions of the recently adopted Animal Control Ordinance.

The first one was to develop recommendations regarding amendments to the ordinance to improve the clarity of the provisions governing tethering of dogs and the second one was to develop recommendations to improve the efficacy of the prohibition on barking as set forth in the animal disturbing the peace.

So the Board established the committee last March. We brought back between March and July appointments to that board and they held their first meeting in August. That committee concluded their work at the end of last year and we would be bringing forward a much simpler document because the ethics is 25 pages, versus two pages, potentially, to this one. So what I could do in the same vein is at the end of the month have a presentation on where we were and where we're at and where we're going for both of them and then develop feedback from the Board before we establish any schedules for the eventual ordinance consideration. If that pleases the Board.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: It's ironic that this particular issue is an excellent example of making sure that we have had discussions and vetted discussions before we go to publish title and general summary. I appreciate the work of the group because I know we had a very comprehensive document that we pared down tremendously to get to the crux of improving our ordinance and then making sure that there was clarity and support for those key issues that people were bringing up. It sounds like that's where we're at.

MR. FLORES: So in the same vein as the Ethics, we'll do the same presentation at the end of the month and then we'll see what direction the Board gives us at that point. With that, Mr. Chair, I stand for any other questions.

CHAIR ROYBAL: Do we have any other questions from the Board?

MR. FLORES: Thank you, Mr. Chair.

MS. MILLER: Mr. Chair.

CHAIR ROYBAL: Manager Miller.

MS. MILLER: I have a little update for Commissioner Moreno, because I remembered that in the animal shelter contract we had a number. About 16,000 per month, covers up to about 120 animals a day and they have – it's like for a five-day stay. In other words, if the Animal Control picks up an animal they will take it to the shelter. The shelter will keep it for the owner to claim it for the five-day period, and then the animal can be put into adoption.

The Santa Fe Animal Shelter strives to be a no-kill shelter so most of them would move to the adoption. I think they only euthanize ones that are not adoptable and I'm not even sure they do that anymore. They're very careful about that. And so that fee covers that cost of up to an average of 120 animals average population, five-day stay, all their vet care that might be needed when they're brought in. They also manage our licensing program and then we have an additional fee if we have, for instance, a hoarding case where we might have 30 or 40 animals and we work with them to try to – if those don't fit within our regular process of processing an animal through the shelter.

So that gives you an idea. I remembered always the population stayed around 100 to 120 on any given day, but they're typically there for five days under our care, that we're compensating the shelter for. And we've had as many as 140, 145, but it stays more around the 100 to 120 range during the average month.

COMMISSIONER MORENO: Thank you for the report.

CHAIR ROYBAL: Thank you, Manager Miller. Any other questions?

VI. DISCUSSION/INFORMATION ITEMS/PRESENTATIONS

A. Matters from County Commissioners and Other Elected Officials

- 1. Elected Officials Issues and Comments**
- 2. Commissioner Issues and Comments**

CHAIR ROYBAL: I don't see any other elected officials in the chambers so I'm going to go ahead and close item number VI. A. 1, which is elected officials issues and comments and go to item VI. A. 2, and these are Commissioner issues and comments. Do any of the Commissioners have announcements? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I do. I'd like to go through a few things if I could and this will encompass probably updates related to projects as well so if I could I'll just go through a few if that's all right, Mr. Chair.

CHAIR ROYBAL: Sure.

COMMISSIONER ANAYA: So the first thing, and I just had lunch and saw the former Commissioner Linda Grill and she stopped me on the way out and raised a concern relative to the La Cienega library. And so I told her I would come to the meeting and put it on the record. So that's what I'm doing. And so what she said to me, and this is what I wanted to get feedback from you on or staff or anybody else that wants to provide it. What she said was that the library wasn't being used and that we were waiting on internet service for the library and that apparently there is somebody that had expressed an interest in paying for the internet service at the library but that was not an allowable function.

And I said, well, that's interesting. This is the first I've heard that we hadn't been using it because we did the opening for it last year and I'm assuming we are using it but I would like to see if – and maybe if you don't know, Ms. Miller, maybe if Rachel, you could respond as to the use and then specifically relative to the internet, maybe we just could look into it and figure out what the issues are with the internet.

Obviously, as I think all the Commissioners are aware, we have broadband concerns just because of access, right? There's places in the county that we frankly just don't have access. Galisteo is a tough area and other areas, but I don't know if it's an access issue or what but I told her I'd come and I'd put it on the record and ask and please assure me that we are using the library, but if there's any other things that are happening associated with that library use, let me know so I can get an update. So there you go, Commissioner Grill, if you're listening in. But Ms. O'Connor.

RACHEL O'CONNOR (Community Services Director): Mr. Chair, Commissioner, thanks for bringing those issues forward. I'll just have a quick response. One is I think the library is getting usage. Perhaps not as much as we'd like to see, but definitely the community center and the library in general do tend to get usage. The second issue, in terms of internet access, and I just spoke with IT Director Sanchez as I came into the room today. He said that we've had difficulty getting access to internet at La Cienega. Both Anna is working with his staff to see if Hughes Net might be an option out there, and what the pricing on that would be. So it is an ongoing issue but we have had difficulty getting internet at La Cienega. So thank you for reminding us to look again at the issue.

COMMISSIONER ANAYA: And I guess a follow-up to that particular

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question was there was a comment that there was someone that was willing, and I'm going to use her words literally, there's somebody willing to pay for it, but that's prohibitive by the County. I said I don't know. I'll ask that question. Is that prohibitive? If somebody wanted to pay for a functional use for internet service, if for example, Tony wanted to pay for the internet use somewhere, would we let him if we had a mechanism, I guess, to do that?

MS. MILLER: Mr. Chair, Commissioner Anaya, it's permissible for the County to take donations for specific purposes. So for instance we've had people donate money to purchase a dog for the police, for the Sheriff's Office. So we have people who make donations for specific purposes and we can actually accept those and budget them specifically for whatever intent they want as long as it's a government function that we can do. So if somebody made a donation for us to purchase alcohol for a party, we could not do that but we can accept a donation for a specific purpose and spend that money as long as it is an authorized expenditure of the funds.

COMMISSIONER ANAYA: I appreciate the response, and I think Commissioner Roybal, I think I'm going to make a suggestion because you have the most community centers, I think, in the whole county. Commissioner Moreno, we have the senior center and the facility center gets used and I have La Cienega and then the Cyclone center where we have some use, but you, overall, probably have the most community space type use and as I was hearing the concerns I was thinking, what mechanism can we put in place that conveys to not only yourself, right? Because just by the look on your face you hadn't heard that concern and I was the same way. But Mr. Shepherd a few months back had some issues that came up and he picked up the phone and said, Robert, here's some concerns I have: x, y, z, and we work on it. But maybe we as a Commission can figure out a simple mechanism that helps you, similar to what we do with the roads.

I think that we've learned a lot from the work order system with the road requests because like housing, you have a track. You have a track timeline and a tool that staff can use to not only attain the feedback and provide the responsiveness and feedback. And it's not always, okay, we're going to do it; you're going to have internet tomorrow. I know that. I know there's other more complex factors associated with that. But at minimum, it puts in play for you and for your team a mechanism to say, here's where the request came in. Here's the day staff, because I'm assuming that there's been discussion with maybe Mr. Garcia and maybe Ms. Bransford and other people relative to what the timeline is but we don't have any way of maybe capturing it, similar to the work orders.

So I know you've always worked on it and you're building those systems as time goes on, but maybe this is an opportunity with community centers where we can build in a practice we could use as a tracking tool where anybody could go see x, y, z had a concern. Here's what the feedback was and then here's some recommended parameter for achieving it. So did you have any comments, Ms. Miller, that you might want to add?

MS. MILLER: Mr. Chair, Commissioner Anaya, what we don't have, like you said, the work order I think particularly for roads and issues on County roads is a real great interactive process for constituents. We don't have that for, say, the senior centers and community centers, and we could look into something like that. But one thing we do have that does get followed up on and I actually do see it is on our website we have a place for either you can be anonymous or you can show your email and your contact

information, where you can make comments, complaints, concerns, and I get a regular report as those come in and we coordinate with the department to make sure that those are followed up on. Or the elected official's office.

And we get stuff all the time on there, and that's a regular method that people that have questions about how they get marriage licenses, or how they might get a response out of the department when they haven't been able to get one. Or it can be any subject. That gets monitored by – those get pulled off by the Manager's Office staff and I get copies of them, Tony gets copies of them, but they also then go to the department director of the elected official to follow up and we make sure that all of them are closed.

So that one's available, so in a case like that, if somebody had a question, if they were being told and it didn't sound right to them that they couldn't make a donation to the County for something, they could say, you know, we were told at a staff level that this couldn't happen. Could you tell us how we might be able to go about doing it and we would get back with the. So that is a mechanism that exists right now. It's on the County website and you just go into – I can get the specific spot on the website from Kristine, but it's an area for public comment.

COMMISSIONER ANAYA: So, Mr. Barela, if you could make sure – and I think this is all the Commissioners – make sure that we get that out to our contacts in the individual communities so that they can understand what those additional tools are that can help them not only put their request in but have it essentially tracked, right? Is what you're getting at. So I appreciate that response. Thank you, Rachel. I appreciate it.

So the next thing I have, I wanted to comment on is that I wanted to thank – and I mentioned this at the last meeting, but our road department, our crews, our people in the plans, Mr. Kelley and Mr. Martinez, Mr. Hogan and Diego on the team, they put in a lot of work not waiting around for bids to happen for construction to start. They're doing a lot of work countywide prepping roads associated for construction and drainage. So they're out there big time, right now and throughout the year getting ready for projects that are going to hit the ground and basically doing a lot of the advance work, and I really want to give them all – you in the room and those that are not and those crews that are doing it countywide in every district, that prep work and it's awesome. I'll tell you what, they're doing an exceptional job and it's very much appreciated.

I know that the public is providing a lot of feedback, just in the prep work and the drainage work that's happened thus far and so I appreciate that and want to give Mr. Kelley, you and your whole team a shout-out: Mr. Martinez, Diego, Erik – all you guys. And especially those crews that are day in and day out taking care of that work.

Cyclone Center, I just wanted to provide an update on the record that there's been some modifications that Ms. Miller got some feedback on as well as Mr. Flores and the team. There's been an interest, I guess, a lot more interest, in doing more bull riding at the arena, which is something we started preparing for. We bought the bucking shoots and some of the other stuff to get ready but they have to do some more prep work to handle those 2,000+ pound animals that are going to be in there doing those shows. And so that's underway, and I appreciate those efforts and that we're getting that level of interest in use.

On a different note, and I'm going to look to you, Ms. Miller, because you're a horseman yourself. I had a call from – and I know what's happening and I just want you

to maybe be part of the discussion that happens with Ms. Bransford and Ms. O'Connor, is I got a call from one of the 4-H Club leaders. I'll pass her name and information on to you – about the use. The horse use. And so what it sounds like is understandably we have liability concerns when we have kids that are riding horses in there, we want them to be safe and everyone to be protected. But apparently New Mexico State has certain rules and parameters for how they handle youth and youth riders and 4-H. So New Mexico State, through 4-H, and then we have our own requirements associated with use and function.

And so the simple question was put to me that the clover buds are the younger kids, and the younger kids are being able to list a horse project until they're not clover buds. Right? Until they're older. And so what's happening is there's those younger kids that have the appropriate supervision through a club or maybe a non-profit, but they don't fit within the parameters of New Mexico State University for their liability purposes. And so I wanted to see if you could use your creative abilities that are great and figure out how do we make sure that we cover the liability questions associated with using the facility but still allow those younger kids if they have the proper supervision the ability to use the facility. Does that make sense? And so that's the concern, right? They're prepping these kids, they're doing training now but now in the cold months they can't get inside that facility and that's what they want to be able to do. So I said I'm supportive of it but I can see that there's variable liability questions and we'll just have to get everybody in the same room to try and resolve it. So if you could help with that I'd appreciate it very much.

Commissioner Moreno, a few months back I brought up some questions relative to the Institute of Art and Design and that's your district. But Ms. Miller was going to reach out to the City, and I know there's an election happening and there's a lot of things in flux, but I'm also reading the papers. And I'm also seeing that the City's making some decisions relative to functional use of the property which it's their property; they have every right to do so. But I wanted to say publicly that I think we still have an excellent opportunity on the short term specifically with the library as a potential joint community space. Not that we would manage it or tell the City anything that they had to do but we invest real County dollars in our libraries – La Cienega, we mentioned earlier, and that particularly library is a huge treasure, as we all know. So I just wanted to just ask again, Ms. Miller, if you could reach out.

And I guess maybe, respectfully, if maybe we could broaden the net and at least let the City know that we have an interest in being part of the discussion which we said before and then we specifically have an interest in maybe the library being a hub piece that we could have broader discussions on and maybe that message goes out to not just the Mayor and the Manager but the whole City Council. Does that sound reasonable, Commissioner Moreno?

COMMISSIONER MORENO: I think I would support looking in that direction. With the election in the City looming, I don't think we know enough right now where the City is going to go. There are five candidates, five different visions and until all the crying and the laughing and all that – when the dust settles. Bad sequence of metaphors there. That we won't know what the City is going to do but I think we should keep our ears open and eyes open for any opportunities that work for us and not just as a token thing, but something meaningful that would be an asset for the community and for

the whole county.

COMMISSIONER ANAYA: Thank you, Mr. Chair. Thank you, Commissioner Moreno. I think we've all – I've heard them all be supportive of the investment in the library but I agree. I just don't want to lose sight because I'm reading other things and I just think we have a real opportunity there.

Another thing, Mr. Chair, Ms. Miller, that I needed to bring to your attention and I think Legal may have already received some communications from some of the community members, but several of the residents of the Village of La Bajada brought up an access concern that they've had for some time. They have agricultural grazing rights on the mesa above La Bajada and they had some access roads that they used to travel on, and there was some exchanges of property between the federal government and I believe Cochiti Pueblo. So these constituents are concerned and would like to have some feedback from us as the County, and I think frankly they tied the relevance of what's happening up north. They said well, we have road issues as well. I don't think they're the same. They're not the same issues but they're road issues nonetheless. And I expressed to them that I would convey it to my colleagues on the Commission and ask Bruce if we could do some due diligence to better understand the frameworks of their concern. And then if you could then meet with them and then come back to us and kind of enlighten us on what those challenges are that they pose. Are you aware of some of what I'm talking about?

MR. FREDERICK: Mr. Chair, Commissioner Anaya, I haven't heard of that issue. It hasn't been raised to me personally, but I think I understand the issue and maybe we can talk later and maybe I can get some contact information from you and I'll be happy to contact them.

COMMISSIONER ANAYA: Mr. Barela will give you their contact information. I don't mind saying on the record it's Mr. Gallegos brought the concern forward. I asked him, are you okay with me bringing that up on the record, and he said absolutely. And so I want to understand the issue. I guess what essentially happened is they had access. They had the access closed and now they have to go all the way around. They used to be able to go from here to the parking lot to get to the property that they graze. Let's say about a half a mile is what I want to say, and now they have to travel 15, 20 miles to get to the same place.

MR. FREDERICK: Mr. Chair, Commissioner Anaya, yes, I'll be interested to know the facts and whether that was a long-established public road on federal lands and what the status of that road is once it was exchanged and became pueblo land.

COMMISSIONER ANAYA: Awesome. The last thing I had today, Mr. Chair, I appreciate you indulging me to bring these forward was Ms. Miller, I know we had done our legislative priorities and at the meeting that we had associated with the legislators, the specific question was asked about the water rights. And that was one of the items that we had on the priority list because I had water rights acquisition, so that we begin to acquire the goal, from my perspective, would collectively as a County – and we've done this historically, but that we acquire water rights and bank those water rights for a future need or purpose, or we're acquiring water rights that actually creates a bank of water that's not utilized immediately which helps keep the aquifer replenished.

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Internally, have we had any discussions as a staff associated with water rights acquisition and banking across the county? And if you could just give me a brief snapshot of kind of your thoughts and maybe where we're at as a County as it relates to that particular question.

MS. MILLER: Yes, Mr. Chair, Commissioner Anaya. Actually Utilities has been working on an RFP to put out for acquisition of water rights. Because we do have some funds for that. In addition we're looking, and I think at our next BCC meeting, to bring forward a resolution to you about how to establish a rate for when developers do come in to acquire water rights for development. Right now we have a fee. That fee isn't based on actual costs of water rights. We want to use the RFP as a potential way to establish a value for that. In addition, the City has a rate that's been established over that same process and using that one for a reference point, but putting in front of you how we can start to establish a rate that's based on the true market cost to that and in addition start putting out there the RFP for acquiring rights throughout the county and getting some proposals in from individuals or entities that actually have rights for sale.

COMMISSIONER ANAYA: Awesome. Awesome. So Mr. Chair, we're way further along than I thought we were and I appreciate that. I know we had discussed it with all the other priorities that you've been dealing with as a Manager and the County's been dealing with. I'm appreciative that that has still remains on the burner. And I would just say to my colleagues that if there's one area that we would – that will help the County as we advance to the future it's acquiring as much water as we possibly can across every district and even to the point where if we're able to find collaborative partners in other regions that we serve – Rio Arriba, San Miguel, Bernalillo – that is going to be where we really, truly help serve our constituencies. Because along with – and it's the last thing I'll say with it, but I appreciate it that we're in that direction, but in that region, in the southern region, in the Stanley area, if we just isolate that one piece for a second and look at the infrastructure that's already coming around the region, you have the City of Moriarty that's coming from Moriarty North that has capacity to expand, you have several water utilities that have already expanded in Edgewood and are bringing their infrastructure. They're probably – Mr. Martinez – probably half way up 472? Or further. Maybe six miles up 472. We're actually creating loop systems or beginning to get to the point where we have loop systems and so that that whole region and countywide, there's going to be opportunities to work collaboratively with other entities to provide the water service needs.

Because what's happening and what we're dealing with in your district, Commissioner Roybal, is no different than what we're going to have to deal with countywide and statewide. It's just too darn expensive for individuals and individual families to continue to bear the cost of drilling their own wells and then the maintenance and upkeep, especially as you go deeper, those costs escalate higher and higher. And so more and more, I think there's a recognition that expansion and creation of other opportunities within our County system is important, but also giving communities the opportunity to expand and create their own systems internally or collectively with partners is a very high need.

So I appreciate the time, Mr. Chair and Ms. Miller, I appreciate those efforts and I'm happy to hear that we're advancing the cause, if you will, to create as much water

and banked water as we can, now and more importantly, for the future. So thank you, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya. And I wanted to say thank you for recognizing staff because they do a great job and also I wanted to say in remarks to some of the other services we could provide in the community centers, I know that right now, IT is looking at bringing internet service to the senior centers and community centers in my area. So I think they're pretty excited about that. So we are looking at that.

And also I just wanted to announce that I am having townhall meetings on the 10th for Nambe for the road easements at 6:00 at the Frank B. Lopez gymnasium and on the 11th – that's going to be for Nambe the 10th and for the 11th it's going to be Pojoaque Pueblo road easements, and again, that's at 6:00 at the Frank B. Lopez gymnasium, and those times and locations are correct. Is that right, Manager Miller?

MS. MILLER: It's 6:00. Yes.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: Yes, I just, in response to Commissioner Anaya, in the last topic you brought up, I think that's a hugely important topic and to the extent that you've thought about that more I hope it's something we can bring up during the strategic planning because I think the idea of that is to think about sort of short and long term and what you have to do now to plan for the future and what our biggest concerns are. And I just think that certainly is one of the important ones and it will be a great thing for you to bring up again in that context. So thank you.

CHAIR ROYBAL: Okay. Thank you, Commissioner Hamilton. Is that it? Okay, so we don't have any other announcements from Commissioners so I'm going to go ahead and close that item.

VII. MATTERS FROM THE COUNTY ATTORNEY

- A. Executive Session: Threatened or Pending Litigation in which Santa Fe County is or May Become a Participant, as Allowed by Section 10-15-1 (H)(7) NMSA 1978, and Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights, as Allowed by Section 10-15-1(H)(8) NMSA 1978, Including the Following:**
- 1. Rights-of-Way for County Roads on Pueblo Lands**

CHAIR ROYBAL: Can I get a motion to go into executive session and we'll be taking a 15-minute break in between going into executive session so we'll be in executive session around 4:15. So if we could get County Attorney Frederick to give us a summary of what we're going into executive session for.

MR. FREDERICK: Sure, Mr. Chair. We're going into executive session for threatened or pending litigation in which Santa Fe County is or may become a participant, as allowed by Section 10-15-1 (H)(7) NMSA 1978, and discussion of the purchase, acquisition or disposal of real property or water rights, as allowed by Section 10-15-1(H)(8) NMSA 1978, including the following: rights-of-way for County roads on pueblo lands.

CHAIR ROYBAL: Okay. Thank you for that summary. Do I have a

motion? Commissioner Moreno.

COMMISSIONER MORENO: I move to go into executive session.

CHAIR ROYBAL: So we have a motion. Do I hear a second?

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: So we have a motion and a second. Can I get a roll call?

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7 and 8) to discuss the matters delineated above passed by unanimous roll call vote as follows:

Commissioner Anaya	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Not Present
Commissioner Moreno	Aye
Commissioner Roybal	Aye

CHAIR ROYBAL: Thank you. We're in executive session. We should be back by around 5:30.

[The Commission met in closed session from 4:00 to 6:00.]

CHAIR ROYBAL: Good evening. I'm going to go ahead and take a motion to come out of executive session.

COMMISSIONER HAMILTON: Mr. Chair.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: I'd like to make a motion that we come out of executive session, indicating that the only things we discussed in executive session were those things that were put on the agenda and announced at the beginning of the executive session by the County Attorney Bruce Frederick, and that the people present were the four Commissioners who are present at this meeting, the County Manager, the County Deputy Manager, the County Attorney, Bruce Frederick and the Assistant Attorney Rachel Brown.

CHAIR ROYBAL: Okay, we have a motion. Do I hear a second?

COMMISSIONER MORENO: Second.

The motion passed by unanimous [4-0] voice vote.

COMMISSIONER HAMILTON: So Mr. Chair, could I make a further motion to slightly amend the remaining agenda for this evening's meeting? Most of you'll notice that Commissioner Hansen is absent. Unfortunately, Commissioner Hansen has been in the hospital for several days with pneumonia and is slightly better but was totally unable to make it to this meeting. Under the circumstances, given all the effort everybody has put into these agreements that we're going to be talking about she really wanted to be present at this meeting when action is taken on this. And so I would suggest

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that we – or I would like to make the motion that we continue the discussion, take the discussion and take comments on the agreements that are on the agenda, but that we defer actual action on the two agreements that were available to potentially take action on tonight and that we also defer action on voting for a new Chair and Vice Chair at next week's special meeting, and that we then also move up on the agenda that one item to set that, to discuss in the special meeting.

CHAIR ROYBAL: Okay, so we have a motion. Do we have a second?

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: So we have a motion and a second.

The motion passed by unanimous [4-0] voice vote.

MS. MILLER: Mr. Chair, for clarification the, your motion includes Commissioner Hamilton setting the date of January 18th, 5:00 pm.

COMMISSIONER HAMILTON: I'm sorry. That's correct. I didn't include that. Yes.

MS. MILLER: For the special meeting where we will have discussion and consideration of all four agreements as well as election – at the end of the meeting, the election of the Chair and Vice Chair for the upcoming year.

COMMISSIONER HAMILTON: That's exactly right. Thank you very much.

MS. MILLER: Okay. Thank you.

VIII. RIGHTS-OF-WAY FOR COUNTY ROADS ON PUEBLO *[Exhibit 2: Letters from Messrs. Ailes, Sandoval, and Swift]*

CHAIR ROYBAL: I'm going to go ahead and call Deputy County Manager Tony Flores.

MR. FLORES: Good evening, Commissioners. Before we get started there were a few people that I was going to recognize when we go through the individual agreements but since we've deviated a little bit. To my left, in the front row, Ms. Tracy Goodluck from the Department of the Interior, Water Rights Office, Deputy Secretary who's here with us tonight and she will be addressing the Commission at the appropriate time. Sitting next to her is Mr. Josh Mann, also from the Solicitor's Office, Department of the Interior. Behind me from Tesuque Pueblo I have Governor Rick Vigil. From the Pueblo of San Ildefonso, I have former governors Aguilar and Mountain, and also Councilor Tim Martinez, and I apologize if I missed anybody on this side.

On the other side of the room, sitting where they were the last time we talked about this in December, I have the President of the New Mexico Land Title Association, Mr. Gary Sandoval in the back. President-elect Mr. John Fox. From Fidelity National, Mr. Orlando Lucero, Esquire. And from Republic Title I have Mr. Warren Hill.

So Mr. Chair, what we have on the agenda tonight is a couple of discussion points of those settlement agreements that I think we're at a conclusion from the staff level and the work with the Interior and also the settling parties. But what I wanted to do is to just kind of set the stage for why we're here.

As you recall, on December 12th, I went through a power point presentation that outlined four what I considered fundamental issues to the resolution adopted by the Board in 2105. We also talked that night about the existing conditions between or within all four of our pueblo partners. We went through the listing of the Pueblo of Tesuque, the County roads that we have, 2.1 miles of County-maintained roads within that pueblo, two of the roads, 73 and 74 are not part of the discussion; only 72-I is.

In the Pueblo of Pojoaque we have approximately 15.5 miles of roads that we maintain, and there's issues back and forth on the existence or right-of-way agreements or rights-of-way.

In the Pueblo of Nambe we have approximately 10 miles that we maintain, and again, the same situation about rights-of-way whether they belong to us or someone else.

And then in the Pueblo of San Ildefonso, we have a little under ten miles that we currently maintain and the written rights-of-way are not complete or comprehensive on 84, 84-A, B, C, and D and parts of 101.

So that sets the stage of why we were here back on December 12th. We also talked that evening of how we were going to resolve and we went into great detail about the negotiation of four individual agreements with four parties. In other words, not one blanket agreement with any of the pueblos. It was pueblo-specific that we would be entering into or presenting to the Board the settlement agreements. We also talked that night about the options for addressing those rights-of-way without the necessity of litigation and we went through an exercise of what that meant.

Outside the resolution we also talked about a process being established with each of our partners where we would ensure some accessibility to the lots through that area that we identified as a gap, the area that is between pueblo land and the County-maintained road, that area, whatever that area may be. So we kind of gave an outline briefly of how we were going to resolve. And we also talked about on December 12th the general conditions that we were going into negotiations with all parties. The first one was that all rights-of-way would be granted for two consecutive 99-year terms. Santa Fe County at its expense would survey rights-of-way for placement into the BIA Tribal Transportation program and on the 12th Mr. Shannon McKinnon who's actually in the audience tonight gave a presentation on what that meant.

All roads will remain as public roads and the pueblos or BIA would not permanently close the roads during the term of the rights-of-way or remove the roads from the BIA inventory.

We also discussed on the 12th that Santa Fe County as it has done for some time will continue to maintain all rights-of-way within the four pueblos for the terms of agreements by entering into a road maintenance agreement with the Bureau of Indian Affairs for the pueblos of Nambe and San Ildefonso, and we would utilize our existing County-maintained maintenance program for the pueblos of Tesuque and Pojoaque.

And again, we talked about general conditions of that gap area, that we would establish a process by which each of the non-pueblo landowners may obtain insurable access to a road across pueblo land.

We also talked that evening about what our next steps would be, and as part of those next steps we talked about Santa Fe County hosting community meetings, townhall meetings, pueblo-specific. And we indicated that evening on the 12th that we would have

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them in the valley and they would occur between December 13th and January 5th of this year. Now, there's been some discussions about what that actually meant and how that was noticed and I want to go through a litany of postings on our information database, because I know that's a question about the transparency of these meetings.

Unequivocally, I'm telling the Board of County Commission as the Deputy County Manager that on December 28th Santa Fe County posted the public meeting notices for those meetings that we discussed on December 12th, and we also emailed out that listing of meetings to District 1 distribution lists. Unequivocally, on January 2nd, the San Ildefonso settlement agreement was posted online. Subsequent to that posting on line we had the San I's community meeting on January 3rd in Pojoaque at the Middle School auditorium. On January 4th, the Tesuque draft settlement agreement was posted on line and the reason it was presented as a draft is that we had not completed the discussions with the pueblo on that gap issue for those few residences off of 72-I.

That evening we held the Tesuque community meeting and we had that draft settlement agreement available to those residents that wanted to have that discussion with us.

Today, January 9th, Tesuque's final settlement agreement has been posted online, and the reason it went from draft to final is that we've actually worked out that to be determined on the gap issue whereby the Pueblo of Tesuque has allowed us to include the surveying of those access points as part of our right-of-way application to BIA. So today that was posted online.

Two other draft settlement agreements were posted online today and the reason they're posted online today is they were just finished in draft form today. So in order to make sure that we have a document out there I was requested – we posted the draft agreements online in advance of the community meetings tomorrow night and Thursday night with the pueblos of Nambe and Pojoaque.

We've also been requested by Commissioner Roybal to attend Representative Trujillo's listening townhall pre-legislative meeting on Monday evening, the 15th, the day before the session starts. So staff will be attending those meetings and the purpose of going through the next steps is I want to point out there's been a lot of discussions via email that we've been posting things later or earlier. The dates I've given you tonight are the actual dates that things were posted.

So as we move forward on the item with San Ildefonso we want to go over the settlement agreement that we've been discussing for a while now and we've presented out to the community at their community meeting last week. Basically, you each have a copy of the settlement agreement with the Pueblo of San Ildefonso. It's item VIII. A, but I think I should go back to my notes and I think Ms. Goodluck wants to say something on the general agreements before I go into the specifics.

TRACY GOODLUCK: Good evening everyone, Commissioners. My name is Tracy Goodluck, as you know, and I'm the deputy director of the Secretary's Indian Water Rights Office within the Department of the Interior. While I currently live and work in Washington, DC, I'm a New Mexican. I'm from Albuquerque and this is a very important meeting for me to participate in tonight. New Mexico is always in my heart. I would like to say Happy Birthday to the state. I think it's the greatest state in the union.

I have been coming in my federal capacity to the Pojoaque Valley for the last several months with our federal team and tonight I am here to represent the federal team, along with my colleagues in the Solicitor's Office – Josh Mann and Stephanie Kiger, to deliver a message from Alan Mikkelsen, our senior advisor to the Secretary of the Interior and chairman of our department's working group on Indian water settlements.

For well over six months Mr. Mikkelsen has made it a priority to come to New Mexico to support the negotiations between Santa Fe County and the pueblos with one intent: to come to a resolution on the roads disputes, both because it is a critical issue on its own for the pueblos, the County, and local residents, and because it is necessary so that we can continue to focus on providing a reliable source of clean drinking water to the Pojoaque Valley. In fact, not many other issues in the department have had this kind of attention paid to it or this many federal resources expended on it.

There have been compromises made by many, and it was not easy to reach these agreements, but in every meeting, all the parties came with open minds and with one goal, to find a common place of agreement so that there can be peace in the valley and neighbors can be neighbors again, and the community can heal.

Mr. Mikkelsen would especially like to thank all the parties for their ability to work together, showing respect for each of the perspectives everyone brought to the table and we could not be here today without the leadership from everyone, from the pueblos – the governors Mitchell, Perez, Talache and Mountain, and as leaders of their nations they had a huge responsibility to represent their current and future generations. We are grateful for their willingness to compromise and make concessions when they did not have to. And so too did the Santa Fe County Commissioners, representing their constituents with passion and always made sure that concerns they heard from you were communicated to all of us as we began to figure out the details and nuances of each of the agreements.

Commissioners Moreno, Hansen, Hamilton, Roybal and Anaya – Mr. Mikkelsen is grateful for the many, many hours you put into this effort, never faltering from your duty to serve Santa Fe County constituents, non-pueblo and pueblo alike. You had a very tough job, and he hopes that everyone tonight will recognize this effort that you put into this process.

Mr. Mikkelsen in particular would also like to thank County Manager Katherine Miller and her team for the courage it took to put their limited resources into find resolution for everyone. In fact, all the parties showed courage to deal with a very delicate and sensitive issue. Now is the time to come together and support these agreements that are brought to the County tonight. Mr. Mikkelsen and our federal team hope that the community and the Commissioners consider the agreements with an open mind, vote in favor of them, and give this a chance to work. It is time for this community to have a resolution and ability to heal.

That said, I thank you for allowing me to speak on behalf of Mr. Mikkelsen and the federal team. I look forward to moving forward with the next steps in the Aamodt settlement and seeing the Pojoaque Valley continue to flourish in our great state. Thank you.

MR. FLORES: Thank you, Tracy. Actually, I hate cell phones, because usually when I'm up here talking I'm getting texts from multiple people telling me of all

the people I forgot to recognize in the audience. So I apologize, but I was remiss and I didn't recognize Mr. Terrence Garcia from San I who is the acting governor? Governor. Excuse me. And we also have Councilor James Naranjo, Thomas Gonzales. I did recognize my friend Tim in the back, and I also need to recognize Councilwoman Irene Tse-Pe. So thank you for the text messages.

VIII. A. Consideration of proposed Settlement Agreement with the Pueblo de San Ildefonso [*Exhibit 3: Settlement Agreement with the Pueblo of San Ildefonso*]

So, Mr. Chair, I'd like to go through – although this agreement has been out there and we've held the community meeting and you've seen it all, so under the agenda item VIII. A. is dealing specifically with the settlement agreement between the Pueblo of San Ildefonso, Santa Fe County, and the United States Department of the Interior. And I'm not going to go through each and every section of this because we've done that quite a bit. Under the County's obligations, which is on page 4 of the agreement, and they were all left in the back for the public as well, Santa Fe County, within five years after the effective date the County shall at its own expense obtain temporary permits, written authorizations, survey the proposed rights-of-way as I indicated for both the subject road and new roads, since this is a different situation than we have on other pueblos, and submit that application in compliance or in conformance with Part 169 for a right-of-way application.

The pueblo at that same timeframe that we're working together on this, they're to provide a final construction design to the County along with any information that they have that can get us to that point of application. They will issue permits and other such authorizations as may be necessary for our work and they will also submit applications to BIA for their rights-of-way that they'd be conveying over.

There's some department obligation, but we know how the feds work so I won't go through those but at the end of the day both parties or all parties, really, are looking at to incorporate the subject roads, which are 84, 84-A, B, parts of 101 into the BIA inventory and we would be constructing new roads which would be the Yellow Bird Loop and Blue Dove Road as part of this agreement.

There's a renewal term in the agreement that's found on page 11. It's 99 plus 99, automatic renewal, and that the roads under Section 7 would be and remain open to the public. We would enter into an agreement with the Bureau of Indian Affairs to continue the maintenance of the roads and there's other points in there that dispute resolution and mediation, etc.

What I'd like to do at this point in time is have anybody from the Pueblo of San Ildefonso that would like to come up and say a few words before I close with title companies here in Santa Fe.

TERRENCE GARCIA: Good evening, Commissioners. Good evening again. My name is Terrence Garcia, the Governor of the Pueblo of San Ildefonso. On behalf of the pueblo I am pleased to have this chance to speak before the Commissioners. The settlement agreement that you are now considering is a result of what true government to government relations and commitment can accomplish and we hope that

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this can carry over on many other subject matters that we have still moving forward.

Of course, San Ildefonso recognizes other pueblos that have participated on this and as this positive outcome would not be possible without support and dedication of the Pueblo of San Ildefonso Council and staff. As we have indicated, some of our Council representatives are here. With this acknowledgement of the different government, leadership and staff would show is that the complex community-wide issues can be resolved when governments work together rather than separately or at odds. Again, the Pueblo of San Ildefonso carefully considered the settlement agreement and authorized the Governor to sign the agreement so that's already authorized. Former Governor James Mountain signed the settlement on behalf of the pueblo on January 2, 2018.

The Pueblo of San Ildefonso now asks the Board of County Commissioners approve the settlement agreement so that we can keep the positive momentum. This is because approval and signature to the settlement agreement is just the start and we'll need to continue to work closely and cooperatively to successfully put the road solution in place. We look forward to working with the Santa Fe County to do so. Thank you.

CHAIR ROYBAL: Thank you, Governor.

MR. FLORES: So, Mr. Chair, as it relates to the Pueblo of San Ildefonso we've also received letters that have been left at the dais from the American Land Title Association regarding the proposed settlement agreement that is before the Board tonight, and we also received a letter from the New Mexico Land Title Association, President-elect, Mr. Fox is here and he'd like to say a few comments before we move on on this item.

JOHN FOX: Thank you, Tony and Mr. Chair and members of the Commission. I'm John Fox, President-elect of the New Mexico Land Title Association and I'm pleased to be here tonight along with our executive committee previously introduced, to offer our support. We have been working with the various parties on these transactions for months if not years in an effort to get to a point where the title industry is able to insure properties in a manner which will be acceptable to owners and lenders. We have invested many hours and lots of research and time into analyzing the process and the agreements and we continue to offer our support. We believe that we're headed in the direction that will allow the title insurance underwriters to be able to insure these properties without taking exception to access, which has been the big sticking point with sales and financing.

So we believe we're going in the positive direction. We've discussed the various intricacies of each of the pueblos. They all present certain challenges and each underwriter has their own standards that have to be complied with. As an agent for seven underwriters, I can tell you that all of them are working diligently to be able to provide the coverage that we need. As the agreements come together, we will seek approval from the Office of the Superintendent of Insurance so that we have the legal forms that are required for us to offer the coverages. We've worked with lenders. We've talked to lenders' counsel in an effort to make sure that the direction we're heading is going to be suitable for them to offer financing and we continue to feel positive and committed towards making these agreements work for the solutions that are desired for everyone. And we appreciate the Commission's support as well as all the pueblos and the County. It's been a very interesting endeavor and we're here for the duration to do whatever's

necessary to make these things work. Thank you.

CHAIR ROYBAL: Thank you, Mr. Fox. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Fox, if I could, I'd like to just make a comment and then maybe ask you a follow-up question. So headed in the right direction, working together, you're willing to make it happen. I'm ecstatic that you've been part of the process, that you provided a letter, but I think there's always that closure piece of it is going to be happen, as far as if we approve the agreements, and are those steps you mentioned – the Superintendent of Insurance, and a few other things.

I guess between now and the 18th, which we're going to consider this again and take in some more feedback, if you can provide additional information to further bring closure, understanding that there are differences between title insurance companies and complexities that come about with property by property, I guess for lack of a better word, but any additional information or process oriented feedback you can provide us will help as we move toward our final determination. So even getting more into the weeds with what you're going to be expecting from the Superintendent of Insurance.

And so if you've already done that, I apologize, but any additional information that helps us, and in particular, helps those particular residents that are impacted by the challenges of title insurance would be helpful. So do you have any maybe additional thoughts relative to maybe my comment? It wasn't so much a question but maybe more of a comment and a plea for additional help.

MR. FOX: I hear what you're saying Mr. Commissioner Anaya, and I think you want a little more specificity to what I'm talking about, what I just laid out, and our executive committee will meet and we'll talk about the specifics and we'll try to give you a little more meat on those bones that I just described that will give you some comfort and clarity about the process going forward for people to be able to get their coverage.

COMMISSIONER ANAYA: Excellent.

MR. FOX: Does that address your comment?

COMMISSIONER ANAYA: I thank you for your willingness to do that and thank the executive committee and look forward to that additional meat on the bones. I like that.

MR. FOX: We're happy to get that meat out there. It's a common quest and we realize that we have a vital role in that process, so we wanted to make sure that it's effective to get the job done.

COMMISSIONER ANAYA: Thank you. Thank you, Mr. Fox. Thank you, Mr. Chair.

MR. FLORES: Mr. Chair, just on Commissioner Anaya's question, I won't speak for him but I can say that Mr. Otis Philips from the Office of the Superintendent has received the documents and he actually attended both of Commissioner Roybal's first two community meetings last week. So he's been engaged in the discussion.

COMMISSIONER ANAYA: Awesome. Thank you, Mr. Flores.

- VIII. B. Consideration of proposed Settlement Agreement with the Pueblo of Tesuque** *[Exhibit 4: Settlement Agreement with the Pueblo of Tesuque]*
C. Discussion of proposed Settlement Agreement with the Pueblo of Nambe *[Exhibit 5: Settlement Agreement with the Pueblo of Nambe]*
D. Discussion of proposed Settlement Agreement with the Pueblo of Pojoaque *[Exhibit 6: Settlement Agreement with the Pueblo of Pojoaque]*
E. Consideration of Special Board of County Commissioners Meeting on January 18, 2017, for consideration of the proposed Settlement Agreements with the Pueblos of Nambe and Pojoaque *[Exhibit 7: Supporting Material from Mr. Chaney; Exhibit 8: Map from Mr. Bent; Exhibit 9: Information from Ms. Nordquist]*

MR. FLORES: So, Mr. Chair, if it pleases the Board, what I'd like to do is go through the settlement agreement with the Pueblo of Tesuque and then have Governor Vigil come up and say a few words and then at that point we could open it up for public comment, if that is okay.

CHAIR ROYBAL: That's perfect.

MR. FLORES: So thank you, Mr. Chair. So as I indicated or prefaced my remarks, in Tesuque, the Pueblo of Tesuque there's three County-maintained roads: 73 and 74 and County Road 72-I, which is about a .2 mile road off of County Road 73. Old Stage Coach Road. And there's that portion of that has the same question. It meanders in and out of pueblo and private and no rights-of-way exist for that. So as part of the settlement agreement, Santa Fe County will once again survey the right-of-way to include those access points, as we are doing in the Pueblo of San Ildefonso. That was the to be determined in the draft agreement that's what's changed tonight.

We will continue to, after we survey the rights-of-way, we will work to get those into the inventory and we will maintain those roads in accordance with our current maintenance schedule.

The other part that is of the agreement goes through the similar County's obligations but at this time we have some stipulations in the time of the contributing funds agreement and this agreement. We also talk about the pueblo consenting to our submission of the right-of-way application and the Secretary's grant of the right-of-way for County-maintained road 72-I. We also reference in this agreement release of claims, reservation of rights. There's no new construction as there is in the other pueblos. It's basically – I don't want to use the words status quo but it's keeping that .2 mile as it is today and codifying it to the BIA right-of-way process.

On page 3, as released in the draft settlement agreement last week, which is different than the Pueblo de San Ildefonso, we are paying the pueblo a one-time lump sum of \$185,000, which is considered the settlement amount if and when the Secretary grants the right-of-way identified in the agreement. So in this case we're actually paying compensation. In the San Ildefonso we're not paying compensation; we're taking on the burden of putting those subject roads and new roads and developing those into BIA rights-of-way.

So at this point, Mr. Chair, I'd ask Governor Rick Vigil if he'd like come up and say a few words on the agreement.

GOVERNOR RICK VIGIL: Good evening, Commissioners, Ms. Miller, Mr. Flores. Back addressing the Commission, I got reappointed as Governor on December 31st and again, I echo Governor Garcia's perspective and duly respect the leadership from San Ildefonso. And again, my observation, just coming into office last week we had dialogue with many different individuals to where again, come Friday is my very first tribal council meeting, to where again, through resolution and providing education to the new leadership in terms of the action that has been taken by former governor Mitchell's administration, to where truly things should be on a government to government relationship.

Having to come into office last week is really challenging and difficult, to where the relationship of how this perspective came to a reality and like in conversation we are also citizens of Santa Fe County, to where again, where Tesuque Pueblo is located to the east of the Sangre de Cristo Mountains realize these are aboriginal lands of our people. Just on Sunday I took a drive up into the area. A lot of encroachments, but hopefully with this agreement we can develop positive working relationship. Just this morning we worked – we had a meeting with the Precision, survey that's been contracted. Again, a positive working relationship, to where the timelines. Hopefully, the implementation would happen in the next two weeks to where again, getting out there, working with them and I look to you as your leadership for the private owners to where I observed that relationship last week, to where it should be a government to government relationship.

And that's where for me in this leadership position today and into the future is maybe developing a government to government relationship act that truly defines how each individual member of sovereign governments will interaction with the Santa Fe County Commission, because here again, our trustee, the Bureau of Indian Affairs, we work with them, and again, the relationship. Times are changing to where technology and the GIS system and the relationship that we will have with Precision to bring that information together for the benefit of Santa Fe County and the Pueblo of Tesuque. So again, we're committed to having a positive and productive relationship with the Commission this coming year. Thank you for your time and attention. Appreciate it.

CHAIR ROYBAL: Thank you, Governor.

MR. FLORES: So, Mr. Chair, that's the brief overview of both of the settlement agreements. I'm going to defer going through the other two settlement agreements since that action previously moved those off till the 18th. So at this point in time, Mr. Chair, if there are no questions specifically on what I've covered I'd like to request that the Board open it up for public comment.

CHAIR ROYBAL: Okay, do we have members of the public that would like to comment on the agreement with Tesuque? Is there anybody from the public? Okay. One more time. I'd like to see if there's anybody from the public that would comment on the – sir, if you could state your name for the record and your address. So it appears that we don't have anybody for public comment for Tesuque so we'll go ahead and go on to our next.

MR. FLORES: Mr. Chair, if it pleases the Board, we could open it up for public comment on the San Ildefonso.

CHAIR ROYBAL: Okay. So we're going to go ahead and hear public comment for San Ildefonso but I do want to open it for Pojoaque Pueblo and Nambe if

there's anybody here that wants to have public comment for those two pueblos as well, or for those two agreements. Okay. Can I have a show of hands of who'd like to make comments today? So we have seven, eight. So we'll go ahead and do a four-minute comment period and if you guys, if there's anybody that wants to give minutes to somebody else that needs additional time, that's fine. Okay, we'll start with you, Mel. Sorry about that, sir. If you could state your name and address for the record again I'd appreciate it. You're on, sir.

MEL CHANEY: Hi. Thank you for listening to me. I'm Mel Chaney. I live in El Rancho, at 17 Guerrero Romero. I have some concerns about – first of all I want to thank you for listening to me. I know you've spent a long time getting things to this point and there are a lot of good things in the agreement. There are some things that do concern me and that is the question. For example, for medic and the Fire Department to be able to serve the area quickly and as expeditiously as possible.

So there are current County roads that will be part of the system that allows this and I'm concerned about those roads and I'm concerned that perhaps they set the level of what the road might and should be that will be built on Yellow Bird Loop and Blue Dove Road. This morning I went out and took some pictures. I'd like to distribute them because I imagine that some of the Commissioners are not familiar with the area and my pictures, I hope, will help you understand what my concerns are.

CHAIR ROYBAL: Mr. Flores will hand those out for you, sir. First of all there's the problem of access into the general area and across the Pojoaque River. If you look at the map you can see Highway 502 across the south border. You can see the turnoff onto 101-D on 502. When you get down to where that road intersects County Road 84 you make a right turn and go about a block through a dip, and then you can make a left turn back onto 101-D, go across the bridge across the Pojoaque River and you're in.

The problem is that that one little stretch, that one little dog-leg that goes on County Road 84 runs through the dip that allows the El Rancho Arroyo to drain. Here is the approach to that dip. You'll notice the County has put a nice sign there, kind of poetic: Turn around. Don't drown. This arroyo really runs and when it really runs you cannot go across it. If the medics or the Fire Department come to this point they would not be able to get across it. What are their options?

They could go back out to the highway, turn east, and you'll see there's a little figure of two people walking. There's a road that goes north and connects onto County Road 84. This road is marked to be 84-D. In this text it says that 84-D will be closed by the County when Yellow Bird Loop is made available. If you could not get across the dip at El Rancho, the first thing you would think to do is go back to 84-D, get down to 84, go west and then you can make the right turn and get across the bridge. But if that road is closed, you won't be able to do that. So you'll have to go further east to the roads way up by Jaconita and Jacona and come back to get across.

So if that arroyo is running, it seems to me that the response time for the medics and the fire people will be lengthened by ten to 20 minutes which may be important.

CHAIR ROYBAL: Mr. Chaney, would you like to make some closing comments?

MR. CHANEY: My comment is I would like to see the County

immediately fix the problem at that arroyo so that it can be crossed at any time by medics, by Fire Department, by residents of the El Rancho community. And any road that is built and Yellow Bird Loop should be readily and easily accessible across all arroyos under any conditions, because it's not reasonable that we should not have this kind of service in that area. Thank you very much.

CHAIR ROYBAL: Thank you, sir. Appreciate it. Mr. Bent, if you could state your name and address for the record.

DEVIN BENT: I'm Devin Bent. I live in County Road 113, Nambe, New Mexico. If you're into the older titles, that's Complaint 26, Private Claim 114, Part B. And I have here a map [inaudible] This is part of the Herrera Decree. As far as I can see there's actually a couple of decisions that were involved [inaudible] When Tony Flores is there any documents that we've been remiss in getting to you? Yes. We've known about the Herrera Decree since the 12th of December and we don't have a decent, legible copy of it so that we know what are rights are. I would really like to see something that would let me know what my rights are in terms of being a person who lives on one of these private claims.

Now, the private claim does things under the Herrera Decree, basically. One is it says we own that land. The pueblo claim is extinguished is the word. Okay. And this is signed by a federal court judge. This is not some docket out of the County Clerk's Office. This is sounded by a federal court clerk and those are the boundaries of that private claim which is privately owned land. Moreover, the Herrera Decree establishes, at least for some of us – it would be nice to see the Herrera Decree and to see it is that we have a right of access. It grants us a right of access.

So which means like if the roads that go through the private claim that you see here, 113B is entirely on the private claim. 113 goes down to 503. It crosses only a little bit of pueblo land. Okay. But if we have a right of access, according to the Herrera Decree, then I don't see how anybody, how any federal government can say that we are in trespass. We have a federal court judge who said we have access, and I think a federal court judge tops some bureaucrat who works in the Department of the Interior. And that we have a right, and I am somewhat disappointed to see that maybe it's being surrendered in this agreement. Okay.

The other thing that comes up is you will find within these private claims, for instance, 113B. 113B is entirely on private land. Okay. Why then if we want to put a line along 113B do we need to get an easement from a pueblo when their claim has been extinguished? What are we paying them for? And it's like I'm buying the Brooklyn Bridge. I don't see what I am paying for and you're paying like a million dollars. Now there are some people who need access. But if we have the Herrera Decree I don't think we should pay for it.

I think the other thing is those easements will be a big expense for us. A big expense which is really not fair at all because the feds who are charging us for these easements don't own that land except just little teeny pieces of it at most. The last time we went through that, even for that little teeny piece, which is like a couple hundred feet, they wanted a quarter of a million dollars. If we have to go in there and pay for a two-mile long easement on County Road 13, which is 99 percent ours, how much is that easement going to cost? Is there some limit on what we pay? As it is right now in my

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neighborhood, telephone lines are lying on the ground. They're lying on the ground. That's illegal, but the phone company won't bury them. [inaudible]

CHAIR ROYBAL: Okay, Devin, the time is done so if you could close any comments, sir. Okay. Thank you, sir. Okay, can we have our next speaker?

BEVERLY DURAN-CASH: So thank you for listening to our comments. My name is Beverly Duran-Cash. I live in County Road 24 and 84-B and I want to recognize like your Deputy, Commissioner, or County Manager, all the people who've worked so hard. We've been here through a long time with you all, and the same people here, day in and day out, are reaching out to the community, the elderly, that can't be here and try to get their comments and concerns, so I'd like to recognize these people that you see every time we're here. They come not only for themselves but they come to represent the elderly and the people that can't make it. And they're never recognized.

I also want to recognize the fact that Tesuque Pueblo had mentioned that they want better relations between government to government. We would really as a community like better relations between our County and ourselves. It's so isolated and we feel like we're left out and you all don't really know how much we want things to work out for the fairness and the betterment of our people.

I want to thank – I know we talked with Katherine and Commissioner Roybal. They're putting all the time to have a dialogue with us. It means a lot. The healing isn't going to start just when people have title insurance. A lot of damage has been done. There's a lot of things – there is still the people getting protected and having rights on a BIA road because we've had some harassment when we're on pueblo roads that are owned by the federal government because of the legality of whose jurisdiction. A lot fear if it's a BIA road how we're going to be protected. Utilities, the water system, there's a lot of questions and so saying that the healing is going to start then is not really accurate. I believe it's true, but it's not really as heavy as they're saying that it will start. I think the healing is starting when Commissioner Roybal gives us a voice, at least asks for comments and consideration and for Katherine Miller who sits there when she's so tired at the end of the day and tired of everything, really, because I am too, and still listens when maybe there's nothing she really can do about it, but she understands. That's the healing is when we have a voice.

And so I may have a few people in my group come up and give comments, not because we want to open anything up. We just want to share what people are emailing us and calling us and you may say, well, I don't know. That's kind of a big thing, but I think as representatives of the people that are paying the property taxes, I really appreciate if let us give the time of the concerns.

One of the comments was, well, that wasn't within our scope; our scope was for you to get title insurance. And I kind of laugh because I saw people walk out of there saying, yes, they want us to get title insurance so we can move if we don't like it. And it's kind of like when you go in for something and you're sick and you're dying and they take care of one part but they let you die from the other. That's not really ethical when it comes to a doctor. Right? So I want you to think of that as maybe you can't solve everything but I think that you still have to be open reasonably to listen to the people's concerns because we're living out there. We have some concerns. The healing has not started yet. The trust is completely out the door. And even thought you guys take great

respect for your government to government relationships and it shows every time we're in a meeting where people are addressed very respectfully by your staff, we that pay the property taxes, we that are your constituents are always timed with three minutes. And the only ones that are timed. And it just makes us feel a little alienated.

Because of that, I want to thank you so much for giving us the time here today even though I know that you guys legally, like everyone on this side wants it over with, it's a tough thing. You know it's been there for hundreds of years and like I told Katherine, wow, it's been there forever and guess what? It just fell on everyone's lap and we understand. We understand how difficult it is, especially with the fact that we've all lived there in peace and we're all intermixed. [inaudible]

CHAIR ROYBAL: Closing comments.

MS. DURAN-CASH: It's okay. Like I said, I just want to thank you again. I want to ask you not to get frustrated but to please listen to some of the comments. It's not at all coming in, putting anybody in defense or anybody feeling like we're not understanding of the depth of work this went into as a County. It's just that we as NM Protects have to protect our people, the elderly that can't come out. We have to try to get information that's accurate and factual and we have to disseminate it to our people so that we can lessen the stress or defend people that are going to be treated unfairly. So that's what I'd like to end with is just a thank you for your time.

CHAIR ROYBAL: Thank you, Ms. Duran-Cash. And I just want to remind you, if there is somebody that isn't speaking they can actually give their minutes to somebody else as well.

ELENA GUARDINCERRI: Good evening, Commissioners. My name is Elena Guardincerri. I live at County Road 101-B within the boundaries of the Pojoaque Pueblo in Jacona. So my comments regards the settlement with Pojoaque. First I would like to ask you whenever you can to listen again to our comments because I had one hour, literally, to read this. It was published two hours ago. So I'm sure I will have more comments in the future and my neighbors might as well.

Page 2 there is a list of all the County roads for which the County will need to get a right-of-way easement with the BIA. So I live on County Road 101-B. I know for sure that a large segment of this road is on private land. The pueblo owns an arroyo that runs parallel to the road but doesn't own most of the road. The same holds true for County Road 11-C. I'm limiting myself to these two roads because that's the area that I know and I didn't have time to research the other roads. So I would like to ask you to do this research and also to include in this settlement agreement a map of what are the County roads that we are paying for. This map could be a survey. If it's survey I would also like to ask you to please also tell us what are the documents that this survey is based on. There must be documents that detail where the titles to each parcel comes from. When was this? What are the documents that define who owns every piece of land? This should be part of the settlement. Otherwise we are settling on something that we don't know.

These are pretty much my comments for now and I can give the rest of my time to Heather if she wants to speak longer. Thank you.

CHAIR ROYBAL: Okay. And just – are you aware that we're going to have a townhall meeting for the Pojoaque Pueblo on the 11th at 6:00? And we will have maps and more detail for that settlement agreement. We actually just got that ourselves

and posted it as soon as we got it.

MS. GUARDINCERRI: Thank you.

CHAIR ROYBAL: You're welcome. I didn't mean to use up your time, Heather.

HEATHER NORDQUIST: Good evening. My name is Heather Nordquist. I live at 40 County Road 84-B in El Rancho, and I'm the executive vice president of Northern New Mexicans Protects and I'm sure you're sick of hearing that phrase but here I am. I'll try to be short. I did prepare a list. Since we had a meeting with you yesterday evening we have received a number of comments from the community. Some of them were mentioned briefly here, but I do have a handout which is basically a data dump. It's not edited. It's just whatever came from our community members.

I would like to thank Katherine and the Commission for their hard work on this and I would like to convey to all of you that the biggest anxiety in the community right now is the speed at which this is trying to be done. We received the final version of this last week. We haven't had time to review that much and when we do we do have some questions and some concerns based on safety, based on lot of different issues. So I encourage you to look at those and take those seriously for the sake of this process.

Also I know that there's a lot of political pressure right now, both from the feds and at the state level as far as appropriations and we encourage you to not pay that much attention to that at the expense of these residents. There are still some really serious questions within those agreements and I think that I voice the opinion of many of the community members in saying they really don't know whether they agree with it or not at this point. And that's just a matter of timing.

I know Mr. Flores acts as if this was all set way in advance and we've had plenty of time, but honestly, we've had a very technical legal document for about a week. So please consider that and thank you for your time and your concern.

CHAIR ROYBAL: Thank you, Ms. Nordquist.

DAVE NEAL: My name's Dave Neal. I live in El Rancho. I have with me right here a copy of the agreement that I want through today and I didn't have enough time to do it justice to hand out tonight. But I would like to go through a couple of points that I have found in here that I don't think are quite right. And first of all, I will say this much: I want the agreement to be done, but I want it to be done and I was going to suggest some refinements to it. That's it. I would like to see this happen, but there's some concerns I have in here that I don't think have been covered.

Let me start off with the very, very first one. Access points. When I look at the definition in access points there's no mention of utilities. Now, when you look at access points, that's going to govern a lot of people on the north side of the river. Mr. Chaney will be one. And there's no mention of utilities in there. I just found out today, and I don't know if the County know this, but you all have a franchise agreement with the Gas Company of New Mexico. And San Ildefonso has a franchise agreement. It would be nice if these access points included utilities.

There's a term in there that says the BIA road inventories are going to be for long term. What do you mean by long term? 99 years? 198 years? It would be nice if we specified exactly or removed the term. These are all small points until I get to the hard ones. Definitions: right-of-way. When I look at the row you guys simply say right-of-

way. That's not the legal definition of a right-of-way. With a right-of-way, basically what it's supposed to say is possibly the legal right established by usage or grant to pass along this route. So I don't understand the abbreviation there and I can give all these to you guys in writing but I'm not comfortable enough until I do some more research.

I got caught off guard here a little bit. According to one of the sections in here you folks are going to do a study, assessments and investigation. Now my request here is if you're going to do these assessments I think the lady said earlier it would be certainly nice if we knew who owned the property. And I've had this discussion, we had it last night. Many of the roads in El Rancho are on private land, and what's happened over the years, they have been surveyed, the surveys have come in and pulled back the actual metes and bounds of the survey but yet that road is sitting on their property. I would encourage you when you do the survey to make sure they include all of the people who own the land underneath them. Not the fact that there's a right-of-way there but who physically owns that land. Because we can go back to the 1940s and we know that that road was established, it was actually a farm road, County Road 84 was a farm road and eventually became the road for Los Alamos and so on and so on. So the question is how did you establish a farm road if there was no County in existence at that point?

The one I want to ask Bruce on and I need to have you give us this and it's not in the agreement is what authority does the County have to convey an easement that they don't own the property to? I'm not asking that you don't have the authority but I would like to have it specified in this agreement where you folks are now basically taking these rights-of-way and conveying them to the BIA as prescriptive – no argument there; you guys got it. But what authority does the County have, because usually these prescriptive easements are based on person to person. We now have a federal government in here. I'm not disagreeing that it's not possible but I would like to see it in the agreement so that the County property owners know what authority you guys exercise to take their property from them.

Okay. Funding source. I saw the funding source in the agreement. You've referenced some gross receipts tax. I guess they're capital gains, or no, the capital outlay gross receipts tax, these receipts that we're going to be paying, I understand right now that the County is going to build these roads and as I understand it, the cost for building these roads will be a certain dollar amount and what's ever left over will be compensated to the pueblo. So let's just say – how are these roads going to be built? Who's going to finance them?

MS. MILLER: Mr. Chair, as we said in the agreement, the County will be building Yellow Bird Loop and Blue Dove Road. The source of funding is existing gross receipts tax, either the 1/8 hold harmless or our capital outlay. Those contracts will be issued by the County to construct those roads. No additional compensation will be provided to the pueblo.

MR. NEAL: Thank you. I appreciate that. I misunderstood. I'm sorry. Okay. There's a question about right-of-way sizes. On Section 3, Paragraph B talks about the fact that there's going to be the rights-of-way for these new roads – excuse me. I take that back. Not the new roads, County Road 84 is going to be basically to the edge of the pavement that exists today. The problem with that is that some of those roads traverse private property. So it would be nice if the County took the time to define what they're

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considering to be a right-of-way width, because if it goes across private property the definition that's in this section isn't going to match, because you're already on private property so you can't come four feet or encroach into the – if you read this section you'll see it.

Sorry I'm being kind of technical here at this point. But we would like to know what the right-of-way widths are going to be for those rights-of-way you guys are going to issue to the BIA and it's basically for County Road 84. Because we know the design has been completed for the new roads on the north side of the river but we don't know what right-of-way width is going to be granted by the County for 84. And that's the – well, I live on 84-B.

Okay. One more here. I'm almost done. Hang on with my guys. Archaeological assessments. Now, I've been down this path a little bit before and I can tell you that this is a real tricky thing. I understand that what's going to happen is the County's going to finance the assessments to find the archaeological artifacts and sites, which is a great thing. But the pueblo, as I understand it, is going to actually finance the mediation of those sites and/or removal, depending on how you look at it. That's going to be hard, because what's going to happen is the County's going to say we found this site and then it's going to be up to the pueblo to figure out how much of that site's going to be removed. That's going to be difficult in road construction, from my experience.

Okay. Getting down to the end here, guys. Oh, yeah. There's a section here on interim access that talks about an unauthorized road of convenience. I guess I don't know what that means. And again, these are points that we would like refined. It doesn't negate the agreement but it would be nice if we could refine these kinds of things so we know what they mean.

And of course we have this issue with the gaps. The gaps you've defined in this agreement are only going to address egress and ingress. Well, what about the utilities to these properties that are going to be inside the developed area? How are they going to get gas, phone line or anything else across these gaps if they're not included in the actual agreement? They're not specified in this agreement right now that I can see. I'm not saying they're not there.

Okay. Oh, Jeez, this page has got a lot of blood on it. I don't understand Section 13, contingency A. Help me understand this, guys. You're telling me that you're not going to file any of the right-of-way applications until you sign the CFA, which is the continuing funding agreement. That means this whole process isn't going to start until you agree to fund the water system. Am I correct? I'm getting a nod on that one. So yes. So what's happening here is this agreement is contingent upon you guys funding the water settlement. It really isn't about the roads. I don't mean to be disrespectful but it seems with that provision in there, why are we going through this measure if the whole purpose is to get the continuing funding agreement just do it. And let's step back and do these road easements correctly.

But that's not the way it's written right now. And of course we've had this discussion before. It's all about leverage. Let me see what else I got here. I think that's – oh. The gross receipts tax – I think there was a mention in here about the gross receipts tax for the contractors that are going to build the road. I think it's 75-25? On the gross receipts tax? Anyways, the gross receipts tax, some of it's going to go to the pueblo.

That's because it's under a current agreement you guys have with the pueblo for gross receipts tax. That's a New Mexico statute. You don't reference it in here. So it would be nice if you referenced that New Mexico statute so there's a clear understanding of who's going to pay what on those gross receipts taxes.

I think that's it. I got some more but I guess that's going to be good for a while. And again, I want to make sure everybody understands here that I want this agreement to be done, but I want it to be done correctly, and I don't want to do it hastily. As you heard tonight, we've not had a lot of time to study this thing. And I just only found these small points. If I get another week at this, I will give you – next time I will give you a written document that shows you exactly what I think about each one of these. Not that I'm a great person or anything like that, but I don't think that right now it's quite refined enough to support your signatures, because you're the folks who are representing us and I thank you for your time.

CHAIR ROYBAL: Thank you, Mr. Neal. We have Ms. Trujillo. Can you state your name and address for the record.

MARTHA TRUJILLO: Thank you. My name is Martha Trujillo. I'm on 39 El Callejón Road in Pojoaque, New Mexico. Thank you, Commissioner Roybal and Commissioners for this short time, just so I can come to you and tell you that I appreciate all the work that has been put into this and I would just like to say that I would appreciate just a little bit more time and work to put our energies into really finalizing the way that this could look, only because there are some of us who work on the – or who have been working on the Aamodt, and for the last 20 years that was part of like what we were doing, picking up the baton from our parents. And when it got signed, it seemed like it did all of a sudden just pick up momentum and it did get signed.

And we saw now and we're seeing now and experiencing that there are things that are happening that were unforeseen consequences of a rushed agreement. And when you're in it you see what is happening and you all have the privilege of not being in it day in and day out. But those of us who are, who are now having to address issues that are in the SLDC and see how the overlay works for our community, that is something that our community is trying to work through with easements and beneficial use of water. We're also working on rules and regulations and how we can protect water rights. These are just a couple of these unforeseen things that I think we were rushed having to meet deadlines with.

So I agree with – don't you start that clock on me now, Tony. What's the deal here? Anyhow, I just wanted to say that I think it's important that we do take a little bit more time in seeing what it is that we're not seeing. My husband and I have been very blessed to live in a community all of our lives, and we've been very blessed to have good neighbors. We've lived in a community that growing up, we saw very few flaws in this community, but over time, especially since after the Aamodt was signed, the blemishes came out, and now we're dealing with a lot of things that I never thought that our community would have to deal with.

And my fear is kicking the can down the road, as I've heard the phrase a few times, it doesn't give me a lot of comfort, especially since I know that this is land that we are hoping that future generations would be living in and still developing in whether it's ag or making homes for my great grandchildren. I don't want to genocide any of my

children in any way or forget where they came from. I haven't. A lot of this procedure has forced me to figure out where I have come from. And knowing that all of our forefathers worked hand in hand. Yes, a lot of bloodshed. A lot of hurt. A lot of repair, took place in our community. And I'm struggling a little bit with our agreement because there's money involved and I just think that if it's a true healing, why are we talking so much about money.

I understand why, but why are we talking about needing to be paid for things? I was a little bit saddened. I had read an article about how one of our Commissioners was ready to sign and get this settlement done and everyone is ready to get something done, but I don't know that the other districts in Santa Fe County realize the financial impact. Your constituents through the districts. I don't know if there's been a time for them to be educated on the dollars that are beautiful county District 1 will be receiving [inaudible] made aware of throughout the other districts and how it will have an impact here in the district. Whether the money's coming from capital outlay, the general budget, I don't think that the rest of the county understands or knows the implications of what that dollar amount would look like for their district.

So thank you for the time. Again, I applaud your efforts but I really want to give you a standing ovation if we take a little bit more time on this. Thank you.

DOUGLAS VERES: My name is Douglas Veres. I go by Kurt Veres, and I live at 70 County Road 84-C. I have already sent a number of comments to the Commissioners and to the County Manager. I do owe San Ildefonso those comments. I have a different impression, I guess, than most people. I think that the County and San Ildefonso have done a wonderful job on this. I have a few nitpicks, however. My previous comments that you already have stand. I would like to just mention a couple of nitpicks here.

Another thing is the more I read this the more I see embedded in it lawyer type language and I hadn't appreciated certain things and I have misinterpreted things because I did not read it properly. I apologize for that. So, let's see. My first nitpick would be on Section 4, New Roads, number E where it says none of the new roads shall be open to the public before the BIA carries out a final inspection. It seems to me that you may want to open segments of them after the BIA inspected it but the wording, none of the new roads – it limits you. You have to complete everything, both Yellow Bird Loop and Blue Dove before you can open anything and that doesn't seem quite right.

My biggest nitpick has to do with that same section, Section 4, part H where it talks about closing 84-C, 84-D and Sandy Way. There are – I have heard that the County intends to keep 84-C where it's on private land, open. There are two small segments of San Ildefonso land that would isolate part of that and I think the language here is very strong as to what's going to be done and I think it would behoove you to think a little bit about 84-C, especially 84-C.

Another nitpick is on Section 7, Roads to Remain Open to the Public. The last sentence, it says the pueblo may temporarily close BIA roads for cultural activities. I believe that means, for instance that Yellow Bird Loop can be closed for cultural activities. Maybe that's required because the BIA always has this but it seems like this is expanding what the current situation is now. And I have other comments but I think those are my main nitpicks. And again, I think a wonderful job has been done by the people

that have worked on this and I thank them very much. Thank you.

CHAIR ROYBAL: Thank you, Mr. Pierce?? Do we have anybody else that would like to address the Commission? One more time, do we have any other public that would like to address the Commission? Do we have copies of the Herrera?

MR. FREDERICK: I haven't seen – I've only seen bits and pieces of it. It only applies to Nambe Pueblo and we all agree that it allows access, the pueblo agrees it allows access to many, many private lots out there; it doesn't apply to others. So it's not the be-all, end-all to allow private access to all lots within Nambe Pueblo.

CHAIR ROYBAL: Okay, can we provide copies we so have or what we do have to Mr. Bent? Okay, with no other public comment I'll go ahead and close public comment. And there's no action on this item for this evening.

MS. MILLER: Mr. Chair, I did want to – this was sent in public comment. It's not – the gentleman couldn't be here. It's actually a letter that's attached to the letter from American Land Title Association and to the New Mexico Land Title Association letters that we received. This is an email. It was addressed to you but it's referencing the agreement at San Ildefonso Pueblo, and I'd just like to read that into the record.

CHAIR ROYBAL: Sure.

MS. MILLER: It says, Dear Commissioner Roybal; I attended the meeting a few nights ago about the proposed agreement between the County and San Ildefonso Pueblo regarding the roads. I am writing to express my support for this agreement. Congratulations to you and the County for getting this done. I'm more than ready for a good enough deal, even if some details are left slightly uncertain. I think you were wise to withhold funds for the water system until this is resolved and it seems to me that it is now getting resolved. At the meeting I appreciated hearing the philosophy expressed by the County's first speaker, that being we will never get to the bottom of the long, poorly documented history here. We simply have to agree to stop arguing about that history and move forward. Better to move forward than to stay bogged down year after year.

In the past I have spoken with seven members of our acequia from seven different households regarding rerouting an acequia lateral crossing several private properties and in each conversation the subject of the roads agreement came up too because it is on everyone's mind. None of these seven people had attended the meeting last week but six of the seven had seen the encouraging news reports in December or heard about it second hand. All seven people expressed relief that this long struggle is coming to an end with title insurance companies satisfied with the resolution. The three people I sat near at the meeting last week also support the agreement.

I think there are plenty of quiet people who simply trust that the outcome negotiated by leaders like you and the County Management is pretty much as good as it can be. At the meeting I recognized two persistent vocal people who object to everything. Initially, vocal watchdogs often identify important issues which can lead to better agreements, but then some people don't know when to quit arguing and move forward. I feel the same way about the proposed water utility. It will have a positive impact on the valley, so let's get on with it. Thank you for serving on the Commission during this time. Greg Swift.

So that has been provided to the recorder as well for the record and I also wanted you to know we have taken down notes on all of the questions and concerns that people

have raised, not just tonight but at our previous meetings and we'll continue to do so in the meetings that we have tomorrow and Thursday. We will do our best to address all of these. Some of the concerns I think can easily be – we can point to where the issue is addressed in the agreements, some of them. As we said, these settlement agreements are not perfect. They don't cover everything and they can't cover every issue that there are for the residents within the pueblo boundaries.

We do feel that we have tried to address the road easement issue, any County trespass, as well as individual access. And we are striving to do that in the other two agreements. As you can see there are to be determined areas, because that is what we're trying to make sure that we nail down in all four agreements.

Additionally, we will look at every one of these concerns that's been provided us to in writing or verbally and try to provide you with a memo that addresses an answer to them at some level, whether it be, yes, definitely. Right here it's addressed in the agreement. It is taken care of. You don't need to be concerned about it. Or, here's where it will be addressed. Or, it's not something that can be covered by this agreement. And so we will have that for you before you take this up for any consideration as well.

CHAIR ROYBAL: Okay. And can we post these on our website? These questions and answers?

MR. FREDERICK: We can make that memo public. If that's your direction that's what we'll do.

CHAIR ROYBAL: Yes. I'd like that. Okay, so we're going to go ahead and close public comment. I want to thank everybody for coming out tonight and making comments and we look forward to other meetings that we will be having. I know that there's a lot of concerns and comments that were brought up so County staff will do their best to address all of them. Thank you all.

IX. CONCLUDING BUSINESS

- A. Election of Board of County Commissioners Chair for 2018 TABLED**
- B. Election of Board of County Commissioners Vice-Chair TABLED**

See page 27.

C. Announcements

CHAIR ROYBAL: Are there any other comments from the Board?
Announcements from our Commissioners? Commissioner Anaya, you have a comment?

COMMISSIONER ANAYA: Mr. Chair and Bruce, I guess I just have one question for tonight. Can County government, Santa Fe County government, in any way – if there is a way then give me an example – supersede a decree of federal determination from a federal judge or any other congressional act?

MR. FREDERICK: Mr. Chair, Commissioner Anaya, the short answer is no.

COMMISSIONER ANAYA: So I just want to say that again on the record because I'm doing it on purpose. I am not aware, and I've asked out attorney if he's aware of any way that a county government in any way would be able to change,

supersede, undermine, modify a federal judge's determination, a decree, a congressional act.

MR. FREDERICK: Mr. Chair, Commissioner Anaya, no, we can't. And these agreements do not in any way compromise anybody's property rights. They don't – if somebody has a claim before this agreement they will have that claim after this agreement. If they have a property right before this agreement, they will have that same property right after this agreement. We're not taking anybody's property rights.

COMMISSIONER ANAYA: Just for clarity, under law, we cannot, we can not and don't have the authority to modify those determinations. Correct?

MR. FREDERICK: Mr. Chair, Commissioner Anaya, if you're talking about an adjudication of an accord between various parties, the County cannot unilaterally change that adjudication.

COMMISSIONER ANAYA: Okay. Thank you, Mr. Chair. That's all I got.

CHAIR ROYBAL: Thank you for the question, Commissioner Anaya.

D. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Roybal declared this meeting adjourned at 7:30 p.m.

Approved by:

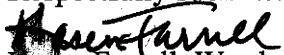

Board of County Commissioners
Anna Hansen, Chair

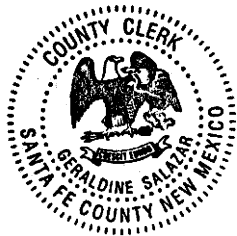
ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK



Respectfully submitted:

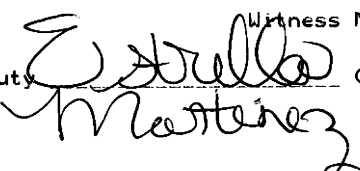

Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

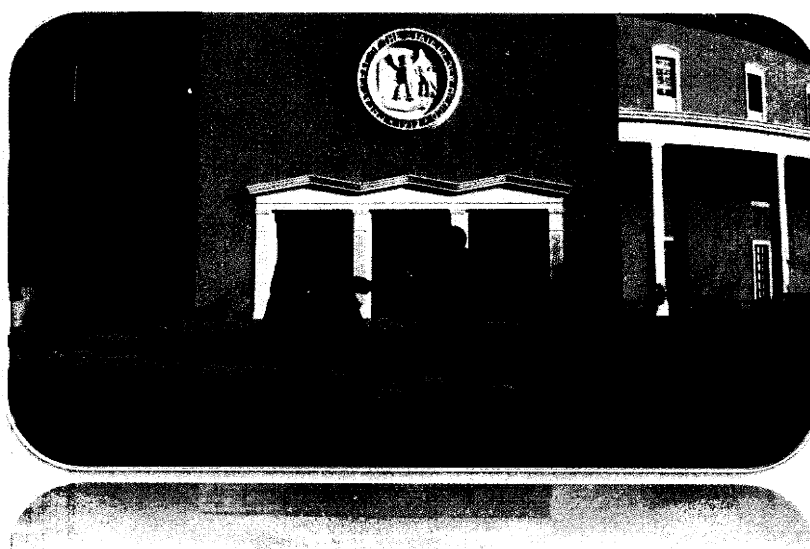
BCC MINUTES
PAGES: 151

I Hereby Certify That This Instrument Was Filed for
Record On The 15TH Day Of February, 2018 at 03:02:36 PM
And Was Duly Recorded as Instrument # 1850089
Of The Records Of Santa Fe County

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

SFC CLERK RECORDED 02/15/2018

Santa Fe County



SFC CLERK RECORDED 02/15/2018

2018 Legislative Report

Santa Fe County Board of County Commissioners Meeting

Santa Fe County
102 Grant Avenue, Santa Fe NM
www.santafecountynm.gov

A look ahead

2018 being an even numbered year means that the state legislature will convene for a 30 day session and will be addressing matters only related to the state budget and taxes.

Other matters can also be addressed as long as they are part of the governor’s agenda for the 2018 regular session. Such other items believed to be added to the agenda are crime related legislation.

This will be the last regular session held under governor Martinez’s administration as she is term limited and at the end of her second consecutive term.

According to December state revenue estimates there is expected to be an approximate \$199 million additional revenues, more than was available in the FY18 budget. This will provide some breathing room for legislators in crafting the state budget but does not leave much room for adding to state funded programs and services that have foregone increases over several budget cycles.

Governor Martinez has stated her legislative proposals for the State Budget and to fight crime in the past few days.

The Governor proposes to increase the budget for 3 specific components; state economic growth, schools and child welfare, and public safety.

The Governor’s proposal to combat crime in the state includes; targeting repeat offenders, supporting police and the courts, and support legislation that is targeted to protect children.

The governor’s and democratic legislators’ budget proposals are similar in that they both propose increased education spending, increased medicare spending, and pay raises for state employees. They are however not in complete alignment and will need compromise as a final budget is formed.

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2018 REGULAR SESSION SCHEDULE (30-Day Session)

December 15, 2017 through January 12	Legislation pre-filing period
January 16	Opening Day
January 25	Santa Fe County Day, 2018 State Legislature
January 28	Capital outlay request and reauthorization request submission deadline (by 5:00 p.m. to the LCS)
January 31	Deadline for introduction
February 15	Session ends (noon)
March 7	Legislation not acted upon by governor is pocket vetoed
May 16	effective date of legislation not a general appropriation bill or a bill carrying an emergency clause or other specified date

SFC CLERK RECORDED 02/15/2018

SFC legislators

Senate

Senator James P. White (R19)

County: Bernalillo, Sandoval, Santa Fe and Torrance
Service: Representative from 2009-2014; Senator from 2017
Occupation: Retired
Address: 1554 Catron Avenue SE
Albuquerque, NM 87123
Capitol Phone: 986-4395
Capitol Room: 415G
Home Phone: (505) 271-4746
Email: james.white@nmlegis.gov

**Senator Carlos R. Cisneros (D6)**

County: Los Alamos, Rio Arriba, Santa Fe and Taos
Service: Senator since 1985
Occupation: Insurance
Address: Box 1129
Questa, NM 87556
Capitol Phone: 986-4362
Capitol Room: 325B
Home Phone: (505) 670-5610
Email: carlos.cisneros@nmlegis.gov

**Senator Liz Stefanics - (D39)**

County: Bernalillo, Lincoln, San Miguel, Santa Fe, Torrance and Valencia
Service: Senator from 1993-1996; Senator since 2017
Occupation: Consultant
Address: P.O. Box 720
Cerrillos, NM 87010
Capitol Phone: 986-4377
Capitol Room: 416C
Office Phone: (505) 699-4808
Home Phone: (505) 471-7643
Email: liz.stefanics@nmlegis.gov

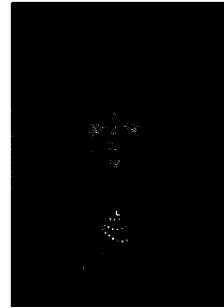
**Senator Richard C. Martinez (D5)**

County: Los Alamos, Rio Arriba, Sandoval and Santa Fe
Service: Senator since 2001
Occupation: Retired Magistrate Judge
Address: Box 762
Española, NM 87532
Capitol Phone: 986-4487
Capitol Room: 319
Home Phone: (505) 747-2337
Email: richard.martinez@nmlegis.gov



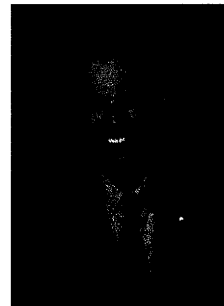
Senator Nancy Rodriguez (D24)

County: Santa Fe
 Service: Senator since 1996
 Occupation: Consultant
 Address: 1838 Camino La Canada
 Santa Fe, NM 87501
 Capitol Phone: 986-4264
 Capitol Room: 301A
 Home Phone: (505) 983-8913
 Email: nancy.rodriguez@nmlegis.gov



Senator Peter F. Wirth (D25)

County: Santa Fe
 Service: Representative from 2004-2008; Senator since 2008
 Occupation: Attorney
 Address: 708 Paseo de Peralta
 Santa Fe, NM 87501
 Capitol Phone: 986-4727
 Capitol Room: 119
 Office Phone: (505) 988-1668
 Home Phone: (505) 989-8667
 Email: peter.wirth@nmlegis.gov



House

Representative Brian F. Egolf (D47)

County: Santa Fe
 Service: Representative since 2009
 Occupation: Attorney
 Address: 123 W. San Francisco
 Santa Fe, NM 87501
 Capitol Phone: 986-4782
 Capitol Room: 104
 Office Phone: (505) 986-4782
 Email: brian.egolf@nmlegis.gov



Representative Debbie A. Rodella (D41)

County: Rio Arriba, Santa Fe and Taos
 Service: Representative since 1993
 Occupation: Self Employed
 Address: 16 Private Drive 1156
 Espanola, NM 87532
 Capitol Phone: 986-4329
 Capitol Room: 306
 Home Phone: (505) 753-8247
 Email: debbie.rodella@nmlegis.gov



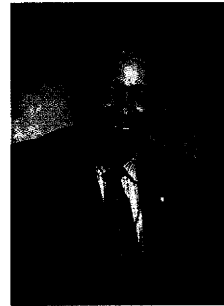
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Representative James E. Smith (R22)

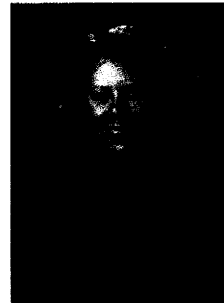
County: Bernalillo, Sandoval and Santa Fe
Service: Representative since 2011
Occupation: Teacher
Address: PO Box 1783
Sandia Park, NM 87047
Capitol Phone: 986-4233
Capitol Room: 204A
Email: jim@jimsmithnm.com

**Representative Jim Trujillo (D45)**

County: Santa Fe
Service: Representative since 2003
Occupation: Businessman
Address: 1901 Morris Place
Santa Fe, NM 87505
Capitol Phone: 986-4420
Capitol Room: 316B
Home Phone: (505) 438-8890
Email: jimtrujillo@msn.com

**Representative Linda M. Trujillo (D48)**

County: Santa Fe
Occupation: Attorney
Address: 1157 Vuelta de las Acequias
Santa Fe, NM 87507
Capitol Phone: 986-4255
Capitol Room: 203AN
Home Phone: (505) 795-4324
Email: linda.trujillo@nmlegis.gov

**Representative Carl P. Trujillo (D46)**

County: Santa Fe
Service: Representative since 2013
Occupation: Engineering
Address: 1 Jerry Hatchet Lane
Santa Fe, NM 87506
Capitol Phone: 986-4236
Capitol Room: 413D
Home Phone: (505) 699-6690
Email: carl.trujillo@nmlegis.gov



Representative Stephanie Garcia Richard (D43)

County: Los Alamos, Rio Arriba, Sandoval and Santa Fe

Service: Representative since 2013

Occupation: Teacher

Address: PO Box 4657

Los Alamos, NM 87544

Capitol Phone: 986-4846

Capitol Room: 313B

Office Phone: (505) 500-4343

Home Phone: (505) 672-4196

Email: stephanie.garciarichard@nmlegis.gov

**Representative Matthew McQueen (D50)**

County: Bernalillo, Santa Fe, Torrance and Valencia

Service: Representative since 2015

Occupation: Attorney

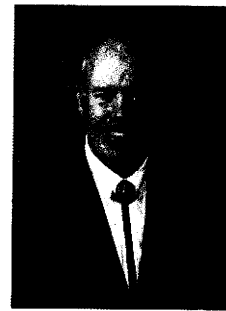
Address: 7 Avenida Vista Grande B7-120

Santa Fe, NM 87508

Capitol Phone: 986-4421

Capitol Room: 316A

Email: matthew.mcqueen@nmlegis.gov

**Representative Tomas E. Salazar (D70)**

County: San Miguel, Santa Fe and Torrance

Service: Representative since 2013

Occupation: Educator

Address: PO Box 66

Las Vegas, NM 87701

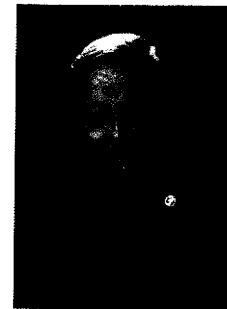
Capitol Phone: 986-4436

Capitol Room: 413C

Office Phone:

Home Phone: (575) 421-2455

Email: tomas.salazar@nmlegis.gov



SFC CLERK RECORDED 02/15/2018

SFC Legislative Related Resolutions

Resolution: 2017-86

Adopting projects for inclusion in Santa Fe County's infrastructure capital improvement plan for fiscal years 2019 – 2023; authorizing submittal of plan to the New Mexico Department of Finance and Administration; and replacing resolution 2016-85

Resolution: 2017-99

Adopting projects for inclusion in Santa Fe County Senior Services' infrastructure capital improvement plan for fiscal years 2019-2023; and authorizing submittal of plan to the New Mexico Department of Finance and Administration

Resolution: 2017-106

To support the New Mexico Association of Counties' 2018 legislative priorities

- ❖ Forfeiture act reform
- ❖ Protecting county funding of healthcare
- ❖ Tax reform
- ❖ Adoption of a local election act
- ❖ Extending 2014 HB16 liquor tax distribution sunset

Resolution 2017-140

A resolution to support community and state tax stabilization from national laboratories in New Mexico

Resolution 2017-141

A resolution in support of the appropriation of funds by the New Mexico Legislature for the "New Mexico Grown Fresh Fruits and Fresh Vegetables for School Meals Program"

Resolution 2017-142

A resolution to support the 2018 Farm Bill priorities as a means to securing a regional food system that is just and accessible for all members of the City of Santa Fe and Santa Fe Communities

Pre-filed related legislation

HB20	<i>Gentry (R30)</i> INMATE RECIDIVISM REDUCTION TRANSITION PROGRAM: LOCAL AND STATE Requires correctional facilities to implement an Inmate Recidivism Reduction Transition Program to provide inmates, upon release, with supports and services designed to reduce recidivism.
HB21	<i>Gentry (R30)</i> LAW ENFORCEMENT PROTECTION FUND FOR RETENTION OF OFFICERS Effective July 1, 2018, proposes a new use of monies from the Law Enforcement Protection Fund to permit distributions from the fund for three years, until June 30, 2021, for retention payments of \$7,500 to certain law enforcement officers, contingent on matching funds from municipalities or counties.
HB35	<i>Trujillo, Carl (D46)</i> MORE LIQUOR EXCISE TAX TO LOCAL DWI GRANT FUND AND DRUG COURTS (For the Courts, Corrections and Justice Committee and the Revenue Stabilization and Tax Policy Committee) Currently 46 percent of the liquor excise tax flows to the Local DWI Grant Fund but this drops to 41.5 percent on July 1, 2018. This bill proposes instead to direct 45 percent of the tax proceeds permanently to the fund plus another five percent to support drug courts. Creates a Drug Court Fund.
HB38	<i>Smith (R22); Rodella (D41)</i> WIRELESS CONSUMER ADVANCED INFRASTRUCTURE INVESTMENT ACT (Duplicates SB14) In general, the Wireless Consumer Advanced Infrastructure Investment Act lays out rules and procedures under which wireless service providers may obtain use of rights of way owned by local governments to place the small wireless equipment necessary for the service. This includes: (2018:SB14)
HB45	<i>Thomson (D24)</i> APPROPRIATION FOR COUNTY AND TRIBAL HEALTH COUNCILS (For the Legislative Health and Human Services Committee) Appropriates \$700,000 (GF) to the Department of Health in FY2019 to fund county and tribal health councils' identification of local communities' health needs and development of strategies to address those needs under the Maternal and Child Health Plan Act.
HB69	<i>Youngblood (R68)</i> INCREASES ELECTED COUNTY OFFICIALS SALARY CAPS Merges class "C" counties into class "B" and increases annual salary caps for elected officials in class "A," "B" and "H" counties, as follows:
HB88	<i>Baldonado (R8)</i> MANDATORY SALE OF REAL PROPERTY ON DELINQUENT PROPERTY TAX LIST Requires Taxation and Revenue Department to annually offer for sale in each county "all" real property listed on that county's property tax delinquency list. Leaves intact authorization for TRD to enter into an agreement with the County Treasurer to postpone the delinquent property tax sale of real property. Applies to property tax years beginning on or after January 1, 2019.
SB14	<i>Candelaria (D26); Gould (R10)</i> WIRELESS CONSUMER ADVANCED INFRASTRUCTURE INVESTMENT ACT (Duplicates HB38) In general, the Wireless Consumer Advanced Infrastructure Investment Act lays out rules and procedures under which wireless service providers may obtain use of rights of way owned by local governments to place the small wireless equipment necessary for the service. This includes: (2018:HB38)
SB17	<i>Cisneros (D6)</i> EXCLUDES OPERATORS OF NATIONAL LABORATORIES FROM GRT EXEMPTION Amends the Gross Receipts Tax Act to apply the tax to a prime contractor who operates a national laboratory in New Mexico, whether or not the prime contractor qualifies as a Section 501(c)(3) nonprofit organization. The bill does so by amending Sec. 7-9-29 relating to Exemptions to specifically exclude a nonprofit prime contractor of a national lab from the exemption.
SB23	<i>Candelaria (D26)</i> APPROPRIATION TO LOCAL GOVERNMENT PLANNING FUND (For the New Mexico Finance Authority Oversight Committee) Appropriates \$1.5 million from the Public Project Revolving Fund to the Local Government Planning Fund for making grants to qualified entities to evaluate and estimate costs of the most feasible alternatives for infrastructure, water or wastewater public projects; to develop water conservation plans, long-term master plans, economic development plans or energy audits; and to pay administrative costs of planning.

Tuesday, January 09, 2018

SEC CLERK RECORDED 02/15/2018

SB49*Sharer (R1)***TAX REFORM PACKAGE**

(Similar to 2017 SB123, 2016 SB145, 2015 SB346 and 2013 SB365) 186-page bill continues the sponsor's effort to reform the state tax system by greatly expanding the gross receipts base to replace the motor vehicle excise, leased vehicle gross receipts and boat excise taxes (which are repealed); lower the state gross receipts tax rate from 5.125% to one percent and governmental gross receipts from five to one percent; provides for a flat-rate personal income tax; repeals the compensating tax, corporate income tax, corporate franchise tax, estate tax and several tax credits; consolidates local option taxes, reducing their maximum permissible rates to 0.5% for municipalities and 0.5% for counties; revises statutes dealing with revenues local governments may pledge to repay indebtedness. All this is effective January 1, 2019.



**AMERICAN
LAND TITLE
ASSOCIATION**



January 9, 2018

The Honorable Henry P. Roybal
Commissioner
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501-2061

Dear Commissioner Roybal:

Congratulations on the Settlement Agreement between the Pueblo de Sal Ildefonso, Santa Fe County and the U.S. Department of the Interior.

Founded in 1907, the American Land Title Association represents businesses and individuals working in real estate settlement, abstract and title insurance industry. Our 6,100 member companies work with consumers across the country every day to ensure their property rights are protected. The core of our industry is searching records that affect property rights and examining them to provide a sense of certainty when homes are purchased or refinanced.

Like you, ALTA members take an active interest in the problem that homeowners in the El Rancho community face due to the lack of an agreement on road access between Santa Fe County and San Ildefonso Pueblo. To that end, ALTA member-companies have met with local, state and federal authorities to discuss this matter and serve as an informational resource. We expect that the agreement will provide homeowners in El Rancho the ability to prove they have access to their property, which will make it easier for them to sell and refinance real estate with certainty that their property rights are protected.

We appreciate and congratulate the County, Pueblos and Department of the Interior for this important milestone. Our members will continue to serve as an informational resource to you.

Sincerely,

Justin B. Ailes
Vice President of Government and
Regulatory Affairs

cc:

United States Senator Martin Heinrich, New Mexico

United States Senator Tom Udall, New Mexico

United States Representative Michelle Lujan Grisham, New Mexico Congressional District 1

United States Representative Steve Pearce, New Mexico Congressional District 2
United States Representative Ben Ray Lujan, New Mexico Congressional District 3
Governor Susana Martinez, New Mexico
Speaker Brian Egolf, New Mexico House of Representatives
Senator Mary Kay Paben, New Mexico Senate President Pro Tempore
Senator Peter Wirth, New Mexico Senate Majority Leader
Governor James Mountain, Pueblo of San Ildefonso
Commissioner Henry Roybal, Santa Fe County, New Mexico
Commissioner Anna Hansen, Santa Fe County, New Mexico
Commissioner Robert Anaya, Santa Fe County, New Mexico
Commissioner Anna T. Hamilton, Santa Fe County, New Mexico
Commissioner Ed Moreno, Santa Fe County, New Mexico
Mr. Joshua Mann, Attorney Advisor, U.S. Office of the Solicitor



1511 University Blvd. NE
Albuquerque, NM 87102
www.nmlta.org
505-999-5804

January 8, 2018

Board of County Commissioners
Santa Fe County
102 Grant Ave.
Santa Fe, New Mexico 87501

Re: NMLTA Support for Settlement Agreement with Pueblo of San Ildefonso
Regarding County Road Access Issues

Ladies and Gentlemen:

On behalf of the board of directors of the New Mexico Land Title Association (NMLTA), this letter is to express the NMLTA's support for the Settlement Agreement negotiated among the Pueblo of San Ildefonso (Pueblo), Santa Fe County (County) and the United States Department of the Interior (DOI).

NMLTA representatives met with representatives of the Pueblo and DOI to review and discuss the Settlement Agreement, and the board of directors of the NMLTA has considered the Settlement Agreement and has voted to express its support as stated in this letter.

NMLTA believes that the Settlement Agreement establishes a sufficient framework to allow title insurance underwriters, subject to their own individual underwriting guidelines and considerations, to treat the current and future County Roads that are the subject of the Settlement Agreement as being public roads which provide public access to the privately-owned properties within the exterior boundaries of the Pueblo. The Settlement Agreement also creates a workable interim solution until the formal federal right-of-way process is completed for the existing and the new County Roads and addresses in an appropriate way the physical "gap" issue of private properties that do not abut a County Road. To the extent that access issues may still be present among private landowners, those are issues that are not part of the agreement, nor can they be, and which will need to be addressed on a case by case basis.

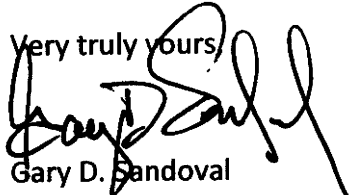
As an association of title insurance underwriters and title insurance agents, the NMLTA represents the interests of the New Mexico title insurance industry as a whole, but it does not speak on behalf of any individual title insurer or agent. Based on the intentions and commitments of the parties as embodied in the Settlement Agreement, the NMLTA is committed to continue to work with the parties to the Settlement Agreement and with the

SFC CLERK RECORDED 02/15/2018

Office of the New Mexico Superintendent of Insurance to be able to provide title insurance that includes access coverage for the properties.

We appreciate the opportunity to provide our industry's input and we commend the parties for their incredible hard work in crafting this resolution of very difficult issues.

Very truly yours,



Gary D. Sandoval

President, New Mexico Land Title Association

Cc: United States Senator Martin Heinrich, New Mexico
United States Senator Tom Udall, New Mexico
United States Representative Michelle Lujan Grisham, New Mexico Congressional District 1
United States Representative Steve Pearce, New Mexico Congressional District 2
United States Representative Ben Ray Lujan, New Mexico Congressional District 3
Governor Susana Martinez, New Mexico
Speaker Brian Egolf, New Mexico House of Representatives
Senator Mary Kay Papen, New Mexico Senate President Pro Tempore
Senator Peter Wirth, New Mexico Senate Majority Leader
Governor James Mountain, Pueblo of San Ildefonso
Mr. Joshua Mann, Attorney Advisor, U.S. Office of the Solicitor
Sen Elizabeth 'Liz' Stefanics
Sen Richard C. Martinez
Rep Carl Trujillo
Rep Gail Chasey
Rep Debbie A. Rodella

Tony T. Flores

From: Greg Swift <swift13@earthlink.net>
Sent: Saturday, January 06, 2018 9:48 PM
To: Henry P. Roybal
Cc: Tony T. Flores; carl.trujillo@nmlegis.gov
Subject: Roads agreement between County and San Ildefonso Pueblo

Dear Commissioner Roybal,

I attended the meeting a few nights ago about the proposed agreement between the county and San Ildefonso Pueblo regarding the roads. I am writing to express my support for this agreement. Congratulations to you and the county for getting this done. I'm more than ready for a good-enough deal, even if some details are left slightly uncertain. I think you were wise to withhold funds for the water system until this is resolved, and it seems to me that it is now getting resolved.

At the meeting, I appreciated hearing the philosophy expressed by the county's first speaker: We'll never get to the bottom of the long, poorly documented history here---we simply have to agree to stop arguing about that history, and move forward. Better to move forward than to stay bogged down year after year.

In the past week, I have spoken with seven members of our acequia (from seven different households) regarding re-routing an acequia lateral crossing several private properties, and in each conversation the subject of the roads agreement came up, too, because it is on everyone's mind. None of these seven people had attended the meeting last week, but six of the seven had seen the encouraging news reports in December or heard about it second-hand. All seven people expressed relief that this long struggle is coming to an end, with title-insurance companies satisfied with the resolution. The three people I sat near at the meeting last week also support the agreement. I think there are plenty of quiet people who simply trust that the outcome negotiated by leaders like you and county management is pretty much as good as it can be.

At the meeting, I recognized two persistent, vocal people who object to everything. Initially, vocal watchdogs often identify important issues, which can lead to better agreements. But then some people don't know when to quit arguing and move forward.

(I feel the same way about the proposed water utility. It will have a positive impact on the valley. So, let's get on with it.)

Thank you for serving on the commission during this time,
Greg Swift

SEC CLERK RECORDED 02/15/2018

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is by and between the Pueblo de San Ildefonso ("San Ildefonso" or "Pueblo"), Santa Fe County ("County"), and the United States Department of the Interior ("Department"). The Pueblo, the County, and the Department are sometimes each referred to as a "Party" and together as the "Parties."

RECITALS

WHEREAS, certain County-Maintained Roads are located within the exterior boundaries of the Pueblo, segments of which traverse Pueblo Land and segments of which traverse Private Land; and

WHEREAS, the Bureau of Indian Affairs ("BIA") and the Pueblo have asserted that the County-Maintained Roads traversing Pueblo Land are in trespass; and

WHEREAS, the County disputes that the County-Maintained Roads are in trespass on Pueblo Land; and

WHEREAS, judicial resolution of this disagreement regarding the County Maintained Roads would be time-consuming, expensive, and divisive, and would adversely affect the Parties' efforts to work collaboratively on other issues of critical concern; and

WHEREAS, conclusively resolving longstanding issues that have the potential to divide the community and providing long term access to Private Land are of paramount importance to the Parties; and

WHEREAS, the Parties agree that constructing the New Roads and placing the Subject Roads and New Roads on the National Tribal Transportation Facility Inventory as BIA owned roads pursuant to the terms of this Agreement will provide long-term access to the public, which includes access by non-Pueblo residents to houses located within the Pueblo's exterior boundaries.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms contained herein.

Section 1. Definitions. Capitalized terms are defined either in the text of this Agreement or in this Section. In addition, the definitions found at 25 C.F.R. Parts 169 and 170 apply to this Agreement.

- A. "Access Point" means the point identified on the County's survey conducted in cooperation with the Pueblo at which lawful ingress and egress to Private Land can occur. Access Points that serve two or more subdivided lots on Private Land are called "Common Access Points."
- B. "Bureau of Indian Affairs" or "BIA" means the agency within the United States Department of the Interior that is responsible for carrying out, administering and overseeing the programs, functions, services and activities available to Federally-recognized Indian Tribes, including the Pueblo.
- C. "BIA Road ROWs" means long-term rights-of-way for each and every BIA Road on Pueblo Lands, as identified and defined in Section D. below.
- D. "BIA Road" means an existing or proposed public road listed on the National Tribal Transportation Facility Inventory that is, or will be, owned by the BIA as a Public Authority and for which the BIA has or plans to obtain a legal right-of-way. 25 C.F.R. § 170.5. The New Roads and the Subject Roads will become BIA Roads under this Agreement.
- E. "Construction" means any road work activities that are not considered Maintenance as defined below.
- F. "Contributed Funds Agreement" or "CFA" means the funding agreement to be entered into between the Secretary and the County pursuant to Sec. 611(d)(1) of the Aamodt Litigation Settlement Act, Pub. L. 111-291. The CFA will provide for the County's contribution of the non-Federal share of the costs of constructing the Regional Water System in accordance with the August 27, 2009 Cost Sharing and System Integration Agreement.
- G. "County-Maintained Roads" or "CMR" means the following already existing Public Roads, whether on Pueblo Land or Private Land, within the exterior boundaries of the Pueblo: CMR 84, CMR 84A, CMR 84B, CMR 84C, CMR 84D, and CMR 101D. The CMRs are depicted on Exhibit A to this Agreement.
- H. "Effective Date" means the date of last signature.
- I. "Final Construction Design" means the 100% final plans, specifications, and cost estimates for the New Roads that have been prepared and stamped by a professional engineer retained by the Pueblo, and approved by the BIA Southwest Regional Road Engineer.
- J. "Gap" means a gap of Pueblo Land located directly between Private Land and a Public Road that prevents lawful ingress and egress from the Private Land to the Public Road.

- K. "Maintenance" means the preservation of the entire road, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the road. 23 U.S.C. § 101 (a)(13).
- L. "National Tribal Transportation Facility Inventory" or "NTTFI" means the comprehensive national inventory maintained by the Secretary of tribal transportation facilities that are eligible for assistance under the Tribal Transportation Program. 25 U.S.C. § 202 (b)(1).
- M. "New Roads" means "Yellowbird Loop," which will replace CMR 84C, CMR 84D, and Sandy Way, and "Blue Dove Road," each of which are or will be Public Roads. The County will construct the New Roads entirely on Pueblo Land on ROWs granted by the Secretary. The approximate locations of Yellowbird Loop and Blue Dove Road are depicted on Exhibit C to this Agreement.
- N. "Northern Segment of CR 101D" means the segment of CR 101D between CR 84 and CR 84D.
- O. "Part 169" means 25 C.F.R. Part 169 – Rights-of-Way on Indian Land.
- P. "Part 170" means 25 C.F.R. Part 170 – Tribal Transportation Program.
- Q. "Private Land" means the land located within the exterior boundaries of the Pueblo that the United States patented to private claimants or to which Indian Title has otherwise been duly extinguished. Discrete areas of Private Land may consist of one lot under common ownership or several lots under different ownership.
- R. "Public Authority" means a Federal, State, county, town, or township, Indian Tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free transportation facilities. 23 U.S.C. § 101 (a)(21).
- S. "Public Road" is a road open to public travel, and not subject to any type of tolls or fees collected by the Pueblo. 23 U.S.C. § 101 (a)(22).
- T. "Pueblo Land" or "Pueblo Lands" means real property owned by the Pueblo de San Ildefonso in fee simple subject to Federal restrictions against alienation, or lands owned by the United States in trust for the benefit of the Pueblo.
- U. "Regional Water System" means the Pojoaque Basin Regional Water System the Bureau of Reclamation will construct pursuant to the Aamodt Litigation Settlement Act, Title VI, Aamodt Litigation Settlement Act for the Claims Resolution Act of 2010, Pub. L. 111-291, 124 Stat. 3064, 3134-3156.

- V. "Road Maintenance Agreement" or "RMA" means an agreement among the BIA, the Pueblo and the County authorizing the County to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the parties to the RMA from time-to-time.
- W. "ROW" means right-of-way.
- X. "Secretary" means the Secretary of the Interior or the Secretary's authorized representative.
- Y. "Standard Appraisal Method" means the standard appraisal method typically used for valuation of comparable unrestricted fee lands.
- Z. "Subject Roads" means CMR 84, CMR 84A, CMR 84B, and the Northern Segment of CMR 101D.
- AA. "Trespass Damages" means all damages suffered by the Pueblo because of the CMRs presence, maintenance, and use from the beginning of time to the date of the approval of each ROW for each CMR; *provided*, however, that Trespass Damages does not include damages, if any, relating to the release of regulated hazardous substances or other dangers on or below the surface of the earth, known or unknown.

Section 2. *General Obligations, County Funding, Consideration.*

- A. **County Obligations:** As may be further described in more detail in later Sections of this Agreement, the County has the following general obligations under this Agreement:
 - 1. Within five (5) years after the Effective Date, which time may be extended under Sections 4(A) and 4(E) below, the County shall at its expense:
 - a. Obtain such appropriate temporary permits or other written authorizations from the Pueblo, the BIA, or both, as may be required to conduct work on Pueblo Land.
 - b. Survey the proposed ROWs for the Subject Road ROWs ("Subject Road ROWs") and New Roads ("New Road ROWs") in accordance with the Final Construction Design. The survey shall identify all of the Access Points to the Subject Roads and New Roads. In addition, the alignment and survey of the proposed ROW for the Subject Roads and New Roads shall eliminate or, if elimination is not feasible, minimize the number and width of Gaps between the Access Points and Private Land.
 - c. Prepare such plats and legal descriptions of the New Road ROWs and the Subject Road ROWs as may be required to support ROW applications for these Roads under Part 169.

- d. Conduct such studies, assessments, and investigations and prepare such reports as may be required to support the ROW applications under Part 169 for the New Roads and Subject Roads.
 - e. Prepare complete ROW applications pursuant to Part 169 for the New Roads and Subject Roads (where located on Pueblo Land) in cooperation with the Pueblo and transmit the applications to the Pueblo for the Council's consideration and consent. Following the grant of ROWs for the New Roads and compliance with Section 2(A)(1)(a), the County will construct the New Roads in accordance with the Final Construction Design.
2. Submit draft ROW applications and related documents to the Pueblo and the BIA for review and comment.
 3. Convey the County's existing ROWs to the BIA for the Subject Roads where located on Private Land. The forms of conveyance shall be prepared by the County Attorney and approved by the BIA, in consultation with the Office of the Solicitor, Southwest Region.
 4. Cooperate with the Pueblo and the BIA in incorporating the New Roads and Subject Roads into the NTTFI.
- B. **Pueblo Obligations.** As may be further described in more detail in later Sections of this Agreement, the Pueblo has the following general obligations under this Agreement:
1. As soon as practicable after the Effective Date, provide the Final Construction Design to the County along with such environmental, archaeological, cultural or other information, data, and reports as may be pertinent under Part 169 and that is within the possession of the Pueblo or its agents.
 2. Cooperate with and assist the County as may reasonably be necessary to facilitate the County's performance of its obligations under this Agreement.
 3. Timely issue permits and such other authorizations as may be necessary for the County to work lawfully on Pueblo Land.
 4. Timely consider and provide written comment on the County's submission of draft ROW applications and related documents.
 5. Timely submit proposed ROW applications approved by Pueblo staff to the Council for consideration.

6. Timely obtain resolutions from the Council consenting to submission of complete ROW applications to the BIA.

7. The Pueblo agrees to submit the completed ROW applications along with the Council's consenting resolution, to the BIA.

C. **Department Obligations.** As may be further described in more detail in later Sections of this Agreement, the Department has the following general obligations under this Agreement:

1. Cooperate with and provide technical assistance to the County and the Pueblo as may reasonably be necessary to facilitate the performance of their obligations under this Agreement.

2. Timely issue permits and such other authorizations as may be necessary for the County to work lawfully on Pueblo Land.

3. Timely consider and provide technical assistance on the County's submission of draft ROW applications and related documents.

4. Timely review ROW applications for completeness and compliance under Part 169, timely request additional documentation or information from the submitting party as may be necessary, and timely forward complete ROW applications to the Secretary.

D. **General Obligations of All Parties.** All Parties have the following general obligations under this Agreement:

1. Cooperate in good faith and reasonably assist each other in performing their respective obligations under this Agreement.

2. Work cooperatively to incorporate the Subject Roads and New Roads into the NTTFI in accordance with 25 C.F.R. Part 170.

3. Timely execute the releases of liability required under this Agreement.

4. Timely prepare and execute, as appropriate, such other instruments and documents as may reasonably be required to carry out the purposes of this Agreement.

E. **Satisfactory Consideration.** The Pueblo agrees that the purpose of the County's construction of the New Roads and performance of its other obligations under this Agreement is to: (1) provide consideration to the Pueblo for the Pueblo's consent to provide ROWs on Pueblo Land for the Subject Roads and New Roads that is fair and reasonable under the circumstances; and (2) finally settle and resolve all Trespass

Damages. Further, the Pueblo agrees that the County's construction of the New Roads and performance of its other obligations under this Agreement is satisfactory to the Pueblo as consideration for the BIA Road ROWs and other permitted access described herein.

- F. **Special County Funding Source.** The source of County revenue that the County will use to construct the New Roads is the one-quarter of one percent capital outlay gross receipts tax imposed by the County under NMSA 1978, Section 7-20E-21, and the first one-eighth increment of the County hold harmless gross receipts tax under NMSA 1978, Section 7-20E-28 (collectively, "Special Funding Source"). If for any reason the Special Funding Source fails to generate sufficient revenue for the County to timely perform its obligations under this Agreement, the County may only use other funds for such performance as may be approved and appropriated by the Board of County Commissioners in its discretion.

Section 3. *Subject Road ROWs.*

- A. The County shall promptly complete the Subject Road ROWs applications for Pueblo Lands and submit them to the Pueblo for review and comment. After the County and the Pueblo agree on the contents of the application(s) for a given Subject Road on Pueblo Land, the Parties shall follow the process set out in Section 2 above.
- B. Each Subject Road ROW that traverses Pueblo Land and that complies with Part 169, shall be for a proposed term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years, and the Pueblo shall consent to such initial and automatic renewal terms by resolution of its Council or in such other form as the Secretary may require. The width of the Subject Road ROWs on Pueblo Land shall be the width of the existing driving surface of the Subject Road on the Effective Date plus four (4) feet on each side of the existing driving surface ("Standard Width"); *provided*, however, that wherever the Standard Width would encroach on Private Land, the width of the ROW shall extend only to the boundary of the Private Land.
- C. For those portions of a Subject Road that traverse Private Lands, the County, in consultation with the Pueblo and the BIA, shall convey its existing ROWs to the BIA under the laws of the State of New Mexico for a term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years. The County shall assign its existing ROWs over Private Lands to BIA no later than sixty (60) days after the Secretary grants all of the Subject Road ROWs across Pueblo Land for a given road. The effective date of the County-granted ROWs shall be the same as the Secretary-granted ROWs for a given Subject Road. In the event an existing County ROW is challenged in State or Federal

court, the County shall defend the ROWs and its conveyance to BIA, and, if necessary condemn the necessary rights, subject to Section 2(F).

- D. Upon expiration of the second ninety-nine (99) year term of a Subject Road ROW, whether on Pueblo Land or on Private Land, the portion of the Subject Road that was within the expired ROW shall return to the same legal status held prior to this Agreement, unless the Parties otherwise agree.

Section 4. *New Roads.*

- A. The County agrees to construct the New Roads entirely on Pueblo Land in accordance with the Final Construction Design within five (5) years after the Effective Date. In the event there are unforeseen circumstances beyond the control of the Parties that may delay completion of the construction of the New Roads within the five (5) year period, the Parties agree to meet to discuss options to complete the road construction in as timely a manner as possible.
- B. The County shall construct the New Roads using base course.
- C. The County shall be responsible for the costs of obtaining the materials, labor, and equipment necessary to construct and survey the New Roads in accordance with the Final Construction Design.
- D. The County shall not be responsible for the following costs:
 - 1. The costs of removing cultural, archeological, or historical resources (collectively, "Cultural Resources"), or major redesign of the New Roads to avoid Cultural Resources;
 - 2. The costs of removing or remediating environmental contamination within the alignment of the New Roads, or major redesign of the New Roads to avoid environmental contamination, *provided*, nothing in this Agreement affects any of the County's potential liabilities (if any) under Federal environmental law.
 - 3. The Parties agree to meet to discuss how to address any situation, including the discovery of Cultural Resources or environmental contamination within the proposed alignment of the New Roads, which could significantly impact the design, cost or construction timeframes. Such meeting shall occur as soon as possible after the County becomes aware of such a situation. Such delays necessary to address such unforeseen circumstances will not count against the five (5) year construction period. Notwithstanding the requirement to meet as soon as possible following a discovery, the County agrees to notify the Pueblo immediately upon the discovery of any Cultural Resources during the construction process.

4. Any litigation costs related to the cost of obtaining court orders to gain or maintain access to construct the New Roads, adjudicating title to the underlying land for the New Roads, or defending or bringing any claims or appeals regarding the New Roads. Because the New Roads will be constructed entirely on Pueblo land, the County will not be required to file or prosecute any legal action to obtain access or remove obstructions to access, *provided*, the County may be required to acquire temporary construction easements on Private Lands during the construction. The BIA and the Pueblo will assure that the County has clear legal and physical access to Pueblo Land before construction commences and throughout construction. Delays necessary to obtain such access will not count against the five (5) year construction period.
 5. Costs of installing or relocating any utilities, including fiber optic cable. The County will not commence construction of the New Roads until after utilities have been installed unless otherwise agreed to by the Parties.
- E. The Pueblo shall as soon as practicable after the Effective Date provide the County with the Final Construction Design for the New Roads. The County, the Pueblo, and BIA must agree on the Final Construction Design. The County, the Pueblo and the BIA shall further agree upon appropriate milestone inspections points for New Roads construction project. Additionally, none of the New Roads shall be opened to the public before the BIA has carried out a final inspection, the BIA has formally accepted the New Roads as BIA Roads, and the Southwest Regional Road Engineer has authorized the New Roads to be opened to public travel. If all of the necessary road access points to Private Land are not included in the Final Construction Design for Blue Dove Road on the Effective Date of this Agreement, the Parties shall meet to agree on a revised Final Construction Design and the County shall design, construct and maintain such additional roadway and such roadway will be included in the New Road ROW.
 - F. The County will bear the cost of surveying the New Roads and for conducting environmental and archeological assessments in accordance with applicable federal law.
 - G. For each New Road ROW that complies with Part 169, the proposed term shall be ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years, and the Pueblo shall consent to such initial and automatic renewal terms by resolution of its Council or in such other form as the Secretary may require.
 - H. Upon opening Yellowbird Loop to public travel, the County will cease maintaining the portions of CMR 84C, CMR 84D and Sandy Way where those Roads cross Pueblo Land, will close the same by posting notices and, in consultation with the Pueblo, place appropriate barriers or take other actions to decommission the Roads, will promptly notify the State of New Mexico that said roads are no longer public roads, cause them to

be removed from the County's annual declaration to the State of New Mexico of roads within the County that are eligible for expenditure of State or County road maintenance funds, and take such other actions as may be required under state law to abandon the Roads. The County will continue to maintain CMR 84C and CMR 84D as County Roads only to the extent they traverse Private Land.

Section 5. *ROW Application and Approval.*

- A. The Pueblo and the County agree that Federal law, including 25 U.S.C. §§ 323-328 and Part 169, controls the application, granting and administration of ROWs on Pueblo Lands. Nothing in this Agreement shall be construed to restrict the authority of the Secretary, or the Pueblo under applicable laws or regulations, including but not limited to, laws and regulations applicable to the review and grant of ROWs by the Secretary. However, the Department represents that nothing in this Agreement is inconsistent with the applicable Federal laws and regulations.
- B. In order to expedite the ROW development, submission and review process, the Pueblo and the County have agreed to use ROW templates to be provided by the BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW applications. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW across Pueblo Land by the Secretary.
- C. For each New Road and Subject Road ROW application, the County shall develop an accurate legal description of the ROW, including its boundaries, Access Points, and a map of definite location of the ROW. Additionally, the County shall place survey caps at agreed-upon locations five hundred (500) feet along both sides of the ROWs. The County shall be responsible for conducting any surveys necessary to support application to the BIA for the ROWS including the costs of such surveys.
- D. The Pueblo and the County shall cooperate with respect to the preparation and filing of documentation necessary for the Secretary to grant ROWs for the Subject Roads (across Pueblo Land) and the New Roads. The Pueblo agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA in support of the County's application(s) subject to any limitations contained herein. The Pueblo shall pay no additional costs related to any surveys.
- E. As soon as practicable after the Pueblo and County agree on the contents of the Subject Road ROW applications, the Pueblo shall submit the applications to the BIA Southwest Regional Road Engineer for initial review, execution and forwarding for the Secretary's review. The documentation shall comply with the requirements of Part 169, including but not limited to, identifying the Pueblo Lands affected by the ROWs, maps of definite

location for each and every ROW, and the ownership of permanent improvements associated with the ROWs.

- F. All New Road and Subject Road ROWs shall be for the primary purpose of maintaining a BIA Road, with Construction identified as a secondary purpose.
- G. The Parties agree that the insurance provided by the County under Section 11(H) satisfies the requirement of 25 C.F.R. § 169.103.
- H. The Secretary shall accept the Pueblo's determinations as reflected in this Agreement and the Tribal Resolution attached as Exhibit B, including: (1) that construction of the New Roads by the County constitutes adequate compensation to compensate it for Trespass Damages; (2) that valuation is waived; (3) that accepting such agreed-upon compensation and waiving valuation is in the Pueblo's best interest; and (4) that the Pueblo provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 19(E).
- I. The Department shall cause the granted ROWs to be recorded with the BIA's Land Title and Records Office as expeditiously as possible.

Section 6. *Automatic Renewal of ROWs.*

The ROWs for the Subject Roads and New Roads will automatically renew for an additional ninety-nine (99) year term unless this Agreement has been terminated prior to expiration of the initial term in accordance with the terms of this Agreement and Part 169.

Section 7. *Roads to Remain Open to the Public.*

Consistent with the Pueblo's resolution consenting to the ROW for the BIA Roads, the Pueblo shall confirm that each BIA Road remains on, or is added to, the NTTFI. The Pueblo further confirms and agrees that the Pueblo shall not request Secretarial approval for the closure and removal from the NTTFI of any BIA Road, or revocation of the ROW for such BIA Road, during the terms of the BIA Road ROW and any renewal or extension thereof, unless this Agreement is terminated as provided below. The Pueblo and the County may mutually request closure of any BIA Road and revocation of its associated ROW in the event that the BIA Road no longer provides access to any Private Land. The Pueblo may temporarily close BIA Roads for cultural activities pursuant to 25 C.F.R. § 170.114.

Section 8. *Renaming Roads.*

- A. The Parties agree that the Pueblo may rename the Subject Roads, consistent with E-911 service requirements, and install appropriate signage using a phased approach.

- B. The Parties will cooperate in displaying the new road names, and signs showing the CMR designations will not be removed for an agreed-upon period after the signs designating the new names have been installed. The Parties agree that the full transition to the new road names shall not exceed five (5) years from the Effective Date.

Section 9. *Interim Access.*

- A. The Pueblo agrees to grant the County a temporary public road permit for CMR 84C, CMR 84D and Sandy Way for a term of five (5) year period; *provided*, however, that if Yellowbird Loop has not been fully constructed and opened to the public at the end of the five (5) year term, the Pueblo shall grant successive extensions of one (1) year or until such time as Yellowbird Loop becomes a Public Road or this Agreement terminates, whichever occurs first.
- B. The Pueblo agrees to provide legal access to all Private Land through a legislative grant of temporary access from either an Access Point or Common Access Point off of CMR 84, CMR 84A, CMR 84B and the Northern Segment CR 101D for a term of five (5) years or until the ROWs are granted, whichever is first. This grant of temporary access does not, and shall not, authorize access over Pueblo Land from any unauthorized roads of convenience.
- C. The Pueblo agrees to grant specific temporary access across Pueblo Land to individual landowners seeking such specific access. Fees for such interim permits shall not exceed one hundred dollars (\$100.00). The term of such permits will be five (5) years or until the permittee has a means of lawful access to a BIA Road via an Access Point or a Common Access Point; *provided*, however, that if such lawful access is not available at the end of the five (5) year term, the Pueblo shall, upon payment of an additional annual processing fee not to exceed one hundred dollars (\$100.00), grant successive permit extensions of one (1) year or until such time as lawful access in accordance with this Agreement has been established or this Agreement terminates, whichever is first.

Section 10. *Gap and Other Access Issues.*

- A. Each lot on Private Land shall be paired with one surveyed Access Point; *provided*, however, that in some cases the same Common Access Point may be paired with multiple lots on Private Land. Lawful ingress and egress to a lot on Private Land that is not directly adjacent to a Common Access Point on a BIA Road will require the use of non-BIA public roads or easements to cross the intervening private lots.
- B. The County shall survey the Gaps when it surveys the Subject Roads and New Roads, and shall include such surveys in the ROW applications described herein.

- C. The County shall require access to be solely through legal Access Points for future development on non-Pueblo land.
- D. The Pueblo and the County shall work cooperatively to resolve the specific access and Gap issues concerning the lots on Private Land along the northern segment of CMR 101D, and will seek to identify and cooperatively resolve access and Gap issues that may arise in other areas.
- E. The Pueblo may choose to realign CMR 84A at its expense. Before the commencement of construction for such realignment, the Parties shall cooperate in establishing legal ROWs consistent with the remaining term of the BIA Road ROWs herein for the realigned CMR 84A. Additionally, the Pueblo will at its expense survey Access Points for each lot on Private Land affected by the realignment and ensure that any Gaps are included in any ROW granted to the BIA.
- F. The County and Pueblo must mutually agree to any change in an Access Point, including changes required because the Access Point is physically obstructed.
- G. The County agrees to cooperate and assist the Pueblo on access issues that may arise.

Section 11. Road Maintenance and Construction.

- A. The County shall maintain the Subject Roads and the New Roads at the County's expense pursuant to an RMA for the entire term of the ROWs granted in accordance with this Agreement. Between the Effective Date and the date of the execution of the RMA described below, the County shall continue to maintain the Subject Roads.
- B. The Parties agree that the County will not be responsible for maintaining the fences called for under the Final Construction Design, maintaining any utilities, maintaining driveways or any other entrance to Private Land from a Public Road. Additionally, the County shall not be responsible for ejecting trespassers from Pueblo Lands.
- C. Within sixty (60) days of the granting of the ROWs by the Secretary, the Parties shall execute a Road Maintenance Agreement authorizing the County, in consultation with the Pueblo, to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the Parties from time-to-time. The RMA may also permit the County to transfer to the BIA an agreed-upon amount of funds to adequately maintain the BIA Roads. The Parties acknowledge, and the RMA shall reflect, that "Adequate Maintenance" means maintaining each and every one of the BIA Roads at the existing Level of Service or above for each road as agreed upon by the Parties on or before the date of execution of the RMA.

- D. Nothing in the RMA or this Agreement shall be construed to restrict or otherwise interfere with the BIA's authority to carry out, oversee, inspect, enforce or approve Maintenance, other transportation-related activities, or any other lawful activity on the BIA Roads.
- E. For any Maintenance or other activities carried out on the ROWs by County contractors, the County shall require its contractors to provide performance bonds and have insurance covering all aspects of the Maintenance or Construction activities to ensure that any such activities, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.
- F. The County shall not assign the RMA without the consent of both the Pueblo and the BIA.
- G. The County does not currently have plans to request any Construction activities to improve any of the BIA Roads, other than the agreed-upon construction of Yellowbird Loop and Blue Dove Road in accordance with the specific terms for construction of those roads. In the event the County plans to propose Construction within any ROW, including but not limited to replacing an earthen-driving surface with an asphalt surface, the provisions of the ROW grant and the RMA shall apply.
- H. The County agrees to maintain throughout the term of the ROWs general liability insurance to cover its maintenance of the BIA Roads, which shall be subject to approval in amount of coverage and form by the Office of the Solicitor, Southwest Region. The United States, the BIA and the Pueblo shall be named as "additional insureds" under such policy

The Parties agree to address in the RMA claims/occurrences arising from the County's or its contractors' maintenance of BIA Roads that are excluded by the County's or its contractors' insurance, and claims/occurrences that exceed the County's or its contractors' insurance coverage limits.

- I. The Pueblo shall not tax any current or future road improvements within the ROWs; *provided*, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance with applicable law on any contractors or subcontractors conducting the Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROWs, nor shall this Agreement affect the application of any other Pueblo laws and ordinances within the ROWs; *provided*, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the BIA.

J. In no event shall the BIA or Pueblo be responsible for maintaining the Gaps.

Section 12. Utilities.

- A. The County agrees that the Pueblo has sole jurisdiction to grant easements, subject to BIA approval, for utilities along any and all roads placed on the NTTFI.
- B. The Pueblo agrees that the Pueblo shall charge no more than market rates based on a standard appraisal method for unrestricted fee lands for such future utility ROWs located within the specific section of CMR 84 and CMR 84B starting at the location where the pavement ends on CMR 84B (Latitude=35°53'34.4633" North, Longitude=106°06'49.7068" West) running approximately 2.44 miles to eastern Pueblo grant boundary (Latitude= 35°53'13.58" North, Longitude=106°04'24.09" West).
- C. The Parties acknowledge that any ROW granted pursuant to this Agreement shall not authorize the installation of utilities within the ROWs or any other uses, unless specifically otherwise provided in that ROW instrument.
- D. The County will not issue road cut permits for installation of utilities or other purposes for any BIA Road.

Section 13. Contingencies.

- A. No ROW applications shall be submitted to either the Southwest Regional Road Engineer for initial review and forwarding to the Secretary, or by the County to the Secretary, for review until the Contributed Funds Agreement for construction of the Regional Water System is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.
- B. In the event that the County and the Bureau of Reclamation do not enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply:
 - 1. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 20; *provided*, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting due execution by the Bureau of Reclamation.
 - 2. The Pueblo shall have sixty (60) days from the date of such notice to terminate this Agreement by giving the County notice of such termination, which notice shall be given in accordance with Section 20. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.

3. Notwithstanding Sections 13(B)(1) and 13(B)(2), this Agreement shall not terminate, if the Bureau of Reclamation provides written notice, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that the delay in executing that Agreement will not delay substantial completion of the Regional Water System.

C. Should the Secretary deny the grant of any of the ROWs, the following provisions shall apply:

1. If the Secretary issues a final decision denying the grant of any of the ROWs pursuant to 25 C.F.R. § 169.24, the Pueblo and the County agree to discuss whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROWs were denied. The Party choosing to terminate this Agreement will give notice to the Parties in accordance with Section 20.

2. If the Secretary denies the grant of any of the ROWs because the Secretary requires modifications to the application or any measures needed to meet applicable law in order to grant the ROW applications, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW applications required modification. The Party choosing to terminate this Agreement will give Notice to the Parties in accordance with Section 20.

Section 14. *Release of Claims.*

A. **Release of Claims Against the County.** If the Secretary grants the ROWs for the Subject Roads and the New Roads, then on the day that the last such ROW is granted, the Department and the Pueblo shall irrevocably and forever release and discharge the County, former and current County employees, and former and current County elected officials from any and all past claims of Trespass Damages, from the beginning of time to the date of the grant of the ROWs for the Subject Roads and New Roads.

B. **Release of Claims Against the United States and the Department.** If the Secretary approves the ROWs for the Subject Roads and the New Roads, then on the day that the last such ROW is granted the Pueblo and the County agree to irrevocably and forever

release and discharge the United States and the Department, former and current Department employees from any and all past surface trespass claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of the ROW for each Subject Road or New Road. The Pueblo also hereby waives, releases, and covenants not to sue the United States in any administrative or judicial forum for any alleged harms or violations, including any breach of the trust responsibility of the United States to the Pueblo, related to past surface trespass claims for the CMRs, negotiation and entry by the Department into this Agreement, from the beginning of time to the date of approval of each ROW for each Subject Road or New Road.

- C. **Release of Claims Against San Ildefonso.** If the Secretary grants the ROWs for the Subject Roads and New Roads, then on the day that the last such ROW is granted the County agrees to irrevocably and forever release and discharge the Pueblo, former and current Pueblo employees, and former and current Pueblo elected officials from any and all claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of each ROW for each Subject Road or New Road.

Section 15. *Reservation of Rights, Compromise Discussions, No Admission of Liability.*

- A. Upon the expiration or early termination of this Agreement, the Parties expressly reserve all rights and claims.
- B. In the event a Party terminates this Agreement pursuant to Section 13 and there is subsequent litigation concerning the CMRs or the BIA Roads, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; *provided*, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.
- C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMRs.

Section 16. *Governing Law.*

- A. This Agreement shall be governed by the laws of the United States.
- B. The Pueblo and the County acknowledge that nothing in this Agreement confers jurisdiction on any non-Federal court to interpret Federal Law regarding health, safety, or

the environment, or to otherwise determine the duties of the United States or other parties pursuant to such Federal law, or to conduct judicial review of any Federal agency action.

Section 17. *Merger, Amendments, Rules of Construction, Successors and Assigns.*

This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by all Parties; (c) shall not be construed against any Party as the drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' successors and assigns.

Section 18. *Representations.*

The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

Section 19. *Dispute Resolution.*

- A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one Party notifies the other of the dispute in writing.
- B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the Department and the County shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.
- C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 14, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 C.F.R. Part 2, 25 C.F.R. Part 169, the Administrative Procedure Act, or any other applicable Federal law.
- D. If after the Pueblo and the County fail to resolve the dispute by mediation and there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be

brought before a court of competent jurisdiction. In the absence of the Department or the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.

- E. The Pueblo and the County hereby waive their sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction. Attached hereto as Exhibit B is a Resolution by the Council of the Pueblo that approves the limited waiver of sovereign immunity provided herein.

Section 20. Notices.

- A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.995.2740

With a Copy To:

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.986.6362

To the Pueblo de San Ildefonso:

Governor
Pueblo de San Ildefonso
02 Tunyo Po
Santa Fe, New Mexico 87506
Fax: 505.455.7351

With A Copy To:

Pueblo de San Ildefonso
Realty Division
02 Tunyo Po
Santa Fe, NM 87506
Fax: 505.455.4163

To the Department of the Interior:

Regional Director, Southwest Region

1001 Indian School Road NW
Albuquerque, NM 87104
Fax: 505.563.3101

With A Copy To:

Office of the Solicitor, Southwest Region
505 Marquette Ave NW
Suite 1800
Albuquerque, NM 87102
Fax: 505.248.5623

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three (3) business days after the notice is mailed with postage prepaid.

- B. A Party may change the persons to whom or addresses at which notice shall be given by giving all other parties notice of the change in accordance with this Section.

Section 21. *No Third Party Beneficiary Rights.*

This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 22. *Private Claims Unaffected.*

The Parties acknowledge and agree that this Agreement and the subsequent grant of any of the ROWs do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the Department related to the CMRs or access to Private Lands.

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Exhibit A

EXHIBIT B

(PUEBLO DE SAN ILDEFONSO COUNCIL RESOLUTION)

SFC CLERK RECORDED 02/15/2018



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of this ____ day of January, 2018, by and between the Pueblo of Tesuque ("Pueblo"), Santa Fe County ("County"), and the United States Department of the Interior ("Department"). The Pueblo, the County, and the Department are sometimes each referred to as a "Party" and together as the "Parties."

RECITALS

WHEREAS, County-Maintained Road ("CMR") 72-I, as defined in this Agreement, is located within the exterior boundaries of the Pueblo, segments of which traverse Pueblo Land and segments of which traverse Private Land; and

WHEREAS, the Department and the Pueblo claim that the segments of CMR 72-I that traverse Pueblo Land are in trespass; and

WHEREAS, the County disputes that CMR 72-I is in trespass on Pueblo Land; and

WHEREAS, judicial resolution of this disagreement regarding CMR 72-I would be time-consuming, expensive, and divisive, and would adversely affect the Parties' efforts to work collaboratively on other issues of critical concern; and

WHEREAS, conclusively resolving longstanding issues that have the potential to divide the community is of paramount importance to the Parties; and

WHEREAS, for purposes of amicably resolving their dispute, this Agreement sets out the terms and conditions under which: (a) the County will apply to the Bureau of Indian Affairs ("BIA") pursuant to 25 C.F.R. Part 169 for a right-of-way ("ROW") for CMR 72-I located on Pueblo Land; (b) the Pueblo will consent to the BIA's grant of ROW for CMR 72-I, which ROW shall have an initial term of ninety-nine (99) years and an automatic renewal term of an additional ninety-nine (99) years; (c) the County will compensate the Pueblo for the BIA-granted ROW; (d) the Parties will grant certain mutual releases of liability; and (e) the Parties will perform such other tasks as described below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County will submit, with the Pueblo's consent, the documentation necessary for the Secretary to grant a ROW for CMR 72-I, according to the process defined herein:

Section 1. Definitions. Capitalized terms are defined either in the text of this Agreement or in this Section. In addition, the definitions found at 25 C.F.R. Part 169 apply to this Agreement.

- A. "Construction" means any road work activities that are not considered Maintenance as defined below.
- B. "Contributed Funds Agreement" or "CFA" means the funding agreement to be entered into between the Secretary and the County pursuant to the Aamodt Litigation Settlement Act, Pub. L. No. 111-291, § 611(d)(1)(B) (2010). The CFA will provide for the County's contribution of the non-Federal share of the costs of constructing the Regional Water System in accordance with Section 3.1.3 of the August 27, 2009 Cost Sharing and System Integration Agreement.
- C. "County-Maintained Road" or "CMR" means CMR 72-I within the exterior boundaries of the Pueblo and, as depicted on the map attached hereto as Exhibit A, which is incorporated into and made part of this Agreement by this reference.
- D. "Escrow Agent" means the company selected by the Parties pursuant to Section 2(B).
- E. "Gap" means a gap of Pueblo Land located directly between Private Land and a Public Road that prevents lawful ingress and egress from the Private Land to the Public Road.
- F. "Maintenance" means the preservation of the entire road, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the road. 23 U.S.C. § 101 (a)(13).
- G. "Private Land" means the land located within the exterior boundaries of the Pueblo that the United States patented to private claimants or to which Indian Title has otherwise been duly extinguished.
- H. "Public Road" is a road open to public travel, and not subject to any type of tolls or fees.
- I. "Pueblo Land" or "Pueblo Lands" means real property owned by the Pueblo of Tesuque in fee simple subject to Federal restrictions against alienation, or lands owned by the United States in trust for the benefit of the Pueblo.
- J. "Regional Water System" or "RWS" means the Pojoaque Basin Regional Water System to be constructed by the United States Bureau of Reclamation pursuant to the Aamodt Litigation Settlement Act, Pub. L. No. 111-291.
- K. "ROW" means a right-of-way.
- L. "Secretary" means the Secretary of the Interior or an authorized representative of the Secretary.

- M. "Trespass Damages" means all damages suffered by the Pueblo because of the CMR presence, maintenance, and use from the beginning of time to the date of the approval of the ROW for the CMR; *provided*, however, that Trespass Damages does not include damages, if any, relating to the release of regulated hazardous substances or other dangers on or below the surface of the earth, known or unknown.

Section 2. *Settlement Amount and Escrow.*

- A. The County agrees to pay the Pueblo a one-time, lump sum of one hundred eighty five thousand dollars (\$185,000.00) ("Settlement Amount"), if and when the Secretary grants the ROW identified herein. The purpose of the Settlement Amount is to: (1) provide compensation to the Pueblo for the ROW described in Section 3 that is fair and reasonable under the circumstances; (2) finally settle and resolve all Trespass Damages related to CMR 72-I; and (3) contribute to costs to survey County Roads 73 and 74, both of which have perfected ROWs, for the purpose of identifying specific parameters of such ROWs.
- B. Within thirty (30) days after the Parties execute this Agreement, they shall select a mutually acceptable Escrow Agent. Within sixty (60) days after selection of the Escrow Agent, the County shall deposit the Settlement Amount with the Escrow Agent. The Escrow Agent shall hold the Settlement Amount until it receives notice from the BIA that the Secretary will grant the ROW pursuant to Section 3(C)(iii), or until the Escrow Agent receives notice of termination of this Agreement from either the County or the Pueblo pursuant to Section 4(B)(ii).
- i. In the event that the BIA gives the Escrow Agent notice pursuant to Section 3(C)(iii) that it will be granting the ROW, the Escrow Agent shall, upon receipt of a copy of the executed ROW, transfer the Settlement Amount directly to the Pueblo according to instructions provided by the Governor of the Pueblo of Tesuque.
 - ii. In the event that the Escrow Agent receives notice of termination of this Agreement, the Escrow Agent shall transfer the Settlement Amount to the County according to the instructions to be provided by the County Manager.
- C. As set forth by Tribal Resolution attached hereto as Exhibit B, the Pueblo:
- i. Agrees that the Settlement Amount is satisfactory to the Pueblo as compensation for the ROW and any Trespass Damages relating to past use of that ROW;
 - ii. Waives valuation of the ROW;

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- iii. Represents that it has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest; and
- iv. Provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 10(E).

Section 3. *Obligations of the Parties.*

A. County Obligations:

- i. Within one (1) year following the execution of this Agreement or the Contributed Funds Agreement, whichever comes last, the County shall at its expense submit to the BIA a ROW application for CMR 72-I. The ROW application shall comply with the requirements of 25 C.F.R. Part 169, including but not limited to, identifying the Pueblo Lands affected by the ROW, maps of definite location for the ROW, and the ownership of any permanent improvements associated with the ROW. The County agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA to grant the ROW under 25 C.F.R. Part 169. The Pueblo and the County may agree in writing to extend the County's one (1) year deadline for submitting the ROW application to the BIA.
- ii. The County's ROW application shall incorporate the following specific terms:
 - 1. The proposed term of the ROW shall be for a term of ninety-nine (99) years, with an automatic renewal term of ninety-nine (99) years.
 - 2. The width of the ROW shall be the existing driving surface of the CMR on Pueblo Land as of the date of this Agreement, plus four (4) feet on each side of the existing driving surface ("Standard ROW Width"); provided, however, that where the Standard ROW Width would encroach on Private Land, the actual ROW width shall extend to the boundary of the Private Land.
 - 3. The primary purpose of the ROW shall be operating and maintaining a Public Road, which shall include the right to access to manage vegetation, inspect, maintain and repair equipment, and to conduct such other activities as may be necessary or appropriate to operate and maintain a Public Road. Construction shall be identified as a secondary purpose of the ROW, subject to the provisions of Section 3(D)(vi), below.
- iii. The County shall at its expense survey the CMR and develop an accurate legal description to include in its ROW application to BIA. In addition, the County

shall place survey caps at agreed-upon locations every five hundred (500) feet along both sides of the CMR.

- iv. The County agrees to maintain throughout the term of the ROW general liability insurance or, at its option, sufficient self-insurance for the Maintenance of the CMR.

B. Pueblo Obligations:

- i. The Pueblo shall consent to the County's submission of the ROW application and the Secretary's grant of the ROW for CMR 72-I.
- ii. The Pueblo shall cooperate and reasonably assist the County in filing the County ROW application. The Pueblo agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA in support of the County's application.
- iii. For instances where a Gap exists between CMR 72-I and Private Land, the County shall survey the Gaps when it surveys CMR 72-I, and shall include such surveys in the ROW applications described herein.
- iv. The Pueblo shall request and the BIA shall agree to a waiver of the requirement that a bond, insurance, or alternative form of security be submitted with the ROW application.

C. BIA Obligations:

- i. Nothing in this Agreement shall be construed to restrict the authority of the United States, the Secretary, or the Pueblo under applicable laws or regulations, including, but not limited to, laws and regulations applicable to the review and grant of ROW by the Secretary.
- ii. The Secretary shall accept the Pueblo's determinations as reflected in this Agreement and the Tribal Resolution attached as Exhibit B, including: (1) that the Settlement Amount is satisfactory, (2) that valuation is waived, and (3) that accepting such agreed-upon compensation and waiving valuation is in the Pueblo's best interest.
- iii. In the event that the Secretary, after review of the documentation submitted by the County, with the support and consent of the Pueblo, and under his authority and any applicable laws or regulations, decides to grant the ROW, the BIA will notify the Parties and the Escrow Agent at least ten (10) days before the Secretary will grant the ROW.

- iv. The BIA shall not require the County to indemnify the Pueblo or the United States for the grant of any ROW pursuant to 25 C.F.R. § 169.125 (c)(6), because the County is prohibited from doing so under Article IX, Section 10 of the New Mexico Constitution.

D. ROW and Other Requirements:

- i. The Pueblo and the County agree that Federal law, including 25 U.S.C. §§ 323-328 and 25 C.F.R. Part 169, controls the application, granting and administration of ROWs on Pueblo Lands.
- ii. In order to expedite the ROW development, submission and review process, the Pueblo and County have agreed to use the ROW template to be provided by BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW documents. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW.
- iii. The BIA shall cause the granted ROW to be recorded with the BIA's Land, Title and Records Office as expeditiously as possible.
- iv. For any Maintenance carried out on the ROW by the County's contractors, the County shall require that its contractors provide performance bonds and have insurance covering all aspects of the Construction or Maintenance activities to ensure that projects, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.
- v. The County shall not assign the ROW to the State of New Mexico or any other party without the consent of the Pueblo and approval by the Secretary, both as required by Federal law and regulations. Any proposed assignment to the State of New Mexico shall not require additional compensation to the Pueblo, but the County or the State shall bear all costs involving preparation and submission of the ROW assignment application.
- vi. The County does not currently have plans to carry out Construction within the ROW. The County will not engage in any Construction, including but not limited to replacing an earthen-driving surface with an asphalt surface, within the ROW except pursuant to a written agreement among the County, the Pueblo, and the BIA.

- vii. The Parties acknowledge that the ROW grant for a public road shall not include authority for any utilities or any other uses.
- viii. The Pueblo shall not tax any current or future improvements within the ROW; provided, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance with applicable law on any contractors or subcontractors conducting Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROW, nor shall this Agreement affect the application of any other Pueblo laws and ordinances within the ROW; provided, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the County.

Section 4. Contingencies.

- A. No ROW applications shall be submitted for review by the Secretary until the Contributed Funds Agreement for construction of the RWS is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.
- B. In the event that the County and the Bureau of Reclamation do not timely enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply:
 - i. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 11; provided, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting due execution by the Bureau of Reclamation.
 - ii. The Pueblo shall have sixty (60) from the date of such notice to terminate this Agreement by giving the County and the Escrow Agent notice of such termination, which notice shall be given in accordance with Section 11. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.
 - iii. Notwithstanding Section 4(B)(ii), the Pueblo shall not give the Escrow Agent notice of termination, and this Agreement shall not terminate, if the Bureau of Reclamation provides written notice to the Escrow Agent, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that

the delay in executing that Contributed Funds Agreement will not delay the date that the RWS is substantially complete.

C. Should the Secretary deny the grant of the ROW, the following provisions shall apply:

- i. If the Secretary denies the grant of the ROW pursuant to 25 C.F.R. § 169.24, the Pueblo and the County agree to discuss whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW was denied. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.
- ii. If the Secretary denies the grant of the ROW because the Secretary requires any modifications to the application or any measures needed to meet applicable law in order to grant the ROW application, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW application required modification. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.

Section 5. *Release of Claims.*

- A. *Release of Claims Against the County.* If the Secretary grants the ROW, then on the day that the ROW is granted and upon the Escrow Agent's transfer of the Settlement Funds to the Pueblo in accordance with Section 2(B)(i), the Department and the Pueblo shall irrevocably and forever release and discharge the County, former and current County employees, and former and current County elected officials from any and all claims of Trespass Damages. This release does not include any and all potential claims pursuant to Federal environmental law, including but not limited to liability for hazardous substances disposed on the land, or any other applicable law.
- B. *Release of Claims Against the Department and the United States.* If the Secretary grants the ROW, then on the day the Secretary grants the ROW and upon the Escrow Agent's transfer of the Settlement Funds to the Pueblo in accordance with Section 2(B)(i), the Pueblo and the County agree to irrevocably and forever release and discharge the United States, the Department, and former and current Department employees from any and all

surface trespass claims, known or unknown, at law or in equity related to the CMR from the beginning of time to the date of the approval of the ROW for the CMR. The Pueblo also hereby waives, releases, and covenants not to sue the United States in any administrative or judicial forum for any alleged harms or violations, including any breach of the trust responsibility of the United States to the Pueblo, related to surface trespass claims for the CMR, negotiation and entry by the BIA into this Agreement, from the beginning of time to the date of the grant of the ROW for the CMR.

- C. *Release of Claims Against the Pueblo.* If the Secretary grants the ROW, then on the day that the Secretary grants the ROW and upon the Escrow Agent's transfer of the Settlement Funds to the Pueblo in accordance with Section 2(B)(i), the County agrees to irrevocably and forever release and discharge the Pueblo, former and current Pueblo employees, and former and current Pueblo elected officials from any and all claims, known or unknown, at law or in equity related to the CMR from the beginning of time to the date of the approval of the ROW for the CMR.

Section 6. *Reservation of Rights, Compromise Discussions, No Admission of Liability.*

- A. In the event a Party terminates this Agreement pursuant to Section 4, the Parties expressly reserve all rights and claims.
- B. In the event a Party terminates this Agreement pursuant to Section 4 and there is subsequent litigation concerning the CMR, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.
- C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMR.

Section 7. *Governing Law.*

This Agreement shall be governed by the laws of the United States.

Section 8. *Merger, Amendments, Rules of Construction, Successors and Assigns.*

This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by all Parties; (c) shall not be construed against any Party as the drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' successors and assigns.

Section 9. *Representations.*

The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

Section 10. *Dispute Resolution.*

- A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one (1) Party notifies the other of the dispute in writing.
- B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the Department and the County shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.
- C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 5, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 C.F.R. Part 2, 25 C.F.R. Part 169, the Administrative Procedure Act, or any other applicable Federal law.
- D. If after the Pueblo and the County fail to resolve the dispute by mediation, there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be brought before a court of competent jurisdiction. In the absence of the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.
- E. The Pueblo waives its sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction. Attached hereto as Exhibit B is a Resolution of the Pueblo approving this Agreement, including the limited waiver of sovereign immunity provided herein. The County's sovereign immunity is waived as to actions to interpret or enforce this Agreement in accordance with NMSA 1978, Section 37-1-23.

- F. The Pueblo and the County acknowledge that nothing in this Agreement confers jurisdiction on any non-Federal court to interpret Federal Law regarding health, safety, or the environment, or to otherwise determine the duties of the United States or other parties pursuant to such Federal law, or to conduct judicial review of any Federal agency action.

Section 11. Notices.

- A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.995.2740

With a Copy To:

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.986.6362

To the Pueblo of Tesuque:

Rt. 42, Box 360-T
Santa Fe, New Mexico 87506

To the Department of the Interior:

Regional Director, Southwest Region
1001 Indian School Road NW
Albuquerque, NM 87104
Fax: 505.563.3101

With A Copy To:

Office of the Solicitor, Southwest Region
505 Marquette Ave NW
Suite 1800
Albuquerque, NM 87102
Fax: 505.248.5623

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of

all pages included in the notice; notices sent by mail shall be deemed given three (3) business days after the notice is mailed with postage prepaid.

- B. A Party may change the persons to whom or addresses at which notice shall be given by giving all other Parties notice of the change in accordance with this Section.

Section 12. *No Third Party Beneficiary Rights.*

This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 13. *Private Claims Unaffected.*

The Parties acknowledge and agree that this Agreement and the subsequent grant of the ROW do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the United States related to the CMR or access to Private Land.

Section 14. *Contingency of Federal Appropriations.*

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PUEBLO OF TESUQUE _____ Fredrick Vigil, Governor _____ Date	SANTA FE COUNTY _____ Henry P. Roybal, Chair Board of County Commissioners _____ Date ATTEST: _____ Geraldine Salazar, County Clerk Approved as to Form: _____ R. Bruce Frederick, County Attorney
U.S. DEPARTMENT OF THE INTERIOR _____ Secretary of the Interior _____ Date	

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EXHIBIT A
MAP

EXHIBIT B

TRIBAL RESOLUTION

SFC CLERK RECORDED 02/15/2018



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is by and between the Pueblo of Nambe ("Nambe" or "Pueblo"), Santa Fe County ("County"), and the United States Department of the Interior ("Department"). The Pueblo, the County, and the Department are sometimes each referred to as a "Party" and together as the "Parties."

RECITALS

WHEREAS, certain County-Maintained Roads ("CMR") are located within the exterior boundaries of the Pueblo, segments of which traverse Pueblo Land and segments of which traverse Private Land; and

WHEREAS, the Department and the Pueblo have asserted that the CMRs traversing Pueblo Land are in trespass; and

WHEREAS, the County disputes that the CMRs are in trespass on Pueblo Land; and

WHEREAS, judicial resolution of this disagreement regarding the CMRs would be time-consuming, expensive, and divisive, and would adversely affect the Parties' efforts to work collaboratively on other issues of critical concern; and

WHEREAS, conclusively resolving longstanding issues that have the potential to divide the community and providing long-term access to Private Land is of paramount importance to the Parties; and

WHEREAS, the CMRs are currently categorized as Bureau of Indian Affairs ("BIA") Roads on the National Tribal Transportation Facility Inventory ("NTTFI") without existing ROWs; and

WHEREAS, the Parties agree that granting long-term ROWs to the BIA for all of the CMRs in accordance with this Agreement, such that they remain BIA Roads during the term of such ROWs, will provide long-term access to the public, which includes access by non-Pueblo residents to houses located within the Pueblo's exterior boundaries.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms contained herein.

Section 1. Definitions. Capitalized terms are defined either in the text of this Agreement or in this Section. In addition, the definitions found at 25 C.F.R. Parts 169 and 170 apply to this Agreement.

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- A. "Access Point" means the point identified on the County's survey conducted in cooperation with the Pueblo at which lawful ingress and egress to Private Land can occur. Access Points that serve two or more subdivided lots on Private Land are called "Common Access Points."
- B. "Bureau of Indian Affairs" or "BIA" means the agency within the United States Department of the Interior that is responsible for carrying out, administering and overseeing the programs, functions, services and activities available to Federally-recognized Indian Tribes, including the Pueblo.
- C. "BIA Road ROWs" means long-term rights-of-way for each and every BIA Road on Pueblo Lands.
- D. "BIA Road" means an existing or proposed public road listed on the National Tribal Transportation Facility Inventory that is, or will be, owned by the BIA as a Public Authority and for which the BIA has or plans to obtain a legal right-of-way. 25 C.F.R. § 170.5.
- E. "Construction" means any road work activities that are not considered Maintenance as defined below.
- F. "Contributed Funds Agreement" or "CFA" means the funding agreement to be entered into between the Secretary and the County pursuant to Sec. 611(d)(1) of the Aamodt Litigation Settlement Act, Pub. L. 111-291. The CFA will provide for the County's contribution of the non-Federal share of the costs of constructing the Regional Water System in accordance with the August 27, 2009 Cost Sharing and System Integration Agreement.
- G. "County-Maintained Roads" or "CMR" means the following already existing Public Roads, whether on Pueblo Land or Private Land, within the exterior boundaries of the Pueblo: CMR 84E, CMR 84F, CMR 84G, CMR 106, CMR 113, CMR 113 South, CMR 113A, CMR 113B, CMR 115, CMR 117 South, CMR 117 North, CMR 119 South, and CMR 119 North. The CMRs are depicted on Exhibit A to this Agreement.
- H. "Effective Date" means the date of last signature.
- I. "Gap" means a gap of Pueblo Land located directly between Private Land and a Public Road that prevents lawful ingress and egress from the Private Land to the Public Road.
- J. "Maintenance" means the preservation of the entire road, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the road. 23 U.S.C. § 101 (a)(13).

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- K. "National Tribal Transportation Facility Inventory" or "NTTFI" means the comprehensive national inventory maintained by the Secretary of tribal transportation facilities that are eligible for assistance under the Tribal Transportation program. 25 U.S.C. § 202 (b)(1).
- L. "Part 169" means 25 C.F.R. Part 169 – Rights-of-Way on Indian Land.
- M. "Part 170" means 25 C.F.R. Part 170 – Tribal Transportation Program.
- N. "Private Land" means the land located within the exterior boundaries of the Pueblo that the United States patented to private claimants or to which Indian Title has otherwise been duly extinguished. Discrete areas of Private Land may consist of one lot under common ownership or several lots under different ownership.
- O. "Public Authority" means a Federal, State, county, town, or township, Indian Tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free transportation facilities. 23 U.S.C. § 101 (a)(21).
- P. "Public Road" is a road open to public travel, and not subject to any type of tolls or fees collected by the Pueblo. 23 U.S.C. § 101 (a)(22).
- Q. "Pueblo Land" or "Pueblo Lands" means real property owned by the Pueblo of Nambe in fee simple subject to Federal restrictions against alienation, or lands owned by the United States in trust for the benefit of the Pueblo.
- R. "Regional Water System" means the Pojoaque Basin Regional Water System the Bureau of Reclamation will construct pursuant to the Aamodt Litigation Settlement Act, Title VI, Aamodt Litigation Settlement Act of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.
- S. "Road Maintenance Agreement" or "RMA" means an agreement among the BIA, the Pueblo and the County authorizing the County to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the parties to the RMA from time-to-time.
- T. "ROW" means right-of-way.
- U. "Secretary" means the Secretary of the Interior or the Secretary's authorized representative.
- V. "Trespass Damages" means all damages suffered by the Pueblo because of the CMRs presence, maintenance, and use from the beginning of time to the date of the approval of each ROW for each CMR; *provided*, however, that Trespass Damages does not include

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damages, if any, relating to the release of regulated hazardous substances or other dangers on or below the surface of the earth, known or unknown.

Section 2. *Settlement Amount; Escrow; Survey Payment; and Waiver of Valuation.*

- A. The County agrees to pay the Pueblo a one-time, lump sum of One Million dollars (\$1,000,000.00) ("Settlement Amount"), if and when the Secretary grants all of the ROWs to the BIA across Pueblo Land for each CMR. The purpose of the Settlement Amount is to: (1) provide compensation to the Pueblo for the Pueblo's consent to the grant of such ROWs to the BIA that is fair and reasonable under the circumstances; and (2) finally settle and resolve all Trespass Damages.
- B. Within thirty (30) days after execution of this Agreement, the Parties shall select an Escrow Agent. Within 60 days after selection of the Escrow Agent, the County shall deposit the Settlement Amount with the Escrow Agent. The Escrow Agent shall hold the Settlement Amount until it receives notice from the BIA that the Secretary will grant the Road ROWs to the BIA pursuant to Section ____, or until the Escrow Agent receives notice of termination of this Agreement from either the County pursuant to Section ____ or the Pueblo pursuant to Section ____.
1. In the event that the BIA and the County give the Escrow Agent notice pursuant to Section ____ that the Secretary will grant the ROWs, the Escrow Agent shall transfer the Settlement Amount directly to the Pueblo according to the instructions to be provided by the Pueblo's Governor.
 2. In the event that the Escrow Agent receives notice of termination of this Agreement, the Escrow Agent shall transfer the Settlement Amount to the County according to the instructions provided by the County Manager.
- C. As set forth by Tribal Resolution attached hereto as Exhibit B, the Pueblo:
1. Agrees that the Settlement Amount is satisfactory to the Pueblo as compensation for the Road ROWs and any Trespass Damages relating to past use of the CMRs;
 2. Waives valuation of the Road ROWs;
 3. Represents that it has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest; and
 4. Provides a limited waiver of the Pueblo's sovereign immunity as further described in Section ____.

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- D. The County shall reimburse the Pueblo fifty thousand dollars (\$50,000.00) toward costs incurred by the Pueblo for the survey work by Precision.

Section 3. *General Obligations, County Funding, Consideration.*

- A. **County Obligations:** As may be further described in more detail in later Sections of this Agreement, the County has the following general obligations under this Agreement:

1. Transfer the Settlement Amount into escrow in accordance with Section ____.
2. Pay \$50,000 for access to the Precision survey in accordance with Section ____.
3. Within one (1) year after execution of the CFA, or earlier, which deadline may be extended by written agreement between the County and the Pueblo, the County shall at its expense:
 - a. Obtain such appropriate temporary permits or other written authorizations from the Pueblo, the BIA, or both, as may be required to conduct work on Pueblo Land.
 - b. Survey proposed ROWs for the CMRs. The survey shall identify all of the Access Points to the CMRs. In addition, the survey of the proposed ROWs for the CMRs shall eliminate or, if elimination is not feasible, minimize the number and width of Gaps between the Access Points and Private Land.
 - c. Prepare such plats and legal descriptions of the CMR ROWs as may be required to support ROW applications for these Roads on Pueblo Land under Part 169.
 - d. Conduct such studies, assessments, and investigations and prepare such reports as may be required to support the ROW applications under Part 169 for the CMRs on Pueblo Land.
 - e. Submit draft ROW applications and related documents to Pueblo staff and the BIA for review and comment.
 - f. After incorporating the comments of Pueblo staff and the BIA on the draft ROW applications, transmit the applications to the Pueblo for the Council's consideration and consent.
 - g. Convey the County's existing ROWs to the BIA for the CMRs where they traverse Private Land. The forms of conveyance shall be prepared by the County Attorney and approved by the BIA, in consultation with the Office of the Solicitor, Southwest Region.

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B. Pueblo Obligations. As may be further described in more detail in later Sections of this Agreement, the Pueblo has the following general obligations under this Agreement:

1. Upon the County's payment pursuant to Section 2(D) above, the Pueblo will provide to the County any and all Precision survey data related to the CMRs in the possession of the Pueblo or Precision.
2. As soon as practicable after the Effective Date, the Pueblo will provide to the County such environmental, archaeological, cultural or other information, data, and reports as may be pertinent under Part 169 and that is within the possession of the Pueblo or its agents.
3. Cooperate with and assist the County as may reasonably be necessary to facilitate the County's performance of its obligations under this Agreement.
4. Timely issue permits and such other authorizations as may be necessary for the County to work lawfully on Pueblo Land.
5. Timely consider and provide written comment on the County's submission of draft ROW applications and related documents.
6. Timely submit proposed ROW applications approved by Pueblo staff to the Council for consideration.
7. Timely obtain resolutions from the Council consenting to submission of complete ROW applications to the BIA.
8. The Pueblo agrees to submit the completed ROW applications along with the Council's consenting resolution to the BIA.

C. Department Obligations. As may be further described in more detail in later Sections of this Agreement, the Department has the following general obligations under this Agreement:

1. Cooperate with and provide technical assistance to the County and the Pueblo as may reasonably be necessary to facilitate the performance of their obligations under this Agreement.
2. Timely issue permits and such other authorizations as may be necessary for the County to work lawfully on Pueblo Land.
3. Timely consider and provide technical assistance on the County's submission of draft ROW applications and related documents.

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4. Timely review ROW applications for completeness and compliance under Part 169, timely request additional documentation or information from the submitting party as may be necessary and timely forward complete ROW applications to the Secretary.

D. General Obligations of All Parties. All Parties have the following general obligations under this Agreement:

1. Cooperate in good faith and reasonably assist each other in performing their respective obligations under this Agreement.
2. Timely execute the releases of liability required under this Agreement.
3. Timely prepare and execute, as appropriate, such other instruments and documents as may reasonably be required to carry out the purposes of this Agreement.

E. Satisfactory Consideration. The Pueblo agrees that the purpose of the County's payment of the Settlement Amount and performance of its other obligations under this Agreement is to: (1) provide consideration to the Pueblo for the Pueblo's consent to the Secretary's grant of ROWs on Pueblo Land for the CMRs that is fair and reasonable under the circumstances; and (2) finally settle and resolve all Trespass Damages. Further, the Pueblo agrees that the County's payment of the Settlement Amount and performance of its other obligations under this Agreement is satisfactory to the Pueblo as consideration for the BIA Road ROWs and other permitted access described herein.

F. Special County Funding Source. The source of County revenue that the County will use to perform its obligations under this Agreement is

_____ "Special Funding Source"). If for any reason the Special Funding Source fails to generate sufficient revenue for the County to timely perform its obligations under this Agreement, the County may use other funds for such performance as may be approved and appropriated by the Board of County Commissioners in its discretion.

Section 4. CMR ROWs—General.

- A. The County shall promptly complete the ROWs applications for the CMRs on Pueblo Lands and submit them to the Pueblo for review and comment. After the County and the Pueblo agree on the contents of the application(s) for a given CMR on Pueblo Land, the Parties shall follow the process set out in Section __ above.
- B. Each CMR ROW that traverses Pueblo Land and that complies with Part 169 shall be for a proposed term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years, and the Pueblo shall consent to such initial and automatic renewal terms

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by resolution of its Council or in such other form as the Secretary may require. The width of the CMR ROWs on Pueblo Land shall be the width of the existing driving surface of the CMR on the Effective Date plus ... [TBD]

- C. For those portions of a CMR that traverse Private Lands, the County, in consultation with the Pueblo and the BIA, shall convey its existing ROWs to the BIA under the laws of the State of New Mexico for a term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years. The County shall assign its existing ROWs over Private Lands to BIA no later than sixty (60) days after the Secretary grants all of the CMR ROWs across Pueblo Land for a given road. The effective date of the County-granted ROWs shall be the same as the Secretary-granted ROWs for a given CMR. In the event an existing County ROW is challenged in State or Federal court, the County shall defend the ROWs and its conveyance to BIA, and, if necessary condemn the necessary rights, subject to Section ____.
- D. Upon expiration of the second ninety-nine (99) year term of a CMR ROW, whether on Pueblo Land or on Private Land, the portion of the CMR that was within the expired ROW shall return to the same legal status held prior to this Agreement, unless the Parties otherwise agree.

Section 5. *ROW Application and Approval.*

- A. The Pueblo and the County agree that federal law, including 25 U.S.C. §§ 323-328 and Part 169, controls the application, granting and administration of ROWs on Pueblo Lands. Nothing in this Agreement shall be construed to restrict the authority of the Secretary, or the Pueblo under applicable laws or regulations, including but not limited to, laws and regulations applicable to the review and grant of ROWs by the Secretary. However, the Department represents that nothing in this Agreement is inconsistent with the applicable federal laws and regulations.
- B. In order to expedite the ROW development, submission and review process, the Pueblo and the County have agreed to use ROW templates to be provided by the BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW applications. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW across Pueblo Land by the Secretary.
- C. For each CMR ROW application, the County shall develop an accurate legal description of the ROW, including its boundaries, Access Points, and a map of definite location of the ROW. Additionally, the County shall place survey caps at agreed-upon locations five hundred (500) feet along both sides of the ROWs. The County shall be responsible for

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conducting any surveys necessary to support application to the BIA for the ROWS including the costs of such surveys.

- D. The Pueblo and the County shall cooperate with respect to the preparation and filing of documentation necessary for the Secretary to grant ROWs for the CMRs (across Pueblo Land). The Pueblo agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA in support of the County's application(s) subject to any limitations contained herein. The Pueblo shall pay no additional costs related to any surveys.
- E. As soon as practicable after the Pueblo and County agree on the contents of the CMR ROW applications, the Pueblo shall submit the applications to the BIA Southwest Regional Road Engineer for initial review, execution and forwarding for the Secretary's review. The documentation shall comply with the requirements of Part 169, including but not limited to, identifying the Pueblo Lands affected by the ROWs, maps of definite location for each and every ROW, and the ownership of permanent improvements associated with the ROWs.
- F. All CMR ROWs shall be for the primary purpose of maintaining a BIA Road, with Construction identified as a secondary purpose.
- G. The Parties agree that the insurance provided by the County under Section 11(H) satisfies the requirement of 25 C.F.R. § 169.103.
- H. The Secretary shall accept the Pueblo's determinations as reflected in this Agreement and the Tribal Resolution attached as Exhibit B, including: (1) that payment of the Settlement Amount constitutes adequate compensation to compensate it for Trespass Damages; (2) that valuation is waived; (3) that accepting such agreed-upon compensation and waiving valuation is in the Pueblo's best interest; and (4) that the Pueblo provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 19(E).
- I. The Department shall cause the granted ROWs to be recorded with the BIA's Land Title and Records Office as expeditiously as possible.

Section 6. *Automatic Renewal of ROWs.* The ROWs for the CMRs will automatically renew for an additional ninety-nine (99) year term unless this Agreement has been terminated prior to expiration of the initial term in accordance with the terms of this Agreement and Part 169.

Section 7. *Roads to Remain Open to the Public.*

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Consistent with the Pueblo's resolution consenting to the ROW for the BIA Roads, the Pueblo shall confirm that each BIA Road remains on, or is added to, the NTTFI. The Pueblo further confirms and agrees that the Pueblo shall not request Secretarial approval for the closure and removal from the NTTFI of any BIA Road, or revocation of the ROW for such BIA Road, during the terms of the BIA Road ROW and any renewal or extension thereof, unless this Agreement is terminated as provided below. The Pueblo and the County may mutually request closure of any BIA Road and revocation of its associated ROW in the event that the BIA Road no longer provides access to any Private Land. The Pueblo may temporarily close BIA Roads for cultural activities pursuant to 25 C.F.R. § 170.114.

Section 9. *Interim Access.*

- A. The Pueblo agrees to provide legal access to all Private Land through a grant of temporary access from either an Access Point or Common Access Point off of a Public Road for a maximum term of seven (7) years or until the ROWs are granted, whichever is first. This grant of temporary access does not, and shall not, authorize access over Pueblo Land from any unauthorized roads. ... [TBD]

Section 10. *Gap and Other Access Issues.* ... [TBD]

Section 11. *Road Maintenance and Construction.*

- A. The County shall maintain the CMRs at the County's expense pursuant to an RMA for the entire term of the ROWs granted in accordance with this Agreement. Between the Effective Date and the date of the grant of the ROWs in accordance with this Agreement, the County shall continue to maintain the CMRs.
- B. Within sixty (60) days of the granting of the ROWs by the Secretary, the Parties shall execute a Road Maintenance Agreement authorizing the County, in consultation with the Pueblo, to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the Parties from time-to-time. The RMA may also permit the County to transfer to the BIA an agreed-upon amount of funds to adequately maintain the BIA Roads. The Parties acknowledge, and the RMA shall reflect, that "Adequate Maintenance" means maintaining each and every one of the BIA Roads at the existing Level of Service or above for each road as agreed upon by the Parties on or before the date of execution of the RMA.
- C. Nothing in the RMA or this Agreement shall be construed to restrict or otherwise interfere with the BIA's authority to carry out, oversee, inspect, enforce or approve Maintenance, other transportation-related activities, or any other lawful activity on the BIA Roads.

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- D. For any Maintenance or other activities carried out on the ROWs by County contractors, the County shall require its contractors to provide performance bonds and have insurance covering all aspects of the Maintenance or Construction activities to ensure that any such activities, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.
- E. The County shall not assign the RMA without the consent of both the Pueblo and the BIA.
- F. The County does not currently have plans to request any Construction activities to improve any of the BIA Roads. In the event the County plans to propose Construction within any ROW, including but not limited to replacing an earthen-driving surface with an asphalt surface, the provisions of the ROW grant and the RMA shall apply.
- G. The County agrees to maintain throughout the term of the ROWs general liability insurance to cover its maintenance of the BIA Roads, which shall be subject to approval in amount of coverage and form by the Office of the Solicitor, Southwest Region. The United States, the BIA and the Pueblo shall be named as "additional insureds" under such policy
- The Parties agree to address in the RMA claims/occurrences arising from the County's or its contractors' maintenance of BIA Roads that are excluded by the County's or its contractors' insurance, and claims/occurrences that exceed the County's or its contractors' insurance coverage limits.
- H. The Pueblo shall not tax any current or future road improvements within the ROWs; provided, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance with applicable law on any contractors or subcontractors conducting the Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROWs, nor shall this Agreement affect the application of any other Pueblo laws and ordinances within the ROWs; provided, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the BIA.
- I. In no event shall the BIA or Pueblo be responsible for maintaining the Gaps.

Section 12. *Utilities.*

- A. The County agrees that the Pueblo has sole jurisdiction to grant easements, subject to BIA approval, for utilities along any and all CMRs.

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- B. The Parties acknowledge that any ROW granted pursuant to this Agreement shall not authorize the installation of utilities within the ROWs or any other uses, unless specifically otherwise provided in that ROW instrument.
- C. The County will not issue road cut permits for installation of utilities or other purposes for any BIA Road.

Section 13. *Contingencies.*

- A. No ROW applications shall be submitted to either the Southwest Regional Road Engineer for initial review and forwarding to the Secretary, or by the County to the Secretary, for review until the Contributed Funds Agreement for construction of the Regional Water System is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.
- B. In the event that the County and the Bureau of Reclamation do not enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply:
 - 1. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 20; provided, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting due execution by the Bureau of Reclamation.
 - 2. The Pueblo shall have sixty (60) days from the date of such notice to terminate this Agreement by giving the County notice of such termination, which notice shall be given in accordance with Section 20. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.
 - 3. Notwithstanding Sections 13(B)(1) and 13(B)(2), this Agreement shall not terminate, if the Bureau of Reclamation provides written notice, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that the delay in executing that Agreement will not delay substantial completion of the Regional Water System.
- C. Should the Secretary deny the grant of any of the ROWs, the following provisions shall apply:
 - 1. If the Secretary issues a final decision denying the grant of any of the ROWs pursuant to 25 C.F.R. § 169.24, the Pueblo and the County agree to discuss

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whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROWs were denied. The Party choosing to terminate this Agreement will give notice to the Parties in accordance with Section 20.

2. If the Secretary denies the grant of any of the ROWs because the Secretary requires modifications to the application or any measures needed to meet applicable law in order to grant the ROW applications, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW applications required modification. The Party choosing to terminate this Agreement will give Notice to the Parties in accordance with Section 20.

Section 14. *Release of Claims.*

- A. *Release of Claims Against the County.* If the Secretary grants the ROWs for the CMRs, then on the day that the last such ROW is granted and the Settlement Amount is paid to the Pueblo, the Department and the Pueblo shall irrevocably and forever release and discharge the County, former and current County employees, and former and current County elected officials from any and all past claims of Trespass Damages, from the beginning of time to the date of the grant of the ROWs for the CMRs.
- B. *Release of Claims Against the United States and the Department.* If the Secretary approves the ROWs for the CMRs, then on the day that the last such ROW is granted the Pueblo and the County agree to irrevocably and forever release and discharge the United States and the Department, former and current Department employees from any and all past surface trespass claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of the ROW for each CMR. The Pueblo also hereby waives, releases, and covenants not to sue the United States in any administrative or judicial forum for any alleged harms or violations, including any breach of the trust responsibility of the United States to the Pueblo, related to past surface trespass claims for the CMRs, negotiation and entry by the Department into this Agreement, from the beginning of time to the date of approval of each ROW for each CMR.

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- C. *Release of Claims Against Nambe.* If the Secretary grants the ROWs for the CMRs, then on the day that the last such ROW is granted the County agrees to irrevocably and forever release and discharge the Pueblo, former and current Pueblo employees, and former and current Pueblo elected officials from any and all claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of each ROW for each CMR.

Section 15. *Reservation of Rights, Compromise Discussions, No Admission of Liability.*

- A. Upon the expiration or early termination of this Agreement, the Parties expressly reserve all rights and claims.
- B. In the event a Party terminates this Agreement pursuant to Section 13 and there is subsequent litigation concerning the CMRs or the BIA Roads, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.
- C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMRs.

Section 16. *Governing Law.*

- A. This Agreement shall be governed by the laws of the United States.
- B. The Pueblo and the County acknowledge that nothing in this Agreement confers jurisdiction on any non-Federal court to interpret Federal Law regarding health, safety, or the environment, or to otherwise determine the duties of the United States or other parties pursuant to such Federal law, or to conduct judicial review of any Federal agency action.

Section 17. *Merger, Amendments, Rules of Construction, Successors and Assigns.*

This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by all Parties; (c) shall not be construed against any Party as the drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' successors and assigns.

Section 18. *Representations.*

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The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

Section 19. *Dispute Resolution.*

- A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one Party notifies the other of the dispute in writing.
- B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the Department and the County shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.
- C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 14, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 C.F.R. Part 2, 25 C.F.R. Part 169, the Administrative Procedure Act, or any other applicable Federal law.
- D. If after the Pueblo and the County fail to resolve the dispute by mediation and there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be brought before a court of competent jurisdiction. In the absence of the Department or the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.

The Pueblo and the County hereby waive their sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction. Attached hereto as Exhibit B is a Resolution by the Council of the Pueblo that approves the limited waiver of sovereign immunity provided herein.

Section 20. *Notices.*

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- A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.995.2740

With a Copy To:

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.986.6362

To the Pueblo of Nambe:

Governor

With A Copy To:

To the Department of the Interior:

Regional Director, Southwest Region
1001 Indian School Road NW
Albuquerque, NM 87104
Fax: 505.563.3101

With A Copy To:

Office of the Solicitor, Southwest Region
505 Marquette Ave NW
Suite 1800
Albuquerque, NM 87102
Fax: 505.248.5623

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three (3) business days after the notice is mailed with postage prepaid.

- B. A Party may change the persons to whom or addresses at which notice shall be given by giving all other parties notice of the change in accordance with this Section.

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Section 21. *No Third Party Beneficiary Rights.*

This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 22. *Private Claims Unaffected.*

The Parties acknowledge and agree that this Agreement and the subsequent grant of any of the ROWs do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the Department related to the CMRs or access to Private Lands.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PUEBLO OF NAMBE _____, Governor Date	SANTA FE COUNTY Henry P. Roybal, Chair Board of County Commissioners _____ Date ATTEST: _____ Geraldine Salazar, County Clerk Approved as to Form: _____ R. Bruce Frederick, County Attorney
U.S. DEPARTMENT OF THE INTERIOR _____ Secretary of the Interior _____ Date	

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EXHIBIT A

MAP

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EXHIBIT B

TRIBAL RESOLUTION



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of this ____ day of January, 2018, by and between the Pueblo of Pojoaque ("Pueblo"), Santa Fe County ("County"), and the United States Department of the Interior ("Department"). The Pueblo, the County, and the Department are sometimes each referred to as a "Party" and together as the "Parties."

RECITALS

WHEREAS, the Department and the Pueblo have claimed that County-Maintained Roads, as defined below, are in trespass over Pueblo Land; and

WHEREAS, the County disputes the County-Maintained Roads are in trespass; and

WHEREAS, judicial resolution of this disagreement regarding the County-Maintained Roads would be time-consuming, expensive, and divisive, and would adversely affect the Parties' efforts to work collaboratively on other issues of critical concern; and

WHEREAS, conclusively resolving longstanding issues that have the potential to divide the community is of paramount importance to the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County shall complete and file applications with the Bureau of Indian Affairs (BIA) pursuant to 25 CFR Part 169 for Rights-of-Way ("ROWs") for all of the County-Maintained Road on Pueblo Land, and the Pueblo shall consent to the filing of such applications and the granting of the ROWs, according to the terms and conditions of this Agreement.

A. **Section 1. Definitions.** Capitalized terms are defined either in the text of this Agreement or in this Section. In addition, the definitions found at 25 CFR Part 169 apply to this Agreement. "Construction" means any activities that are not considered Maintenance activities as defined below.

B. "Contributed Funds Agreement" or "CFA" means the funding agreement to be entered into between the Secretary and the County ... [TBD]... the Aamodt Litigation Settlement Act, Pub. L. No. 111-291, § 611(d)(1)(B) (2010). The CFA will govern the County's contribution of the non-Federal share of the costs of constructing the Regional Water System in accordance with Section 3.1.3 of the August 27, 2009 Cost Sharing and System Integration Agreement.

C. "County-Maintained Roads" or "CMR" means the following Public Roads within the exterior boundaries of the Pueblo: CR 84, CR 84E, CR 84J, CR 89A, CR 89B, CR 89C, CR

89D, CR 89E, CR 101B, CR 101C, CR 101E, CR 101G, CR 103, CR 105, CR 109, CR 109S, and CR 109A. The County-Maintained Roads are shown on Exhibit A to this Agreement, which is incorporated into and made part of this Agreement by this reference.

D. "Escrow Agent" means the company selected by the Parties pursuant to Section 2(B).

E. "Gap" means a gap of Pueblo Land located directly between Private Land and a Public Road that prevents lawful ingress and egress from the Private Land to the Public Road.

F. "Grant" means the formal transfer of a right-of-way interest by the Secretary's approval or the document evidencing the formal transfer, including any changes made by a right-of-way document.

G. "Maintenance" means the preservation of the entire road, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the road. 23 U.S.C. § 101 (a)(13).

H. "Private Land" means the land located within the exterior boundaries of the Pueblo that the United States patented to private claimants or to which Indian Title has otherwise been duly extinguished.

I. "Public Road" means a road that is open to public travel and not subject to any type of tolls or fees.

J. "Pueblo Land" or "Pueblo Lands" means real property owned by the Pueblo in fee simple subject to Federal restrictions against alienation, or lands owned by the United States in trust for the benefit of the Pueblo.

K. "Precision" means Precision Surveys, Inc., a licensed New Mexico surveying company.

L. "Regional Water System" or "RWS" means the Pojoaque Basin Regional Water System to be constructed by the United States Bureau of Reclamation pursuant to the Aamodt Litigation Settlement Act, Pub. L. No. 111-291.

M. "ROWs" means the road rights-of-way that the Secretary may grant to the County over Pueblo Lands pursuant to this Agreement and 25 CFR Part 169.

N. "Secretary" means the Secretary of the Interior or an authorized representative of the Secretary.

O. "Trespass Damages" means all damages suffered by the Pueblo because of the CMRs presence, maintenance, and use from the beginning of time to the date of the approval of each ROW for each CMR; *provided*, however, that Trespass Damages does not include damages, if

any, relating to the release of regulated hazardous substances or other dangers on or below the surface of the earth, known or unknown.

Section 2. *ROW Applications; Compensation; Escrow and Closing.*

A. ROWS. The County shall file ROW applications for all of the County-Maintained Roads pursuant to Section 3(A) of this Agreement. Upon the Secretary's issuance of the ROWs, the BIA shall deliver the fully executed ROWs to the Escrow Agent.

B. Compensation.

1) The County shall pay the Pueblo \$1,750,000.00 ("Initial Settlement Payment"), which Initial Settlement Payment shall be deposited with the Escrow Agent in accordance with Section 2(C) below.

2) Additional Settlement Payments. The County shall make two additional payments of \$500,000.00 each directly to the Pueblo on or before the 25th and 50th anniversaries of this Agreement. The source of County revenue that the County will use to make the Additional Settlement Payments shall be _____ ("Special Fund"). If for any reason the Special Fund fails to generate sufficient revenue for the County to timely make either Additional Settlement Payment, the County may use other County funds then available to make the Payments, as may be approved and appropriated by the Board of County Commissioners in its discretion.

3) Adjusted Fair Market Value ("FMV") Settlement Payment. At least one-hundred eighty (180) days before the initial ninety-nine (99) year term of the ROWs expires, the Pueblo shall provide written notice to the County of the amount, if any, by which the FMV of the ROWs has increased net of inflation. The Pueblo's notice shall include an appraisal by a certified appraiser and an explanation of how the FMV was calculated net of inflation. If the County does not dispute the Pueblo's calculation of the increase in FMV net of inflation, the County shall pay the increased FMV to the Pueblo before the expiration of the initial ninety-nine (99) year ROW term. However, if the County disputes the increase in FMV, it shall have 60 days after the Pueblo's notice to obtain a second appraisal of the increase in FMV net of inflation and to provide such appraisal to the Pueblo. The Pueblo and the County shall thereafter (a) agree that the increase of FMV, net of inflation, is the average of the two appraisals or (b) commence dispute resolution in accordance with this Agreement. The County shall use the Special Fund to make the Adjusted FMV Payment. If for any reason the Special Fund fails to generate sufficient revenue for the County to timely make the Adjusted FMV Payment, the County may use other County funds then available to make the Payment, as may be approved and appropriated by the Board of County Commissioners in its discretion.

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4) Purpose of Settlement Payments; Compromise. The purposes of the Settlement Payments described in Section 2(B)(1), 2(B)(2), and 2(B)(3) of this Agreement are to: (a) provide fair and reasonable compensation to the Pueblo for the ROWs granted to the County by the Secretary; and (b) finally settle and resolve all claims relating to Trespass Damages. This Agreement represents a compromise by all Parties. The Pueblo is by this Agreement waiving any and all claims for Trespass Damages, ... [TBD] ...

C. Within thirty (30) days of the execution of this Agreement, Parties shall select a mutually acceptable Escrow Agent. Within sixty (60) days after such selection, the County shall deposit the Initial Settlement Payment with an Escrow Agent selected by the Parties. The Escrow Agent shall hold the Initial Settlement Payment until it receives notice from the BIA that the Secretary will grant the ROWs pursuant to Section 3(E)(iii), or until the Escrow Agent receives notice of termination of this Agreement from either the County or the Pueblo pursuant to Section 4(B)(ii).

- 1) In the event the BIA gives the Escrow Agent notice pursuant to Section 3(E)(iii) that it will be granting the ROWs, the Escrow Agent shall, upon receipt of a copy of the executed ROWs, transfer the Initial Settlement Payment directly to the Pueblo according to instructions provided by the Pueblo.
- 2) In the event the Escrow Agent receives notice of termination of this Agreement, the Escrow Agent shall transfer the Initial Settlement Payment to the County according to instructions provided by the County.

D. Tribal Resolution. As set forth by Tribal Resolution attached hereto as Exhibit B, the Pueblo:

- 1) Agrees the Initial Settlement Payment, the Additional Settlement Payment, and the Adjusted FMV Settlement Payment (collectively, "Total Compensation") together constitute satisfactory compensation to the Pueblo for the ROWs and for waiver of any and all claims for Trespass Damages. ... [TBD] ...
- 2) Waives valuation of the ROWs;
- 3) Represents that it has determined that accepting Total Compensation and waiving valuation is in its best interest; and
- 4) Provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 10(E).

Section 3. *Obligations of the Parties.*

A. County Obligations:

i. Within ... [TBD] ... following the execution of this Agreement or the Contributed Funds Agreement, whichever comes last, the County shall at the County's expense submit to the BIA applications for ROWs for all of the CMRs. ... [TBD] ... The ROW applications shall comply with 25 CFR Part 169, including but not limited to identifying the Pueblo Lands affected by the ROWs, maps of definite location for each and every ROW, and the ownership of any permanent improvements associated with the ROWs. The County agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA to grant the ROWs under 25 CFR Part 169. The Pueblo and the County may agree in writing to extend the County's deadline for submitting the ROW applications to the BIA.

ii. The County's ROW applications shall request the Secretary grant ROWs for the County-Maintained Roads that include the following terms and conditions:

1. The ROWs shall be for a proposed term of ninety-nine (99) years, with a renewal term of ninety-nine (99) years, not subject to further BIA approval, but ...[TBD]

2. The width of the ROWs on Pueblo Land shall be the existing driving surface of the CMRs as of the date of this Agreement, plus four (4) feet on each side of the existing driving surface ("Standard ROW Width"); *provided*, however, that where the Standard ROW Width would encroach on Private Land or Pueblo Land that the Pueblo has assigned ("Assigned Pueblo Land"), the actual ROW width shall extend to the boundary of the Private Land or Assigned Pueblo Land.

3. The primary purpose of the ROWs shall be operating and maintaining Public Roads, which shall include the right of access to manage vegetation, inspect, maintain and repair equipment, and to conduct such other activities as may be necessary or appropriate to operate and maintain a Public Road. Construction shall be the secondary purpose of the ROWs, which shall be subject to the provisions of Section 3(D)(vii) below.

iii. The County shall at its expense survey the County-Maintained Roads and develop accurate legal descriptions to include in its ROW applications to BIA. In addition, the County shall place survey caps at agreed-upon locations every five hundred (500) feet along both sides of the CMRs.

iv. The County shall reimburse the Pueblo \$50,000 for costs incurred by the Pueblo for the survey work by Precision performed for purposes of surveying the CMRs.

v. The County agrees to maintain throughout the term of the ROW general liability insurance or, at its option, sufficient self-insurance for the Maintenance of the CMR.

B. Pueblo Obligations:

i. The Pueblo shall consent to the County's submission of the ROW applications under this Agreement as well as the Secretary's grant of ROWs for all of the County-Maintained Road. ... [TBD]

ii. Upon request by the County, the Pueblo shall provide or request Precision to provide the County all of Precision's survey data relating to the CMRs. In addition, the Pueblo shall upon the County's request provide any non-confidential environmental or other reports and data in the Pueblo's possession that would assist the County in completing the ROW application under 25 CFR Part 169.

iii. The Pueblo shall cooperate and reasonably assist the County in filing the County's ROW applications, including preparing and executing such further documents as may be required by the BIA to support the County's ROW applications. The Pueblo shall pay no additional costs related to any surveys.

iv. For instances where a Gap exists, ... [TBD]

C. BIA Obligations:

i. Nothing in this Agreement shall be construed to restrict the authority of the United States, the Secretary, or the Pueblo under applicable laws or regulations, including, but not limited to, laws and regulations applicable to the review and grant of ROWs by the Secretary.

ii. The Secretary shall accept the Pueblo's determinations as reflected in this Agreement and the Tribal Resolution attached as Exhibit B, including that: (1) the Initial Settlement Payment, Additional Settlement Payment and any Adjusted FMV Settlement Payment are satisfactory, (2) valuation is waived, and (3) accepting such agreed-upon compensation and waiving valuation is in the Pueblo's best interest.

iii. In the event the Secretary, after review of the documentation submitted by the County, with the support and consent of the Pueblo, and under his authority and any applicable laws or regulations, decides to grant the ROWs, the BIA will notify the Parties and the Escrow Agent at least ten (10) days before the Secretary will grant the ROWs.

iv. The BIA shall not require the County to indemnify the Pueblo or the United States for the grant of any ROW pursuant to 25 CFR § 169.125 (c)(6), because the

County is prohibited from doing so under Article IX, Section 10 of the New Mexico Constitution.

D. ROW and Other Requirements:

- i. The Pueblo and the County agree that Federal law, including 25 U.S.C. §§ 323-328 and 25 CFR Part 169, controls the application, granting and administration of ROWs on Pueblo Lands, including any ROWs applied for or granted pursuant to this Agreement.
- ii. In order to expedite the ROW development, submission and review process, the Pueblo and County have agreed to use the ROW templates to be provided by BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW documents. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW.
- iii. The Parties agree that the insurance required in Section 3(A)(v) will satisfy the requirements of 25 CFR § 169.103 and no additional bond, insurance, or other form of security will be required.
- iv. The BIA shall cause the granted ROWs to be recorded with the BIA's Land, Title and Records Office as expeditiously as possible.
- v. For any Maintenance carried out on the ROWs by County contractors, the County shall require its contractors provide performance bonds and have insurance covering all aspects of the Construction or Maintenance activities to ensure that projects, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.
- vi. The County shall not assign any of the ROWs to the State of New Mexico or any other party without the consent of the Pueblo and approval by the Secretary, both as required by Federal law and regulations. Any proposed assignment to the State of New Mexico shall not require additional compensation to the Pueblo, but the County or the State shall bear all costs involving preparation and submission of the ROW assignment application.
- vii. The County does not currently have plans to carry out Construction within the ROWs. The County will not engage in any Construction, including but not limited to replacing an earthen-driving surface with an asphalt surface, within the

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ROW except pursuant to a written agreement among the County, the Pueblo, and the BIA.

- viii. The Parties acknowledge that the ROW grant for a public road shall not include authority for any utilities or any other uses.
- ix. The Pueblo shall not tax any current or future improvements within the ROWs; provided, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance with applicable law on any contractors or subcontractors conducting Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROWs, nor shall this Agreement affect the application of any other Pueblo laws and ordinances within the ROWs; provided, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the County.

Section 4. Contingencies.

- A. No ROW applications shall be submitted for review by the Secretary until the Contributed Funds Agreement for construction of the RWS is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.
- B. In the event the County and the Bureau of Reclamation do not enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply.
 - i. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 11; provided, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting execution by the Bureau of Reclamation.
 - ii. The Pueblo shall have sixty (60) days from the date of such notice to terminate this Agreement by giving the County and the Escrow Agent notice of such termination, which notice shall be given in accordance with Section 11. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.
 - iii. Notwithstanding Section 4(A)(ii), the Pueblo shall not give the Escrow Agent notice of termination, and this Agreement shall not terminate, if the Bureau of

Reclamation provides written notice to the Escrow Agent, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that the delay in executing that Contributed Funds Agreement will not delay substantial completion of the RWS.

C. Should the Secretary deny the grant of any of the ROWs, the following provisions shall apply:

- i. If the Secretary denies the grant of any of the ROWs pursuant to 25 CFR § 169.24, the Pueblo and the County agree to discuss whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROWs were denied. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.
- ii. If the Secretary denies the grant of any of the ROWs because the Secretary requires any modifications to the application or any measures needed to meet applicable law in order to grant the ROW applications, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW applications required modification. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.

Section 5. *Release of Claims.*

- A. *Release of Claims Against the County.* If the Secretary grants the ROWs, then on the day that all ROWs are granted and upon the Escrow Agent's transfer of the Initial Settlement Payment to the Pueblo in accordance with Section 2(B)(i), the Department and the Pueblo shall irrevocably and forever release and discharge the County, former and current County employees, and former and current County elected officials from any and all claims of Trespass Damages. This release does not include any and all potential claims pursuant to Federal environmental law, including but not limited to liability for hazardous substances disposed on the land, or any other applicable law.

- B. *Release of Claims Against the United States and the Department.* If the Secretary grants the ROWs, then on the day the Secretary grants the ROWs and upon the Escrow Agent's transfer of the Initial Settlement Payment Settlement Funds to the Pueblo in accordance with Section 2(B)(i), the Pueblo and the County agree to irrevocably and forever release and discharge the United States, the Department, and former and current Department employees from any and all surface trespass claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of each ROW for each CMR. The Pueblo also hereby waives, releases, and covenants not to sue the United States in any administrative or judicial forum for any alleged harms or violations, including any breach of the trust responsibility of the United States to the Pueblo, related to surface trespass claims for the CMRs, negotiation and entry by the Department into this Agreement, from the beginning of time to the date of the grant of each ROW for each CMR. This release does not include any and all potential claims pursuant to Federal environmental law, including but not limited to liability for hazardous substances disposed on the land, or any other applicable law.
- C. *Release of Claims Against the Pueblo.* If the Secretary grants the ROWs, then on the day that the Secretary grants the ROWs and upon the Escrow Agent's transfer of the Initial Settlement Payment to the Pueblo in accordance with Section 2(B)(i), the County agrees to irrevocably and forever release and discharge the Pueblo, former and current Pueblo employees, and former and current Pueblo elected officials from any and all claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of each ROW for each CMR.

Section 6. *Reservation of Rights, Compromise Discussions, No Admission of Liability.*

- A. Upon termination or expiration of this Agreement, the Parties expressly reserve all of their respective rights, claims, and defenses ... [TBD]
- B. In the event a Party terminates this Agreement pursuant to Section 4 and there is subsequent litigation concerning the CMRs, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.
- C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMRs.

Section 7. *Governing Law.*

This Agreement shall be governed by the laws of the United States.

Section 8. *Merger, Amendments, Rules of Construction, Successors and Assigns.*

This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by all Parties; (c) shall not be construed against any Party as the drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' successors and assigns.

Section 9. *Representations.*

The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

Section 10. *Dispute Resolution.*

- A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one Party notifies the other of the dispute in writing.
- B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the County and the Department shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.
- C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 5, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 CFR Part 2, 25 CFR Part 169, the Administrative Procedure Act, or any other applicable Federal law.
- D. If after the Pueblo and the County fail to resolve the dispute by mediation, there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be brought before

a court of competent jurisdiction. In the absence of the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.

E. The Pueblo waives its sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction. Attached hereto as Exhibit B is a Resolution by the Council of the Pueblo that approves the limited waiver of sovereign immunity provided herein. The County's sovereign immunity is waived as to actions to interpret or enforce this Agreement in accordance with NMSA 1978, Section 37-1-23.

F. The Pueblo and the County acknowledge that nothing in this Agreement confers jurisdiction on any non-Federal court to interpret Federal Law regarding health, safety, or the environment, or to otherwise determine the duties of the United States or other parties pursuant to such Federal law, or to conduct judicial review of any Federal agency action.

Section 11. Notices.

A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County:

County Manager
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.995.2740

With a Copy To:

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.986.6362

To the Pueblo of Pojoaque:

Chief General Counsel
Pueblo of Pojoaque
30 Buffalo Thunder Trail
Santa Fe, NM 87506

With A Copy To:
Governor
Pueblo of Pojoaque
78 Cities of Gold Road
Santa Fe, NM 87506

To the Department of the Interior:
BIA, Regional Director, Southwest Region
1001 Indian School Road NW
Albuquerque, NM 87104
Fax: 505.563.3101

With A Copy To:
Office of the Solicitor, Southwest Region
505 Marquette Ave NW
Suite 1800
Albuquerque, NM 87102
Fax: 505.248.5623

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three (3) business days after the notice is mailed with postage prepaid.

- B. A Party may change the persons to whom or addresses at which notice shall be given by giving all other Parties notice of the change in accordance with this Section.

Section 12. *No Third Party Beneficiary Rights.*

This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 13. *Private Claims Unaffected.*

The Parties acknowledge and agree that this Agreement and the subsequent grant of any of the ROWs do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the United States related to the CMRs or access to Private Land.

Section 14. *Contingency of Federal Appropriations.*

January 9, 2018 Public Discussion Draft

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

DRAFT

January 9, 2018 Public Discussion Draft

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PUEBLO OF POJOAQUE <hr/> Joseph Talachy, Governor <hr/> Date	SANTA FE COUNTY <hr/> Henry P. Roybal, Chair Board of County Commissioners <hr/> Date ATTEST: <hr/> Geraldine Salazar, County Clerk Approved as to Form: <hr/> R. Bruce Frederick, County Attorney
U.S. DEPARTMENT OF THE INTERIOR <hr/> Secretary of the Interior <hr/> Date	

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DRAFT

EXHIBIT A

MAP

DRAFT

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EXHIBIT B

TRIBAL RESOLUTION

DRAFT

502-101D to N. side

Write a description for your map.

EXHIBIT

7

Tables

Legend

- 2012
- El Rancho
- El Rancho
- El Rancho Senior Center
- Feature 1
- Feature 2
- Pojoaque
- Untitled Path

Bridge to N. side of Rio Pojo

arroyo dip on CR84

El Rancho

turn off 502 to 101D

Google Earth

© 2017 Google

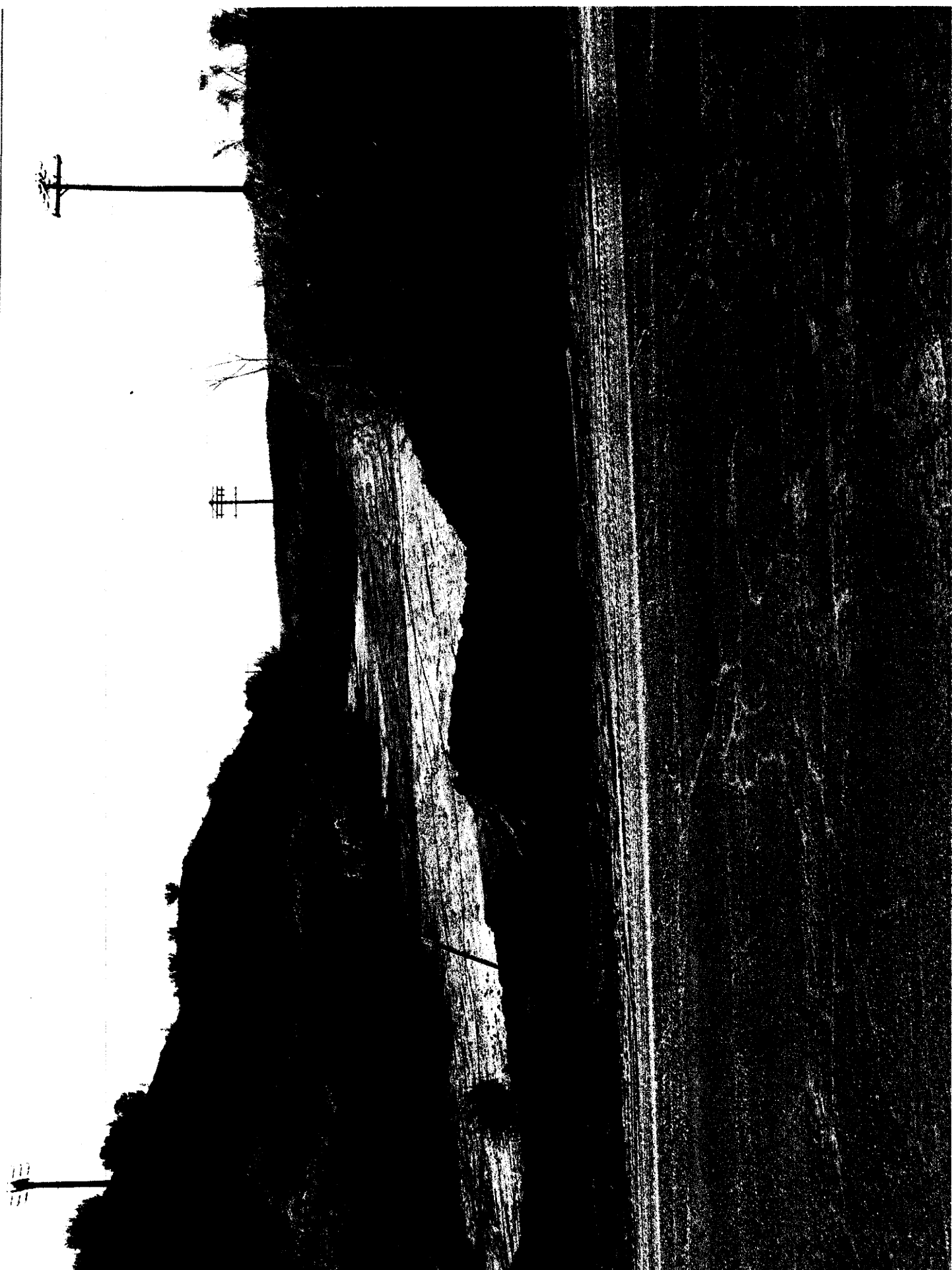


3000 ft

SEC. CLERK RECORDED 02/15/2018



SEC. CLERK RECORDED 02/15/2018



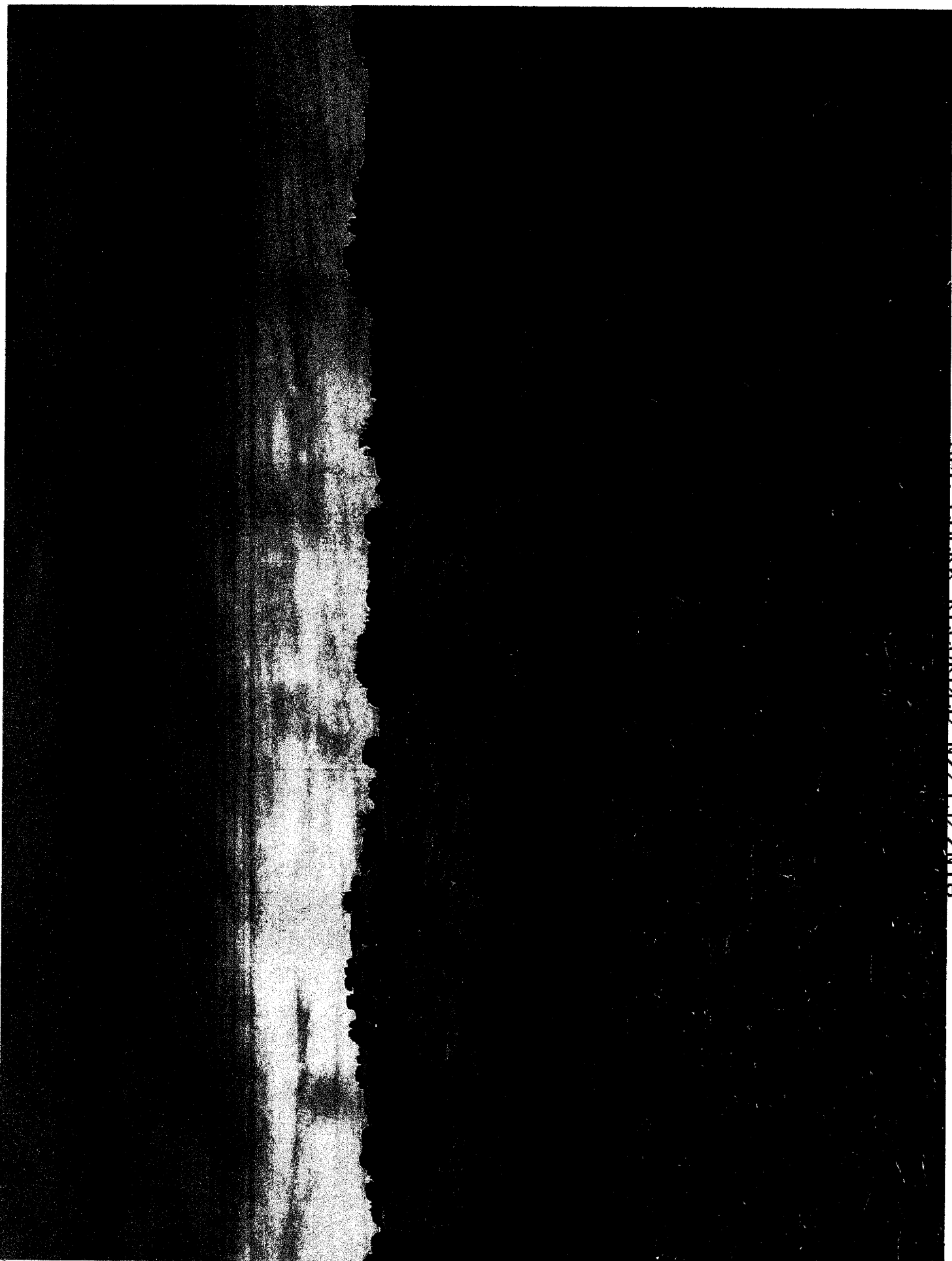
REC'D CLERK RECORDED 82/11/2018

SEC. CLERK, RECORDED, 02/15/2018

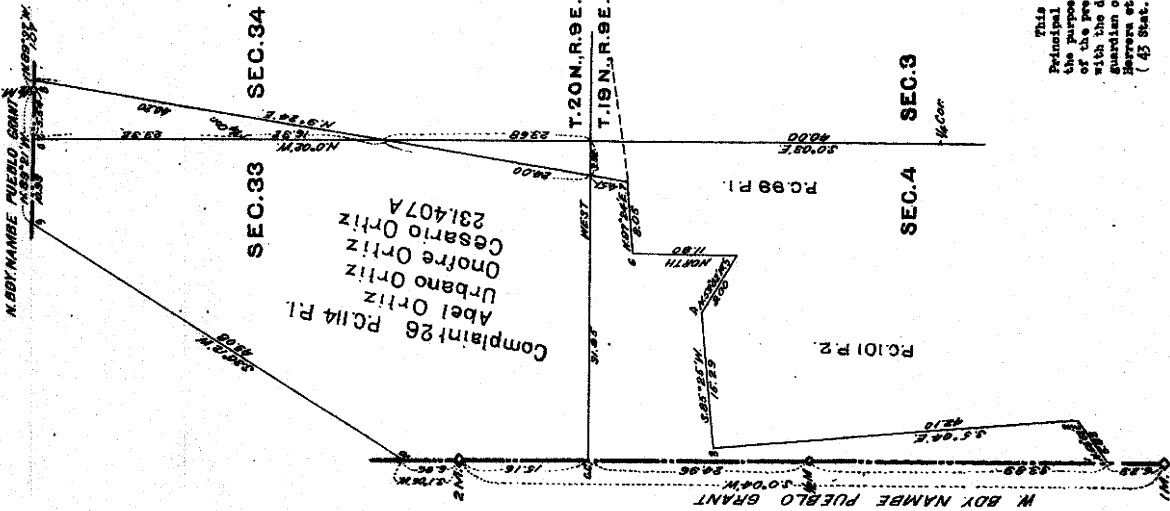


SEC. CLERK RECORDED 02/15/2018

SEC. CLERK RECORDED 02/15/2018



TOWNSHIPS 19 & 20 NORTH. RANGE NO. 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN IN NEW MEXICO
Supplemental Plat Showing Tracts in Nambé Pueblo Grant



FILED
NOV 12 1930
PUBLIC SURVEY OFFICE
SANTA FE, N. M.

United States District Court
For the District of New Mexico.

The area designated as Complaint No. 26 is represented upon this plat in accordance with the decree of this Court in the case of The United States vs. Antonio Garcia et al. Guardian of the Pueblo of Nambé in the State of New Mexico vs. David Herrera et al. (No. 1723 in Equity) found this plat in so far as it refers to this area is hereby approved in open Court this 8th day of April, 1930.

John G. Sullivan
U.S. District Judge.

The tract shown upon this supplemental plat conforms to the lines of the previous survey and was approved March 26, 1927, and the field notes of said survey conform to the decree of this Court in the Court decree. Complaint number shown herein refers to the Court decree.

Public Survey Office.
Santa Fe, New Mexico. November 1, 1929.

This supplemental Plat of Townships 19 & 20 North, Range No. 9 East of the New Mexico Principal Meridian was made and approved March 26, 1927, prepared for the purpose of showing claims within the Nambé Pueblo Grant, which were then in the hands of the United States, and which were then being surveyed and to which the Indian title was then being retained in accordance with the decree of the U.S. District Court in the case, "The United States vs. Antonio Garcia et al. Guardian of the Pueblo of Nambé in the State of New Mexico vs. David Herrera et al.", dated May 25, 1929, in pursuance of the Act of Congress dated June 7, 1924 (43 Stat. 656) is hereby approved.

James H. Hays
Office Geodesical Engineer.

Department of the Interior
General Land Office
Washington, D.C., March 17, 1930.

The amendments shown upon this supplemental plat, having been correctly made in accordance with the regulations of this office, the plat is hereby accepted.

John C. Connelley
Assistant Commissioner.

General

- The locations of and the cost of the gap fixes have yet to be identified. These cannot be done until the surveys have been completed. The above items in my mind are deal killers until such time as all gaps are defined and all cost to the parties are determined.
- I am in El Rancho and for me, on the north side of the river, the proposal seems an improvement and way to move on...and I want to move on, but, it also looks like Divide and Conquer on the part of the powers that be, separating us from each other. As a group we were small to begin with, now...we are separated into 4 groups having to consider 4 proposals. The hurry up and vote makes me uncomfortable because it forces each area to fend for ourselves.
- An issue that concerns me is that all roads in the approved ROWs, for example--Yellow Bird Loop, must be designed to be accessible under all conditions so that fire protection and medical alerts can be handled promptly without fail.

In fact, the roads in present use in the area do not meet this quality level. For example, the normal access to the north side of the Pojoaque River is across the bridge at El Rancho. The normal way to reach the bridge is to use the El Rancho turn off of State Hwy 502. This requires that you must "ford" the El Rancho Arroyo to reach the bridge access road. The pavement through the ford is below the level of the arroyo on either side. The area drained by this arroyo is considerable and if there is a deluge within this area the ford, which is normally dry, becomes impassable. The county has placed poetic signs on either side of the crossing, "IF FLOODED TURN AROUND, DON'T DROWN." If an ambulance/firetruck has reached this impasse there are several additional ways of getting to the north side of the Pojoaque but the response time will be increased by 10 to 20 minutes. Not acceptable. I believe the County should be addressing this problem now at this and other arroyo crossings.

San Ildefonso

- Is there any assurance in the agreement that if the alignment of the new road on the north side of El Rancho creates a gap issue for someone who currently does not have one that such gap will be provided to the property owner free of charge?
- The road easement proposal raises questions about the community's vulnerability with regard to utility easements under (or above?) these roads. In my opinion, one of the underlying pueblos' goals with this County road dispute is to continue to exploit the federal loophole for utility easements. If this issue isn't addressed and detailed in a contract now, we'll find ourselves in a similar position that we encountered with the unethical JMEC negotiations.
- What will be the width of the utility easements? IF fair-market value is used, who will determine that and will the full width of an easement be used to calculate the footprint/area? Even if the footprint includes private property due to the excessive easement width? Many utilities run along the edge of the roads, often bordering our private land. Will this encroach on the private properties and restrict residents from using/developing their land due to excessive utility easement width?
- Does the County's conveyance of RoW's granted by private fee landowners to the BIA and the Pueblo, then allowing them jurisdiction over both the negotiation of the easement agreements and fees comply with the law? How does the County allow the Pueblo to charge for easements over

land that is not theirs? The alignment of the road to be "wholly on tribal land" seems to me as a bit of a pipe dream. (See Attachments B, C)

- Next I call attention to the San I Settlement Agreement, Pg. 9, Par. E. "none of the new roads shall be opened to the public before the BIA has carried out a final inspection, the BIA has formally accepted the New Roads as BIA Roads, and the Southwest Regional Road Engineer has authorized the New Roads to be opened to public travel."
Problem: The proposed ROW for Yellow Bird Loop overlaps in many places the roads currently in use on the north side of the river. It seems the requirement for quality by passes should be established so that prompt and easy access to all properties is assured during the construction period.
• The situation is a bit worse than Mel describes. There are two additional ways to get to the bridge at El Rancho during heavy rains - one by crossing Arroyo Jacona and one by taking 84D from 502. When Arroyo El Rancho is flooding typically Arroyo Jacona is also flooding so this way is blocked. 84D can become impassable due to erosion and cars getting stuck. Thus, in heavy rain events the El Rancho bridge is not available for residents on the north side of the river. However, the bridge at San I on Tunyo Po is always accessible and then by 84C the north side of the river is accessible. The terms of the agreement include plans to close or restrict access along 84C. This would remove the only reliable access to the north side of the river during heavy rain events. It won't be an additional 10 or 20 minutes - it will be until the arroyos recede which could take hours.
• Are roads wholly on private lands (i.e. CR 101D aka Evergreen Lane) on the north side of the river to be transferred to the BIA and entered into the TTP inventory?