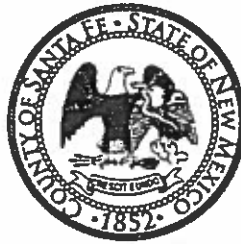


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5


Katherine Miller
County Manager

MEMORANDUM

DATE: January 14 , 2013

TO: Board of County Commissioners

FROM: Adam Leigland, Public Works Department Director

VIA: Katherine Miller, County Manager 

ITEM AND ISSUE: BCC Meeting January 28, 2014

RESOLUTION 2014- ___ A RESOLUTION TO EXTEND THE CONTINGENT ACCEPTANCE OF ENTRADA CALABASA, ALSO KNOWN AS HORCADO RANCH ROAD, LOCATED IN COMMISSION DISTRICT 2, FOR LESSER COUNTY MAINTENANCE FOR UP TO ONE ADDITIONAL YEAR AND APPROVAL OF STANDARD FORM 2800-14 RIGHT-OF-WAY GRANT AND TEMPORARY USE PERMIT

The County's Road Acceptance Policy, which was adopted via Resolution 2012-151 on November 13, 2012, created the category of limited County maintenance, under which the conditions for County acceptance are eased in exchange for a limited and specified level of maintenance. The Road Acceptance Policy also requires that, when a road is accepted for County maintenance, all relevant easements and rights-of-way must be transferred to the County. Finally, the Policy allows for a road to be adopted on a contingent basis, to permit time for all necessary paperwork, such as transfer of right-of-way, to be accomplished.

A resident of Entrada Calabasa West, aka Horcado Ranch Road (see map), hereinafter "the applicant," petitioned the County to adopt his road, and on January 29, 2013, the BCC approved resolution 2013-12 to adopt the road for limited County maintenance. The road was adopted contingently for a period of one year, to allow the transfer of the rights-of-way. This contingent approval will expire on January 29, 2014.

The rights-of-way in question are rather complicated, and their transfer to the County has taken much longer than expected. The greater section of the road, approximately 3.1 miles, falls on US Bureau of Land Management (BLM) land, and the road comprises two overlapping easements over the same alignment that the BLM had granted to two separate parties, the applicant and another person. The initial approximately 0.6 miles of road comprise easements granted to the applicant by two private landowners.

Even though the BLM supports the acceptance of the road by the County, the actual transfer of the BLM easements from the two parties to the County has proven to be time-consuming. The County has taken the lead on this transaction; County staff have met with all parties involved numerous times, and as of a November 21, 2013, meeting with the BLM, believe that a solution has finally been found. This solution involves an application to the BLM for assignment of right-of-way to the County directly from the BLM instead of reassigning the easement from the present holders, and a maintenance agreement with the other current BLM easement holder. Copies of both of these documents are attached. The next step is BCC approval of the Standard Form 2800-14 Right-of-Way Grant and Temporary Use Permit, which is also attached for approval.

Meanwhile, on the initial section of road, the applicant owns an easement across the private property, which he has assigned to the County. Discussions continue with the private property owners whether the assignment is valid and should be recognized or whether a separate easement agreement with the private property owners should be executed. Those discussions are going to be concluded shortly.

Staff feels that the situation is very close to resolution and is requesting an extension to the one-year contingent period granted January 2013. When all easements and right-of-way have been transferred in accordance with the Road Acceptance Policy, staff will return to the BCC with a resolution to accept the road unconditionally.

REQUESTED ACTION:

Approval of subject resolution and BLM's Standard Form 2800-14 Right-of-Way Grant and Temporary Use Permit.

SANTA FE COUNTY

RESOLUTION NO. 2014 -

A RESOLUTION TO EXTEND THE CONTINGENT ACCEPTANCE OF ENTRADA CALABASA, ALSO KNOWN AS HORCADO RANCH ROAD, LOCATED IN COMMISSION DISTRICT 2, FOR LESSER COUNTY MAINTENANCE FOR UP TO ONE ADDITIONAL YEAR

Whereas, Santa Fe County encompasses a geographical area of approximately 2,000 square miles; and

Whereas, the County is primarily rural with small areas of concentrated development; and

Whereas, a comprehensive road system is a necessary and vital link between communities; and

Whereas, there are an estimated 1,500 total miles of roads within the County; and

Whereas, of the total miles, approximately 576 miles are recognized as County roads and maintained by the County; and

Whereas, the County's goal is to provide the best services possible to County residents, within the available resources; and

Whereas, Resolution 2012-151, the Road Acceptance Policy, lays out a procedure whereby the citizens of Santa Fe County may request the County to accept non-County roads for County maintenance after meeting certain conditions; and

Whereas, the Road Acceptance Policy contains the category of "Lesser County-Maintained Road," which eases the requisite conditions for road acceptance in exchange for a lower standard of road maintenance; and

Whereas, the Road Acceptance Policy allows for the BCC to condition its acceptance of a road upon the execution of any necessary documents; and

Whereas, a citizen of Santa Fe County with a real property interest in Entrada Calabasa, aka Horcado Ranch Road, has applied to the County to accept said road for County maintenance; and

Whereas, the BCC approved Resolution 2013-12 on January 29th, 2013, to adopt Entrada Calabasa, aka Horcado Ranch Road, as a lesser-maintained road for a period of one year to allow for all rights-of-way to be transferred to the County in accordance with the Road Acceptance Policy; and

Whereas, both County staff and the applicant have worked diligently in that year to transfer the rights-of-way but have not completely succeeded;

NOW, THEREFORE, BE IT RESOLVED the following:

1. The BCC extends the contingent acceptance of Entrada Calabasa, aka Horcado Ranch Road, until all rights-of-way have been transferred to the County in accordance with the Road Acceptance Policy or for one (1) additional year, whichever occurs first.
2. The maintenance activities shall be limited to twice-annual motor grading, the installation and maintenance of necessary signage, and, if necessary, on a case-by-case basis as determined by the Public Works Department, the restoration of any arroyo crossing.
3. Upon transfer of all rights-of-way to the County in accordance with the Road Acceptance Policy, said road will be unconditionally adopted by the County for lesser maintenance by separate resolution.
4. Said road shall be added to the certified listing of County Maintained Roads filed with the New Mexico Department of Transportation.

PASSED, APPROVED, and ADOPTED THIS ____ DAY OF _____, 2014.

BOARD OF COUNTY COMMISSIONERS

Daniel W. Mayfield, Chair

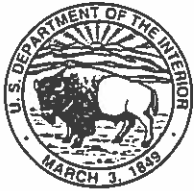
Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Taos Field Office
226 Cruz Alta Road
Taos, New Mexico 87571-5983
www.blm.gov/nm



In Reply Refer To:
NMNM131733
2800 (F0200)

CERTIFIED RETURN RECEIPT REQUESTED
7010078000022272053

January 8, 2014

Santa Fe County
Attn: Katherine Miller
102 Grant Ave
Santa Fe, NM 87501

Dear Mrs. Miller:

Enclosed are two copies of an unsigned right-of-way (ROW) grant (BLM Form 2800-14) for an access road across public land, serial number NM131733. Please review the document and if it meets your approval, sign and date both copies and return to the address shown above. Upon our receipt of the signed documents and the fees discussed below, we will issue the ROW grant, absent any other unresolved issues.

Processing and Monitoring Fee Exemption

Based on the information submitted with your application you noted you were a local government or an instrumentality of a local government. Under this circumstance, you would be exempt from fees according to the right-of-way regulation 43 CFR 2804.16 which states:

"You are exempt from paying processing and monitoring fees if:

- a) You are a state or local government, or an agency of such a government, and BLM issues the grant for governmental purposes benefitting the general public

BLM will not request processing or monitoring fees for this right-of-way unless you do not meet rental exemption.

Rental Exemption

Based on the information submitted with your application you noted you were a local government or an instrumentality of a local government. Under this circumstance, you would be exempted from rental according to the right-of-way regulation 43 CFR 2806.14 which states:

"You do not have to pay rent for your use if you are a Federal, state, local government or its agent or instrumentality, unless you are:

- b) using the facility, system, space, or any part of the right-of-way area for commercial purpose; or
- c) A municipal utility or cooperative whose principal source revenue is customer charge; or
- d) You have been granted an exemption under a statute providing for such.”

BLM will not request rental for this right-of-way unless you do not meet rental exemption.

Please return **BOTH** signed copies of the grant, along with the processing and monitoring fees as discussed above by February 8, 2014. If these requirements are not met, your application may be denied.

Please be aware that you may not conduct any activities related to your right-of-way project on public land until you have received an authorized grant from this office. If you have any questions contact Evelyn Rodriguez, at 575-751-4732.

Sincerely,



Sam DesGeorges
Field Manager

Enclosures:

Two Unsigned Right-of-Way Grants, NMNM131733

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office
Taos Field Office

Serial Number
NMNM131733

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a. ☒ Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b. ☐ Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. ☐ Other (describe) _____

2. Nature of Interest:

- a. By this instrument, the holder Santa Fe County, 102 Grant Ave, Santa Fe, NM 87501 receives a right to construct, operate, maintain, and terminate a access road right-of-way on public lands (or Federal land for MLA Rights-of-Way) described as follows:

N.M.P.M.,

Township 18 North, Range 8 East,
Sec. SW $\frac{1}{4}$ of 13, Sec. NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of 24, and
NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Sec.25, SE $\frac{1}{4}$ of Sec.26, and
the NE $\frac{1}{4}$ of Sec.35 in Santa Fe, NM

- b. The right-of-way or permit area granted herein is 50 feet wide, 26,695 feet long and contains 20.200 acres, more or less. If a site type facility, the facility contains N/A acres.
- c. This instrument shall terminate on January 8, 2034, 20 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument ☒ may ☐ may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

**Exhibit A
County of Santa Fe
Horcado Road Stipulations
NMNM 131733**

1. Cultural and Paleontological Resources

Any cultural and/or paleontological resources (historic site or object) discovered by the applicant, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Applicant shall suspend all operation in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The applicant will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the applicant.

2. Archeological Monitoring

The applicant will be required to have BLM permitted archeologist on site during any maintenance or upgrades beyond periodic grading of the existing route. The applicant will be responsible for the cost associated with having a permitted archeologist on site.

3. Wildlife

The applicant shall not leave trenches open overnight, if possible. In cases where the trench cannot be backfilled immediately, escape ramps should be constructed in the trench. The escape ramps are short lateral trenches sloping to the surface or wooden planks extending to the surface with slopes of less than 45 degrees.

4. Soil Stabilization and Rehabilitation

- a. No construction or routine maintenance activities shall be performed during periods when soil is wet to adequately support construction equipment. If such equipment creates ruts in excess of 5 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
- b. The applicant shall uniformly spread topsoil over all unoccupied disturbed areas (outside the ditch line and work area). Spreading shall not be done when the ground of topsoil is frozen or wet.

5. Weed Control

The applicant shall be responsible for weed control on disturbed area within the limits of the right-of-way. The applicant is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).

6. Work limits

SANTA FE COUNTY

RESOLUTION NO. 2013 - 12

A RESOLUTION TO ACCEPT THE REMAINING PORTION OF ESTRADA CALABASA WEST, ALSO KNOWN AS HORCADO RANCH ROAD, LOCATED IN COMMISSION DISTRICT 2, FOR LESSER COUNTY MAINTENANCE

Whereas, Santa Fe County encompasses a geographical area of approximately 2,000 square miles; and

Whereas, the County is primarily rural with small areas of concentrated development; and

Whereas, a comprehensive road system is a necessary and vital link between communities; and

Whereas, there are an estimated 1,500 total miles of roads within the County; and

Whereas, of the total miles, approximately 576 miles are recognized as County roads and maintained by the County; and

Whereas, the County's goal is to provide the best services possible to County residents, within the available resources; and

Whereas, Resolution 2012-151, the Road Acceptance Policy, lays out a procedure whereby the citizens of Santa Fe County may request the County to accept non-County roads for County maintenance after meeting certain conditions; and

Whereas, the Road Acceptance Policy contains the category of "Lesser County-Maintained Road," which eases the requisite conditions for road acceptance in exchange for a lower standard of road maintenance; and

Whereas, the Road Acceptance Policy allows for the BCC to condition its acceptance of a road upon the execution of any necessary documents; and

REC'D CLERK RECORDED 02/04/2013

Whereas, a citizen of Santa Fe County with a real property interest in Estrada Calabasa West, aka Horcado Ranch Road, has applied to the County to accept the remaining portion of said road for County maintenance; and

Whereas, Estrada Calabasa West aka Horcado Ranch Road provides access to over 4,400 acres of private land;

Whereas, the Arterial Roads Task Force Report designated Estrada Calabasa West aka Horcado Ranch Road as a future main North/South artery;

Whereas, the Santa Fe County Road Acceptance Policy requires the transfer of any relevant right-of-way or easement to the County; and

Whereas, the right-of-way for the section of Estrada Calabasa West, aka Horcado Ranch Road, in question is owned by two private landowners and the US Bureau of Land Management (BLM), on which the applicant has easements and which he will to transfer to the County in accordance with the Road Acceptance Policy; and

Whereas, the County currently maintains the first 0.22 miles of Estrada Calabasa West within the La Tierra Subdivision.

NOW, THEREFORE, BE IT RESOLVED the following:

1. The BCC conditionally accepts, for lesser County maintenance, the remaining portion of Estrada Calabasa West, aka Horcado Ranch Road, beginning at the western limits of the La Tierra Subdivision and ending at its intersection with Camino del Cerezo, a distance of approximately 3.73 miles.
2. The maintenance activities shall be limited to those permitted by the County's Road Acceptance Policy.
3. Upon approval of this Resolution, said road shall be graded once. No other activities will take place until all requirements outlined in the Road Acceptance Policy, such as the transfer of the right-of-way, are met.
4. In accordance with the Road Acceptance Policy, this contingent approval shall expire within one (1) year of the date of approval of this resolution, at which time the road shall automatically revert to a non-County-maintained road.
5. Staff shall work with the applicant and the Bureau of Land Management to achieve the transfer of any easement or right-of-way on acceptable terms and the County Manager shall be delegated the right to execute any such documents.
6. Said road shall be added to the certified listing of County Maintained Roads filed with the New Mexico Department of Transportation.

PASSED, APPROVED, and ADOPTED THIS 29th DAY OF January, 2013.

BOARD OF COUNTY COMMISSIONERS

Kathy Holian
Kathy Holian, Chair

Attest:

Geraldine Salazar 1/29/13
Geraldine Salazar, County Clerk

Approved as to form:

Stephen C. Ross
Stephen C. Ross, County Attorney



SFC CLERK RECORDED 02/04/2013



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 3

I Hereby Certify That This Instrument Was Filed for
Record On The 4TH Day Of February, 2013 at 03:13:14 PM
And Was Duly Recorded as Instrument # 1695663
Of The Records Of Santa Fe County

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

APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS

FORM APPROVED
OMB NO. 1004-0189
Expires: April 30, 2012

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

FOR AGENCY USE ONLY

Application Number

Date filed

1. Name and address of applicant (include zip code) Santa Fe County 102 Grant Ave Santa Fe, NM 87501	2. Name, title, and address of authorized agent if different from Item 1 (include zip code) Katherine Miller County Manager, Santa Fe County 102 Grant Ave Santa Fe, NM 87501	3. TELEPHONE (area code) Applicant 505-986-6200 Authorized Agent 505-986-6200
4. As applicant are you? (check one) a. <input type="checkbox"/> Individual b. <input type="checkbox"/> Corporation* c. <input type="checkbox"/> Partnership/Association* d. <input type="checkbox"/> State Government/State Agency e. <input checked="" type="checkbox"/> Local Government f. <input type="checkbox"/> Federal Agency * If checked, complete supplemental page	5. Specify what application is for: (check one) a. <input type="checkbox"/> New authorization b. <input type="checkbox"/> Renewing existing authorization No. c. <input type="checkbox"/> Amend existing authorization No. d. <input type="checkbox"/> Assign existing authorization No. e. <input type="checkbox"/> Existing use for which no authorization has been received* f. <input checked="" type="checkbox"/> Other* * If checked provide details under Item 7	

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description (describe in detail). (a) Type of system or facility, (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (length, width, grading, etc.); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (Attach additional sheets, if additional space is needed.)

Assignment of the Hecorado Ranch Road ROW located in Santa Fe County from Morris and Kirschenbaum to Santa Fe County.

8. Attach a map covering area and show location of project proposal

9. State or local government approval: ☐ Attached ☐ Applied for ☒ Not required

10. Nonreturnable application fee. ☐ Attached ☒ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☒ No (If "yes," indicate on map)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested

Santa Fe County Public Works Department has the technical and financial capability to construct, operate, maintain subject right-of-way.

13a. Describe other reasonable alternative routes and modes considered.

Not applicable. This is the assignment of a pre-existing ROW from private individuals to a local government.

b. Why were these alternatives not selected?

Not applicable

c. Give explanation as to why it is necessary to cross Federal Lands

Access private property

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (Specify number, date, code, or name)

Not applicable

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

ROW is already existing. Once the ROW is assigned to Santa Fe County, the County will spend an estimated \$1000 to install signs and spend an estimated \$5000 per year in maintenance.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

Assigning the ROW to the County will improve the condition of the road, making access for the population in the area easier. It may also make any private parcels that are served by the road more marketable.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

No change to existing conditions.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species, and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

No change to existing conditions.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

None

20. Name all the Department(s)/Agency(ies) where this application is being filed.

BLM only

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant

Katherine M. M...

Date

11.27.13

Title 18, U.S.C. Section 1061 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

(Continued on page 3)

(SF-299, page 2)

ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, (hereinafter referred to as the "County") and John T. Morris, 60 Vuelta Horcado, Santa Fe, New Mexico (hereinafter referred to as "the Resident").

WHEREAS, Horcado Ranch Road (hereinafter referred to as "the Roadway Property" or "the road") is situated in Santa Fe County, Santa Fe, New Mexico;

WHEREAS, portions of Horcado Ranch Road are situated on United States Department of Interior, Bureau of Land Management property (BLM) and on private properties owned by Ed Klopfer and the Hoyt Family, LLC;

WHEREAS, John T. Morris has been granted a right of way for the use of this road for ingress/egress to his property by BLM and is responsible for maintenance operations of said road;

WHEREAS, there are multiple residents that use this road for access to their residences that have requested county maintenance;

WHEREAS, the County accepted this road for maintenance as a "lesser maintained road" (grading twice annually) through Resolution No. 2013-12 for a period of one year (expiring on January 29, 2014);

WHEREAS, the beginning terminus of the road maintenance agreement is the western limits of the La Tierra subdivision and ends at the intersection with Camino del Cerezo, a distance of approximately 3.73 miles; and

WHEREAS, the Resident would like to share in the maintenance operations of said road.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. ACCESS.

As a lesser-maintained County road, the Resident has a license over Horcado Ranch Road, to use a public road consistent with its classification and status, subject to the terms and conditions of a right-of-way for ingress and egress granted to the County by BLM and easements granted to the County by Ed Klopfer and Hoyt Family LLC.

2. UTILITY INSTALLATION.

The Roadway Property shall be subject to permits issued by BLM, Klopfer, and Hoyt Family, LLC.

3. ROAD MAINTENANCE.

The County will provide routine maintenance of the Roadway Property consistent with the status of the road as a lesser-maintained County road. The County may, but is not obligated, to provide snow removal consistent with the status of the road as a lesser-maintained County road; the Resident may perform snow removal operations at the Resident's election. If the Resident elects to perform snow removal, said maintenance shall be at the Resident's sole cost and expense.

4. EMERGENCY REPAIRS.

The County shall perform emergency repairs consistent with the status of the road as a lesser-maintained County road. The Resident may perform emergency repairs with the prior consent of the County; if the Resident elects to perform emergency repairs, said maintenance shall be at the Resident's sole cost and expense unless prior written arrangements are made with the County.

5. TERM.

This Agreement shall commence upon execution by both parties, grant to the County of a right-of-way/easement from BLM, Ed Klopfer, and Hoyt Family, LLC, and adoption of the road by the Board of County Commissioners by a resolution replacing Resolution 2013-12, and shall terminate upon the request of the Resident, revocation of the rights-of-way, or reclassification by the County of the road as a non-County-maintained road. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party.

6. TORT CLAIM LIABILITY.

Nothing contained herein shall be deemed a waiver by the County of its rights pursuant to 41-4-1, et. seq. NMSA 1978 Comp., as amended, also known as the Tort Claims Act. The County hereby acknowledges and agrees that by entering into this Agreement, the Association shall not incur any liability to any third party or entity for any injury or damage resulting from the work completed or in progress.

7. MISCELLANEOUS.

This Agreement:

(a) constitutes the entire agreement between the parties and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto;

(b) shall be construed and enforced in accordance with the laws of the State of New Mexico;

(c) shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives;

(d) may be modified only by a writing duly executed by the parties;

(e) may not be assigned or delegated by either party without the written consent of the other party. Any purported assignment without such consent shall be void and shall entitle the other party to the remedies allowed herein for a default in the performance of this Agreement;

(f) is the product of mutual effort and shall not be construed against one party in favor of the other.

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

If any provision of this Agreement, or application thereof, shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and any application of its other provisions shall remain in full force and effect.

The title and paragraph headings used in this Agreement are solely for the convenience of the parties and shall not be used to explain, construe, modify or aid in the interpretation of the provisions of this Agreement.

8. NOTICE.

All notices required to be given to the County shall be mailed (pre-postage paid) to the County at:

Santa Fe County
Attn: Legal Department
PO Box 276
Santa Fe, NM 87504-0276

All notices required to be given to the Resident shall be mailed (pre-postage paid) to the Resident at the address provided below in the signature block.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year last shown below.

John T. Morris

John T. Morris

60 Vuelta Horcado, Santa Fe, NM 87501

SANTA FE COUNTY

Katherine Miller

Katherine Miller, County Manager

1.10.14

Date:

APPROVED AS TO LEGAL FORM:

Stephen Ross 1-3-14

Stephen Ross, County Attorney

SANTA FE COUNTY

FISCAL IMPACT REPORT (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed ordinance or resolution as to its direct impact upon the County's operating budget and is intended for use by staff of the Human Resources and Finance Divisions, the County Manager and the governing body of Santa Fe County. Ordinances/resolutions with a fiscal impact must be reviewed by the Finance Division Director or the Budget Administrator. Ordinances/resolutions with proposed staffing increases must be reviewed and approved by the Human Resources staff and approved by the County Manager before presentation to the Board of County Commissioners (BCC).

Please refer to the instructions on how to complete this form.

Section A. General Information

☐ Ordinance ☒ Resolution ☐ Other

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

Short Title(s): Adopt Horcado Ranch Road

Reviewing Division(s): Finance

Person Completing FIR: Adam Leigland

Date: 12/24/2013

Phone: x3023



Section B. Summary

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

Adopt Horcado Ranch Road in Comm Dist. 2 for limited County maintenance

Section C. Fiscal Impact

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

- The item must be presented to the Finance Division for analysis and recommendation as a potential request to increase the existing budget for the county.
- Detailed budget information must be included, such as funding source, amounts and justification.
- Detailed salary and benefit for new full-time equivalents (FTE's) must be included. The

request must be approved by the staff of the Human Resources Division for each new FTE request.

1. Projected Expenditures:

- Indicate Fiscal Year(s) affected – the current fiscal year and the following three fiscal years, where applicable
- Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- Indicate: "R" if recurring annual costs
Indicate: "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- Attach additional projection schedules if four years does not adequately project revenue and costs patterns
- Costs may be netted or show as an offset if some cost savings are projected (please explain further in Section 3 Narrative)
- Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.
- This form allows for information related to two fiscal years. Please note *info* relation to other fiscal years in narrative 3.

Exp. Classification	FY 13	"A" or "N"	"R" or "NR"	FY 14	"A" or "N"	"R" or "NR"	Funds affected
Salary and Benefits							Select or type...
Maintenance	\$5,000	A	R	\$5,000	A	R	General
Other Operating	\$1,000	A	NR				Select or type...
Contractual Services							Select or type...
Capital Requirements							Select or type...
Total	\$6,000			\$5,000			

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

** For salary and benefit information contact the Finance Division, or attach the New FTE Request form to provide necessary information.

2. Revenue Sources:

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

Expenditure/Revenue Narrative.

Type of Revenue	FY	"R" or "NR"	FY	"R" or "NR"	Funds Affected
				Select...	Select or type...
Total	\$0		\$0		

3. Expenditure/Revenue Narrative:

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

Horcado Ranch Road is approximately 4 miles long. It is estimated that under a limited-maintenance regime of twice-annual grading and low-water crossing maintenance as needed, it will cost approximately \$5000 per year to maintain. Additionally, once the road is adopted, it will require a one-time cost of approximately \$1000 to install road signs. Capital improvements on the road, estimated to cost \$500k to \$900k, will be needed at some point in the future. These are listed on the CIP. A special assessment district is contemplated to fund these improvements.

Section D. General Narrative**1. Conflicts:**

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

Resolution 2012-151 is the County's road acceptance policy under which this road adoption is being considered. Resolution 2013-12, adopted Jan 28, 2013, contingently adopted Horcado Ranch Road for limited County maintenance for a period of one year to allow all rights-of-way to be transferred from BLM and private landowners to the County. County will enter into a patent with BLM for the right-of-way on BLM land.

2. Consequences of Not Enacting This Ordinance/Resolution:

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

Resolution 2013-12 will expire and subject road will revert to non-County-maintained.

3. Technical Issues:

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

4. Community Impact:

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

Adopting the road will improve its condition, making access for the approximately 44 parcels much easier. It also may make any private parcels served by the road more marketable.

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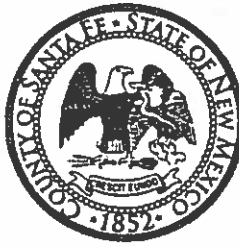
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Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *January 7, 2013*

TO: *Board of County Commissioners*

FROM: *Commissioner Daniel Mayfield*
Adam Leigland, Public Works Department Director

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting January 28, 2014*

RESOLUTION 2014-___ A RESOLUTION TO DIRECT STAFF TO CONSIDER ARROYOS AS A SOURCE OF FILL MATERIAL WHEN SUCH MATERIAL IS REQUIRED AND APPROPRIATE FOR COUNTY ROAD MAINTENANCE

County road maintenance efforts often require the use of fill material to restore roads to their proper grade and profile. Generally, the County procures this fill material, and in many cases, it is appropriate to do so because the material must meet certain specifications. But in many other cases, such specification is not necessary and any fill material will do. In these cases, it makes sense to source the material as close to the work location as possible to avoid not only the cost of the material itself but also the transport costs. It could also speed up operations because transport distances are smaller.

County-wide, the County road network is crossed by over 80 arroyos, and these arroyos by their nature are potentially good sources of unspecified fill material. If County road maintenance forces had access to the material in nearby arroyos when it was suitable, the County could realize significant cost and time savings. A recent example illustrates the efficacy of this approach. After the heavy rains of September 2013 and the subsequent significant damage to County Road 84, the road maintenance team was able to negotiate with the Pueblo of Pojoaque to pull material from an adjacent arroyo to repair the road very quickly. An ancillary advantage of this approach is that the arroyos themselves may also be restored in the process.

The arroyos vary in their ownership and regulatory control. Some are on private land, while others are on the Pueblos. Many are under US Army Corps of Engineers permit oversight. It is important to note, therefore, that in implementing this policy, the County must take proper steps to avoid violating the anti-donation clause, such as securing temporary work permits to work on private land, and to obtain permission from the relevant agencies.

The subject resolution directs staff to consider arroyos as a source of fill material when it is appropriate.

REQUESTED ACTION:

Approval of subject resolution.

SANTA FE COUNTY

RESOLUTION NO. 2014 -

A RESOLUTION TO DIRECT STAFF TO CONSIDER ARROYOS AS A SOURCE OF FILL MATERIAL WHEN SUCH MATERIAL IS REQUIRED AND APPROPRIATE FOR COUNTY ROAD MAINTENANCE

Whereas, Santa Fe County encompasses a geographical area of approximately 2,000 square miles; and

Whereas, the County is primarily rural with small areas of concentrated development; and

Whereas, a comprehensive road system provides necessary and vital links between communities; and

Whereas, there are an estimated 1,500 total miles of roads within the County; and

Whereas, of the total miles, approximately 576 miles are recognized as County roads and maintained by the County; and

Whereas, the County's goal is to provide the best services possible to County residents within the available resources; and

Whereas, in the course of road maintenance, County maintenance forces occasionally require fill material; and

Whereas, typically, such fill material is purchased; and

Whereas, the County road network crosses approximately 80 arroyos; and

Whereas, these arroyos often present a source of sand and gravel that could be used as fill material; and

Whereas, in some cases, it is cost-effective to pull fill material from these arroyos; and

Whereas, in the past, the County has cooperated with other entities to pull fill material from arroyos owned by the other entities for road maintenance purposes; and

Whereas, the US Army Corps of Engineers (USACE), which has permit authority over certain arroyos in Santa Fe County, allows, via a nationwide permit, the County to pull material from these arroyos 200 feet above and below any arroyo crossing by a County road when it is done as part of County road maintenance and limits the volume of pulled material to twenty-five (25) cubic yards;

NOW, THEREFORE, BE IT RESOLVED the following:

1. When County forces, in the course of County road maintenance, require fill material, and when the requisite fill material does not need to be engineered or otherwise specified, County forces shall investigate the efficacy of pulling material from nearby arroyos.
2. If it is deemed efficacious, County forces shall endeavor to coordinate with the entity owning or governing the arroyo to utilize the material in said arroyo.
3. When the County pulls material from any arroyo, the County shall comply with the terms of the USACE nationwide permit even if the arroyo in question is not under the purview of the USACE.
4. Nothing in this resolution shall be construed to compel County forces to harvest material in arroyos solely for the purposes of maintaining or improving said arroyos.
5. The County will carefully consider the limitations imposed by the anti-donation clause in the State constitution when carrying out the actions in this resolution.

PASSED, APPROVED, and ADOPTED THIS ____ DAY OF _____, 2014.

BOARD OF COUNTY COMMISSIONERS

By _____
Daniel "Danny" Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:

_____
Stephen C. Ross, County Attorney

SANTA FE COUNTY

FISCAL IMPACT REPORT (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed ordinance or resolution as to its direct impact upon the County's operating budget and is intended for use by staff of the Human Resources and Finance Divisions, the County Manager and the governing body of Santa Fe County. Ordinances/resolutions with a fiscal impact must be reviewed by the Finance Division Director or the Budget Administrator. Ordinances/resolutions with proposed staffing increases must be reviewed and approved by the Human Resources staff and approved by the County Manager before presentation to the Board of County Commissioners (BCC).

Please refer to the instructions on how to complete this form.

Section A. General Information

☐ Ordinance ☒ Resolution ☐ Other

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

Short Title(s):

Fill Material from Arroyos

Reviewing Division(s):

Finance

Person Completing FIR:

Adam Leigland

Date: 12/24/2013

Phone: x3023

Section B. Summary

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

Save time and money by encouraging Public Works forces to utilize fill material from nearby arroyos for road maintenance when it is allowed and makes sense to do so.

Section C. Fiscal Impact

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

- The item must be presented to the Finance Division for analysis and recommendation as a potential request to increase the existing budget for the county.
- Detailed budget information must be included, such as funding source, amounts and justification.
- Detailed salary and benefit for new full-time equivalents (FTE's) must be included. The request must be approved by the staff of the Human Resources Division for each new FTE request.

1. Projected Expenditures:

- Indicate Fiscal Year(s) affected – the current fiscal year and the following three fiscal years, where applicable
- Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- Indicate: "R" if recurring annual costs
Indicate: "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- Attach additional projection schedules if four years does not adequately project revenue and costs patterns
- Costs may be netted or show as an offset if some cost savings are projected (please explain further in Section 3 Narrative)
- Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.
- This form allows for information related to two fiscal years. Please note *info* relation to other fiscal years in narrative 3.

Exp. Classification	FY 13	"A" or "N"	"R" or "NR"	FY 14	"A" or "N"	"R" or "NR"	Funds affected
Salary and Benefits		A			A		General
Maintenance		A					General
Other Operating		A					General
Contractual Services		A					General
Capital Requirements							Select or type...
Total	\$0			\$0			

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

** For salary and benefit information contact the Finance Division, or attach the New FTE Request form to provide necessary information.

2. Revenue Sources:

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

Type of Revenue	FY <input type="text"/>	"R" or "NR"	FY <input type="text"/>	"R" or "NR"	Funds Affected
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Select..	Select or type...
Total	\$0		\$0		

3. Expenditure/Revenue Narrative:

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

This resolution is intended to save resources. It is difficult to quantify the savings, but if a nearby arroyo can supply the needed fill material, then transport costs are reduced or eliminated and costs to purchase new fill are eliminated. There may be increased staff time in determining if the fill material in the arroyo is suitable and in seeking permission to use the fill, if permission is needed, but these should be minimal increases and should be offset by the operational savings.

Section D. General Narrative

1. Conflicts:

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

There are no identified conflicts or overlaps

2. Consequences of Not Enacting This Ordinance/Resolution:

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

No consequences

3. Technical Issues:

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

None

4. Community Impact:

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

This may have a positive effect on the community: if an arroyo can be somehow be cleaned or cleared in the course of harvesting the fill material, it would be a win-win situation.

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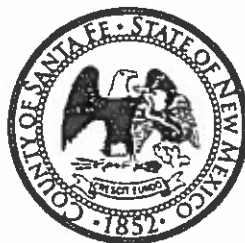
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Commissioner, District 2

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Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: January 13, 2014

TO: Board of County Commissioners

FROM: Lisa Roach, Open Space and Trails Planner *LR*

VIA: Penny Ellis-Green, Growth Management Director *PEG*
Robert Griego, Planning Division Director *RG*

ITEM AND ISSUE: BCC Meeting January 28, 2014

REQUEST APPOINTMENT OF THREE (3) MEMBERS TO THE COUNTY OPEN LANDS,
TRAILS AND PARKS ADVISORY COMMITTEE (COLTPAC) (GROWTH MANAGEMENT)

BACKGROUND AND SUMMARY:

Appointments to the County Open Lands, Trails, and Parks advisory committee follow the procedure outlined in Resolution No. 2011-4. The purpose of the Committee is to advise the BCC, acting through and with the assistance of the County staff on matters related to open space, trails, and parks.

In accordance with Resolution 2011-4, COLTPAC members are appointed by the BCC based on letters of interest, qualifications, county-wide representation, and advice from staff. Members should be of diverse backgrounds and representative of the varied users of Santa Fe County open space, trails, and parks. Desirable expertise for COLTPAC membership includes experience on matters such as conservation, restoration, natural and cultural resources, community interests, education, trails planning and construction, hydrology, agriculture, wildlife, water, management and stewardship, public administration and finance. The Resolution identifies the COLTPAC as nine (9) members – one member appointed by each Commissioner from their District and the remaining members appointed as "At Large" who may reside in any area of the County.

The Committee currently has representatives from four of the five Commission Districts, one "At Large" representative from District 5, and one "At Large" representative from District 1. There are currently three (3) vacancies to fill – one (1) vacancy for District 4 and two (2) "At Large" vacancies. All three positions are vacant due to term expirations, as of January 2014. Staff advertised the COLTPAC vacancies in the local newspaper, placed on the County website and through a press release from the Public Information Officer in addition to email notification.

Staff received one (1) application for re-appointment from out-going COLTPAC Chair, Judy Kowalski (At-Large) and six (6) additional applications to be considered by the Board for new appointments to serve on COLTPAC. Their letters of interest and resumes are attached as exhibits to this document.

Applicants for District 4 Position:

1. Dave Dannenberg (District 4)

Applicants for two (2) At-Large Positions:

1. Julie Bennett (District 1)
2. Richard Higgins (District 1)
3. Toby Gass (District 2)
4. Patricia Conoway (District 3)
5. Judy Kowalski (District 5)
6. John Parker (District 5)

ACTION REQUESTED:

Staff recommends the following:

- Appointment of Dave Dannenberg to fill the vacant District 4 position. Dave is a highly qualified applicant with a strong interest in development and stewardship of County open spaces and trails. He previously applied for an At-Large position with COLTPAC and remains interested in serving on the Committee.
- Re-appointment of Judy Kowalski (District 5) to fill one of the vacant At-Large positions. Judy is the out-going Chair of COLTPAC and is dedicated to continuing her work with the Committee. She brings to the Committee 30 years of experience in land management and resource conservation and is keenly interested in serving a second consecutive term on COLTPAC.
- Appointment of Patricia Conoway (District 3) to fill the second vacant At-Large position. Patricia is a resident of Cerrillos with a passion for the outdoors. She is a horse owner, rider, and member of the Santa Fe Chapter of the Backcountry Horsemen of New Mexico. Patricia is an advocate for balancing development, conservation, and public access to the County's open spaces and would be a great addition to the Committee.

4 La Vista
Santa Fe, NM 87505
September 1, 2013

Robert Griego, Santa Fe County Planning Manager
PO Box 276
Santa Fe, NM 87504-0276

Re: COLTPAC Advisory Committee

Dear Mr. Griego,

I would be thrilled to server on the COLTPAC Advisory Committee.

Santa Fe county's forward looking development and stewardship of open spaces and trails is commendable. I can be a valuable contributor to that effort.

My qualifications - with focus on past civic activities ...

- I am a twelve year resident of Santa Fe County, a hiker and mountain biker familiar with the region.
- I have past experience in local government development projects. 1) In Tempe, Arizona, I spearheaded development of a city and private financed performing arts center, as president of a local community theater group – Tempe Little Theater. 2) Developed a collaboration between Intel Corporation and Arizona State University that lead to a focused curriculum in Computer Science and Engineering.
- Business owner, leader, manager. I have run my own business (here in the Santa Fe area). I have been a general manager of business groups at Intel Corporation.
- Locally, I have served on the board of directors of the Santa Fe Prep parent's association and the La Vista Homeowner's Association.
- I have been involved in the Santa Fe Fat Tire Society and IMBA and believe I have sense for the priorities related to trails and open space development.

Please feel free to contact me directly by email or phone if you have further questions.

Best Regards,

Dave Dannenberg
(505) 216 – 7797
dave@dberg.us

Dave Dannenberg

4 La Vista Santa Fe, NM 87505

Email: dave.dannenberg(at)dborg.us Office/Message (five-zero-five) 570-2051

Work status: US Citizen

STARTUP CTO

VISION – LEADERSHIP - INNOVATION

APPS

IOS, HTML5, ANDROID

PRODUCT DEVELOPMENT, DISTRIBUTION AND MARKETS

USER EXPERIENCE

WEB SERVICE APIS

SPRING WEB MVC, HIBERNATE, MYSQL, TOMCAT

DISTRIBUTED, HIGH VOLUME, SCALEABLE

PRODUCT ARCHITECTURE, DESIGN AND DEVELOPMENT

HANDS ON ENGINEERING

JAVA, OBJECTIVE C, JAVASCRIPT, HTML5, CSS

SEMICONDUCTORS, MICROPROCESSOR DESIGN

EMBEDDED SYSTEMS

LEADERSHIP

TEAM LEVEL AND LARGE ORGANIZATION

INTEL MANAGEMENT TRAINING

BUSINESS OPS AND DEVELOPMENT

DEALS AND SOFTWARE LICENSING

INDUSTRY

MOBILE CONSUMER ELECTRONICS

NEWS MEDIA

MUSIC, AUDIO

NETWORKING INFRASTRUCTURE

SEMICONDUCTORS AND MICROPROCESSORS

Summary

My passion is as an innovator and product developer. I have a broad and deep domain expertise in consumer-facing mobile software and systems – with many product success stories. Most recently, I have led teams in developing mobile apps and services, several with multi-million user bases and growing. I am a creative and adaptive individual and apply this to my product design, development and management tasks.

I am a trained gear head in Software Engineering, Electrical Engineering and Computer System Engineering. My work is hands on with many technologies. Over the past 12 year, I have focused on software development with experience in most of the key technologies that touch mobile clients and web services. (iOS, Android, C/C++, ObjC, Java, XCode, Netbeans, Eclipse, PHP, LAMP, JavaEE, MySql, Tomcat, Hibernate, RoR, JavaScript, ExtJS, XML, JSON, HTML, CSS and more ...).

I am a dynamic, high-energy, Intel-trained manager and organizational leader (and a nice guy). I have most recently managed smaller development teams. In my past work, I have recruited and managed large, multi-disciplinary organizations including cross-site and offshore organizations with several hundred employees.

My leadership style is organized around the steps of a) common vision setting guided by the business b) identification of roles/responsibilities and c) peer mentoring and review. I encourage a culture of focused urgency, camaraderie and community awareness within a team. I am able to create effective, energized organizations focused on success.

My most recent work includes development of the iOS (iPhone) apps and the server-side infrastructure used by the Economist magazine for digital publishing. I recently completed a music analysis and discovery product (in the App Store as “Habu”) for Sony's Gravity Mobile subsidiary. I am currently developing a cloud service API, web and mobile client that implement a policy debate system using innovative social sharing techniques. I architected these systems, led the development efforts and contributed to a large portion of the app and core server implementations.

My interest lies in product development, but I also have a keen sense for guiding and growing a business, with past history in business development and operational roles. I am experienced in closing collaboration and sales deals, including all aspects of software licensing.

I have a talent for developing strategic vision and connecting the vision to an organizational direction. I enjoy communication and public speaking and can effectively sell an agenda to a customer, organization or industry group. I have worked in large companies – IBM and Intel. I have also been involved in startups – both on my own and with inside startups at Intel.

I am 49 year old, in great health – energetic and athletic. I mountain bike, hike, sail in my spare time. I am willing to travel for work and will consider relocation for the right position. I would prefer a position at a startup or smaller company.

Selected Achievements

Crescendo Content Delivery Platform – (Audible Logic) Architect and Lead Developer. Created the concept and architecture for this comprehensive software library that enables rapid development of demanding mobile content delivery applications such as digital magazines. Crescendo is now the cornerstone of Audible Logic's consulting business – AgaveApps.com.

Economist magazine's iOS apps, publishing tools. Architected the system currently used by the Economist magazine to publish its digital content to a variety of mobile devices. Led the development effort and contributed to development of the publishing tool and the iPhone app, which is built on the Crescendo library.

SelectRadio® Software for Windows Mobile Smartphones – (Audible Logic) Architect, Lead Developer and Project Manager. Evolved the SelectRadio product through 4 major versions driven by customer and market requirements. SelectRadio was a top selling audio app in its class. The app enables mobile smartphone users to discover new audio media from a cataloged listing of over 5000 titles, using patented HyperScan™ technologies. The product has gained approval from thousands of users over its past 5 year lifetime.

SurfBalance™ Safe Browser for Kids - (Audible Logic) Architect and Lead Designer for this iPhone and Android application which is based on the Crescendo platform. This innovative product, provides a positive and structured web browsing experience for children. The product provides full featured site filtering and remote supervision and tracking features for parents.

Embedded Intel Architecture – (Intel) General Manager of a 200+ person organization that developed a thriving business for Intel Pentium-class processors in embedded networking, point of sale and kiosk applications. Oversight of business operations, partner programs, marketing and technical development that propelled this business from 10M to a profitable 250M revenue in a two year period.

Showlow processor for 1G RIM Blackberry® Handhelds - (Intel) Director of Business Development spearheading development of two system-on-chip products that powered Research In Motion's first Outlook-integrated handhelds. The product team was awarded the prestigious Intel Achievement Award for fastest time from concept to 1M units shipped (in less than 1 year).

Organizational Transformation - (Intel) General Manager of the Internet Exchange Architecture (IXA) Platform Operation a (300+ person) multidisciplinary organization tasked with creating software stacks for Intel Network Processors, managing independent software vendors, development tools programs and university research activities. In a CTO-like role, transformed the organization into a customer-focused organization, building high-level reference stacks to bootstrap key customers to market using Intel Network Processors.

Professional Experience Chronologically

Audible Logic - Santa Fe, NM

CTO and Founder (2001 to Present)

Startup company focused on developing better methods to deliver and present audio and multimedia on mobile, smart handhelds.

Working with a partner company responsible for marketing and sales, Audible Logic developed two popular smartphone software products, SelectRadio and SurfBalance. Audible Logic in 2009, created a software consulting arm – AgaveApps.com - building on prior work and culminating in the Crescendo content delivery platform that enables highly functional, and fast time to market for demanding content delivery applications, such as digital magazines.

Product Development

Release of 4 major versions of our SelectRadio product and the first version of SurfBalance for iPhone to end users.

IPR Creation

Multiple patent filings and grant, METHOD AND APPARATUS FOR EFFICIENTLY SEARCHING AND SELECTING CONTENT FROM A PLURALITY OF ACTIVE MULTIMEDIA STREAMS (Grant 7,747,769) related to user search and discovery of media, incorporated in the HyperScan features of the SelectRadio product.

iPhone, Smartphone development expertise

Mastery of iPhone OS and Windows Mobile tools, SDKs.

Mobile audio expertise

Audio data buffering implementation optimized for mobile networks.

Enterprise expertise

Enterprise Java, PHP employed for Web 2.0 connectivity

Professional Experience Chronologically (cont.)

Intel • Phoenix, AZ

General Manager of Communication Product Operation (1998 to 2001)

General Manager of Internet Exchange (IXA) Platform Operation

Executive Manager responsible for product development, marketing and PNL business operations for these two inter-related organizations consisting of multiple products and over 300 employees.

These two organizations dovetailed into one another through the acquisition of Basis Communications and their product line in 2000. The organization's original product line consisted of versions of the then Intel-owned StrongArm core processors (acquired earlier from Digital) used in a variety of broadband "edge" applications.

Corporate Strategic Development

Completed acquisition of BasisComm to fill the need for specialized processing and domain expertise in emerging DSL and Cable modem edge routers. The enhanced product offering boosted customer confidence and set positive revenue growth in motion for this organization.

Rapidly Transitioning the Organization's Role

This organization later assumed wider responsibility for all Intel network processors, coalescing a diverse set of resources and technologies acquired from Netboost and other Intel acquisitions. The General Manager role transitioned to a CTO-like responsibility, and the organization was tasked to create pockets of application value, by delivering software stacks running on these processors.

In this modified role, the organization completed a successful backhaul-edge stack, among several others. This organization later assumed wider responsibility for all Intel network processors, coalescing a diverse set of resources and technologies acquired from Netboost and other Intel acquisitions.

Research and education agenda

The organization managed University research funding, spearheading development of an embedded computing curriculum at Arizona State University in partnership with Motorola Computer Group.

Professional Experience Chronologically (cont.)

General Manager of Embedded Intel Architecture Division (1996 to 1998)

Manager responsible for product development, business development and partner ecosystems that built a profitable 250M+ revenue organization in a period of two years.

This organization's role was to sell Intel's 386, P4 and P5 class CPUs that were designed for PCs into non-PC, embedded applications – including point of sale terminals, telecommunications and data networking. The organizational focus was to provide a sustainable roadmap of long life products and provide the support needed by our target industries, including alternative tools and OS's, high reliability operation and power and thermal management solutions.

Executive management

Developed a 100+ person multi-functional organization, with primary responsibility for business development, ISV and IHV programs, application engineering and customer technical support, reporting to Intel Senior VP.

Linux ecosystem for Intel Architecture

One of the organization's crowning strategic achievements was the development of the Linux ecosystem on Intel Architecture, through funding of compiler and kernel optimizations.

Profitability targets

Exceeded profitability goals by creating several time to market acceleration projects that bootstrapped key customers quickly to production.

Software CMM

The organization's software team was the first corporate development team to successfully adopt Capability Maturity Model, achieving a solid level 2 maturity

Director of Business Development in Intel Wireless Products Operation (1993 to 1996)

Individual contributor in a "startup" business operation within Intel that was chartered with exploring opportunities in emerging wireless and handheld computing markets.

Tasked with identifying new product opportunities. This organization created products for several early smartphone attempts, including providing CPU's to Nokia for the historic Nokia 9000 Communicator, the grandfather of today's smartphone.

RIM Blackberry

Developed relationship with customer Research in Motion and drove development, including architecture support, for two low power, system on chip products used in first generation Blackberry and it's predecessor, Inter@ctive Pager. Development team awarded prestigious Intel Achievement Award for fastest time to revenue product (concept to first ship in less than 1 year).

Wireless patent portfolio

Organization created valuable patent portfolio in wireless handheld domain. Co-filed, PORTABLE PROCESSING SYSTEM WITH ALWAYS ON , ALWAYS CONNECTED CAPABILITY (Grant 6,567,855). as well as several patents related to sliding keyboard designs.

Professional Experience Chronologically (cont.)

Applications and Systems Engineering for Intel i960 Processor Products (1988 to 1993)

Led a team of 30+ engineers in providing the customer technical support, documentation, hardware validation, sales and application support for a range of the then top performing CPU's of the i960 product family.

Design Engineering for Intel Embedded Controllers (1986 to 1988)

Various roles in designing logic blocks for Intel 8 and 16 bit processor variants.

IBM • Research Triangle Park, NC

Co-op education intern, process development (1982 to 1985)

Design and test of process test sites for early flash memory products.

Education

Georgia Institute of Technology • Atlanta, GA

B.S. Electrical Engineering with Mathematics (1981 to 1986)

Cooperative education certificate with IBM • Research Triangle, NC

Summa cum laude, 3.8 GPA.

Honored on Georgia Tech most distinguished alumni roles in 2001

Lisa Roach

From: Julie Bennett <bennettj@cybermesa.com>
Sent: Thursday, January 09, 2014 8:50 PM
To: Lisa Roach
Subject: RE: COLTPAC Position
Attachments: Julie Bennett Resume 2014.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Roach,

I am a 34-year Santa Fe County resident, having lived in the traditional community of La Puebla for 32 of those years. I have followed, participated and educated myself about land use issues in Santa Fe County during this time and am passionate about the value of open space in our community. In 2000, my husband and I initiated an ambitious and complex process to place a conservation easement on our 21 acres of irrigated land, in collaboration with the Santa Fe Farmer's Market Institute, with the support of Federal, State and County funding programs. Although the project did not come to fruition at that time, we plan to reinstate the process in the near future. The plan called for the designation of a public trail along the Santa Cruz River which bordered the property as well as perimeter hiking trails within the easement. I feel that the land of our County holds the key to the health of our community in many ways, and I would be honored to serve the County in selecting and designating future open space for our citizens' use, pleasure and empowerment.

Sincerely,

Julie Bennett
5 Rancho Valle
Espanola, NM 87532
505.753.6428
505.690.4409

From: Lisa Roach [<mailto:lroach@co.santa-fe.nm.us>]
Sent: Monday, January 06, 2014 10:57 AM
To: bennettj@cybermesa.com
Subject: FW: COLTPAC

Good morning, Ms. Bennett –

Robert Griego forwarded me your email. I am the County's Open Space and Trails Planner and liason to COLTPAC, having started with the County in October. We are currently advertising for three open COLTPAC positions – two At-Large and one for District 4 (advertisement below). The positions carry a three-year appointment term, and meetings are held monthly on the first Wednesday evening of each month at 6pm at the County Admin Building on Grant Avenue. If you are interested, please email me a letter of interest and resume by Friday, January 10th, and if you have any further questions, I would be happy to address them.

JULIE BENNETT
5 RANCHO VALLE, ESPANOLA, NEW MEXICO 87532
505.753.6428 h 505.690.4409 c
bennettj@cybermesa.com

**Providing technical expertise and a meticulous work ethic to the
Building and Design Industry.
Advocating sustainability for every project.**

Sales Associate, *Santa Fe by Design*, Santa Fe, New Mexico. 2011 to present.
Working with contractors, design professional and homeowners to select, design and specify plumbing fixtures and hardware for remodel and new construction projects.

Designer / Sole Proprietor, *Design Arts*, Espanola, New Mexico. 1990 to present.
Providing consultation, design, purchasing and production coordination for institutions, contractors, homeowners, museums and galleries. Professional services include:

- Maximizing project potential by analyzing site and/or as-built conditions to match design solutions to design program;
- Promoting efficient space planning; envelope and insulation strategies and sustainable engineering, lighting and mechanical design to ensure resource, water and energy efficiency;
- Analyzing active and passive strategies for space heating;
- Strategizing implementation of solar water and space heating and photovoltaic generation;
- Specifying and purchasing green and/or renewable products and local and indigenous materials; providing cradle to grave life cycle analyses, ensuring indoor environmental air quality;
- Hiring, scheduling and supervising consultants and subcontractors; contract negotiation and management; budget and project review and evaluation;
- Serving as a liaison between clients, contractors and licensing agencies to facilitate collaborative planning and project management; providing client/consumer education;
- Ensuring code compliance, evaluating applicable green building programs and coordinating green building incentives;
- Creating presentation drawings, project contracts, schedules and maintenance documents using computer-aided design and related software;
- Completing projects for The Museum of New Mexico, The Smithsonian Institution, Colorado Fine Arts Center, Pojoaque Pueblo, Patina Gallery, Wheelwright Museum Modern Santa Fe Builders and private residential clients.

Acting Director and Designer, *Museum of New Mexico*, Santa Fe, New Mexico.

- Managed schedules, budgets and personnel for a 12-person department providing exhibit design and installation to the five units of the Museum of New Mexico. 1989-1990.
- Internationally recognized by a Print Casebook Award for the "Best in Exhibit Design" for the Hispanic Heritage Wing at the Museum of International Folk Art. 1986-1980.

Designer/Production Liaison, *Modern Santa Fe Builders*, 2004-2006.

- Residential design, space planning, kitchen and bath design, lighting design, finishes, trim and tile;
- Production coordination for new and remodel residential projects.

Sales and Marketing, *Old World Hardware*, Santa Fe, New Mexico. 2002-2004.
Hardware and lighting sales, take-offs, web development, print ad design.

Residential and Theatrical Carpenter, Taos Furniture Construction Division, The Santa Fe Opera, and private clients, Santa Fe, NM, 1981-1986.

COMMUNITY SERVICE

Initiator, *Conservation Easement Donation and Sale*

Prototyped the development of a publicly and privately funded conservation easement to preserve agricultural land and create farming and recreational opportunities on 21 acres of traditionally irrigated property.
2000-2012.

Chair, *Passive Solar sub-committee*

Coordinated the formulation of passive solar guidelines for residential remodels.

Member, *City of Santa Fe Residential Green Remodeling Code Committee*
2009-ongoing.

Member, *Citizens' Task Force*. Worked to revise the Santa Fe County Land Use Code for approval by the Santa Fe County Board of Commissioners. 1994 -1997 and 2009-2010.

EDUCATION AND ADVANCED TRAINING

Coursework in Green and Sustainable Building and Design, Thermal Bypass Issues in Buildings, Universal Design, ArchiCAD, Construction Management and Estimating, and Business Practices for Designers.
Santa Fe Community College, January 2008-present.

MFA. Ohio State University, Columbus. 1980

BFA. New York State College of Ceramics, Alfred. 1976

HOBBIES

Hiking, Cross-Country and Telemark Skiing, Gardening, Swimming, Yoga and Printmaking

January 9, 2014

Ms. Lisa A. Roach
Open Space and Trails Planner
PO Box 276
Santa Fe, NM 87504-O276

Dear Ms. Roach,

Attached please find my CV in support of seeking a position on the County Open Lands, Trails, and Parks Advisory Committee. I am particularly well suited to be of service to the county in support of trails and parks. I am a retired civil engineer with multiple decades of experience in planning and executing complex projects. I was responsible on the 'civilian' side for the construction of a 2.5 mile trail at Pecos National Historical Park where I am also a docent. I have also advised the park on various growth strategies, plans, and conducted historical and archeological research for them. I am also actively involved in the purchase of the first day's battlefield of the Civil War battle of Glorieta Pass for the Civil War Trust of which I am a member and their local agent. Additionally, I have just finished my second term as President of the Tano Road Association and now have a well rounded experience with both city and county government and the undertaking of large projects under their jurisdiction.

I hope I can be of service to Santa Fe County. Thank you for your consideration.

Sincerely yours,

Richard G. Higgins

1353 Tano Ridge Rd
Santa Fe, NM 87506
505-231-3637
rgilh@aol.com

Richard G. Higgins

1353 Tano Ridge Rd.
Santa Fe, NM 87506
Phone: 505-231-3637
Email: rgjlh@aol.com

Education

Master's Degree, Norwich University, June, 2009
MA Field of Study: Military History.
Capstone Director: Dr. John T. Broom
Capstone, The Red Army of World War II: Past Voices and Victory.

Master's Degree, Business Administration, Seattle University, June, 1984. Concentration in International Business and Statistics.

Bachelor of Science Degree, Civil Engineering, University of Maine, Orono, Maine. May, 1979.

Experience

2006-Date, Prime Grant Manager or Sponsor of the following projects:

Search for the Civil War Union Dead at Pecos NHP - successful, in permit negotiations with the NPS for exhumation.

Agent for the Civil War Trust for the purpose of purchasing the first day's battlefield at Glorieta (complete 1st Quarter 2014).

Preservation Plan and National Register Nomination for Apache Canyon, NM, Santa Fe Trail Bridge Site, American Battlefield Protection Program (complete).

New Mexico Vista Interpretive Site, Glorieta Battlefield, Pecos National Historical Park, NM (complete).

Glorieta Battlefield Trail, Grant from New Mexico State Parks, (complete).

Recognition of the 150th anniversary of the Civil War in New Mexico (ongoing).

2005-Date, Historical Consultant and Writer.

Research at Glorieta, NM Battlefield for Dr. Emily Brown (ongoing).

National Register Nomination and General History for Bandelier National Monument with Dr. Emily Brown (complete).

Administrative History for Carlsbad Caverns NPS with Dr. Emily Brown (complete).

Writing Projects:

Two Red Army novels of WWII, one complete, one in progress.

Numerous magazine articles for *WWII Quarterly*, most recent include the *Spies of Santa Fe* and *Behind Barbed Wire in America*, the story of the Japanese American Internment.

Articles for the Civil War Trust's journal, *Hallowed Ground*.

Other:

Numerous consultations for NPS, Civil War Trust, U Maine, and others regarding historical studies and artifacts.

Historical docent at Pecos NHP, 2005-Date.

1998-2005 – Vice-President of the Boeing Company with three assignments. Retired as Vice-President – The America's, Commercial Airplanes.

1984-1998 – Various managerial assignments at the Boeing Company including positions relating to Services and Engineering.

1979-1984 – Various engineering assignments at the Boeing Company in Commercial Aviation, specializing in Structural Engineering.

1972-1980 - US Coast Guard Reserve. Honorably Discharged.

**Awards,
Honors, Societies**

2011 Tau Beta Pi Engineering Honor Society – Distinguished Alumnus of the Year

Richard and Jean Higgins Materials Laboratory, University of Maine, 2006.

Recognition for historical contributions by the Colorado and New Mexico National Guard, US Air Force, and US Army. Francis Crowe Society, University of Maine, 2001, Distinguished Alumnus.

Aviation Week - Aviation MRO Safety Award, 1999.

Air Transport Association Appreciation Award, 1996.

Executive Programs – Carnegie-Mellon University 1989, the University of Washington 1992.

Tau Beta Pi Engineering Honor Society – 1979-Date.

Society for Military History – 2008-Date.

Civil War Trust – Approximately 10 years.

Friends of the Pecos National Historical Park – 2006-Present.

Museum of New Mexico Foundation, Regents Circle - 2012-Date.

Board of Directors - Santa Fe Opera 2008 - Date.

Board of Visitors – University of Maine-2012-Date.

Board of Advisors – University of Maine College of Engineering 2000 – Date.

Tano Road Association, President – 2005-2013, currently member of the Board.

Toby Gass: COLTPAC 2014

Toby Gass
68 Camino Espejo
Santa Fe NM 87507
505-474-3536
tgass@earthlink.net
December 6, 2013

Santa Fe County
Attn: Robert Griego, Planning Manager
P.O. Box 276
Santa Fe, NM 87504-0276
rgriego@santafecountynm.gov

Dear Mr. Griego:

I would appreciate being considered to fill the vacancy for a member-at-large on COLTPAC. My complete CV follows this letter of interest. Over the past several decades, I have watched commonly used, non-designated open lands and trails in Santa Fe County vanish as population and building density have increased. The only way to preserve the remaining routes and spaces is through deliberate coordinated planning that includes acquisition of land or easements. A thoughtful open lands and trails program can help preserve local heritage, protect important natural and cultural resources, facilitate healthy lifestyles, reduce private automobile usage, and maintain the quality of life that causes people to want to live in Santa Fe County.

My graduate degrees in Forest Resources and Ecology were earned primarily on the basis of research in central and northern New Mexico. I have also worked for both the National Park Service and the US Forest Service and understand how to coordinate among agencies on regional trail planning. Among my responsibilities was that of trails manager, responsible for over 350 miles of trails in the Santa Fe National Forest and for the crews that maintained them. My experience as a trail user includes hiking, backpacking, cross-country skiing, snowshoeing, and horse packing. I can therefore offer the committee both academically and practically earned knowledge regarding the function and importance of the ecosystems found in Santa Fe County and their suitability for conservation, preservation, or recreational uses.

Additionally, I have an M.B.A. with an emphasis in management of public, not-for-profit, and arts organizations and can bring strong analytical skills to the question of how potential projects can be prioritized, financed, and subsequently maintained.

I appreciate having the opportunity to be able to assist the County in realizing its goals for the Open Lands and Trails program. Please do not hesitate to contact me if you have any questions or need additional information. Thank you for your consideration.

Sincerely,

Toby Gass

Tobah M. Gass, Ph.D.

Tobah (Toby) M. Gass

68 Camino Espejo
Santa Fe NM 87507
County Commission District #2

tgass@earthlink.net
505-474-3536

Academic background

Ph.D., Ecology, Colorado State University
M.S., Forest Resources, University of Idaho
M.B.A., University of California, Los Angeles
 o emphasis in public, not-for-profit, and arts management
A.B., *cum laude*, Harvard-Radcliffe Colleges

Additional Education

Santa Fe Science Writing Workshop, Santa Fe, NM
Enhancing linkages between mathematics and ecology, Kellogg Biological Station, Michigan State University
Non-native invasive forest pests and pathogens. National Center for Ecological Analysis and Synthesis, Santa Barbara, California
Dendroclimatology Summer School, Laboratory of Tree-ring Research, University of Arizona
Cours de Langue et Civilisation Françaises, Université de Paris IV- Sorbonne

Academic experience

Contract editor for academic manuscripts in forestry and ecology, December 2013 – present
Independent researcher, September 2013 – present
Lecturer, Department of Forestry and Wildland Resources. Humboldt State University, spring, 2012

Past research projects:

- Implications of precipitation changes on the carbon balance of piñon-juniper woodlands
- Grazing effects on soil nutrients in montane riparian zones
- Current status of ponderosa pine in the Intermountain West
- Carbon isotope responses to fertilization, density, and age in a wet tropical forest
- Barriers to prescribed burning on private land in Colorado
- Stand age and fire behavior in the Pecos Wilderness, Santa Fe National Forest

Scientific Publications and Presentations

Gass, T.M., C.L. Bell, S.A. West, R.E. Pangle, E. Yezpe-Gonzales, W. Pockman, N.G. McDowell, and M.G. Ryan (in prep) *Ecosystem respiration response to precipitation manipulation in a semi-arid woodland*.
Gass, T.M and D. Binkley (2011) *Soil nutrient losses in an altered ecosystem are associated with native ungulate grazing*. Journal of Applied Ecology. 48(4):952-960. DOI: 10.1111/j.1365-2664.2011.01996.x

Gass, T.M., S. Kumar, and P.H. Evangelista (2009) *Ponderosa pine in the Interior West: current condition and land management legacies*. 85 pp. Contract report for the USDA Forest Service Forest Inventory and Analysis Program, Intermountain Region.

Gass, T.M. (2008) *Barriers to prescribed burning on private land in Colorado*. Colorado Forest Restoration Institute. 22 pp.

Gass, T.M. and A.P. Robinson (2007) *A hierarchical analysis of stand structure, composition, and burn patterns as indicators of stand age in an Engelmann spruce-subalpine fir forest*. Canadian Journal of Forest Research 37:884-894.

Functional and structural response to disturbance in forests of the Interior West. April 12, 2011. New Mexico Highlands University, Las Vegas, NM (invited).

Prescribed burning in Colorado: legal considerations for the private landowner. April 6, 2009. Southeast Colorado Prescribed Fire training workshop. Kim, CO. Sponsored by the Rocky Mountain Bird Observatory with funding from USDA NRCS (invited).

Modeling gross primary production from stable carbon isotopes. February 25, 2009. Front Range Student Ecology Symposium. Colorado State University, Fort Collins, CO.

Modeling white pine blister rust in the southern Rocky Mountains. Tracy Holcombe, Paul Evangelista, Toby Gass, Sunil Kumar, Mingyang Li, and Thomas J. Stohlgren. August 5, 2008. Ecological Society of America Annual Meeting, Milwaukee, Wisconsin. (authors in alphabetical order)

Inference and information from carbon isotope ratios. April 11, 2008. Spring Symposium, Department of Ecology and Evolutionary Biology, University of Colorado, Boulder, Colorado.

White pine blister rust: predicting disease spread with maximum entropy models. Toby Gass, Paul Evangelista, Tracy Holcombe, Sunil Kumar, Mingyang Li, and Thomas J. Stohlgren. February 5, 2008. Non-native invasive forest pests and pathogens distributed graduate seminar. National Center for Ecological Analysis and Synthesis, Santa Barbara, California.

Relationship between stand-replacing fire and stand age in subalpine forests. Poster at US EPA STAR Graduate Fellowship Conference, Washington, D.C., 2004.

Stand age and stand-replacing fire in a subalpine forest. Poster at ESA/INTECOL Congress, Montreal, Canada, 2005.

Teaching experience

Forest Health & Protection (FOR 222), 2 lectures and 2 lab sections weekly. Humboldt State University, spring 2012

Forest Management (FOR 315), 23 students. 2 lectures and 1 lab section weekly. Humboldt State University, spring 2012

Guest lectures:

New Mexico Highlands University

Colorado State University

University of Idaho

Academic Service

Manuscript reviews for *Canadian Journal of Forest Research*, *Ecological Applications*, *Ecology*, *Forest Ecology and Management*, *Global Change Biology*, *International Journal of Wildland Fire*, *Plant and Soil*, *Tree Physiology*.

Land Management Employment

USDA Forest Service, Santa Fe National Forest, Pecos-Las Vegas Ranger District, 1993-2002

- Served as lead wilderness manager for 223,000 acre wilderness area covering 3 Ranger Districts on 2 National Forests
- Member of District, Forest, and Regional planning committees
- Contributed to NEPA and other planning documents for federally designated wilderness area, Wild and Scenic Rivers, grazing allotments, and Burned Area Emergency Rehabilitation (BAER)
- Addressed and managed policy regarding non-motorized recreational uses, cattle grazing, management of outfitting and guiding activities, wildland fire response, and trail maintenance and construction
- Managed 350 mile trail system including planning for maintenance, new construction, trailhead design, and interpretive signing
- Hired, trained, and supervised trail crew and wilderness rangers, including employees and interns
- Engaged numerous local and national service organizations for volunteer service trips
- Developed annual work plans and budgets
- Functioned as Recreation, Lands, Minerals, Heritage Resources, and Roads Staff Officer during extended position vacancy
- Wrote successful applications for approximately \$100,000 in grant monies
- Managed annual collection and submission of data for national database of recreation infrastructure and workload
- Regularly conducted training sessions, ranging in length from 2 to 40 hours, for agency employees in 3-state area
- Served as agency liaison in meetings such as outreach and education planning for Pecos National Historical Park and conservation education planning for the USDA Forest Service Regional Office
- Participated in initial attack and prescribed burn operations
- Conducted law enforcement actions, including patrol and investigation, focusing on natural resource protection
- Edited District newsletter and prepared press releases for print media

USDOI National Park Service, Park Ranger, 1986 – 1992

- Sunset Crater National Monument, Wupatki National Monument, Lyndon B. Johnson National Historical Park, Canaveral National Seashore, Sleeping Bear Dunes National Lakeshore, Grand Canyon National Park, Bandelier National Monument
- Worked as an interpretive ranger (naturalist), backcountry ranger, and generalist ranger.
- Prepared and presented hundreds of educational walks, talks, campfire programs, backpack trips, canoe trips, and other field activities
- First-line supervisor for volunteers, interns, and seasonal employees

- Wrote park brochures and articles for park newspapers
- Collected data on air quality, stream flows, and fire weather
- Worked on foot and horseback, and from power boats, paddle boats, all-terrain vehicles, and helicopters
- Emergency responder for wildland fire, structural fire, search and rescue, technical rescue, and medical incident
- Enforced federal laws and regulations
- Worked solo in remote areas for extended periods of time

Professional Land Management Training (partial list)

- Fire Regime Condition Class
- Riparian Proper Functioning Condition Assessment
- National Park and Wilderness Fire Management
- Continuing Education in Ecosystem Management, 8 weeks at Northern Arizona University, Colorado State University, Utah State University, and the San Carlos Apache Nation
- Use and Care of Traditional Hand Tools & Crosscut Saw Certification
- Forest Plan Implementation 1900-01
- National Wildfire Investigation Training Program
- Archeological Resources Protection Training Program
- Wilderness Management Distance Education Program
- Federal Law Enforcement Training Center – Distinguished Graduate
- National Wildland Fire Coordinating Group certifications formerly held: S-130 Basic wildland firefighting; S-131 Advanced firefighter training; S-190 Introduction to fire behavior; S-212 Power saws; S-260 Fire business management principles; S-270 Basic air operations; S-290 Intermediate fire behavior; I-259 Security manager; I-359 Medical unit leader; Fireline EMT; Wilderness resource advisor

Lisa Roach

From: Patricia Conoway <pjconoway@msn.com>
Sent: Wednesday, January 08, 2014 1:12 PM
To: Lisa Roach
Subject: COLTPAC letter of interest
Attachments: pjc resume.pdf

Hello Lisa,

Happy New Year!

I'm writing to apply for one of the open positions for the advisory committee that reports to the Board of County Commissioners.

For easy review, I'm including my letter in the body of this email. My resume however, is included as an attachment.

I look forward to your response.

Patricia Conoway

Patricia J. Conoway
151 Wagon Trail Road
PO Box 54
Cerrillos, NM 87010

Lisa Roach
Open Space and Trails Planner
PO Box 276
Santa Fe, NM 87504-0276

January 7, 2014

Dear Lisa,

I am applying for one of the positions that have recently come available within COLTPAC.

I am including my resume for your information and as a summary of my background and experience, but I will also summarize my interest and qualifications in this cover letter:

I chose New Mexico as my permanent residence over twenty years ago, when I returned to the US from Australia, where I worked at a multinational advertising agency, DDBNeedham Worldwide, in Sydney. I'm originally from Pittsburgh, Pennsylvania. I chose New Mexico, specifically Santa Fe, out of a book because I was tired of big cities, super highways, smog and crowds. I had five criterion: no big cities, easy access to the outdoors, west of the Mississippi, enough culture to satisfy when I needed a culture "fix", and four seasons. I'd

never even been to Santa Fe before. I arrived in a used GMC Jimmy and five suitcases. Twenty years later, I'm still here.

The reason? I love it here. I love the diversity of population and cultures, the big sky, the landscape and most definitely the availability of outdoor activities. I've always loved horses; I acquired a horse for the first time in my life after living here a few years when I knew I was going to stay. I still have her, plus another horse on my dream ranch, which I moved into just two years ago, here in Cerrillos. I've been a member of Back Country Horsemen for eight years. I also started a business in the mid nineties, Conoway Consulting, a marketing and advertising firm. Plus I owned a residence and rentals on Candelario Street in Santa Fe before moving to Cerrillos and my fifty-three acre ranch with barn and round pen (and house, too)!

I believe I'm qualified for one of the positions available because of my love for this state, my desire to keep it as one of the best places to live or visit in the entire country, and my business background. I'm a team player and an avid believer in keeping a balance with: the goals of job creation and attracting business to the state, and keeping our open spaces and pristine areas as they are for future generations. I've had the privilege of riding my horse in the backcountry, in areas that many folks never get to see. I've visited parts of this state that have taken my breath away, like the Bosque del Apache, the Sangres and others, but I'm always happy to get back to Cerrillos and the awesome beauty that is in my own back yard.

I'm a believer in balance - in nature, development, and special interests. I believe I would be a great addition to the committee and I look forward to serving on it. I do hope this, and my attached resume help you and the review board to choose me for one of the open positions.

Wishing you a very happy and prosperous New Year.

Best regards,

Patricia J. Conoway

Patricia J. Conway
151 Wagon Trail Road
PO Box 54
Cerrillos, NM 87501
505-820-7912

Background Summary

Broad and in depth experience in strategic planning, marketing, advertising, communications, within high tech, packaged goods, fashion jewelry, publishing, toys, beverage, banking and retail industries as well as retail sales experience.

Experience

- | | |
|------------------------------|---|
| Jan.-March 2007 | Secretary, NM Legislature for Representative John Heaton |
| April 2007-present | Various free-lance projects in advertising & PR; part time sales; Landlord. |
| Feb. 2002-2006 | Conoway Consulting, Santa Fe, New Mexico
*Marketing planning, media placement, PR for Gertrude Zachary Jewelry, Etc., Albuquerque, NM and projects including creative development and media for various local clients. |
| April 1994-Feb. 2002 | *Conoway Consulting: Marketing planning, PR, advertising, research, staff training: Community Bank.
*Strategic Planning, advertising Pajarito Travel
*PR: Film "Ridin'Down" (Independently produced Western) winner Santa Fe and New York film festival award
*Advertising, sales promotion, events, PR, direct mail planning, execution, sales associate manuals and artists' biographies for Packards, Inc., Santa Fe
*Promotions, advertising development and execution, City of Santa Fe Parking Division. |
| Oct. 1993-Dec. 1994 | *Direct retail sales, Packards, Inc. Plaza, Santa Fe, NM and Adieb Khadoure Fine Art, Canyon Road, Santa Fe, NM |
| Dec. 1992-June 1993 | *The Frontline Agency, Sydney, Australia: Client Services Director
*Direct responsibility for entire agency staff of 23
*Senior client liaison for Microsoft, Australia. Responsible for communications strategy development and execution for 30 Microsoft products and services for business, retail, high tech and general consumer audiences, including TV, print, point of sale, direct mail, fulfillment. Overall company sales exceeded goal 25%.
*Strategic planning and communications program execution for Arrowfield Wines.
*Led new business task force. |
| Sept. 1991-Sept. 1992 | Sabbatical in US |
| Sept. 1988-Sept. 1991 | Group Account Director, Associate Board Director, DDB Needham, Pty. Ltd., Sydney, Australia. Responsible for Microsoft, SC Johnson, Allowrie Farmers (Dairy Group), Wrigley, Matchbox Toys.
*On Agency new business task force.
*New product launches (Word, Excel, PowerPoint) software; sales exceeded goal by 40%.
*Strategic planning, new communications execution for SC Johnson, Wrigley, Allowrie Dairy Group
*Led new business pitch for successful win, State Bank of New South Wales |

*Conceived, executed, produced direct marketing video for DDBN new business solicitations

June 1987-Jan. 1988 **Advertising Director, Jewelry Division, The Franklin Mint, Franklin Center, PA**
 *Developed \$60.0 million division's first strategic business plan
 *Supervised product development and communications programs for 50+ fine and costume jewelry items.

August 1983-May 1987 **Vice President, Account Supervisor, DDB Needham, New York, New York.**
 *Responsible for overall account management (creative, media development and placement) Xerox Non Reprographics. Time Inc. – Fortune Magazine, Group W Satellite Communications, - The Nashville Network.
 *Supervised overall communications for \$65 million Xerox account
 *Led team effort for new business win: Fortune Magazine
 *Ombudsman/management liaison, development/training of account personnel

June 1980-July 1983 **Senior Account Executive/Account Executive BBDO Inc., New York, New York**
 *Pepsi Cola, Lever Brothers Wisk, General Electric Consumer Goods

Feb. 1978-June 1980 **Assistant Account Executive/Account Executive NW Ayer, ABH International New York, New York**
 *Management training program participant, Kraft Dairy Group, Ralston Purina Cereals and pet foods.

Education **The American Graduate School of International Management, Glendale, AZ**
 Master of International Management, marketing concentration

Indiana University of Pennsylvania, Indiana, PA
 BA Psychology. Minor English Literature
 Dean's List semesters 5,6,7,8

References: Patricia Murray, SR. VP First National Bank, NM 992-2314
 Bill Hinsvark, Site Santa Fe 989-1199

Lisa Roach

From: Kowalski, Judy, EMNRD <Judy.Kowalski@state.nm.us>
Sent: Tuesday, December 10, 2013 5:48 PM
To: Lisa Roach
Subject: Resume and letter of interest
Attachments: 2013 Resume.doc

Hi, Lisa. Attached please find my resume in consideration for appointing me to serve another term on COLTPAC. As I indicated at our last COLTPAC meeting, I am very interested in serving another term, as I feel we have a very esteemed group of people on the committee who can be very beneficial to the County and to the furtherance of the parks and open space program and properties. I feel that this last year has been one of struggle for COLTPAC, but that many of the issues that have hindered us are being ironed out. I feel that my experience serving on COLTPAC for my first term, and as chair for this last difficult year, can be of assistance to you and the newer members in helping the County match the needs of the program with the resources it has available. I would very much appreciate the opportunity to make a contribution to the program by serving another term. Please consider this e-mail my letter of interest. If you should need any additional information, please let me know and I will be happy to provide it.

Regards,
Judy

Judy Kowalski, Bureau Chief

Design and Development Bureau

Parks Division

EMNRD

1220 S. St. Francis Dr.

Santa Fe, NM 87505

505-476-3387



Resume of

Judy Kowalski
2986 Corte Ojo de Agua
Santa Fe, NM 87505
505-660-7418
December 2013

Employment History:

September 2012 – Present

NM Energy Minerals and Natural Resources Department
Parks Division, Design and Development Bureau
1220 So. St. Francis Drive
Santa Fe, NM 87504
505-476-3387

Title: Bureau Chief

Job Responsibilities: Responsibilities as Bureau Chief include managing and approving expenditures of capital funds, managing and assisting with land acquisitions and related contracts, managing and ensuring the progress of park strategic planning activities, managing and assisting with water rights issues, overseeing the technical issues associated with water and wastewater permits and issues, managing the bureau personnel involved with architecture and design, Recreational Trails Program, Land and Water Conservation Fund, and managing interactions with the Support Services Bureau to ensure compliance with environmental and cultural resource regulations. Manages federal grant budgets and agreements, including reporting, documentation and new contracts, as well as interaction with Federal grant managers. Interacts on a day-to-day basis with Parks upper management and Parks staff to solve problems and ensure the smooth functioning of the parks infrastructure and design and development programs, including ensuring that capital planning is in line with the Division's organizational goals, objectives, and mission. Conducts research and provides information necessary to respond to legislative inquiries regarding the Division's budget and capital expenditures.

October 2008 – September 2012

NM Energy Minerals and Natural Resources Department
Parks Division, Design and Development Bureau
1220 So. St. Francis Drive
Santa Fe, NM 87504
505-476-3387

Title: Registered Landscape Architect

Job Responsibilities: Determined the most appropriate and effective use of capital funds for landscape projects that meet the goals, objectives, and mission of the Parks Division, as well as providing relevant analysis and input to overall bureau activities. Landscape and irrigation design, construction document preparation, and construction management for State Park facilities statewide. Ensured compliance with resource protection rules and regulations for implementation of projects. Managed individual project budgets for each assigned large-scale project and managed construction contractors. Managed implementation of statewide signage replacement program. Assisted parks planner in development of park management plans. Planned, designed and contracted for construction of park trails with Recreational Trails

Program funding. Worked closely with park staff to analyze the needs of parks as related to natural resources and landscape infrastructure and design solutions that most effectively and efficiently address those needs. This requires excellent communication and analysis skills, as well as interpersonal skills, to ensure maximum customer satisfaction.

March 2003 - November 2005 and August 2006 - October 2008

MRWM, Ltd., Landscape Architects

210 La Veta NE

Albuquerque, NM 87108

505-268-2266

Title: Registered Landscape Architect

Job Responsibilities: Landscape and irrigation design, construction document preparation, and construction management for commercial landscape projects, including I-40 landscaping, parks, streetscapes, and buildings. Responsibilities included working closely with clients on needs assessment, project budgeting, and public outreach to produce a design that addressed all public concerns identified in the public input process.

November 2005 – August 2006

HDR Engineering, Inc.

2155 Louisiana Blvd. NE

Albuquerque, NM 87110

505-830-5400

Title: Registered Landscape Architect, Group Manager

Job Responsibilities: Managed the landscape architecture group, including two landscape architects in training. Primary responsibilities included marketing, landscape design, site design in cooperation with project engineers, and completion of construction documents for commercial and public works projects. Managed the day-to-day work of employees, including training, compensation and benefits. Undertook sales and marketing outreach to clients to obtain landscape contracts for the firm.

2001-2003

National Park Service

Santa Fe Field Office

Santa Fe, NM 87504

Title: Historical Landscape Architect

Job Responsibilities: Completed cultural landscape inventories for National Monuments in the southwest region.

1996-2000

NM Energy, Minerals and Natural Resources Department

Forestry Division

Santa Fe, NM 87504

Title: Program Manager

Job Responsibilities: Developed the Four Corners Sustainable Forests Partnership, a four-state, federally funded cooperative program to aid in the growth of small, forest-based industries in rural communities throughout the Four Corners Region. Managed \$3 million in grants and contracts in cooperation with small businesses, local governments, state agencies, the Bureau of Indian Affairs, and the USDA Forest Service. The program promoted the growth of businesses manufacturing products from small diameter timber by providing seed money and technical assistance. Capital management responsibilities included ensuring the appropriate expenditure of all grant funds, proper reporting to grantees, marketing and outreach about the

program statewide and region-wide, and ensuring that all grant requirements were adequately met. Also managed the activities of state program managers in Utah, Arizona and Colorado, whose activities were funded by the federal grant.

1990-1996

NM Energy, Minerals and Natural Resources Department
Office of the Secretary and Energy Conservation Division
Santa Fe, NM

Title: Program Manager

Job Responsibilities: In cooperation with the NM Economic Development Department, the NM Environment Department, New Mexico State University Waste Management Education and Research Consortium, Sandia and Los Alamos National Laboratories, and small business representatives, developed an award-winning statewide pollution prevention program that promoted waste reduction and a continuous improvement business model designed to improve both environmental and financial performance. Obtained funding from the U.S. Environmental Protection Agency and served as fiscal manager for the program. Responsibilities included managing the expenditures of the program to ensure compliance with federal requirements and reporting activities and expenditures to the grantee. Also developed and managed a statewide recycling grant program to assist local governments in the development of solid waste management plans and recycling programs in response to the Solid Waste Act of 1989.

1988-1990

U.S. Congress Office of Technology Assessment
Washington, D.C.

Title: Analyst

Job Responsibilities: Conducted an assessment of problems, policies, and technologies associated with municipal solid waste in the United States. Specific areas of responsibility included evaluating potential markets for recycled materials, identifying and evaluating incentives and disincentives for using recycled materials in manufacturing processes, and comparing costs of various solid waste management options. Designed work plans and managed contractors for three related studies. Produced a report, with others, entitled "Facing America's Trash, What Next For Municipal Solid Waste," published in October 1989. Also conducted an assessment of environmental problems at the U.S. Department of Energy's Defense Production Complex. Areas of responsibility included cost analysis of environmental restoration projects and assessment of DOE's cost estimation methodologies. Produced a report, with others, entitled "Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production," published in February 1991. Testified before Congressional subcommittees.

1986-1988

American Mining Congress
Washington, D.C.

Title: Staff Economist

Job Responsibilities: Analyzed economic impacts of environmental regulations and proposed legislation on the minerals industries. Prepared issue papers on various topics, including the status of the mining industry and acted as liaison with government agencies having minerals-related responsibilities.

1984-1986

U.S. Department of Commerce
Washington, D.C.

Title: Industry Economist

Job Responsibilities: Produced a report on the competitiveness of the U.S. copper, lead, zinc, and aluminum industries and their relation to the Nation's strategic needs, and prepared testimony on the subject for Congressional hearings. Assisted with the completion of reports on U.S. trade in aluminum mill products and materials competition in the metals-consuming industries.

1981-1984

Pincock, Allen & Holt, Inc.
Tucson, AZ

Title: Mineral Economist

Job Responsibilities: Conducted supply/demand analyses for mineral commodities that included identification of markets, evaluation of competitors, and assessment of emerging technologies. Estimated capital and operating costs for the economic evaluation of mineral deposits, and undertook market studies for gold/silver refineries and other mineral processors.

Education:

University of New Mexico, School of Architecture and Planning, Master of Landscape Architecture, 2002

University of Arizona, Master of Science, Mineral Economics, 1981

University of Delaware, Bachelor of Arts, International Relations and Economics, 1974

Awards:

2009, Cultural Properties Review Committee, Heritage Preservation Award

2001, National Park Service, Star Award

2001, Landscape Architects Educational Cooperative, Robert H. Boyer Award

2000, USDA Forest Service, Rural Community Assistance National Action Award

1999, USEPA Region 6, Regional Administrator's Environment Excellence Award

1999, NM State Forester's Award for External Customer Service

1998, Environmental Professional of the Year, Western Association of Energy Engineers

1996, Environmental Professional of the Year, NM Association of Energy Engineers

Public Service:

2011 – Present: Santa Fe County Open Lands Trails and Parks Advisory Committee Chair

2007 – 2009: Albuquerque Environmental Planning Commissioner

2005 – 2008: Treasurer, New Mexico Chapter, American Society of Landscape Architects

Lisa Roach, Open Space and Trails Planner
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276

January 7, 2014

Dear Ms. Roach:

I would be very interested in serving on County Open Lands, Trails and Parks Committee. I am a resident of El Dorado and have served as a volunteer with the Eldorado Community Improvement Association in various capacities for the past eight years, including as chairman of the Conservation Committee, charged with managing our greenbelts and 4,000 acre wilderness preserve. During my tenure we created several new trails, improved signage restored a degraded wetland area and opened the trails to mountain biking.

Santa Fe is blessed with an abundance of open space and trails. Many residents enjoy these community assets on a regular basis. Management and oversight of these community assets is a vitally important job requiring sensitivity to community needs and traditions. Planning and implementation of new trails and acquisition of open space should be accomplished in as transparent and inclusive a manner as possible. Trails should be designed to maximize sustainability and minimize ecological and cultural impacts. Where possible diverse uses should be allowed and community participation and education should be emphasized.

Thank you for considering my application. I have enclosed my résumé.

Sincerely,

John Parker
4 Vista Grande Drive
Santa Fe, NM 87508

John W. Parker

4 Vista Grande Dr. · Santa Fe, New Mexico, 87508 · Telephone 505-466-7513

EDUCATION

M.A., University of Nebraska Major: Biology	May 1982
B. S., University of New Mexico Major: Biology Minor: Geology	August 1977

EXPERIENCE

Bureau Chief Radiation Control Bureau New Mexico Environment Department	July 2003 – November 2009
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Management of Bureau comprised of radiation protection programs implemented throughout the state. Directly supervised program managers for Indoor Radon Outreach (EPA Grant), WIPP Transportation Oversight, Radiologic Technologist Certification Program, and Radiation Protection Section. The latter Section includes radioactive materials licensing and radiation producing machines registration and inspection programs.

Bureau Chief DOE Oversight Bureau New Mexico Environment Department	January 1997 – July 2003
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Management position responsible for implementing the Agreement-in-Principle between the US Department of Energy and the State of New Mexico. Agreement funds state environmental oversight of Los Alamos and Sandia National Laboratories, and the Inhalation Toxicology Research Institute. Duties include development of annual grant application and budget, work plans and reports. Supervise administrative staff and three office managers.

Program Manager Environmental Surveillance Section Hazardous and Radioactive Materials Bureau New Mexico Environment Department	July 1991 - January 1997
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Managed a section comprised of three programs and 15 staff. Primary program involved oversight of environmental impacts at Los Alamos and Sandia National Laboratories, the Inhalation Toxicology Research Institute and the Waste Isolation Pilot Plant. Primary duties included development of program guidance, implementation protocols, budget planning and justification and supervision of staff.

Water Resource Specialist Ground Water Section New Mexico Environmental Improvement Division	June 1987 - July 1991
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Implemented the Underground Injection Control Program (excluding oil and gas related activities) under a grant with the U.S. EPA. Duties included preparation of grant applications, quarterly and annual compliance reports, and budgets. Also responsible for conducting inspections and enforcement, sampling of groundwater and effluents. Required to give technical presentations at commission meetings and administrative hearings. Supervised three technical staff.

Environmental Scientist
Radiation Protection Bureau
New Mexico Environmental Improvement Division
January 1985 - June 1987

Assignments included two primary program areas. Initially worked in uranium mill licensing program. Duties included review and evaluation of license applications and preparation of detailed assessment, monitoring of licensees for compliance with applicable regulations, and development of draft state regulations. Transitioned to licensing and registration of radiation producing machines and radioactive source materials. Duties included inspection of materials licenses and registrants for compliance with state regulations and license conditions, computerization of records dealing with licensing, registration and certification.

Environmentalist
Grants EID Field Office
New Mexico Environmental Improvement Division
February 1984 - January 1985

Enforcement of Food, Water Quality, Liquid and Solid Waste, Air Quality, Water Supply, and Swimming Pool regulations. Conduct inspection and enforcement activities in preceding program areas. Sampled waste and environmental media and submitted to analytical laboratory.

SPECIALIZED TRAINING

Throughout my career in state government I have received extensive training, in technical subjects such as risk assessment and communication, ground-water investigation, health physics and radiation protection, RCRA corrective action, computer applications (e.g. MS Office Suite, ARCVIEW GIS, Oracle Financial, Statistica) as well as management topics including progressive discipline, employment law, managing organizational performance, budget development and reconciliation.

REFERENCES

Hobbies: Hiking, mountain biking, skiing, snowshoeing, building, bird-watching and photography

Volunteer Work:

1990 – 1998 President, Seven Springs Association. Informal organization of property owners in the Jemez Mountains community of Seven Springs. Worked with USFS on issues such as paving of Hwy 126, uncontrolled camping and forest fire preparedness

1993 – 1998 Greater Eastern Jemez Wildfire Committee. Worked with contract attorney to incorporate as a non-profit, then apply for federal money available to communities within the National Forest to perform mitigation work (thin overgrowth on private properties.)

2004 –Present ECIA Conservation Committee. Developed 5-year plans and annual budgets. Planning and implementation of activities associated with open spaces and conservation in Eldorado.

2008- 2012 ECIA Architectural Committee. Developed guidelines for solar installations in the Eldorado Community, attended bi-weekly meetings and site visits concerning residents applications to construct structures or additions on their property.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5


Katherine Miller
County Manager

MEMORANDUM

DATE: *January 9, 2014*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director* ^{REL} *1/13/14*

VIA: *Katherine Miller, County Manager* 

ITEM AND ISSUE: *BCC Meeting January 28, 2014*

**REQUEST APPROVAL OF AGREEMENT FOR PURCHASE AND SALE OF EASEMENT
FOR THE AGUA FRIA GATEWAY MONUMENT**

BACKGROUND AND SUMMARY:

In 2012 Santa Fe County partnered with the National Park Service National Trails Office to develop conceptual designs for gateway entrances to the Historic Village of Agua Fria. The gateways will be located on Agua Fria Street, the original route of El Camino Real de Tierra Adentro, a federally designated National Historic Trail by the U.S. Congress. This project was initiated by the Village of Agua Fria during the planning process to develop the Agua Fria Community Plan adopted in July of 2008. The County has worked closely with the Village of Agua Fria to develop the gateway entrances.

The goal of the gateway entrances is to communicate to travelers that they are entering a historic village on El Camino Real. The gateways will capture the special character of Agua Fria Village. A secondary goal of the gateways is to calm and slow traffic as it enters the Village.

In May of 2012 Santa Fe County hired a landscape architect to design the gateway entrances on Agua Fria Street. The project has been divided into two phases. Phase 1 includes the gateway entrance on the eastern end of the Village. Funding was budgeted in FY14 for construction of Phase 1. Phase 2 includes the gateway entrance on the western end of the Village. Funding for phase 2 has not yet been identified.

The County has completed the design and selected a location for the gateway on the eastern end of the Village. The property is owned by Manuelita Gonzales and her daughter Kathleen Laemmle. The landowners are willing to sell an easement to the County for the purpose of constructing and maintaining the gateway. The appraised value of the easement is \$4,900.

ACTION REQUESTED:

Approval of the Agreement for Purchase and Sale of Easement for the Agua Fria Gateway Monument.

**AGREEMENT FOR PURCHASE AND SALE
OF EASEMENT**

THIS AGREEMENT FOR PURCHASE AND SALE OF EASEMENT (the "Agreement"), dated the _____ day of _____, 2014, is made and entered into by and between Kathleen Laemmle and Manuelita M. Gonzales, #1950 Skeeter Lane, Santa Fe NM 87507, joint tenants ("Sellers"), and Santa Fe County, a political subdivision of the State of New Mexico ("the Buyer").

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, Sellers and Buyer agree as follows:

1. PURCHASE AND SALE OF EASEMENT.

1.1 Purchase and Sale: Sellers agree to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase from Sellers an exclusive permanent sign easement approximately 464 sq. ft. in area (the "Easement"), located within the following described property, *to wit*: a 0.7760 acre parcel (33,803 sq. feet) being Lot 1-A, as shown on the "Family Transfer Land Division for Kathleen Laemmle and Manuelita M. Gonzales of Lot 1" and recorded in Plat Book 507, Page 030 in the records of Santa Fe County, New Mexico.

SEE ATTACHMENT A (Grant of Easement)

1.2 Purchase Price: As consideration for the Easement, Buyer shall pay to Sellers Four Thousand Nine Hundred Dollars and No Cents (\$4,900.00).

1.3 Sellers agree to execute the attached Easement Agreement to convey the exclusive permanent easement which is to be recorded with the Santa Fe County Clerk.

2. REVIEW, INSPECTION, TITLE AND SURVEY.

Buyer acknowledges that it has inspected the Easement and reviewed title documents and surveys of the property where the Easement is located.

3. CONDITIONS PRECEDENT TO THE BUYER'S OBLIGATIONS.

Buyer's obligation to purchase the Property is conditioned upon satisfaction (or waiver in writing by Buyer) of each of the following conditions:

3.1 This purchase shall be subject to Buyer's approval or disapproval of any inspection, survey or any other document related to the Easement, in Buyer's sole and absolute discretion, until the date of the recording of the Easement. Buyer shall provide written notice of disapproval to Sellers on or before the date of recording. In the event Buyer provides written notice of disapproval

to Sellers, this Agreement shall be deemed terminated and the parties shall be relieved of any further obligations to each other with respect to the purchase and sale of the Easement.

3.2 Sellers shall have delivered to Buyer the Easement Agreement duly executed by the Sellers.

3.3 Buyer shall have obtained the written approval of this transaction from the Santa Fe Board of County Commissioners.

4. CONDITIONS PRECEDENT TO THE SELLERS' OBLIGATIONS.

Sellers' obligation to sell the Easement to Buyer is condition upon satisfaction (or waiver in writing by Sellers) of the following condition:

4.1 Buyer shall deliver (or cause to be delivered) to Sellers, a transfer of funds in an amount equal to the Purchase Price to such account as shall be designated by Sellers and all other documents required of Buyer to comply with its obligations hereunder.

5. TERMINATION.

This Agreement may be terminated prior to the date the Buyer issues the Purchase Price to the Sellers and the easement is recorded only as follows and in each case only by written notice:

- a) By the mutual written consent of Sellers and Buyer;
- b) By either Sellers or Buyer, if the recording of the Easement has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with their obligations under this Agreement) on or before the twenty-first (21st) of February 2014;
- c) Buyer's disapproval of any inspection, survey or any other document related to the Property, in Buyer's sole and absolute discretion;
- d) By either Sellers or Buyer, if a material breach of any covenant, warranty, representation, agreement or provision of the this Agreement, that individually or in the aggregate could have a material adverse effect, has been committed by the other party and such breach has not been (i) cured within thirty (30) days after the non-breaching party gives written notice of said breach to the breaching party; or, (ii) waived by the non-breaching party.

6. COSTS.

Buyer shall pay all fees, if any, and the cost of any other obligations of Buyer hereunder.

7. LIABILITY.

Any liability incurred by Buyer in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, §41-4-1 et seq., as amended.

8. INDEMNIFICATION.

Sellers hereby agree to indemnify and hold Buyer harmless from any obligation, cost, expense, liability and claim by third parties which Buyer may suffer arising out of Sellers' acts or omissions regarding the Easement or any part of this Agreement.

9. INCORPORATION OF ATTACHMENT.

All attachments attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

10. NOTICES.

All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid, or (c) by facsimile transmission with an original mailed by first class mail, postage prepaid, to the following addresses:

If to Sellers: Kathleen Laemmle and
Manuelita M. Gonzales, joint tenants
#1950 Skeeter Lane
Santa Fe, NM 87507

If to Buyer: County of Santa Fe
102 Grant Ave. P.O. Box 276
Santa Fe, NM 87504-0276
Attn: Stephen Ross, Santa Fe County Attorney

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon delivery to the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Any party may change their address for purposes of this paragraph by giving notice to the other party.

11. ASSIGNMENT.

This Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided, however, that this Agreement may not be assigned by either party without the prior express written consent of the other party.

12. ENTIRE AGREEMENT.

This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose.

13. WAIVER.

Failure of either party at any time or times to require performance of any of the provisions of this Agreement shall in no way affect its right to enforce the same, and a waiver by either party of any breach of any of the provisions of this Agreement shall not be construed to be a waiver by such party of any prior or succeeding breach of such provision or a waiver by such party of any breach of any other provision.

14. HEADINGS AND CONSTRUCTION.

The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with herein. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities contained herein against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner consistent with the purpose of the parties and this document.

15. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the parties only when a copy or a counterpart has been signed by each party and delivered to each other party. Signatures, copies and counterparts may be transmitted by mail or overnight courier service and when so transmitted are as effective as if a manually signed, original document had been delivered.

16. APPLICABLE LAW, JURISDICTION AND VENUE.

This Agreement shall, in all respects, be governed by and construed according to the laws of the State of New Mexico applicable to agreements executed and to be wholly performed therein.

17. FURTHER DOCUMENTS.

Each of the parties hereto shall, on and after the date of recording of the Easement, execute and deliver any and all additional papers, documents, instructions, assignments and other instruments, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the parties hereto.

18. SEVERABILITY.

Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision hereof which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and all other provisions hereof shall remain in full force and effect.

19. NO OBLIGATION TO THIRD PARTIES; NO FIDUCIARY RELATIONSHIP OR DUTIES.

The negotiation, execution, delivery and performance of this Agreement shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, to obligate either of the parties hereto to any person or entity other than each other, or to create any agency, partnership, joint venture, trustee or other fiduciary relationship or fiduciary duties between Sellers and Buyer.

20. CONSTRUCTION.

For all purposes of interpretation or construction of this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter shall include the masculine and feminine. As used in this Agreement, the term "and/or" means one or the other or both, or anyone or all, or any combination of the things or persons in connection with which the words are used; the term "person" includes individuals, partnerships, limited liability companies, corporations and other entities of any kind or nature; the terms "herein," "hereof" and "hereunder" refer to this Agreement in its entirety and are not limited to any specific provisions; and the term "including" means including, without any implied limitation.

21. DATES OF PERFORMANCE.

If under this Agreement the date upon which an event is scheduled to occur or the last date on which a party's performance of any obligation is required falls on a nonbusiness day, then such date shall be deemed to be the immediately following business day.

22. TIME IS OF THE ESSENCE.

Time is of the essence hereof and of all the terms, provisions, covenants and conditions hereof.

Purchase of Easement Agreement No. 2013-0265-OS/PL

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

SELLERS

KATHLEEN LAEMMLE AND MANUELITA M. GONZALES, JOINT TENANTS

By: Kathleen Laemmle

Date: _____

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on _____, 2014, by

Age Group	Percentage
18-24	10%
25-34	20%
35-44	25%
45-54	20%
55-64	15%
65-74	10%
75-84	5%
85+	5%

My commission expires:

Notary Public

By: _____
Manuelita M. Gonzales

Date: _____

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on _____, 2014, by

My commission expires:

Notary Public

BUYER

SANTA FE COUNTY

By: _____
Daniel M. Mayfield, Chair
Santa Fe Board of County Commissioners

Date: _____

ATTEST

Geraldine Salazar
Santa Fe County Clerk

Date: _____

Approved as to form


Stephen C. Ross
Santa Fe County Attorney

Date: 12/13/13

Purchase of Easement Agreement No. 2013-0265-OS/PL

Finance Department

Teresa C. Martinez
Teresa C. Martinez
Director

Date: 12/17/13

GRANT OF EASEMENT

Kathleen Laemmle and Manuelita M. Gonzales and (hereinafter "Grantors"), #1950 Skeeter Lane, Santa Fe, NM 87507, do hereby grant and convey to the County of Santa Fe, its successors and assigns, (hereinafter "Grantee") an exclusive permanent easement for the purpose of installing, constructing and maintaining a permanent sign or monument on a parcel of land of approximately 464 sq. ft. lying within Lot 1-A as shown on as shown on the "Family Transfer Land Division for Kathleen Laemmle and Manuelita M. Gonzales of Lot 1" and recorded in Plat Book 507, Page 030 in the records of Santa Fe County, New Mexico ("Permanent Sign Easement"), more specifically described on Exhibits A and B, attached hereto and incorporated herein.

The grant of Easement herein is subject to the following terms and conditions:

- a) This Permanent Sign Easement shall be interpreted under the laws of the State of New Mexico.
- b) This Permanent Sign Easement may be executed in counterparts that together will be a single instrument.
- c) This Permanent Sign Easement may be modified only by a written document signed and notarized and recorded in the official records of Santa Fe County, New Mexico.
- d) This Easement shall at all times be deemed to be and shall be a continuous covenant running with the land and shall be binding upon and in favor of the successors and assigns of the Grantors and Grantee.
- e) Grantors shall not interfere with the Grantee's use and enjoyment of this easement by planting trees or otherwise obstructing the view of the sign or monument Grantee places on the Easement pursuant to this Grant of Easement.

GRANTORS

Kathleen Laemmle
Signature

Manuelita M. Gonzales
Signature

1
ATTACHMENT A

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me on _____, 20__ by Kathleen Laemmle.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

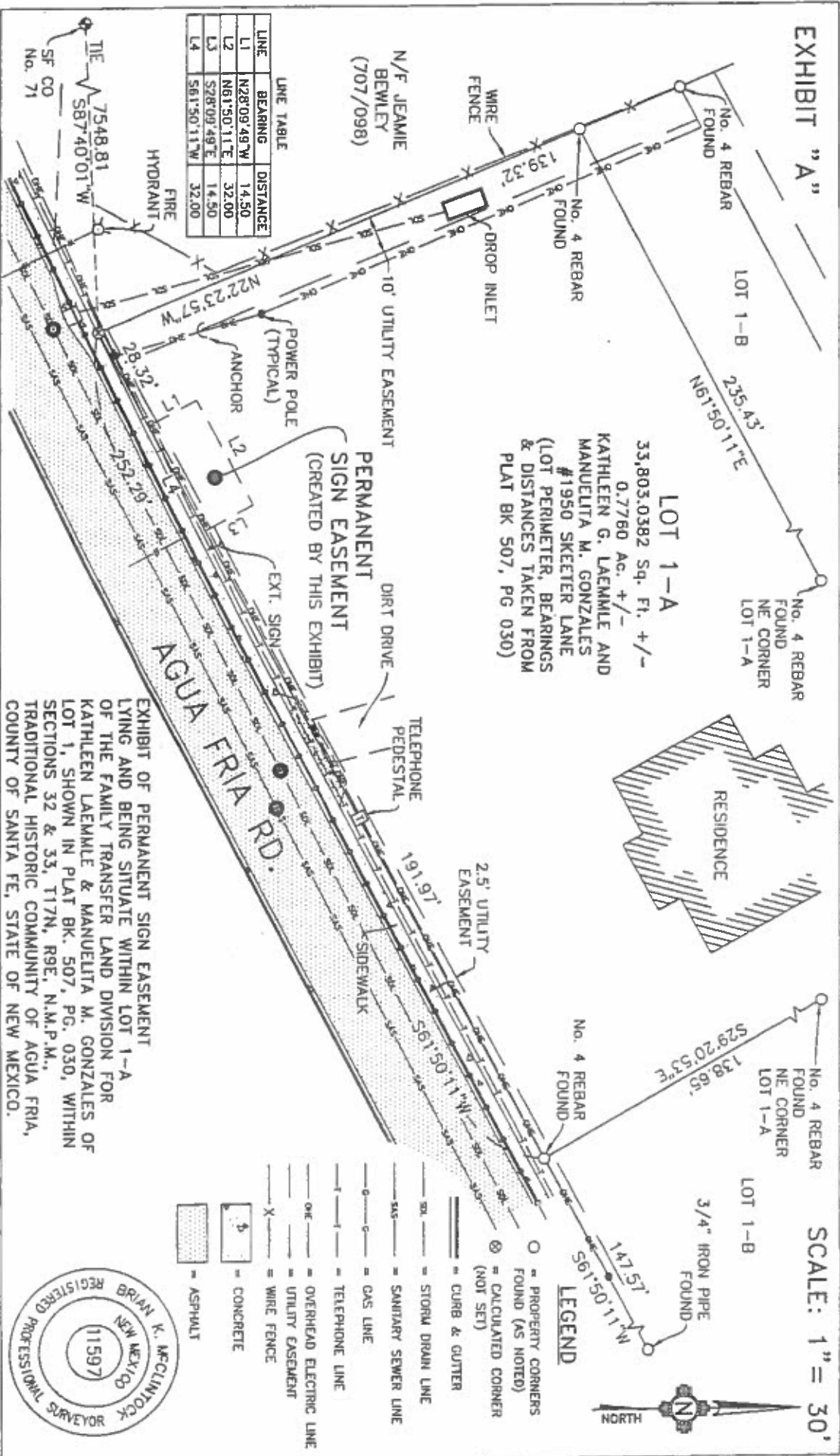
This instrument was acknowledged before me on _____, 20__ by Manuelita M. Gonzales.

Notary Public

My commission expires: _____

EXHIBIT "A"

SCALE: 1" = 30'



LINE	BEARING	DISTANCE
L1	N28°09'49"W	14.50
L2	N61°50'11"E	32.00
L3	S28°09'49"E	14.50
L4	S61°50'11"W	32.00

N/F JEAMIE BEWLEY (707/098)

10' UTILITY EASEMENT

ANCHOR (TYPICAL)

POWER POLE

DIRT DRIVE

TELEPHONE PEDESTAL

2.5' UTILITY EASEMENT

SIDEWALK

AGUA FRIA RD.

PERMANENT SIGN EASEMENT (CREATED BY THIS EXHIBIT)

LOT 1-A

33,803.0382 Sq. Ft. +/-

0.7760 Ac. +/-

KATHLEEN G. LAEMMLE AND MANUELITA M. GONZALES #1950 SKEETER LANE (LOT PERIMETER, BEARINGS & DISTANCES TAKEN FROM PLAT BK 507, PG 030)

No. 4 REBAR FOUND NE CORNER LOT 1-A

No. 4 REBAR FOUND NE CORNER LOT 1-B

3/4" IRON PIPE FOUND

LEGEND

- = PROPERTY CORNERS FOUND (AS NOTED)
- ⊙ = CALCULATED CORNER (NOT SET)
- = CURB & GUTTER
- = STORM DRAIN LINE
- = SANITARY SEWER LINE
- = GAS LINE
- = TELEPHONE LINE
- = OVERHEAD ELECTRIC LINE
- = UTILITY EASEMENT
- X— = WIRE FENCE
- = CONCRETE
- = ASPHALT



Brian K. McClintock, N.M.P.S. #11597
New Mexico Professional Surveyor
c/o - BLUELINE CONSTRUCTION, INC.
P.O. Box 28666, Santa Fe, New Mexico 87592-8666
505 216.7909/office
bkm@bluelinenm.com

DESCRIPTION OF "PERMANENT SIGN EASEMENT" - FOR LOT 1-A, #1950 SKEETER LANE

A Parcel of land, being known as a "Permanent Sign Easement", within Lot 1-A of the "Family Transfer Land Division for Kathleen Laemmle and Manuelita M. Gonzales", as filed in Plat book 507, page 030, and lying within Sections 32 and 33, T.17N., R.9E., N.M.P.M., in the Traditional Historic Community of Agua Fria, Santa Fe County, State of New Mexico and being more particularly described as follows:

Beginning at a point on the southwest corner of the herein described easement parcel, also being a point on the northerly right of way line of "Agua Fria Street" from which said point, Santa Fe County monument #SFCO No. 71, bears S.61deg.50'11"W., along the said right of way line of "Agua Fria Street" a distance of 28.32 feet to the southwest corner of said Lot 1-A, thence S.87deg.40'01"W. a distance of 7548.81 feet to said monument; Thence from said easement point of beginning N.28deg.09'49"W a distance of 14.50 feet to the northwest easement corner; Thence N.61deg.50'11"E. a distance of 32.00 feet to the northeast easement corner; Thence S.28deg.09'49"E. a distance of 14.50 feet to the southeast easement corner, also being a point on the northerly right of way line of "Agua Fria Street"; Thence S.61deg.50'11"W. , along said right of way line, a distance of 32.00 feet to said point and place of beginning.

Said easement area described contains 464 sq.ft., more or less.

Brian K. McClintock

Brian K. McClintock

NMPS # 11597

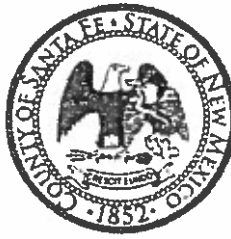




Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4


Liz Stefanics
Commissioner, District 5


Katherine Miller
County Manager

MEMORANDUM

DATE: January 16, 2014

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager 

VIA: Katherine Miller, County Manager 
Jeff Trujillo, ASD Director
Adam Leigland, Public Works Director

ITEM AND ISSUE: BCC Meeting January 28, 2014

REQUEST APPROVAL OF PRICE AGREEMENT #2014-0183-A-PW/MS SURFACE TREATMENT AGGREGATE WITH ASSOCIATED ASPHALT & MATERIALS, LLC AND PRICE AGREEMENT OF #2014-0183-B-PW/MS SURFACE TREATMENT AGGREGATE WITH ESPANOLA TRANSIT MIX, LLC. (BILL TAYLOR)

Issue:

Santa Fe County Public Works Department, Road Maintenance Division has maintenance responsibilities for approximately 574 miles of road. Every year the division conducts chip seal projects to extend the life of the road and to maintain it for safety. The estimated chip quantity per year is to be 7,500 tons of chips and requires price agreements with local vendors to provide the chip seal materials.

The Public Works Department and the Purchasing Division request approval of a Price Agreement for Surface Treatment Aggregate with the following firms:

- 2014-0183-A-PW/MS Price Agreement for Surface Treatment Aggregate with Associated Asphalt & Materials, LLC
- 2014-0183-B-PW/MS Price Agreement for Surface Treatment Aggregate with Espanola Transit Mix, LLC

Background:

Santa Fe County Public Works Road Maintenance Division and Purchasing Division solicited Invitation for Bid (IFB) #2014-0183-PW/MS Surface Treatment Aggregate on December 15, 2013. Two firms provided bids and they are listed below:

Associated Asphalt & Materials, LLC (Santa Fe, NM)
Espanola Transit Mix, LLC (Espanola, NM)

Recommendation:

The Purchasing Division requests authorization to enter into approval of Price Agreement #2014-0183-A-PW/MS Surface Treatment Aggregate with Associated Asphalt & Materials, LLC and Price Agreement of #2014-0183-B-PW/MS Surface Treatment Aggregate with Espanola Transit Mix, LLC.

**SANTA FE COUNTY
PRICE AGREEMENT
SURFACE TREATMENT AGGREGATE**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, (hereinafter referred to as the "County") and **Associated Asphalt & Materials, LLC** authorized to do business in the County of New Mexico (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "County" shall mean the County of Santa Fe, New Mexico.
- B. "Using Department or Department" shall mean a Department, Commission or Board of Santa Fe County.
- C. "Purchase Order" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items and services to be provided by the Contractor.
- D. "Price Agreement" means this indefinite quantity Price Agreement which requires the Contractor to provide Road Maintenance & Construction Materials services to a Using Department which issues a Purchase Order.
- E. "Price" means the fixed hourly rates and prices paid by the County and its Departments for the Road Maintenance & Construction Materials services, and deliverables as described in Attachment A.

2. GOODS TO BE PROVIDED

- A. **Purchase.** Attachment A of this Price Agreement are the prices for the Contractor's tangible goods and services. Attachment A also indicates any specifications required for the tangible goods and services that are subject of this Price Agreement.
- B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any service ordered by the County must be a service described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2014-0183-A-PW/MS.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the item(s) or services listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Price Agreement. The Contractor is required to accept the Purchase Order and furnish the item(s) and service.
- D. **Specifications.** The services furnished under this Price Agreement shall meet or exceed the specifications provided in this IFB# 2014-0183-A-PW/MS including

all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s) or services(s).

E. Delivery and Billing Instructions.

1. The Contractor shall deliver the items and services in accordance with the County's instructions. The Contractor shall also deliver, with the services ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever, the Using Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within five business days that a deliverable is unacceptable by the Using Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices and rates for the items and services.

F. Price. Prices listed in Attachment A for each item shall be the price for the term of this agreement.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

- A. Inspection.** Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Contractor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed purchase orders are valid under this Price Agreement.
- D. Invoices.** The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices, extended totals, delivery tickets and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Using Department and not the Purchasing Division.

- E. **Payment of Invoices.** Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.
- F. **Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be four (4) years from the date of signature by the parties, unless earlier terminated pursuant to Paragraph 6 (Termination) or 11 (Appropriations).

5. CANCELLATION

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the services or deliverables fail to meet the requirements of this Price Agreement.
- B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION

- A. For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.
- B. For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may only be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

8. ASSIGNMENT

Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

9. NON-COLLUSION

In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

10. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit

billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

14. SCOPE OF AGREEMENT, MERGER

This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. NOTICE

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

16. INDEMNIFICATION

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for

personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. NEW MEXICO TORT CLAIMS ACT.

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

19. INSURANCE.

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.
- D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW

This Price Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless expressed and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL

The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

25. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

Associated Asphalt & Materials, LLC
3810 Oliver Road
Santa Fe, NM 87507

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Price Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Daniel W. Mayfield, Chair
Board of County Commissioners


Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM


Stephen C. Ross
Santa Fe County Attorney

1/9/14

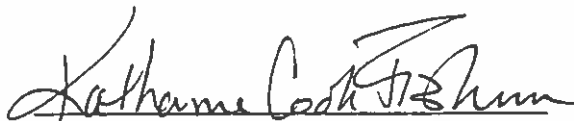
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Finance Department

Date

CONTRACTOR


Signature

1/13/2014

Date

Katharine Cook Fitzhugh, Managing Member
Print Name and Title

FEDERAL TAX I.D. NUMBER: 45-5344393

Associated Asphalt Material

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
SURFACE TREATMENT AGGREGATE
IFB #2014-0183-PW/MS

ITEM #	EST. QTY (Tons)	ITEM DESCRIPTION	UNIT	UNIT PRICE	WRITTEN IN WORDS
1	7,500	SURFACE AGGREGATE MATERIAL - 3/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION: STRAIGHT STREET, SANTA FE, NM	TON	\$20.00	TWENTY DOLLARS & NO/CENTS
2	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
3	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
4	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
5	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #1 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
6	7,500	SURFACE AGGREGATE MATERIAL - 3/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION:	TON	N/B	
7	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
8	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
9	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
10	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #7 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		

11	7,500	SURFACE AGGREGATE MATERIAL - 3/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
12	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
13	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
14	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
15	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #11 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
SURFACE AGGREGATE MATERIAL - 1/2" CHIPS					
16	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION: STRAIGHT STREET, SANTA FE, NM	TON	\$19.00	NINETEEN DOLLARS & NO/CENTS
17	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
18	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
19	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
20	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #16 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
21	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION:	TON	N/B	
22	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
23	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
24	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
25	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #21 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		

26	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
27	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
28	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
29	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
30	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #26 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
SURFACE AGGREGATE MATERIAL - 5/8" CHIPS					
31	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION: STRAIGHT STREET, SANTA FE, NM	TON	\$19.00	NINETEEN DOLLARS & NO/CENTS
32	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
33	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	FORTY-FIVE CENTS
34	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
35	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #31 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	THIRTY-FIVE CENTS
36	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION:	TON	N/B	
37	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
38	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
39	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
40	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #36 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		

41	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
42	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
43	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
44	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
45	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #41 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		

**SANTA FE COUNTY
PRICE AGREEMENT
SURFACE TREATMENT AGGREGATE**

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IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

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- A. "County" shall mean the County of Santa Fe, New Mexico.
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- A. **Purchase.** Attachment A of this Price Agreement are the prices for the Contractor's tangible goods and services. Attachment A also indicates any specifications required for the tangible goods and services that are subject of this Price Agreement.
- B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any service ordered by the County must be a service described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2014-0183-B-PW/MS.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the item(s) or services listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Price Agreement. The Contractor is required to accept the Purchase Order and furnish the item(s) and service.
- D. **Specifications.** The services furnished under this Price Agreement shall meet or exceed the specifications provided in this IFB# 2014-0183-B-PW/MS including

all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s) or services(s).

E. Delivery and Billing Instructions.

1. The Contractor shall deliver the items and services in accordance with the County's instructions. The Contractor shall also deliver, with the services ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever, the Using Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within five business days that a deliverable is unacceptable by the Using Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices and rates for the items and services.

F. Price. Prices listed in Attachment A for each item shall be the price for the term of this agreement.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

- A. Inspection.** Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Contractor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed purchase orders are valid under this Price Agreement.
- D. Invoices.** The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices, extended totals, delivery tickets and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Using Department and not the Purchasing Division.

- E. **Payment of Invoices.** Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.
- F. **Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be four (4) years from the date of signature by the parties, unless earlier terminated pursuant to Paragraph 6 (Termination) or 11 (Appropriations).

5. CANCELLATION

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the services or deliverables fail to meet the requirements of this Price Agreement.
- B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION

- A. For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.
- B. For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may only be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

8. ASSIGNMENT

Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

9. NON-COLLUSION

In signing this Price Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

10. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit

billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

14. SCOPE OF AGREEMENT, MERGER

This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement.

15. NOTICE

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

16. INDEMNIFICATION

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for

personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

18. NEW MEXICO TORT CLAIMS ACT.

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

19. INSURANCE.

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.
- D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW

This Price Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless expressed and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL

The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

25. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

Espanola Transit Mix, LLC
P.O. Box 38
Espanola, NM 87532

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Price Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Daniel W. Mayfield, Chair
Board of County Commissioners


Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM



Stephen C. Ross
Santa Fe County Attorney

1/9/14

Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Finance Department

Date

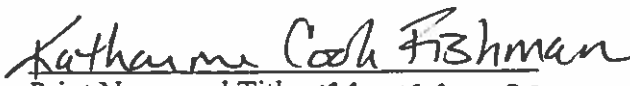
CONTRACTOR



Signature

1/13/2014

Date



Print Name and Title *managing member*

FEDERAL TAX I.D. NUMBER: 45-5332605

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
SURFACE TREATMENT AGGREGATE
IFB #2014-0183-PW/MS

ITEM #	EST. QTY (Tons)	ITEM DESCRIPTION	UNIT	UNIT PRICE	WRITTEN IN WORDS
SURFACE AGGREGATE MATERIAL - 3/8" CHIPS					
1	7,500	MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION:	TON	N/B	
2	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
3	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
4	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #1 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
5	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #1 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
6	7,500	SURFACE AGGREGATE MATERIAL - 3/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION: 1301 N. Riverside Dr., Espanola	TON	\$20.00	Twenty dollars & no/cents
7	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
8	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
9	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #7 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents
10	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #7 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents

11	7,500	SURFACE AGGREGATE MATERIAL - 3/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
12	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
13	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
14	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #11 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
15	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #11 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
SURFACE AGGREGATE MATERIAL - 1/2" CHIPS					
16	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION:	TON	N/B	
17	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
18	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
19	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #16 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
20	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #16 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
21	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION: 1301 N. Riverside Dr., Espanola	TON	\$19.50	Nineteen dollars & fifty cents
22	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
23	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
24	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #21 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents
25	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #21 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents

26	7,500	SURFACE AGGREGATE MATERIAL - 1/2" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
27	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
28	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
29	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #26 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
30	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #26 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
SURFACE AGGREGATE MATERIAL - 5/8" CHIPS					
31	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF SANTA FE SITE LOCATION:	TON	N/B	
32	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
33	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
34	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #31 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
35	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #31 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
36	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF ESPANOLA SITE LOCATION: 1301 N. Riverside Dr., Espanola	TON	\$19.50	Nineteen dollars & fifty cents
37	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
38	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE	\$0.45	Forty-five cents
39	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #36 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents
40	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #36 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE	\$0.35	Thirty-five cents

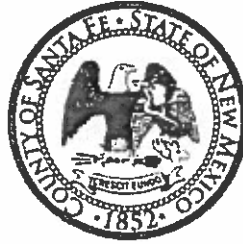
41	7,500	SURFACE AGGREGATE MATERIAL - 5/8" CHIPS MATERIAL SITE TO BE LOCATED WITHIN 25 MILE RADIUS OF EDGEWOOD SITE LOCATION:	TON	N/B	
42	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 UP TO 20 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
43	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 OVER 20 MILES AND UP TO 40 MILES USING A TANDEM DUMP TRUCK	TON/MILE		
44	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN LINE #41 UP TO 20 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		
45	7,500	HAULING OF MATERIAL FROM SITE LOCATION LISTED IN ITEM #41 OVER 20 MILES & UP TO 40 MILES USING AN END DUMP OR BELLY DUMP	TON/MILE		



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: January 15, 2014

To: Board of County Commissioners

From: Bill Taylor, Procurement Manager

Via: Katherine Miller, County Manager
Adam Leigland, Public Works Director
Mark Hogan, Projects & Facilities Director

ITEM AND ISSUE: BCC Meeting January 28, 2014

Request approval of Agreement No. 2014-0180 with Randy Sena Construction, Inc. for the construction services of the Nambe Community Center, Park & Headstart Site Improvements in the amount of \$311,869.72 exclusive of GRT/Bill Taylor

ISSUE

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2014-0180-PW/PL with Randy Sena Construction, Inc. for the construction services of the Nambe Community Center, Headstart and Park Site Improvements in the amount of \$311,869.72 exclusive of GRT.

BACKGROUND

Santa Fe County purchased the former Nambe Elementary School, located at 180 NM State Road 503 in Nambe, New Mexico and renovated it for use as a Community Center. The County constructed a playground, tennis court and basketball court adjacent to the Community Center. In 2013 the County solicited engineering services and awarded a contract to Souder, Miller and Associates to design additional site improvements. The improvements include grading, drainage, earthwork, parking lot improvements, driveway and connector road construction, base course and asphalt paving, sidewalk construction, site amenities and erosion control measures. The design is complete and ready for construction.

The Purchasing Division issued Invitation for Bid (IFB) #2014-0180-PW/PL on December 8, 2013. This solicitation was advertised in the Santa Fe New Mexican and in the Albuquerque Journal and posted on the County's Website. Twelve (12) contractors attended the mandatory pre-bid conference and seven bids were received from the following construction companies at the January 3, 2014 Public Bid Opening:

Randy Sena Construction, Inc.
Allied 360° Construction
Century Club Construction
Max Tek Contractors
Royal Enterprises General Contractors
RL Leeder
Russell Sand & Gravel Company

All bids were reviewed for responsiveness by the Purchasing staff and Randy Sena Construction, Inc. was the lowest, responsive bid received.

ACTION REQUESTED

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2014-0180-PW/PL with Randy Sena Construction, Inc. for the construction services of the Nambe Community Center, Park & Headstart site improvements in the amount of \$311,869.72 exclusive of GRT.

**SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)
AS MODIFIED BY SANTA FE COUNTY
INDICATED BY NOTICE IN THE FOOTER ON EACH PAGE OF THE CONTRACT
DOCUMENT**

THIS AGREEMENT is by and between Santa Fe County ("Owner") and
Randy Sena Construction, Inc., a New Mexico Corporation, whose principle address is
6811 Huseman Pl. SW Albuquerque, NM 87121. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: The construction consists of grading, drainage, earthwork, parking lot improvements, driveway and connector road construction, base course and asphalt paving, sidewalk construction, site amenities and erosion control measures.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Construct site improvements to the Nambe Community Center, Park and Headstart located at 180 NM State Road 503, Nambe, New Mexico.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Souder, Miller and Associates, Inc. , 2101 Parkway Drive, Santa Fe, NM 87507 (Engineer), which is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents and the Contract between Owner and Engineer (2013-0159-PW/PL) in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The construction of the Nambe Community Center, Park and Headstart shall be completed in accordance with the NMDOT Standard Specifications for Construction of Highways and Bridges, 2007 Edition, and as supplemented by the Engineer's Supplemental Technical Specifications, and the Owner's Supplemental Terms and Conditions for Construction.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

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

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This document has been modified from its original form as an EJCDC document and the user did not highlight the modifications. You are encouraged to read the document carefully and consult Legal Counsel prior to its execution.

4.02 *Days to Achieve Substantial Completion and Final Payment*

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

4.03 *Liquidated Damages*

- A. Contractor and Owner agree that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. The parties agree that the liquidated damages provided herein represent the Owners' probable damages, not a penalty. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner five hundred dollars (\$500.00) for each consecutive Working Day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each consecutive Working Day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.
- B. Contractor agrees that the liquidated damages herein provided are reasonable and represent the amount of damages reasonably anticipated to the Owner in the event the Work is not completed as provided in Paragraph 4.02.

ARTICLE 5 – CONTRACT PRICE

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

- A. For all Work other than Unit Price Work, a lump sum of: Three Hundred Eleven Thousand Eight Hundred Eleven Dollars (\$311,869.72), exclusive of New Mexico Gross Receipts Tax (GRT)

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

- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item. (Refer to Exhibit A)

Total of all Bid Prices (Unit Price Work): (\$311,869.72), exclusive of NM GRT.

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

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as Exhibit A.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. The New Mexico Public Works minimum Wage Act requires: the Construction Contractor to submit certified weekly payrolls records for all their employees: and, requires the Contractor to ensure that all tiers of Subcontractors submit certified weekly payrolls records for all their employees, working this Public Works project to the County and the Engineer (Souder, Miller and Associates, Inc., 2101 Parkway Drive, Santa Fe, NM 87507) on a biweekly basis.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments, subject to the Owner's withholding of liquidated damages in accordance with Article 4.03 of the Contract and 14.02 of the General Condition on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor for Work completed, less liquidated damages and such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less the of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed (i.e. value of items on the punch list) or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

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

ARTICLE 7 – INTEREST

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

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data

are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

- 1. This Agreement.
- 2. Performance Bond for 100% of Project Sum.
- 3. Payment bond.
- 4. General Conditions.
- 5. Santa Fe County's Supplementary Conditions.
- 6. Specifications as listed in the table of contents of the Project Manual including Engineer's Supplemental Technical Specifications.
- 7. Drawings listed on attached sheet index.
- 8. Addenda as applicable
- 9. Exhibits to this Agreement (enumerated as follows):
 - a. EXHIBIT A - Contractor's Bid Proposal, Bid Form and Bid Sheets and contract sum/compensation.
 - b. EXHIBIT B - Documentation submitted by Contractor prior to Notice of Award: insurance certifications as described in ARTICLE 5, Bonds and Insurance, 5.04 Contractor's Insurance in Contract No. 2014-0180-PW/PL Standard General Conditions and listed as follows: Workers' Compensation Insurance; Employer's Liability Insurance; Commercial General Liability Insurance (Premises-Operations, Independent

Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage); and, Automobile Liability Insurance.

10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

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

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

OWNER: Santa Fe County

By: Daniel W. Mayfield, Chair

Santa Fe County Board Of County
Title: Commissioners

Attest: Geraldine Salazar

Title: County Clerk

Address for giving notices:

Santa Fe County

Office of the Attorney

102 Grant Avenue

Santa Fe, NM 87501

CONTRACTOR

Randy Sena Construction, Inc.

By: _____

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

Randy Sena Construction, Inc.

6811 Huseman Place, SW

Albuquerque, NM 87121

License No.: 365181

APPROVED AS TO FORM

Stephen C. Ross 1-13-14
Stephen C. Ross Date:

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez 1/13/14
Teresa C. Martinez Date:
Santa Fe County Finance Director

REVISED BID SHEETS

BID ITEMS FOR THE NAMBE COMMUNITY CENTER, PARK AND HEADSTART SITE IMPROVEMENTS

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
201000 1	Clearing and Grubbing Unit Cost Written in Words Seventy five hundred dollars & no cents Dollars & Cents	LS	1	Unit Cost Written in Numbers 7,500 Dollars & Cents	Extended Price Written in Numbers 7,500 Dollars & Cents
203000 2	Unclassified Excavation Unit Cost Written in Words Six dollars & no cents Dollars & Cents	CY	560	Unit Cost Written in Numbers 6 Dollars & Cents	Extended Price Written in Numbers 3,360 Dollars & Cents
203100 3	Borrow Unit Cost Written in Words Twenty eight dollars & fifty seven cents Dollars & Cents	CY	700	Unit Cost Written in Numbers 28.57 Dollars & Cents	Extended Price Written in Numbers 19,999 Dollars & Cents
207000 4	Subgrade Preparation Unit Cost Written in Words Three dollars & twelve cents Dollars & Cents	SY	6400	Unit Cost Written in Numbers 3.12 Dollars & Cents	Extended Price Written in Numbers 19,968 Dollars & Cents
209000 5	Blading and Reshaping Unit Cost Written in Words Eight thousand three hundred thirty three dollars & no cents Dollars & Cents	Mile	0.3	Unit Cost Written in Numbers 8,333 Dollars & Cents	Extended Price Written in Numbers 2,499.90 Dollars & Cents
303001 6	Compacted Crusher Fines Unit Cost Written in Words Seventeen dollars & fifty cents Dollars & Cents	SY	160	Unit Cost Written in Numbers 17.50 Dollars & Cents	Extended Price Written in Numbers 2,800 Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
303160	Base Course – 6" Unit Cost Written in Words Seven dollars & six cents <hr/> Dollars & Cents	SY	4530	Unit Cost Written in Numbers 7.06 <hr/> Dollars & Cents	Extended Price Written in Numbers 31,981.80 <hr/> Dollars & Cents
7					
303161	Santa Fe Brown Gravel – ¾" Unit Cost Written in Words Twelve dollars & seventy-one cents <hr/> Dollars & Cents	SY	1180	Unit Cost Written in Numbers 12.71 <hr/> Dollars & Cents	Extended Price Written in Numbers 14,997.80 <hr/> Dollars & Cents
8					
408100	Prime Coat Material Unit Cost Written in Word Thirty four hundred dollars & no cents <hr/> Dollars & Cents	TON	0.5	Unit Cost Written in Numbers 3,400 <hr/> Dollars & Cents	Extended Price Written in Numbers 1,700 <hr/> Dollars & Cents
9					
417000	Miscellaneous Paving 3" Complete Unit Cost Written in Words Fifty two dollars & no cents <hr/> Dollars & Cents	SY	250	Unit Cost Written in Numbers 52 <hr/> Dollars & Cents	Extended Price Written in Numbers 13,000 <hr/> Dollars & Cents
10					
450050	Concrete Pavement – 5" Unit Cost Written in Words Fifty four dollars & no cents <hr/> Dollars & Cents	SY	130	Unit Cost Written in Numbers 54 <hr/> Dollars & Cents	Extended Price Written in Numbers 7,020 <hr/> Dollars & Cents
11					
536100	Mortar Concrete Overlay 2" Unit Cost Written in Words Fifty dollars & no cents <hr/> Dollars & Cents	SY	60	Unit Cost Written in Numbers 50 <hr/> Dollars & Cents	Extended Price Written in Numbers 3,000 <hr/> Dollars & Cents
12					

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
543100 13	Pedestrian Metal Railing Unit Cost Written in Words Thirty three dollars & seventy-three cents <hr/> Dollars & Cents	LF	535	Unit Cost Written in Numbers 33.73 <hr/> Dollars & Cents	Extended Price Written in Numbers 18,045.55 <hr/> Dollars & Cents
570012 14	12" Culvert Pipe Unit Cost Written in Words Thirty five dollars & fifty-one cents <hr/> Dollars & Cents	LF	183	Unit Cost Written in Numbers 35.51 <hr/> Dollars & Cents	Extended Price Written in Numbers 6,498.33 <hr/> Dollars & Cents
601000 15	Removal of Structures and Obstructions Unit Cost Written in Words Five thousand dollars & no cents <hr/> Dollars & Cents	LS	1	Unit Cost Written in Numbers 5,000 <hr/> Dollars & Cents	Extended Price Written in Numbers 5,000 <hr/> Dollars & Cents
602110 16	Concrete Block Revetment Unit Cost Written in Words One hundred thirty three dollars & thirty-three cents <hr/> Dollars & Cents	SY	45	Unit Cost Written in Numbers 133.33 <hr/> Dollars & Cents	Extended Price Written in Numbers 5,999.85 <hr/> Dollars & Cents
603280 17	SWPP Management Unit Cost Written in Words Five thousand dollars & no cents <hr/> Dollars & Cents	LS	1	Unit Cost Written in Numbers 5,000 <hr/> Dollars & Cents	Extended Price Written in Numbers 5,000 <hr/> Dollars & Cents
605201 18	Storm Tech SC-740 Chamber System or Equal Unit Cost Written in Words Sixty five hundred dollars & no cents <hr/> Dollars & Cents	LS	1	Unit Cost Written in Numbers 6,500 <hr/> Dollars & Cents	Extended Price Written in Numbers 6,500 <hr/> Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
607312 19	Standard Gate – 12' Unit Cost Written in Words Fourteen hundred dollars & no cents Dollars & Cents	EA	2	Unit Cost Written in Numbers 1,400 Dollars & Cents	Extended Price Written in Numbers 2,800 Dollars & Cents
607960 20	Coyote Fence Unit Cost Written in Words Fifty dollars & no cents Dollars & Cents	LF	325	Unit Cost Written in Numbers 50 Dollars & Cents	Extended Price Written in Numbers 16,250 Dollars & Cents
608005 21	Concrete Sidewalk – 5" Unit Cost Written in Words Forty five dollars & no cents Dollars & Cents	SY	480	Unit Cost Written in Numbers 45 Dollars & Cents	Extended Price Written in Numbers 21,600 Dollars & Cents
618000 22	Traffic Control Management Unit Cost Written in Words Three thousand dollars & no cents Dollars & Cents	LS	1	Unit Cost Written in Numbers 3,000 Dollars & Cents	Extended Price Written in Numbers 3,000 Dollars & Cents
621000 23	Mobilization Unit Cost Written in Words Fourteen thousand dollars & no cents Dollars & Cents	LS	1	Unit Cost Written in Numbers 14,000 Dollars & Cents	Extended Price Written in Numbers 14,000 Dollars & Cents
623003 24	Drop Inlet Unit Cost Written in Words Six hundred fifty dollars & no cents Dollars & Cents	EA	1	Unit Cost Written in Numbers 650 Dollars & Cents	Extended Price Written in Numbers 650 Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
632001	Reclamation Seeding Class A Unit Cost Written in Words Six thousand dollars & no cents Dollars & Cents	AC	0.5	Unit Cost Written in Numbers 6,000 Dollars & Cents	Extended Price Written in Numbers 3,000 Dollars & Cents
25					
663608	Polyvinyl Chloride Pipe-8" Unit Cost Written in Words Thirty dollars & twenty-three cents Dollars & Cents	LF	43	Unit Cost Written in Numbers 30.23 Dollars & Cents	Extended Price Written in Numbers 1,299.89 Dollars & Cents
26					
667005	Parking Stop Unit Cost Written in Words One hundred dollars & no cents Dollars & Cents	EA	59	Unit Cost Written in Numbers 100 Dollars & Cents	Extended Price Written in Numbers 5,900 Dollars & Cents
27					
667050	Park Shelter Unit Cost Written in Words Twenty five thousand dollars & no cents Dollars & Cents	EA	1	Unit Cost Written in Numbers 25,000 Dollars & Cents	Extended Price Written in Numbers 25,000 Dollars & Cents
28					
667205	Cobble Swale Unit Cost Written in Words Seventy five dollars & no cents Dollars & Cents	CY	100	Unit Cost Written in Numbers 75 Dollars & Cents	Extended Price Written in Numbers 7,500 Dollars & Cents
29					
667206	Landscape Boulders Unit Cost Written in Words One hundred fifty two dollars & sixty-three cents Dollars & Cents	EA	95	Unit Cost Written in Numbers 152.63 Dollars & Cents	Extended Price Written in Numbers 14,499.85 Dollars & Cents
30					

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
667515 31	Litter Receptacle Unit Cost Written in Words One thousand dollars & no cents Dollars & Cents	EA	2	Unit Cost Written in Numbers 1,000 Dollars & Cents	Extended Price Written in Numbers 2,000 Dollars & Cents
667521 32	Picnic Table Unit Cost Written in Words Fifteen hundred dollars & no cents Dollars & Cents	EA	2	Unit Cost Written in Numbers 1,500 Dollars & Cents	Extended Price Written in Numbers 3,000 Dollars & Cents
667522 33	Benches Unit Cost Written in Words One thousand dollars & no cents Dollars & Cents	EA	3	Unit Cost Written in Numbers 1,000 Dollars & Cents	Extended Price Written in Numbers 3,000 Dollars & Cents
667600 34	Adjustable Basketball Goal- Complete Unit Cost Written in Words Twenty two hundred fifty dollars & no cents Dollars & Cents	EA	1	Unit Cost Written in Numbers 2,250 Dollars & Cents	Extended Price Written in Numbers 2,250 Dollars & Cents
701000 35	Panel Signs Unit Cost Written in Words One hundred dollars & no cents Dollars & Cents	SF	10	Unit Cost Written in Numbers 100 Dollars & Cents	Extended Price Written in Numbers 1,000 Dollars & Cents
701100 36	Steel Post and Base Post for Panel Signs Unit Cost Written in Words Fifty dollars & no cents Dollars & Cents	LF	15	Unit Cost Written in Numbers 50 Dollars & Cents	Extended Price Written in Numbers 750 Dollars & Cents

Bid Item No.	SHORT DESCRIPTION	UNIT	QTY	UNIT COST (\$)	EXTENDED PRICE (\$)
702810	Traffic Control Devices for Construction Unit Cost Written in Words One thousand dollars & no cents <hr/> Dollars & Cents	LS	1	Unit Cost Written in Numbers 1,000 <hr/> Dollars & Cents	Extended Price Written in Numbers 1,000 <hr/> Dollars & Cents
704000	Retroreflectorized Painted Markings Unit Cost Written in Words Thirteen dollars & thirty-three cents <hr/> Dollars & Cents	LF	75	Unit Cost Written in Numbers 13.33 <hr/> Dollars & Cents	Extended Price Written in Numbers 999.75 <hr/> Dollars & Cents
704782	Retroreflective Preformed Patterned Pavement Marking Handicapped Symbol Unit Cost Written in Words One thousand dollars & no cents <hr/> Dollars & Cents	EA	1	Unit Cost Written in Numbers 1,000 <hr/> Dollars & Cents	Extended Price Written in Numbers 1,000 <hr/> Dollars & Cents
801000	Construction Staking by the Contractor Unit Cost Written in Words Fifteen hundred dollars & no cents <hr/> Dollars & Cents	LS	1	Unit Cost Written in Numbers 1,500 <hr/> Dollars & Cents	Extended Price Written in Numbers 1,500 <hr/> Dollars & Cents
801012	Testing Allowance Unit Cost Written in Words Five thousand dollars & no cents <hr/> Dollars & Cents	ALLW	1	Unit Cost Written in Numbers 5,000.00 <hr/> Dollars & Cents	Extended Price Written in Numbers 5,000.00 <hr/> Dollars & Cents

BASE BID TOTAL WRITTEN IN NUMBERS	\$311,869.72
BASE BID TOTAL WRITTEN IN WORDS	Three hundred eleven thousand eight hundred sixty nine dollars & seventy-two cents

Note: All bid amounts are exclusive of Gross Receipts Tax

**STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT
AS MODIFIED BY SANTA FE COUNTY
INDICATED BY NOTICE IN THE FOOTER ON EACH PAGE OF THE CONTRACT
DOCUMENT**

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

- (1) With respect to matters pertaining to contract management and administration procedures including change orders, the provisions of Contract 2014-0180-PW/PL, Standard General Conditions of the Construction Contract (as modified by Santa Fe County), and Santa Fe County’s Supplementary Conditions shall govern. In conflicts or discrepancies between these documents, the most restrictive, specific and otherwise most beneficial to the County shall take precedence.

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

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

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer* — Souder, Miller and Associates, 2101 Parkway Drive, Santa Fe, NM 87507.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative* -NOT APPLICABLE
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Progress Schedule* A schedule, prepared and maintained by Contractor, and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. ~~*Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.~~
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to

emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

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

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or

- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

- 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
- 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
- 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete

and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. The Progress Schedule required to be submitted by the Contractor shall include the Contractor's preparation and completion of thorough and accurate "As-Built" or "Red Lines" to be submitted no later than Contractor's submission to the Engineer of the Application for Final Payment as provided in 14.07.
3. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
4. Contractor's Progress Schedule will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

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

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or

make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or

decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

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

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

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference

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points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

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

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

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
 4. claims for damages insured by usual personal injury liability coverage;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 7. claims for bodily injury or property damage arising out of completed operations;
 8. claims involving contractual liability insurance applicable to the Contractor's obligations under 6.20 of this Agreement, and
 9. Builder's Risk insurance for the full value of the Construction Contract.
- B. The insurance required by Paragraph 5.04.A shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.
- C. The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:
1. Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal: Statutory
 2. Employer's Liability:
 - \$500,000 per Accident
 - \$500,000 Disease, Policy Limit
 - \$500,000 Disease, Each Employee

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

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

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.

2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 6.20.

3. Products Completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

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

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

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

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

B. Contractor waives all rights against Owner, Owner's officers, employees, agents and consultants for all losses and damages caused by, arising out of or resulting from any of the perils or causes

of loss covered by Contractor's insurance policies required by 5.04, except such rights as Contractor may have to proceeds of such insurance held by the Owner as fiduciary.

5.07 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause. Owner shall distribute any money so received in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

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

5.09 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the

policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

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

6.03 *Services, Materials, and Equipment*

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

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and

- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and

EJCDC C-700 Standard General Conditions of the Construction Contract

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a

specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

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

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

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1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

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

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

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

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

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members,

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partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification

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

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
 - 3. or to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

6.21 *Delegation of Professional Design Services*

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

- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

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

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.
- C. The Contractor will coordinate the Work with the Owner's Engineer as provided in this Agreement. The Owner's Project will be managed and inspected by the Engineer who will act as Owner's representative on the Site and have the construction and contract administration duties as provided in this Agreement. The duties and obligations of the Engineer are also as stated in Agreement No. 2013-0159-PW/PL between the Owner and the Engineer,
- D. The Engineer will determine the days that will be charged by the Owner as a working day based on the Project Manager's review of the weather and actual work performed by the Contractor. The Project Manager's determination of a working day will be made between the end of a day and noon of the next day. A working day will be charged if the Contractor was able to perform on a critical path item for six (6) or more hours on a Saturday, Sunday or holiday recognized by Santa Fe County.
- E. The Engineer identified in this Agreement will have oversight of the Project design documents and specifications and will complete the record documents, including the final "as built" for the Project. The duties and obligations of the Engineer are as stated in this Agreement and Agreement No. 2013-0159-PW/PL between the Owner and the Engineer.

7.03 Legal Relationships

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

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.
- B. Engineer will complete the record documents including the final "As-Builts" for the Project. Engineer's duties during the construction phase of this Project are as stated in Agreement No. 2013-0159-PW/PL between the Owner and Engineer.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts

will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Authorized Variations in Work*

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

9.04 *Rejecting Defective Work*

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

9.05 *Shop Drawings, Change Orders and Payments*

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

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9.06 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.09 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.
- C. The allowance for the combined overhead (general administration, overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders or Work Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

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

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10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

10.04 *Notification to Surety*

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

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of

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the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost,

less market value, of such items used but not consumed which remain the property of Contractor.

- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

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2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

12.02 *Change of Contract Times*

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

12.03 *Delays*

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

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

13.05 *Owner May Stop the Work*

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

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

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

- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
- F. The Engineer may determine beginning and end of a warranty period that is longer than the period of time of one (1) year established in 13.07.A above. The Engineer shall formally submit a letter so notifying the Contractor and Owner of such warranty period.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored

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elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Progress Schedule*

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

14.02 *Progress Payments*

A. *Applications for Payments:*

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

Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

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

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's

objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

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

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

EJCDC C-700 Standard General Conditions of the Construction Contract

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14.06 *Final Inspection*

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

14.07 *Final Payment*

A. Application for Payment:

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

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work

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

C. Payment Becomes Due:

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

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

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

unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

15.03 *Owner May Terminate For Convenience*

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

15.04 Contractor May Stop Work or Terminate

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

ARTICLE 16 – DISPUTE RESOLUTION**16.01 Methods and Procedures**

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

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

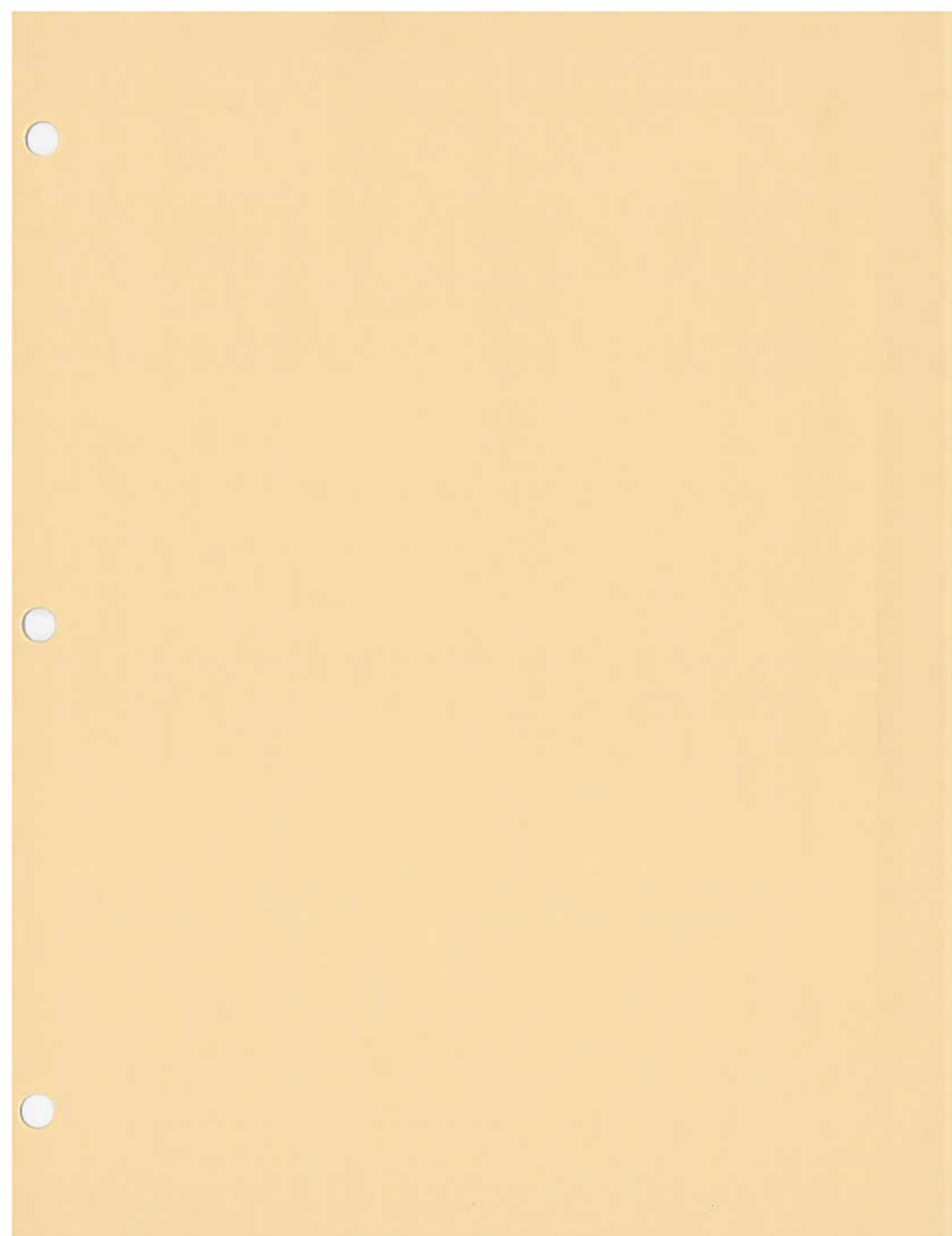
- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination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

17.05 *Controlling Law*

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

17.06 *Headings*

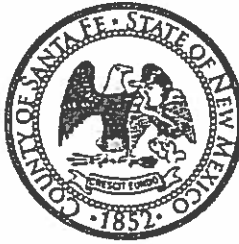
- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: January 14, 2014

TO: Santa Fe County Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Katherine Miller, County Manager *KM*
Jeff Trujillo, ASD Director

ITEM AND ISSUE: BCC Meeting January 28, 2014

REQUEST APPROVAL OF ELECTRONIC SITE LEASE AGREEMENT WITH TESUQUE RADIO COMPANY, INC. IN THE AMOUNT OF \$39,969.47 TO BRING LEASE CURRENT TO JUNE 30, 2014; AND PAYMENT OF \$12,483.72 FOR BASE RENT AND ELECTRICITY FOR JULY 1, 2014 TO JUNE 30, 2015 (BILL TAYLOR)

Issue:

The Santa Fe County Fire Marshal and the Santa Fe County Sheriff's Office request approval of an Electronic Site Lease Agreement with Tesuque Radio Company, Inc. in the amount of \$39,969.47 (inclusive of electricity, US Forest Service Fees, and NM GRT) to bring the County current on the Lease through June 30, 2014, and payment of \$12,483.72 for the last rental period of July 1, 2014 to June 30, 2015.

Background:

The County Fire Marshal, Public Works Roads Division and the County Sheriff entered into this Electronic Site Lease Agreement in 2007 with Tesuque Radio Company, Inc. (the "2007 Lease"). Tesuque Radio Company has a leasehold interest from the US Department of Agriculture Forest Service on which Tesuque Radio Company developed and maintains this radio site on Tesuque Peak. The 2007 Lease governs the County's lease of the radio site from Tesuque Radio Company for the placement and operation of County radio equipment. When the 2007 Lease was entered into the County (Fire, Roads and Sheriff) had seven repeaters, three duplexers, and three antennas on the site. The term for the 2007 Lease commenced on July 1, 2007 and is for a period of five years with an automatic renewal into another five year term. According to the 2007 Lease, the County is responsible for the payment of base rent, electricity charges, gross receipts tax (GRT) and US Forest Service fees. The 2007 Lease also has an escalation clause that is applied annually to the base rent using the CPI.

The County was current in its lease payment for the 2007 Lease until year five of the term beginning July 1, 2011 and ending June 30, 2012. The Fire Marshal received an invoice in July 2011 in the amount of \$12,699.12 for its monthly rent, electricity, GRT and the 2010 and 2011 Forest Service fees. The Fire Marshal requested that its lease payment be reduced because some of its equipment had been removed from the site. Pending Tesuque's response to the request for a rent reduction, the Fire Marshal did not pay the invoice. Tesuque requested the County confirm exactly what equipment had been removed from the site, the dates of the removal and what equipment remained on the site. During this time the County Sheriff and Public Works Roads Division also received invoices and paid Tesuque Radio Company a total of \$13,998.48 (annual rent, electricity, and GRT for July 1, 2011 – June 30, 2012 and 2010 and 2011 Forest Service fees). Roads Division and the Sheriff's Office did not make any payments after that and the County did not inform Tesuque of a termination date or otherwise inform Tesuque that the County did not wish to have the term automatically renew for another five years. The County did not make any lease payments for the period of July 1, 2012 to the present.

Roads Division confirmed that all the equipment it had on the site was removed 2011. It was confirmed in 2013 that equipment belonging to the Fire Marshal and County Sheriff's remains on the site.

Tesuque Radio Company has offered to amend the 2007 Lease and renegotiate some of the terms of the 2007 Lease on the condition that the County pays an amount that would make the County current on the 2007 Lease through the term ending June 30, 2014. Tesuque has agreed to a definite base subject to a 5% increase, that the Lease will terminate June 30, 2015, and to removal of the indemnification clause from the Lease. The amendment to the 2007 Lease is in the form of a new lease agreement that would supersede the 2007 Lease. The new terms and conditions are described in Exhibit A. Under the new amended lease the payments are as follows:

July 1, 2011 to June 30, 2012

Rent, electricity, NM GRT and Forest Service fees	\$15,001.97
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July 1, 2012 to June 30, 2014

Base Rent @ \$950 per month; \$950 X 24 for period of July 1, 2012 to June 30, 2014	\$22,800.00
Electricity @ \$25 per month; \$25 X 24 for period of July 1, 2012 to June 30, 2014.	\$ 600.00
GRT for period of July 1, 2012 to June 30, 2014	<u>\$ 1,567.50</u>
	\$24,967.50

July 1, 2014 to June 30, 2015

Base rent @ 950 per month; \$950 X 12 for period of July 1, 2014 to June 30, 2015 (subject to 5% increase)	\$11,400.00
Electricity @\$25 per month; \$25 X 12 for period of July 1, 2014 to June 30, 2015	\$ 300.00
GRT for period of July 1, 2014 to June 30, 2015	<u>\$ 783.72</u>
	\$ 12,483.72

The new lease would be between the Tesuque Radio Company and Santa Fe County (Fire Department and County Sheriff). Public Works Roads Division would not be a party to the new lease since it no longer has any equipment on the site. Under the amended lease, the County is required to pay Tesuque \$39,969.47 (\$15,001.97 + \$24,967.50) by than February 28, 2014, which will make the County current on the Lease through June 30, 2014.

Recommendation:

The Purchasing Division requests authorization to enter into Electronic Site Lease Agreement with Tesuque Radio Company, Inc. in the amount of \$39,969.47 to bring the County current on the Lease through June 30, 2014, and payment of \$12,483.72 as base rent for July 1, 2014 through June 30, 2015.

Santa Fe County

ELECTRONIC SITE LEASE AGREEMENT

This Lease Agreement is entered into as of the date set forth for "Date of Lease" in Exhibit A, by and between Tesuque Radio Company, Inc., a New Mexico corporation ("Lessor"), and the person who is identified as Lessee in Exhibit A ("Lessee").

RECITALS

A. Lessor is the lessee under that certain Communication Use Lease under which Lessor is granted a leasehold by the United States Department of Agriculture, United States Forest Service, to construct, maintain and operate a facility to house certain electronic equipment and rent space in that facility for the operation of certain electronic transmission equipment at Tesuque Peak, Santa Fe County, New Mexico, at a site more specifically described as follows:

A building and antenna tower site on Tesuque Peak, Santa Fe National Forest, situated in the northwest quarter NW¼, NW¼, SE¼, Section 16 T.18N., R.11E., NMPM, 35 degrees, 47' 09" north latitude, by 105 degrees 46' 54" west longitude, as shown on the Tesuque Peak Electronic Site Plan.

B. Lessee seeks a lease of space to maintain and operate certain electronic equipment at the Electronic Site, subject to the terms and conditions of this Lease Agreement.

AGREEMENT

1. Definitions. For the purposes of this Lease Agreement, certain terms will be defined as follows.

(a) "Base Rent" is the minimum rent paid by Lessee to Lessor on a monthly basis. Base Rent is described in 3(a).

(b) "Electronic Site" means the building and antenna tower site and the improvements maintained thereon from time to time by Lessor on Tesuque Peak, Santa Fe County, New Mexico.

(c) "Cabinet" means the cabinet, closet or other space which will be furnished for Lessee's use in installing its equipment in the Electronic Site.

(d) "Commencement Date" is the first day for which a rent is due from Lessee to Lessor.

(e) "Equipment" means the electronic equipment, cabinets, wiring, antennae and other fixtures and installation which Lessee installs at the Electronic Site in accordance with its Equipment Layout Plan.

(f) "Equipment Layout Plan" means the set of documents describing the Equipment which Lessee seeks to install at the Electronic Site, together with installation and wiring diagrams, frequency and power usage specifications, and such other information respecting Lessee's Equipment and installation as Lessor may require.

(g) "Objectionable Interference" means both intra-site and inter-site signal interference, of whatsoever cause or source, and is more specifically described in Section 11.

(h) "Term" or "Lease Term" means the term of this Lease Agreement, beginning on the Commencement Date and continuing until termination hereof, including all extensions or renewals.

(i) "Termination Date" means the last date of the Lease Term, as specified in Exhibit A, but subject to provisions of this Agreement under which this Agreement may be extended or earlier terminated.

2. Grant of Lease. In consideration of the Lessee's payment of the rents as provided in this Agreement, and in further consideration of Lessee's representations, warranties and covenants hereinafter set forth, Lessor hereby grants to Lessee during the term hereof the right to occupy the Cabinet in the manner hereinafter described, and further confers upon Lessee a non-exclusive lease to maintain and operate its equipment in the Electronic Site located at the Tower Site, subject, however, to all of the terms and conditions of this Agreement.

3. Rents. Lessee agrees to pay to Lessor, and Lessor agrees to accept from Lessee, as partial consideration for the lease herein granted, the amounts described in this Section 3.

(a) Base Rent. The Lessee will pay to the Lessor the Base Rent described in Exhibit A which is attached hereto and made a part hereof. Subject to Lessor's rights upon any default by Lessee under this Agreement, Lessee will pay to Lessor without abatement, offset, notice or demand, in advance, commencing on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the term of this Agreement, the monthly installment of the Base Rent shown in Exhibit A.

(b) Additional Rent. The Base Rent will be adjusted annually during the term of this Agreement, on the anniversary of the commencement of this Agreement, or if that anniversary does not fall on the first day of a calendar month, the first day of the calendar month in which the anniversary falls (the "Adjustment Date"). For each year subsequent to the first year of the Lease Term, an adjustment to the Base Rent will be made (the "Adjustment"). The Adjustment will be an addition to the Base Rent, and will be computed by use of the Consumer Price Index (the "Index"). The Index will mean the Consumer Price Index (all items) For All Urban Consumers, U. S. City Average (1982-1984 = 100) published by the U. S. Department of Labor, Bureau of Labor Statistics. If the Index is revised so that the base year changes, the Index will be converted in

accordance with the conversion factors published by the Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would have been attained if the Index had not been discontinued or revised. The Index which is published for the second month preceding each Anniversary Date (the "Extension Index") will be compared with the Index published for the month in which the original Commencement Date falls (the "Beginning Index"). If the Extension Index has increased over the Beginning Index, the Adjustment payable for each of the twelve months following the Anniversary Date will be calculated as follows:

- (1) First, subtract the Beginning Index from the Extension Index;
- (2) Second, divide the result of the subtraction by the Beginning Index;
and
- (3) Multiply the monthly installment of Base Rent by the product of (2).

The figure produced by this computation will be the Adjustment for each month of the subsequent year of the Lease Term, and will be paid each month in monthly installments during that year of the Lease Term in addition to the Base Rent, until the next Adjustment Date. There will be an Adjustment in each year of the Lease Term, but in no event will the sum of the Base Rent plus the Adjustment for any year of the Lease Term (the "Total Rent") be less than the Total Rent in the preceding year.

(c) Electricity Charge. Lessee will pay to Lessor an electricity charge computed in accordance with this Paragraph. Lessor will compute an estimated annual electricity charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the electricity charge. At the end of each calendar year, Lessor will determine the actual electricity charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(d) Fuel Charge. The Electronic Site currently is equipped with backup electricity generating equipment, and may be equipped with other generating or heating equipment in the future. Lessor will compute an estimated annual fuel charge for Lessee, and will bill the estimated annual charge to Lessee in 12 equal monthly installments, and each installment will be payable by Lessee with Lessee's monthly rental payments. In any case where the Lease commences on a date other than January 1, Lessor will prorate the fuel charge. At the end of each calendar year, Lessor will determine the actual fuel charges for the Electronic Site and the actual charge to Lessee. If Lessee has underpaid for the year, Lessee will pay the balance of the actual charge owed on or before the fifth day of the calendar month next following the month in which Lessee is billed for the balance. If Lessee has overpaid for the year, Lessor will return the overage to Lessee within 60 days after the end of the year.

(e) Gross Receipts Tax. Lessee acknowledges that the amounts described in the preceding Paragraphs of this Section may be or become subject to New Mexico State gross receipts tax or other federal or state taxes or exactions. Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, New Mexico State gross receipts tax or other taxes at the rate of taxation then specified in Santa Fe County, upon notice from Lessor.

(f) Additional Charges. From time to time and in accordance with Sections 5(a), 6(b), 6(c), 13 and 22(n) of this Agreement Lessee may be required to pay amounts to Lessor for specific items described in those Sections. Additionally, Lessee will pay a late fee of 1½% of any past due amount of Rent or any other charge for each month or portion of a month during which the past due amount of Rent or any other charge remains unpaid. Lessee will pay each such amount to Lessor, together with any gross receipts tax or other taxes thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

4. Term. The Term of this Lease Agreement will commence at the Commencement Date set forth in Exhibit A attached hereto and incorporated herein by this reference. The Term of the Lease will continue from the Commencement Date until the Termination Date described in the same Exhibit, unless earlier terminated in accordance with the terms and conditions hereinafter set forth. The Lease Agreement will automatically renew for successive terms, each of the same length as the initial term, unless and until Lessee notifies Lessor no more than ninety (90) and no less than thirty (30) days before the Termination Date that Lessee will not require a renewal of the Lease Agreement. At any time after the initial Term of this Agreement, Lessor may terminate this Agreement by giving written notice to Lessee no less than 120 days before the Termination Date selected by Lessor in its notice to Lessee; provided, however, that Lessor will not effect any such termination if the termination would violate Lessor's Communications Use Lease or Lessee's special use permit to use the Electronic Site.

5. Lessee's Installation of Equipment.

(a) Lessee will submit to Lessor at Lessor's request, before installing any equipment at the Electronic Site, an Equipment Layout Plan respecting all equipment which Lessee proposes to install at the Electronic Site. The Equipment Layout Plan will be subject to Lessor's reasonable approval. Lessor will have Lessee's Equipment Layout Plan, proposed installation and operating frequencies reviewed by a licensed electrical engineer selected by Lessor. Lessee will pay the engineer's reasonable fee for this review, together with a small fee charged by Lessor for arranging the review and inspection. Approval of the Equipment Layout Plan and proposed installation will be granted giving due consideration to good engineering practices dictated by the unique nature of, and mixed uses contemplated for the Electronic Site, compatibility with other lessees, efficient use of mechanical and utility infrastructure and appurtenances, and to construction economics. Lessee hereby represents that it recognizes that the solution to any potential conflict in design and layout alternatives may be less than ideal. Lessor may require reasonable revisions to the Equipment Layout Plan in accordance with applicable regulations and standards of the Federal Communications Commission, United States Forest Service, or recognized professional engineering organizations as a condition for its approval. Upon Lessor's approval of a final Equipment Layout Plan, the parties will initial the final Equipment Layout Plan, and Lessee shall

install its equipment at the Electronic Site in strict accordance with the final Equipment Layout Plan.

(b) Lessee will install its equipment at the Electronic Site in accordance with the final Equipment Layout Plan, and in accordance with all applicable federal, state and local laws, regulations and ordinances. Any change or alteration to the installation or to the equipment specified in the final Equipment Layout Plan will be pursuant to written change order only, approved by both Lessor and Lessee. Changes required by physical site characteristics or governmental regulations or construction economics or exigencies, and which do not materially affect the Electronic Site or the use of the Electronic Site by Lessor or other lessees, will not be unreasonably withheld by Lessor. Lessor may require Lessee, upon reasonable notice, to move its Equipment to another cabinet or other location in the shelter at the Electronic Site, and to move its antennas to another location or locations on the towers or shelter at the Electronic Site. Lessor's engineers and representatives will have the right at all reasonable times during the course of installation to inspect the work in progress.

(c) Lessee acknowledges that Lessor's approvals of Lessee's Equipment and Equipment Layout Plan do not constitute any representation or warranty that the Equipment or Equipment Layout Plan are safe, meet any engineering standard or guideline, or comply with any industry standard or governmental law, regulation or rule and, further, that any inspection or approval does not constitute any waiver or reduction of any right Lessor has under this Agreement to indemnity or other relief from Lessee under this Agreement.

6. Utilities.

(a) Electric Power. Lessor will arrange for the supply of 30 amp, 240 volt alternating current electrical power to the Electronic Site by the electric utility company having the franchise and responsibility for supply of electricity thereto, and will supply a main disconnect and distribution panel to which the supply of electricity is connected. Lessor may, but is not required, to supply standby power. Lessee may connect to the main disconnect and distribution panel at its own cost and expense, and will obtain all its power requirements therefrom. Lessee will effect such connection in a manner specified in its final Equipment Layout Plan, and will cause the work to be performed by a licensed electrical contractor reasonably satisfactory to Lessor. Lessee will pay for power consumed in accordance with Paragraph 3(c), above.

(b) Telephone. Lessor will not provide any telephone service to the Electronic Site. If in the future Lessor obtains any form of telephone service, access which is generally available to lessees, Lessee will have the right to equal access thereto upon appropriate subscription and payment for services therefor independent of this Agreement.

(c) Sewer, Water and Natural Gas. Lessor will not have any obligation to supply sewer, water or natural gas to the Electronic Site. If Lessor in the future supplies propane, liquefied natural gas or a similar energy source to lessees generally, Lessor will make the same available to Lessee in an equitable manner upon appropriate subscription and payment for services therefor independent of this Agreement.

(d) Trash Removal. Lessee will be responsible for the prompt removal from the Electronic Site of any surplus material or trash created in connection with the installation, operation, maintenance, alteration, modification or removal of Lessee's equipment, whether or not flammable or of a dangerous character. In all events, Lessee will not introduce or permit the introduction of any material to the Electronic Site which may by the provisions of any law, rule or regulation be in the nature of, or subject to regulation as, an explosive, poisonous or hazardous material or substance.

(e) Grounding System. Lessor has provided a grounding system at the Electronic Site. Lessee will connect all Equipment to the grounding system in accordance with its Equipment Layout Plan, and will maintain the integrity of these connections throughout the term of this Lease Agreement. All costs and expenses of grounding Lessee's equipment will be paid by Lessee.

(f) Air Conditioning. Lessor will have no duty to supply heating or air conditioning to the Electronic Site.

(g) Security. Lessor has installed a locked gate at the access road and locking devices at entry doors to the Electronic Site. All interior door locks, including the entry doors to the Cabinets and the Electronic Site, may be keyed to a master key which Lessor may keep in controlled custody. Lessor may install and remove other security and monitoring devices from time to time, and Lessee shall cooperate in their installation and use. Notwithstanding the foregoing, Lessor will have no liability for any act of any lessee or other person for any act (whether or not negligent or willful) which causes damage to the Electronic Site or any equipment or person therein, irrespective of the failure of any security system or absence of any security system.

7. Use of Electronic Site by Lessee.

(a) Lessee's use of the Electronic Site is limited to the operation of its unmanned radio transmitting and receiving equipment, on the frequencies, and with the powers, and limited to the scope, set forth on Exhibit B, which is attached hereto and incorporated herein by this reference.

(b) Lessee will not use the Electronic Site for storage, shop space, office, or any other purpose aside from the specific purposes described in the preceding Paragraph (a), it being specifically understood that the Electronic Site is constructed and operated as an unmanned radio transmission site. Lessee will not install or attempt to use additional equipment or devices of any character whatsoever in the Electronic Site unless and until it shall have obtained the prior written approval of Lessor to an amended Equipment Layout Plan.

8. Access to Electronic Site.

(a) Lessee will have the right, through its engineers, technicians and employees, to obtain access to the Electronic Site and its Cabinet at all reasonable times for the purpose of normal, recurring maintenance duties, for extraordinary repair and emergency purposes, and for the installation and removal of equipment in accordance with this Lease Agreement. Lessor will provide Lessee with a key to its Cabinet, and keys to the Electronic Site and any gates on the access

road. Lessee represents and warrants that personnel acting for Lessee or on its behalf will have skills, knowledge and training commensurate with those prevailing in the industry, including knowledge of the possible effects of radio frequency radiation and energy and the hazards of lightning and high voltage electricity. Lessee further warrants that all such personnel for whom it obtains access to the Electronic Site are covered by both worker compensation and other insurance sufficient to cover any hazard, risk or injury which may be attendant to, or occur by reason of or as a proximate cause of, those personnel being at or upon the Electronic Site.

(b) Lessee will perform its repair, maintenance and other work at the Electronic Site in a manner so as to prevent any damage or injury to equipment maintained by Lessor or Lessee or other persons in or about the Electronic Site or to any persons in the Electronic Site or areas nearby. Lessee further agrees to cooperate with Lessor and all other Lessees by removing its carrier from the air when it is necessary for antenna workers to be in a field of radiation which exceeds the prescribed maximum range specified by any industry standard or governmental regulatory authority, in order to work on antennas or other portions of the Electronic Site. Lessee will restrict repair work to periods of time least disruptive to other lessees and users.

(c) Lessee will not place locking devices or otherwise prevent access by Lessor to Lessee's Cabinet, without the previous written consent of Lessor; and in that event Lessee will furnish the keys or other means to permit Lessor to enter the Cabinet. However, Lessor will not, except in emergency situations which could result in immediate danger or harm to life or property, or which by the terms of any insurance carried by Lessor or order of any governmental authority would require immediate action on the part of Lessor, enter into the Cabinet in which Lessee maintains its equipment without first notifying Lessee of its intent to enter, and affording Lessee the opportunity to accompany Lessor's representatives. Lessor agrees to make reasonable attempts to advise Lessee by telephone or comparable means of any such emergency situation or immediate action so that Lessee's representative can be present if possible.

9. Governmental Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal, state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect); and Lessee shall indemnify and hold harmless Lessor from any and all penalties, fines, costs, expenses or damages, including attorney fees and costs, resulting from the failure of Lessee or its employees or contractors to comply with any of these laws, rules or regulations applicable to Lessee's use of the Electronic Site.

10. Repair and Maintenance of Lessee's Equipment. Lessee will keep all of its Equipment in good working order, condition and repair, in a safe and operative condition, at Lessee's sole cost and expense, all in accordance with good engineering practices, taking into consideration and implementing all reasonable precautions to avoid interference or hindrance to and with the operations of all other lessees or other uses of the Electronic Site and the Lessor, and in a manner so as to avoid and preclude any (i) objectionable interference, (ii) hazardous radiation, (iii) any emission or contamination by any hazardous substance or any other dangerous chemical or

substance in or about the Electronic Site, (iv) the creation of any hazard of fire, electrical shock, dangerous emissions or contamination, or other similar hazard or calamity, or (v) the creation of any other hazardous condition or risk which could result in material damage to any person or property in or about the Electronic Site.

11. Prevention of Objectionable Interference.

(a) "Objectionable Interference" means any interference produced by a Electronic Site user which originates at or by reason of the use of the Electronic Site by the user, and which (i) is determined by an authorized representative of the Federal Communications Commission to be objectionable interference, (ii) is objectionable interference within the meaning of the rules and regulations of the Federal Communications Commission as in effect from time to time, or (iii) otherwise causes a material impairment of the signals transmitted or received by a user of the Electronic Site within the Facility's service area as such area is or may be defined by the Federal Communications Commission. Lessee will install and operate its Equipment so as not to cause any Objectionable Interference to any other current lessee of the Electronic Site, Lessor or any other person. Lessee will cooperate fully with all other lessees and users in preventing interference among equipment employed by any of those persons at the Electronic Site. Lessee will install at Lessee's sole cost and expense suitable interference protection devices before equipment operation begins or as may become necessary thereafter because of Lessee's operations.

(b) In all events, the determination of Objectionable Interference, the resolution of disputes and other matters relating to interference will be determined in accordance with and subject to rules, regulations and decisions of the Federal Communications Commission then applicable, as well as Lessor's United States Forest Service Communications Use Lease and applicable United States Forest Service rules and regulations.

12. Lessee's Risk of Loss or Injury.

(a) Lessee assumes all risk of damage or loss to its property or equipment at the Electronic Site and that risk will be and remain exclusively Lessee's responsibility and not that of Lessor. Lessee hereby indemnifies and saves harmless Lessor, its stockholders, directors, officers, agents, employees and affiliates from any liability or expense, including attorney fees and costs, that shall or may arise because of any claims asserted by Lessee or any other person on account of the destruction of or damage to Lessee's property or Equipment.

(b) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorneys' fees and costs) arising from or occasioned in any respect by (i) any alleged act, omission, fault or negligence of Lessee, or (ii) injury (including death) or damage to Lessee's employees or employees of Lessee's contractors and subcontractors arising from or occasioned by or allegedly occasioned by any act or omission, or by reason of the use and occupancy of the Electronic Site or the access road or any part thereof by Lessee or any other person.

(c) Lessee will further indemnify and save harmless Lessor from any and all loss, damage, claims, suits, demands or actions, and costs and expenses of any kind (including attorney fees and costs) arising from or occasioned in any respect by (i) any failure of any warranty or representation by Lessee, (ii) Lessee's failure to perform any obligation by it to be performed hereunder, or (iii) any act or omission of Lessee or its employees or contractors which results in any prejudice to Lessor's rights under its Communications Use Lease with the United States Forest Service.

(d) Lessor will not be liable to Lessee or anyone claiming under or through Lessee for any loss or damage caused by the acts or omissions of any other lessee or any other person or the malfunctioning or interruption of any service, utility, facility or installation.

(e) Lessor undertakes only to exercise reasonable care in the management of the Electronic Site and Lessor will not be liable on this account to Lessee for any event except for any act or omission caused by the negligence, gross negligence or willful misconduct of Lessor. Lessor further agrees to observe its obligations under and will be liable to Lessee for damages provided by law for any material breach of these obligations. Notwithstanding anything else in this Agreement to the contrary, in no event will Lessor be liable to any of the persons described in the preceding sentence for consequential damages under any circumstances, and Lessee, for itself and for all other persons for whom it may make such a waiver, hereby expressly waives all such claims.

(f) Lessee represents and warrants that it or its representatives are knowledgeable in matters of electrical engineering and related fields, and have evaluated fully the suitability of the Electronic Site for Lessee's purposes. Lessee acknowledges that its determination to enter into this Agreement is based solely upon its own investigation and inspection of the Electronic Site and not in reliance upon any representation of Lessor as to any feature, specification or aspect of the Electronic Site, except as specifically described in this Agreement.

13. Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to obtain such additional insurance coverage or to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will be issued by insurers having a Best's AAA or better rating, and will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement, and will contain a waiver of subrogation against Lessor. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3.

14. Radio Frequency Radiation Considerations. Lessee recognizes and acknowledges that radio frequency radiation ("RF Hazards") as they may affect humans and all other forms of life are of concern and are specifically regulated by the Federal Communications Commission and may be subject from time to time to other rules and regulations ("RF Standards"). Lessee further acknowledges that RF Hazards will be measured and considered under RF Standards in the aggregate of the combined radio frequency densities of all users of the Electronic Site, and that this combined aggregate power density must be considered for assessment of compliance with applicable RF Standards. Accordingly, in order to assure that the Electronic Site complies with applicable RF Standards after consideration of Lessee's and all other transmissions of radio frequency energy from or to the Electronic Site, Lessee hereby agrees:

(a) To design, install and operate its Equipment in such a manner that Lessee's use of the Electronic Site, in concert with all other users of the Electronic Site, will at all times comply with all applicable RF Standards;

(b) To design, install and operate its Equipment so as to minimize downward radio frequency radiation affecting the Electronic Site and surrounding lands;

(c) To provide Lessor with a complete copy of Lessee's FCC filings, permits, and any other documents from any source addressing potential biological or botanical exposure to RF Hazards which could be caused by Lessee's operations or Equipment at the Electronic Site;

(d) That measurements of radio frequency power densities present on the site or surrounding land may be required by Lessor, or in order to assure compliance with RF Standards by government agencies, including but not limited to the Federal Communications Commission and the Environmental Protection Agency and the Environment Department of the State of New Mexico; and

(e) Should such measurements be required by Lessor or under any law, rule or regulation, the measurements will be carefully conducted and results certified by a registered professional engineer (electrical, State of New Mexico) or any other qualified person authorized by Lessor, the cost of the measurement to be paid by Lessee.

15. Use of Road. Lessee will have the nonexclusive right to use the access road for access, ingress and egress to the Electronic Site.

16. Certain Obligations of Lessor. Lessor will keep the foundations, exterior walls, roofs, tower structures and foundations, and the structural portions of the Electronic Site in a good state of repair in accordance with rules and regulations of the United States Forest Service during the term of this Agreement, at Lessor's expense except as to damage or injury thereto caused by any lessee. The access road will be maintained (except during inclement weather) in a condition sufficient for four-wheel drive vehicular travel. In this regard, Lessor reserves the right, without liability to Lessee, to interrupt the electrical or other services at the Electronic Site at such time as may be necessary and for so long as may be reasonably required for the making of necessary repairs, alterations or improvements thereto. Except for emergencies, these interruptions will to the extent possible be confined to non-working hours (or in cases of 24 hour transmitting or receiving

at such hours as will cause the least practicable interruption to Lessee's activities) and will be commenced only after Lessor's having given at least one week's notice to the lessees affected. Lessor will not be liable to Lessee for any consequential damages of any kind, or by reason of inconvenience, annoyance, or injury to the Electronic Site, or activities conducted by Lessee from the Electronic Site, arising from the necessary repairing or maintenance of any portion thereof, whether due to casualty, fire, normal maintenance requirements or otherwise, or from the making of any alteration or improvements in or to any portion of the Electronic Site or its equipment.

17. Termination of Communications Use Lease. If Lessor's Communications Use Lease is terminated for any reason whatsoever, this Agreement will terminate at Lessor's election as of the date of the Communications Use Lease's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. If Lessee's United States Forest Service special use permit respecting Lessee's use of the Electronic Site is terminated through no action or fault of Lessee, this Agreement will terminate at Lessee's election as of the date of the permit's termination, and from and after the date of such termination, the Rent payments under this Agreement shall be abated. Any amounts remaining unpaid with respect to periods before the termination will be immediately due and payable from Lessee to Lessor. Lessee will immediately remove its Equipment and otherwise act in accordance with the provisions of this Agreement ordinarily applicable to termination of this Agreement. Lessor will have no further liability or obligation under this Agreement from and after the date of such termination.

18. Destruction of Electronic Site. If the Electronic Site, or any part thereof, shall at any time during the term of this Agreement be destroyed by fire, wind or other casualty, Lessor will with all reasonable speed, but subject to the receipt of insurance proceeds and other limitations set forth in this Agreement, cause the Electronic Site to be restored to the same condition as existed immediately prior to the damage. However, if substantial damage occurs within one year before the end of the term of this Agreement (exclusive of any option or ability to renew by either party), then Lessor, at its sole option, will have the right to terminate this Agreement by giving notice to Lessee. If reconstruction or repair of the Electronic Site cannot be made without dismantling or removing Lessee's Equipment, then Lessee will cooperate fully with Lessor and its contractors, and Lessor may remove Lessee's Equipment or any portion thereof and interrupt its broadcasting activity during the making of the repairs or during reconstruction. Lessee will be entitled to a *pro rata* abatement of its monthly Rent for such time as it is unable to conduct its normal broadcasting activities as a result of the damage or destruction to the Electronic Site or during the making of repairs or reconstruction of the Electronic Site. Lessee will bear the expense of replacing its equipment, fixtures and appurtenances, or any part thereof, arising as a result of or caused by virtue of the damage, destruction, repairing or reconstruction of the Electronic Site, and in all event shall carry sufficient insurance on its own property to cover the expense of any new installation required.

19. Certain Duties of Lessee Upon Termination of This Agreement. At the end of the Term of this Agreement, or upon the earlier termination of this Agreement, or upon the termination of any extensions or renewals of this Agreement, and provided that Lessee is not in default under the provisions of this Agreement, Lessee will within a reasonable time remove from the Electronic Site any and all Equipment and other property placed in or about the Electronic Site by Lessee. To the extent that this removal causes any damage or change to the Electronic Site, the Lessee will repair the damage and correct any change at its sole cost and expense. If the Lessee continues to

maintain its Equipment in the Electronic Site or otherwise conducts any activity in or from the Electronic Site, this will in no event be construed to be a renewal of this Lease Agreement. However, to the extent and for the time Lessee maintains such Equipment or continues such activity, it will pay a daily fee to Lessor in an amount equal to double the sum it had paid on a daily basis rate of rent payable in the last month of the Term of this Agreement.

20. Default. The following events will be events of default by the Lessee under this Agreement:

(a) Lessee fails to pay any installment of the rent or any other sum due to Lessor from Lessee on the date that the same is due, and that failure continues for a period of ten (10) days thereafter;

(b) Lessee fails to comply with any term, condition or covenant of this Lease, other than the payment of money, and does not cure that failure within thirty (30) days after written notice thereof to Lessee, or there is a material failure of any of Lessee's warranties or representations;

(c) A receiver or trustee is appointed for all or substantially all of the assets of the Lessee; or

(d) Lessee attempts to assign its rights or otherwise attempts to allow the use of any of its interest or right under this Lease, except as expressly provided herein or permitted by a previous written instrument from Lessor, which will not be unreasonably withheld.

21. Remedies Upon Lessee's Default. Upon the occurrence of any of the events of default, Lessor will have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever:

(a) Lessor may terminate this Agreement. In that event, Lessor may remove Lessee's Equipment from the Electronic Site without prejudice to any other remedy which it may have for arrearages in Rents and other amounts owed by Lessee, unless Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of the termination of this Agreement;

(b) Lessor may do whatever Lessee is obligated to do under the terms of this Agreement, and Lessee agrees to reimburse Lessor on demand for any expenses incurred by Lessor in effecting Lessee's compliance with its obligations under this Agreement, and Lessee further agrees that Lessor will not be liable for any damages resulting to Lessee from that action, whether caused by the negligence of Lessor or otherwise;

(c) Lessor may enter Lessee's Cabinet by any means whatsoever not causing physical harm to any individual, to remove Lessee's Equipment, without being liable to any person for damages occasioned thereby, and without terminating this Agreement except at Lessor's sole option by notice to Lessee;

(d) Lessor may obtain a temporary restraining order and injunctive relief, it

being acknowledged by the parties that money damages would be an inadequate relief for Lessee's obligations under this Agreement;

(e) Lessor may make Lessee's Cabinet and Equipment available to any other person, for a fee or other compensation, with the right to receive from Lessee the costs of Lessor's action (including costs of repair and attorney fees and costs) together with any deficiency between what Lessee is obligated to pay and what Lessor actually receives under the arrangement with such other person; and

(f) Lessor may pursue any one or more other rights available to Lessor under applicable law.

22. Miscellaneous Provisions.

(a) Failure of Lessor to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, or any delay by Lessor in enforcing any right of Lessor hereunder, shall not constitute a waiver of the default or right, but Lessor will have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement at any time. Pursuit of any one or more of the remedies set forth in Section 21 above will not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor will pursuit of any remedy provided constitute forfeiture or waiver of any amount or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Agreement. The receipt of any amount by Lessor with knowledge of any breach of this Agreement by Lessee or of any default on the part of Lessee in the observance or performance of any of the terms, covenants or conditions of this Agreement, will not be deemed to be a waiver of any provision of this Agreement. No receipt of any amount by Lessor from Lessee after the termination hereof will reinstate the Term of this Agreement, or affect any notice theretofore given to Lessee or operate as a waiver of the right of Lessor to enforce the payment of any other amount required to be paid by Lessee by law or under the terms of this Agreement.

(b) Neither party will be required to perform any covenant or obligation in this Agreement not involving the payment of money to the other party, or be liable in damages to the other, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or *force majeure*. An "act of God" or "*force majeure*" is defined for purposes of this Agreement as negligent or intentional destruction of property by another party, strikes, lockouts, sitdowns, power shortages or blackouts, adverse weather, material or labor restrictions by any governmental authority, any governmental action, unusual transportation delays, military or criminal action, floods, washouts, explosions, earthquakes, fire, acts of the public enemy, insurrections, and any other cause not reasonably within the control of the party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

(c) If Lessee fails in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and by it to be performed, and Lessor places in the hands of an attorney the enforcement of all or any part of this Agreement, Lessee agrees to pay Lessor without any further notice or demand Lessor's reasonable attorney fees and costs, whether suit is

actually filed or not; provided, however, that Lessee will not be required to pay such fees and costs if Lessee cures its failure of performance within ten (10) days of the commencement of the failure.

(d) If Lessee continues to occupy or otherwise use the Electronic Site after the expiration or termination of this Agreement, all of the terms and provisions of this Agreement will be applicable during the period, except that Lessee will pay the increased rent described in Section 19 of this Agreement. No holding over by Lessee, whether with or without the consent of Lessor, will operate to extend this Agreement except as otherwise expressly provided.

(e) Lessee agrees to furnish promptly, from time to time, upon Lessor's request, a statement certifying that this Agreement is in full force and effect and that there is no prepayment of the Rent, and that there is no existing default by reason of any act or omission by Lessor, and such other matters as may be reasonably required by Lessor.

(f) This Agreement will be binding upon and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, successors and assigns. The parties agree that Lessor may assign this Lease, and upon such assignment Lessor shall have no further responsibility hereunder.

(g) The captions appearing in this Agreement are employed only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any paragraph or section.

(h) If any provision of this Agreement is ever held to be invalid or unenforceable, that invalidity or unenforceability will not affect any other provision of this Agreement, and the other provisions will continue in full force and effect.

(i) All payments required to be made by Lessee will be payable to Lessor at Lessor's address set forth below. Any notice or document required or permitted to be delivered under the terms of this Agreement will be deemed to be delivered when personally delivered or (whether or not actually received) when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below.

If to Lessor:

Tesuque Radio Company, Inc.
Attention: John C. Herklotz
Post Office Box 3636
Laguna Hills, California 92654

If to Lessee:

Santa Fe County
Attn: Katherine Miller, Santa Fe County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

Any party may change its address by giving notice in the prescribed fashion to all of the other parties hereto.

(j) Lessee and Lessor will execute, acknowledge as appropriate and deliver to the other any document or instrument reasonably necessary to effectuate or carry out the provisions of this Agreement promptly upon request therefor.

(k) Nothing contained in this Agreement will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties, and it is understood and agreed that neither the method of computation of rent nor any other provision contained in this Agreement nor any acts of the parties, will be deemed to create any relationship other than the relationship of lessor and lessee.

(l) This Lease Agreement will be interpreted according to the substantive laws of the State of New Mexico. If a dispute arises under the terms of this Agreement or with respect to the subject matter hereof, suit shall be brought, if at all, in the courts of general jurisdiction, federal or state, for Santa Fe, New Mexico.

(m) If Lessee is a corporation or partnership, then Lessor may require guaranties of Lessee's obligations hereunder by Lessee's shareholders, officers, or partners; and any such persons, by their execution of any counterpart of this Agreement, do hereby guarantee the timely and complete performance by Lessee of all of its undertakings and covenants herein contained, including the payment of money, and do further guarantee the payment of any sum of money or the performance of any act which it is later determined that Lessee is required to pay or do as a result of any breach of this Agreement by Lessee. This shall be a continuing guaranty given as a further inducement to Lessor to enter into this Agreement, and may not be terminated in any respect by any guarantor. Lessor may extend any obligation of Lessee or any guarantor and may renew, exchange, surrender or otherwise deal with any collateral offered or given by Lessee or any person. Each of the guarantors hereby waives presentment, demand for payment by any person, protest and notice of nonpayment, dishonor or protest and all other notices and demands.

(n) Lessee shall pay to Lessor as additional Rent upon invoice by Lessor any additional charge, fee or rent imposed upon Lessor by the United States Forest Service or other U.S. government agency under Lessor's Communications Use Lease. Lessor shall allocate any such additional charge, fee or rent among its lessees (including Lessee) in accordance with a reasonable method of proration based upon the lessees' respective base rents or other factors.

(o) IT IS EXPRESSLY AGREED BY LESSEE, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS LEASE AGREEMENT, WITH ANY SPECIFIC REFERENCES TO WRITTEN EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THIS AGREEMENT OR THE EXPRESSLY MENTIONED WRITTEN EXTRINSIC DOCUMENTS ATTACHED TO OR INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SUPERSEDES ALL PRIOR NEGOTIATIONS AND AGREEMENTS, WRITTEN OR ORAL, PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THERE WILL BE NO MODIFICATION OF THIS AGREEMENT EXCEPT BY A SUBSEQUENT WRITTEN INSTRUMENT EXECUTED BY THE PARTIES HERETO. LESSOR AND LESSEE EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES BY LESSOR OF MERCHANTABILITY, USE, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE WHICH MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

IN WITNESS WHEREOF this Agreement is executed as of the date stated in Exhibit A attached hereto and made a part hereof.

LESSOR:

TESUQUE RADIO COMPANY,
a New Mexico corporation

By: 
John C. Herklotz, President

LESSEE:

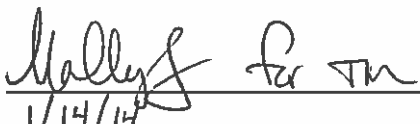
SANTA FE COUNTY

By: _____
Daniel Mayfield, Chair
SANTA FE BOARD OF COUNTY
COMMISSIONERS

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Finance Department:

By: 
Date: 1/14/14

Approved as to Form:

By:  1/14/14
Stephen C. Ross, County Attorney

**EXHIBIT A
TO
ELECTRONIC SITE LEASE AGREEMENT**

Lessee: Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504
Telephone: (505) 986-6200

Date of Lease: July 1, 2012

Commencement Date: July 1, 2012

Termination Date: June 30, 2015

Description of Equipment:

Santa Fe County Fire Department has one (1) repeater with SN0201482, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

Santa Fe County Sheriff's Office has one (1) repeater with SN0201476, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 15' – 20' off the ground on the roof. Transmit 154.785 MHz; Receive 158.8875 MHz

Monthly Rent Installment and Charges from July 1, 2012 through June 30, 2015 (Base Rent and charges for period, as subject to revision in accordance with the Agreement and paragraph 2, below):

Rate of Monthly Base Rent	\$950.00
Monthly Electricity	25.00
Gross Receipts Tax	<u>65.31</u>
TOTAL	\$1,040.31

Deposit: None

Other Terms:

This Lease terminates and replaces all prior leases between Tesuque Radio Company and Santa Fe County, including the Electronic Site Lease dated July 1, 2007 (the "Prior Lease"). The following provisions, revise and supersede the provisions of the Electronic Site Lease Agreement (the "Agreement") to which this Exhibit A is attached. In the event of any conflict between this Exhibit A and the Agreement, the provisions of this Exhibit A shall control.

1. Notwithstanding the provisions of Section 3 respecting monthly installments of rent, Lessee shall pay annual rent based upon an annual period of July 1 to June 30. The first payment of rent, for the periods July 1, 2012 through June 30, 2013 and July 1, 2013 through June 30, 2014, in

the amount of \$22,800.00, shall be paid by Lessee to Lessor on or before February 28, 2014, together with electricity charges of \$600.00 and New Mexico gross receipts tax of \$1,567.50.

2. Notwithstanding the provisions of Subsection 3(b) respecting escalations in the rent provided for under the Electronic Site Lease Agreement, there shall be no increase to Base Rent under Subparagraph 3(b) for the periods July 1, 2012 through June 30, 2013 or July 1, 2013 through June 30, 2014. Commencing with the period July 1, 2014 through June 30, 2015, Base Rent shall increase at a rate of five percent on each anniversary date of the Agreement.

3. Lessee shall pay to Lessor, on or before February 28, 2014, the amount of \$15,001.97, representing the amount agreed by Lessor and Lessee to represent and discharge all obligations of Lessee to Lessor for (1) payments of rent, electricity charges, and New Mexico gross receipts tax under the Prior Lease through June 30, 2012, and (2) payments of United States Forest Service use fee amounts through the September 30, 2012 reporting date.

4. Subsection 3(b) of the Electronic Site Lease Agreement is deleted in its entirety.

5. The second sentence of Subsection 3(e) of the Electronic Site Lease Agreement is revised to read as follows:

Accordingly, Lessee will pay with all amounts payable under this Section, together with such amounts, an amount equal to New Mexico State gross receipts tax (or other applicable taxes for which Lessor is entitled to seek reimbursement from Lessee) at the rate of taxation then specified for Santa Fe County, upon notice from Lessor.

6. The third sentence of Subsection 3(f) of the Electronic Site Lease Agreement is revised to read as follows:

Lessee will pay each such amount to Lessor, together with an amount equal to any gross receipts tax (or other applicable tax for which Lessor is entitled to seek reimbursement from Lessee) thereon, within the calendar month commencing after the month in which the Lessee is invoiced for the amount.

7. The words "to indemnify or" are deleted from the last line of Subsection 5(c) of the Electronic Site Lease Agreement, and are replaced with the word "for."

8. Section 9 of the Electronic Site Lease Agreement is revised to read as follows:

Government Regulations. Lessee agrees that it will comply at its own cost and expense with the terms of any federal state, or local law, rule or regulation, including but not limited to those of the Federal Communications Commission, and those laws, rules and regulations requiring adherence to radio frequency radiation and energy limitations and safety standards, applicable to Lessee, or to Lessee's use of its equipment and the Electronic Site (including, specifically, but not by way of limitation, the Communications Use Lease and the United States Forest Service Tesuque Peak Site Plan, as from time to time in effect).

9. The second sentence of Subsection 12(a) of the Electronic Site Lease Agreement is deleted in its entirety.

10. Subsections 12(b) and 12(c) of the Electronic Site Lease Agreement are both deleted in their entirety.

11. Section 13 of the Electronic Site Lease Agreement is revised to read as follows:

Insurance. Lessee will obtain, pay all premiums for and maintain in full force and effect during the Term of this Agreement comprehensive public liability insurance, whether by primary or excess loss or blanket coverage covering all of Lessee's operations and activities on or about the Electronic Site and the access road, including but not limited to the operations of contractors and the operation of vehicles and equipment, with aggregate limitations at least equivalent to those prevailing in the industry, but in no event less than \$1 million for injury to, or death of, any one or more persons, and \$1 million for property damage, or such lesser amounts as Lessor may prescribe from time to time. Each of the foregoing limitations will be for each occurrence and shall not be an aggregate limit in the policy or policies. Lessee further agrees to increase the foregoing limits as Lessor may from time to time reasonably require by notice applicable to all lessees in similar circumstances. Lessee shall cause all of its contractors installing its equipment and making repairs or changes to the equipment to procure public liability and property damage insurance complying with this Section; and Lessee further shall require of its contractors that they maintain worker compensation insurance. Lessee will give Lessor such evidence of insurance coverage as Lessor may require from time to time. All insurance policies will provide for not less than 30 days' written notice of cancellation or change, commencing with the receipt thereof, to be given to Lessor before any cancellation or change in the policy will be effective. Such insurance further shall include coverage for the liability assumed by Lessee under this Agreement. If Lessee fails to procure or maintain the required insurance policies, or fails to cause its contractors to procure the required policies, Lessor may, but will not be required to, procure or maintain such policies at the expense of Lessee. Any amounts so paid by Lessor will be additional amounts due from Lessee under Section 3. Lessee's obligation to obtain insurance coverage may be satisfied by Lessee's participation in the insurance pool of the New Mexico Association of Counties, provided that such insurance coverage otherwise meets all of the requirements of this Section 13.

**EXHIBIT B
TO
ELECTRONIC SITE LEASE AGREEMENT**

Equipment and Operating Frequencies:

Santa Fe County Fire Department has one (1) repeater with SN0201482, and one (1) Decibel Products (Andrew) model DB 222-A omnidirectional exposed dipole antenna at 35' on tower. Transmit 154.415 MHz; Receive 158.970 MHz.

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*ct/tesuque radio/docs\electronic site lease (santa fe county 2012 [2013]).doc
File No. 7209-000*

