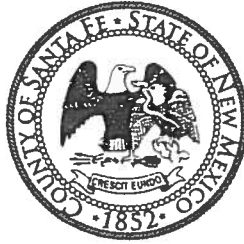


**Daniel "Danny" Mayfield**  
Commissioner, District 1

**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:** *February 19, 2013*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director*

**VIA:** *Katherine Miller, County Manager*

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

**RESOLUTION 2013 – A RESOLUTION REQUESTING AN INCREASE TO THE ROAD PROJECTS FUND (311) TO BUDGET A GRANT FROM THE DEPARTMENT OF TRANSPORTATION TO MAKE IMPROVEMENTS TO COUNTY ROADS IN THE LA TIERRA SUBDIVISION AND TO BUDGET FUNDS CONTRIBUTED BY THE LA TIERRA ASSOCIATION FOR THE PROJECT IN THE AMOUNT OF \$200,000. (PUBLIC WORKS/ ADAM LEIGLAND)**

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### **BACKGROUND AND SUMMARY:**

There are approximately 8 miles of roads within the La Tierra subdivision that is County maintained. The Public Works Department and the La Tierra Association have been working together over the past 15 years and developed a schedule to keep these roads in good condition. The La Tierra Association has contributed approximately \$300,000 over the years to enhance the capital outlay funding received from the legislature for these improvements to the county roads.

In January of 2013, the Public Works Department received legislative capital outlay funding, in the form of a grant from the NMDOT in the amount of \$100,000 for the La Tierra subdivision. The grant was awarded, due to an ICIP request made by the County for additional chip seal improvements to the roads within the subdivision. The cost of the materials for this project is estimated at \$200,000. The La Tierra Subdivision has agreed to contribute the remaining \$100,000 needed to purchase the materials through Agreement No. 2013-0167-PW/PL with Santa Fe County. The County will be providing the equipment and labor to make these improvements. A list of the roads to be included in the project is listed below.

<b><u>ROAD:</u></b>	<b><u>BEGIN:</u></b>	<b><u>END:</u></b>	<b><u>LENGTH:</u></b>
Vuelta Tomas	Paseo La Tierra	Dead end	0.48 miles
Vuelta Linda	Estrada Redonda	Dead end	0.20 miles
Vuelta Muerdago	Camino Montuoso	Dead end	0.38 miles
Vuelta Montuoso	Vuelta Susana	Dead end	0.35 miles

Estrada Redonda

Estrada Maya

Vuelta Linda

0.34 miles

**ACTION REQUESTED:**

Staff is requesting an increase to the State Special Appropriations Fund (311) to budget funds to improvements to county roads in the La Tierra Subdivision.

**Santa Fe County**  
**Fiscal Impact Report**

Department: Public Works Department

Action Item for discussion: La Tierra Grant Resolution

Agreement Number: \_\_\_\_\_

Indicate with An X below	Section 1 Identify the type of document below for BCC Consideration and Approval
X	Revenue, e.g. Grant, charges and fees, etc.
	Contractual Services (includes change orders), e.g. Professional services agreement, construction, price agreement, joint powers agreement, lease agreement, etc.
	Loan/Grant Agreement
	Other:

Indicate with An X below	Section 2 Funding Source Identify the item below for BCC Consideration and Approval
	General Fund, e.g. Property taxes, gross receipt Taxes, etc.
	Special Revenue Funds, e.g. Fire, Indigent, etc.
	Capital Outlay GRT, (capital infrastructure only, Does not include maintenance or repair costs)
	Bond Proceeds
X – match To be funded By La Tierra Association	Grant Funds Match <u>Y</u> or N If yes, indicate the percentage and amount required % and/or \$ 100,000, and source.
	Other:

**Section 3 Ongoing operations and maintenance (O&M) requirements:**

**Short Term (specify needs for the current fiscal year only)**  
\$200,000 and In-kind equivalent to \$100,000 (County Equipment and labor)

How FTE's	#	N/A	Position	Hourly Rate
Current Fiscal Year Cost \$				
Initial Costs (vehicle, computer, office space, etc.)				

**O & M (Concisely identify the recurring needs, supplies, equipment, and the resources necessary for carrying out the job duties)**

Chip seal treatments to 1.75 miles of La Tierra roads contracted by Public Works Staff.  
Current Fiscal Year Cost \$ \$200,000 (NMDOT grant and La Tierra agreement)

Annual Cost \$ 8,750/year Recurring maintenance costs for these roads would increase if these improvements are not made.

**Long Term Specify the needs for the next four (4) years. This will include staff, O & M, asset renewal and replacement costs, and additional capital needs.**

**Salary & Benefits:**

All other expenses: \$35,000 for the next 4 years bases on \$8,750 per year.

administrative issues and technical issues. What consequences, if any, may occur if this item is not acted upon):

Contract Number: D14042  
Vendor Number: 0000054297  
Control Number: C5121522

STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT

<sup>13<sup>th</sup></sup> ~~2012~~ <sup>2012</sup> THIS AGREEMENT is made and entered into as of this 2<sup>nd</sup> day of January, 2012, by and between the Department of Transportation, P.O. Box 1149, South Building 1 North, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department", and Santa Fe County, hereinafter called the "Grantee". The Effective Date of this Agreement is the date of last signature by the Department.

RECITALS

WHEREAS, in the Laws of 2012 HB191, Chapter 64, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID 12-1522 NMDOT Control Number C5121522 \$100,000

APPROPRIATION REVERSION DATE: June 30, 2016

Laws of 2012 HB191, Chapter 64, Section 18, Sub Section 44, one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including resurfacing, to county roads in the La Tierra subdivision in Santa Fe county;.

The Grantee's total reimbursements shall not exceed the appropriation amount one hundred thousand dollars (\$100,000) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, (AIPP Amount) zero dollars (\$0.00) which equals one hundred thousand dollars (\$100,000), hereinafter referred to as "Adjusted Appropriation Amount."

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the "Project Description." "A more detailed scope of work, included in the term Project Description, is attached as Attachment A to this Agreement." The Department has included specific requirements as detailed in Attachment B to this Agreement. If the Attachments impose more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of the Attachments shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the DFA Appropriation ID and the Project's control number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, requests for payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a.) The Adjusted Appropriation Amount identified in Article I. A., herein or (b.) The total

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<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." See, Section 13-4A-4 NMSA 1978.

<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
  - (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein; and
  - (v) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
    - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.
    - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
    - c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
    - d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: SANTA FE COUNTY  
Name: AGNES LEYBA-CRUZ  
Title: PROTECT SPECIALIST  
Address: 4250 AIRPORT RD. SE, NM 87507  
Email: ALOPEZ@SANTAFE COUNTY NM. GOV  
Telephone: 505-995-6516  
FAX: 505-428-3113

Department: Department of Transportation District 5 Office  
Name: Susan Godina  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 4127, Santa Fe, NM 87502  
Email: Susan.Godina@state.nm.us  
Telephone: 505-476-4162  
FAX: 505-827-9509

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

### ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2016, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V. herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement,



it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V. A.

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V.B.

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI. D. herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II. herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI.A., the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

A. This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

### **B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

### **C. Paperless Reporting**

In lieu of the paper reports described in subparagraphs A and B of this Article, the Department may, in its discretion, require Grantee to report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days advance, written notice of the switch to or from paperless reporting. The Department shall also give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

#### **D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII., the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article.

### **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III. herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within 15 calendar days from the date of cashing or depositing of the State warrant.

#### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II. herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are

for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS:**  
**REPRESENTATIONS AND WARRANTIES**

A. The Grantee hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Grantee insures compliance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.

- (v) The Grantee has the legal authority to receive and expend the Project's funds.
- (vi) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (vii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
- (viii) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (ix) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (x) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and federal whistleblower laws. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (xi) The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.
- (xii) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to

implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior

or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

**ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN  
CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE  
UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the [Santa Fe County] may immediately terminate this Agreement by giving Grantee written notice of such termination. The [Santa Fe County]'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the [Santa Fe County] or the [Department of Transportation] or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the [Santa Fe County] or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS  
FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS  
AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a [Department of Transportation] Grant Agreement. Should the [Department of Transportation] early terminate the grant agreement, the [Santa Fe County] may early terminate this contract by providing contractor written notice of such termination. In the event of termination pursuant to this paragraph, the [Santa Fe County] only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.



## **ARTICLE XVII. SEVERANCE TAX BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

Katherine Miller  
Signature of Official with Authority to Bind Grantee

Approved as to form  
Santa Fe County Attorney  
By: [Signature]  
Date: Sept 19, 2012  
DOM/MLG 9/19/12

By: Katherine Miller  
(Type or Print Name)

Its: County Manager  
(Type or Print Title)

10.1.12  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY  
THE COUNTY'S OFFICE OF GENERAL COUNSEL**

By: Roberta D. Joe  
(Type or Print Name)

Its: Assistant County Attorney  
(Type or Print Title)

Sept. 19, 2012  
Date

**DEPARTMENT OF TRANSPORTATION**

Kathryn E. Bender  
By: Kathryn E. Bender

Its: Deputy Secretary, Programs & Infrastructure

1-22-13  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY  
THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

Cynthia A. Christ  
By: Cynthia Christ

Its: Assistant General Counsel

7-31-12  
Date

# CAPITAL OUTLAY PROJECT SCOPE AND TERMINI FORM

Appropriation ID: 12-1522

Control Number: C5121522

## Specific Roadway Project Information

Route #(s)/Road #(s)/Road Name(s)	Begin Termini (Mile Post if applicable)	End Termini (Mile Post if applicable)
Vuelta Thomas	Paseo La Tierra	Cul-de-sac
Vuelta Linda	Estrada Redonda	Cul-de-sac
Vuelta Muerdago	Camino Montuoso	Cul-de-sac

## Estimated Cost in each area that this appropriation will be utilized for

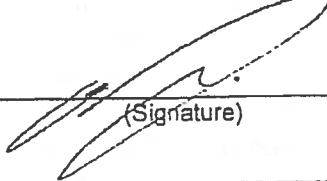
Planning	Design	Construction	Other (specify)
		\$100,000.00	

## Provide a Detailed Project Scope in Space Below

Include items such as pavement rehab or construction/reconstruction, shoulder widening, intersections, bridge replacement or rehab, bike paths/lanes, sidewalks or other type of pedestrian facilities, structural improvements, drainage improvements, lighting or signal improvements, signing, striping, right of way acquisition, & all other pertinent information.

**Plan, design and construct improvements, including resurfacing, to County roads in the La Tierra Subdivision in Santa Fe County. More specifically this funding will be used to provide drainage and chip seal improvements on the roads described above with County crews.**

Tribal/Local Government Agency Name: Santa Fe County

  
(Signature)  
  
(Title)

**Adam Leigland, PE, AICP**  
**Director, Public Works**

(505) 992-3010  
(Telephone Number)

6/15/12  
(Date)

Must be signed by authorized officer who has knowledge of the representations contained in this Form.

<p><b>When complete fax or e-mail form to:</b></p>	<p>Joseph Romero, LGAU New Mexico Department of Transportation (NMDOT) Phone: 505-827-5575 Fax: 505-827-3229 <a href="mailto:Joseph.Romero@state.nm.us">Joseph.Romero@state.nm.us</a></p>
<p><b>Tribal/Local Government Agencies must complete each section. Failure to do so may</b></p>	

## **ATTACHMENT B**

### **The Santa Fe County shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The Santa Fe County shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PERIODIC/FINAL REPORT  
EXHIBIT 1

☐ PERIODIC REPORT      ☐ FINAL REPORT

Grantee: \_\_\_\_\_ DFA Appropriation ID: \_\_\_\_\_

Project Control Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

*A. Third Party Obligations*

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Termination Date: \_\_\_\_\_

*B. Project Phase*

Bonds Sold ☐ Plan/Design ☐ Bid Documents ☐ Construction ☐  
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

☐ PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

☐ FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
REQUEST FOR PAYMENT  
EXHIBIT 2**

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
(Make sure information is complete & accurate)							
A. Grantee Representative				A. Adjusted Appropriation Amount:			
B. Address:				B. Total Amount of Funds Received by Grantee:			
Complete Mailing, including Suite, if applicable				C. Amount of this Request for Payment:			
City State Zip				D. Unexpended Grant Balance: \$0.00			
C. Phone No: [ ]				E. ___ Gf ___ STB (attach wire if 1st draw)			
D. Project Control No.				F. Payment Request No.			
DFA Appropriation ID:							
E. Project Title:							
F. Reversion Date							
<b>III. Fiscal Year Expenditure Period Ending:</b> (Jan-Jun) <input type="checkbox"/> (Jul-Dec) <input type="checkbox"/>							
(check one)							
<b>Fiscal Year</b>							
<b>IV. Certification:</b> Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual invoices; and that the grant activity is in full compliance with the grant agreement. None of the obligations for which payment is requested has formed the basis for any payment previously made.							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
Printed Name				Printed Name			
Date:				Date:			
SWORN TO AND SUBSCRIBED				SWORN TO AND SUBSCRIBED			
before me on this _____ day				before me on this _____ day			
of _____, 20____				of _____, 20____			
Notary Public				Notary Public _____			
My Commission expires _____				My Commission expires _____			
<b>(NOT/District Use Only)</b>							
<b>Vendor Code:</b>				<b>Fund No.:</b>			
<b>Loc No.:</b>							
District Fiscal Officer Date				District Project Manager Date			
I certify that the Local Government financial and vendor file information agree with the above submitted information				I certify that the Local Government records and related appropriation laws agree with the above submitted information			

**AGREEMENT FOR  
ROAD IMPROVEMENTS TO  
LA TIERRA SUBDIVISION  
SANTA FE COUNTY, NEW MEXICO**

This Agreement is made this 1<sup>st</sup> day of November 2012, by and between the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter "County") and the La Tierra Association, Inc. (hereinafter "Association").

**WHEREAS**, the County is responsible for maintenance, repair and improvements to these County roads within the La Tierra Subdivision;

**WHEREAS**, the Association has requested that a double Chip Seal application be made on some of the roads within the La Tierra Subdivision;

**WHEREAS**, the County has estimated that Chip Seal improvements to the roads within the subdivision, described on Exhibit "A" will cost Two Hundred Thousand Dollars (\$200,000.00) to improve;

**WHEREAS**, the County does not have the total amount of funds to complete the Chip Seal improvements on the County roads within the La Tierra Subdivision;

**WHEREAS**, the County has received a \$100,000.00 legislative appropriation for the Chip Seal improvements on the roads within the La Tierra Subdivision;

**WHEREAS**, the Association committed to provide a \$100,000.00 match to acquire the legislative appropriation for the Chip Seal improvements on the roads within the La Tierra Subdivision;

**WHEREAS**, the parties desire to enter into an agreement whereby the Association will pay up to \$100,000.00 to the County for the material costs and expenses for the Chip Seal improvements to the roads within the La Tierra Subdivision; and

**WHEREAS**, the Chip Seal improvements will be completed by the County using County-owned equipment, the cost for which will not be charged against the legislative appropriation or the La Tierra contribution/match;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**1. SCOPE.**

The County will reconstruct the roads and provide a double penetration chip seal on the roads within the La Tierra Subdivision described on Exhibit "A". Such improvements, repairs, maintenance and resurfacing shall include repairing and improving roadsides, ditches and existing culverts within the road rights-of-way and chip seal resurfacing, including base course

where needed. The intent is to clean and reestablish ditches, fill and stabilize eroded ditches, rebuild eroded road shoulders, install erosion control features and repair and maintain the road surface. (All repairs, maintenance and improvements on the road identified on Exhibit "A" shall hereinafter be referred to as the "Work"). This Agreement shall include the repair and maintenance of existing road surface.

## **2. STANDARD.**

The parties recognize that there are differing standards for new road construction versus maintenance standards of previously constructed roads and that the roads, subject to this Agreement, was originally constructed to the County's road standards at the time the La Tierra Subdivision was created. Therefore, nothing contained herein shall require the County to conduct such studies and reviews as might be necessary to determine the extent of construction required to improve such road to meet current standards of new road construction. Further, the County is not, by this Agreement, bound to improve said road to new road standards. The parties understand that all Work performed under this Agreement shall be performed according to what is determined necessary by the County relying on its experience and expertise in order to achieve reasonably safe road conditions and the reasonable elimination or reduction of the deterioration of the roads and associated problems. The parties agree that the Work will be performed according to all current and applicable "maintenance and improvement" standards only. To the extent that it is reasonable and practical and, where appropriate, the County will seek to employ the standards set forth in the New Mexico Highway Department's "Standard Specifications for Highway and Bridge Construction" (for new road construction).

## **3. COMMENCEMENT.**

The Work contemplated under this Agreement shall commence in the Spring of 2013 and shall continue on a timely basis until completed.

## **4. ELIGIBLE COSTS AND EXPENSES.**

The eligible costs and expenses under this Agreement shall be limited to the County's actual expenditures for materials and rental of equipment necessitated by the non-availability of the County's own equipment, materials and services. Eligible costs and expenses shall also include payments to any private contractors procured by the County necessitated by the non-availability of County employees who are qualified to perform the Work involved in this project or the County's inability to provide materials and/or equipment necessary to complete the Work ("Eligible Costs"). The County will not use inmate or prison labor to perform any of the Work under this Agreement.

## **5. PAYMENT.**

The Association hereby represents that it has deposited in an Association account the total amount of One Hundred Thousand Dollars (\$100,000.00) which is dedicated to the payment of Eligible Costs.



Upon completion of the work or a portion thereof, the County will prepare an itemized statement, which will be provided to the Association showing the specific work completed, and all Eligible Costs. The Association may request, and shall receive, documentation supporting the statement of Eligible Costs and may also audit the accounting. The County agrees to expend its legislative appropriation for Eligible Costs before initiating reimbursement requests for Eligible Costs from the Association.

## **6. ACCOUNTING AND APPLICATION.**

The County shall account for the receipt of reimbursements by the State of New Mexico from the legislative appropriation and all payments by the Association under a separate line item in the County's budget. All accounting shall be completed pursuant to generally accepted accounting practices and applicable New Mexico statutes. No payment made under this Agreement shall be considered a tax or assessment of any nature.

## **7. TERM.**

This Agreement shall commence as set forth in Paragraph 3 above and terminate upon completion of the work or December 1, 2014, whichever is earlier. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party, provided that the County shall be required to complete any Work in progress and the Association shall be required to pay for any Work completed. The foregoing is subject to the availability of funds by both parties and the determination of the availability of County funds and resources is in the sole discretion of the County.

## **8. TORT CLAIM LIABILITY.**

Nothing contained herein shall be deemed a waiver by the County of its rights pursuant to NMSA 1978, Section 41-4-1, et. seq., 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. The Association does not have the right to control the performance of the Work in any manner.

## **9. 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.

#### **10. 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  
P.O. Box 276  
Santa Fe, N.M. 87504-0276

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

La Tierra Association, Inc.  
P.O. Box 90039  
Albuquerque, N.M. 87199

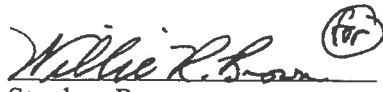
**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year last shown below.

**SANTA FE COUNTY**

  
Katherine Miller  
Santa Fe County Manager

11.1.12  
Date

**APPROVED AS TO LEGAL FORM:**

  
Stephen Ross  
Santa Fe County Attorney

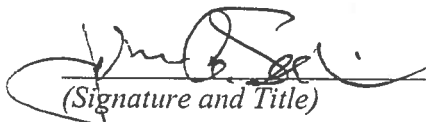
10/10/12  
Date

**FINANCE DEPARTMENT APPROVAL:**

  
Teresa Martinez  
Santa Fe County Finance Director

10/25/12  
Date

**LA TIERRA ASSOCIATION, INC.**

  
(Signature and Title)  
President

10/11/12  
Date

**EXHIBIT "A"**

**LA TIERRA SUBDIVISION**

**COUNTY MAINTAINED ROADS**

<u>ROAD:</u>	<u>BEGIN:</u>	<u>END:</u>	<u>LENGTH:</u>	<u>ESTIMATE:</u>
Vuelta Tomas	Paseo La Tierra	Dead end	0.48 miles	
Vuelta Linda	Estrada Redonda	Dead end	0.20 miles	
Vuelta Muerdago	Camino Montuoso	Dead end	0.38 miles	
Vuelta Montuoso	Vuelta Susana	Dead end	0.35 miles	
Estrada Redonda	Estrada Maya	Vuelta Linda	<u>0.34 miles</u>	
			1.75 miles	

## La Tierra Roads Improvement Map



### Legend



### Chipsel Proposed Roads



State\_Roads\_2012

PUBLISH.POLITICAL.INCORPORATED\_AREAS



<all other values>

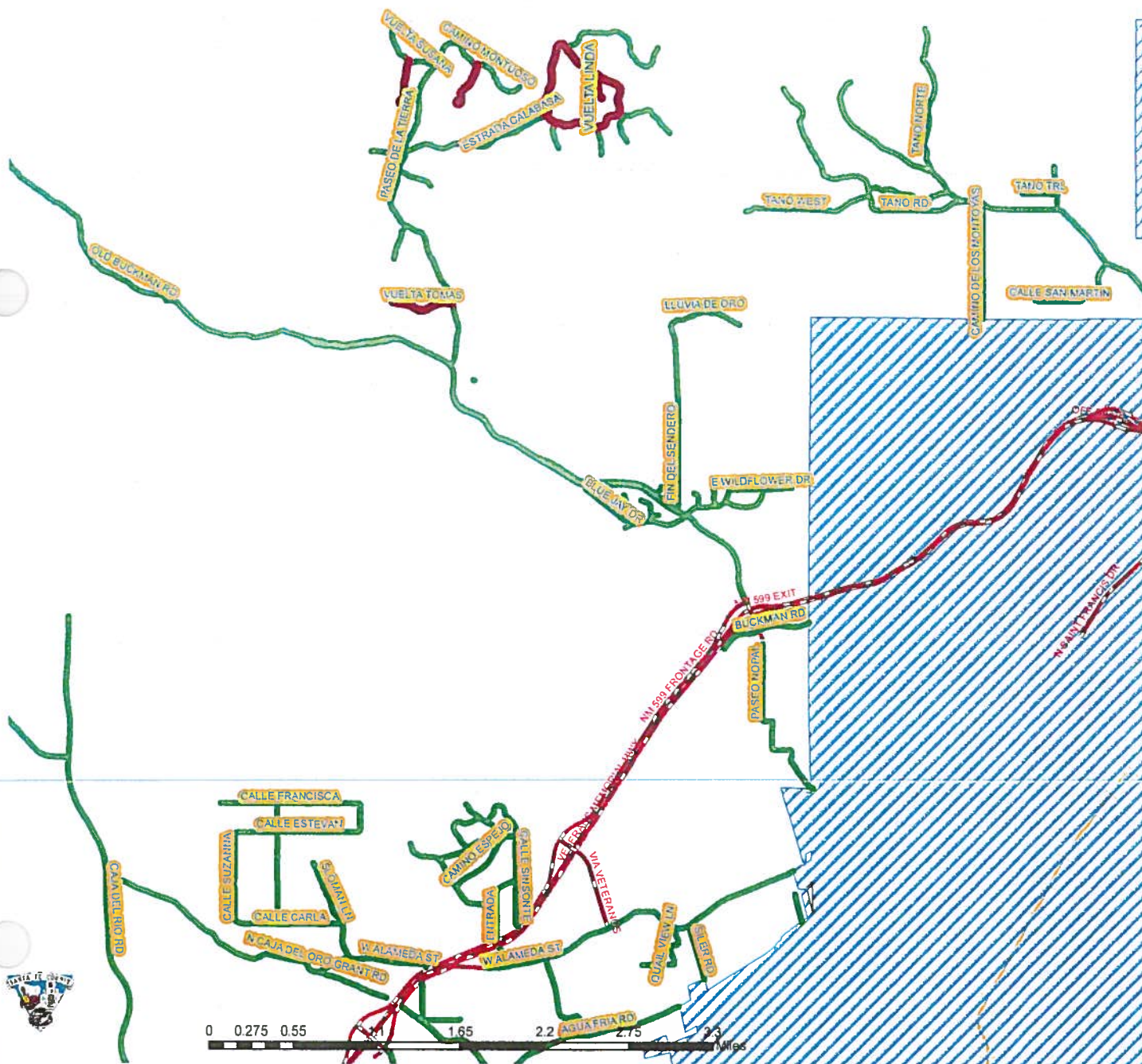
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# SANTA FE COUNTY

Page 1 of 4

## RESOLUTION 2012 -

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

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

Department / Division: Public Works/Project Development Fund Name: Road Projects Fund

Budget Adjustment Type: Budget Increase Fiscal Year: 2013 (July 1, 2012 - June 30, 2013)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
311	0668	360	0190	Grants/State/NM State Highway	\$100,000	
311	0668	371	0200	Contributions/Donations/Agreements	\$100,000	
TOTAL (if SUBTOTAL, check here)					\$200,000	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
311	0668	453	8011	Capital Purchases/Rdwy Capitalized Cont Svc	\$200,000	
TOTAL (if SUBTOTAL, check here)					\$200,000	

Requesting Department Approval:

Title:

Adam Leightland, PE, AICP  
Director, Public Works

Date:

MAR 13 2013

Finance Department Approval:

Date:

Entered by:

Date:

County Manager Approval:

Date:

Updated by:

Date:

# SANTA FE COUNTY

## RESOLUTION 2013 - \_\_\_\_\_

Page 2 of 4

ATTACH ADDITIONAL SHEETS IF NECESSARY.

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

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

- 1) Please summarize the request and its purpose.  
The Santa Fe County Public Works Department received a grant to make improvements to roads in the La Tierra Subdivision in the amount of \$100,000. In addition to the grant the La Tierra Association has agreed to contribute \$100,000 to the project in Agreement No. 2013-0167-PW/PL for the placement of a double chip seal application on some of the roads. The total estimated cost of the project is \$200,000.

### a) Employee Actions

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

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

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
8011	Double chip seal application for roads in the La Tierra subdivision.	\$200,000

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



# SANTA FE COUNTY

Page 3 of 4

## RESOLUTION 2013 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

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

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

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:

- a) If this is a state special appropriation, YES X NO        This will impact the Roads Project Fund (311)  
If YES, cite statute and attach a copy.

Laws of 2012 HB 191, Chapter 64, Section 18, Sub Section 44, one hundred thousand dollars (\$100,000) to plan, design and construct improvements, including resurfacing, to county roads in the La Tierra Subdivision in Santa Fe County.

- b) Does this include state or federal funds? YES X NO         
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.

Laws of 2012 HB 191, Chapter 64  
Appropriation ID: 12-1522  
NMDOT Control Number: C5121522  
Date: January 22, 2013

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

- d) Please identify other funding sources used to match this request.

Additional funding of \$100,000 included in the \$200,000 budget has been contributed by the La Tierra Association.

**SANTA FE COUNTY**  
**RESOLUTION 2013 - \_\_\_\_\_**

Page 4 of 4

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

**Approved, Adopted, and Passed This \_\_\_\_\_ Day of \_\_\_\_\_, 2013.**

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Kathleen Holian, Chairperson

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk

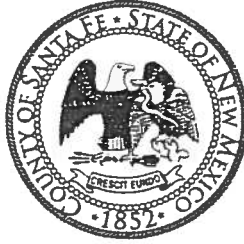




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *February 19, 2013*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director*

**VIA:** *Katherine Miller, County Manager*

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

**REQUEST APPROVAL OF GRANT AGREEMENT 12-L-G-1476 FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO MAKE IMPROVEMENTS TO THE OSCAR HUBER MEMORIAL BALL PARK AND GRANDSTANDS IN MADRID IN SANTA FE COUNTY IN THE AMOUNT OF \$332,000. (PUBLIC WORKS/ ADAM LEIGLAND)**

---

### **BACKGROUND AND SUMMARY:**

The Oscar Huber Memorial Park is registered in the National Register of Historic Places due to its long history as a mining town and ball field for the surrounding area. The Madrid Landowners Association requested state funding to repair the grandstands to a safe and functional facility to hold community events. Beginning in 2004, the state legislature began authorizing grants to Santa Fe County for that purpose.

In 2009, the County acquired the grandstand and contracted for the design and repair of the grandstands. Working in coordination with the State Historic Preservation Office and utilizing state funding, the County was able to restore the major structure of the grandstands. A total of \$331,371 in state grants was used to pay for the improvements. Due to insufficient funds, seating, electrical upgrades, and other site work were scheduled for a subsequent phase when more funds were available.

During the 2012 NM Legislative session, Santa Fe County was awarded funds to make the additional improvements to the grandstands. The NM Department of Finance has now issued Grant Agreement 12-L-G-1476 to Santa Fe County in the amount of \$332,000 for improvements to the Madrid Grandstands.

**ACTION REQUESTED:**

Staff is requesting approval of Grant Agreement 12-L-G-1476 to make improvements to the Oscar Huber Memorial Park including seating for the grandstand, electrical upgrades and site work in the amount of \$332,000.

**Santa Fe County**  
**Fiscal Impact Report**

Department: Public Works Department

Action Item for discussion: Oscar Huber Grant Agreement

Agreement Number: \_\_\_\_\_

Indicate with An X below	Section 1 Identify the type of document below for BCC Consideration and Approval
	Revenue, e.g. Grant, charges and fees, etc.
	Contractual Services (includes change orders), e.g. Professional services agreement, construction, price agreement, joint powers agreement, lease agreement, etc.
X	Loan/Grant Agreement
	Other:

Indicate with An X below	Section 2 Funding Source Identify the item below for BCC Consideration and Approval
	General Fund, e.g. Property taxes, gross receipt Taxes, etc.
	Special Revenue Funds, e.g. Fire, Indigent, etc.
	Capital Outlay GRT, (capital infrastructure only, Does not include maintenance or repair costs)
	Bond Proceeds
X No match	Grant Funds Match Y or N If yes, indicate the percentage and amount required % and/or \$, and source.
	Other:

**Section 3 Ongoing operations and maintenance (O&M) requirements:**

Short Term (specify needs for the current fiscal year only) \$0 The facility will be under construction in the current fiscal.

How FTE's	#	N/A	Position	Hourly Rate
Current Fiscal Year Cost \$ 0				
Initial Costs (vehicle, computer, office space, etc.)				
<b>O &amp; M (Concisely identify the recurring needs, supplies, equipment, and the resources necessary for carrying out the job duties)</b> The Public Works Staff will be responsible for preventive maintenance and other maintenance not provided by the Madrid Land Owners Association.  Current Fiscal Year Cost \$ 0 The facility will be under construction in the current fiscal year.  Annual Cost \$ The annual maintenance cost is \$2,545 (based on 1% of the construction cost of \$254,500) for repairs other than the day to day maintenance provided by the Madrid Land Owners Association.				
<b>Long Term Specify the needs for the next four (4) years. This will include staff, O &amp; M, asset renewal and replacement costs, and additional capital needs.</b>  Salary & Benefits:  All other expenses: \$10,180 (based on 1% of the construction cost for 4 years).				

Additional narrative (should include additional information such as significant issues, administrative issues and technical issues. What consequences, if any, may occur if this item is not acted upon):

Blank lined area for additional narrative.



STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
SEVERANCE TAX BOND CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or "DFA", and the Santa Fe County, hereinafter called the "Grantee." The Effective Date of this agreement is the date of the last signature by both the Department and the Grantee.

RECITALS

WHEREAS, in the Laws of 2012, Chapter 64, Section 16, Para. 115 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1. NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iii) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (iv) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

12-L-G-1476      \$332,000.00      Appropriation Reversion Date: June 30, 2016  
Laws of 2012, Chapter 64, Section 16, Paragraph 115, Three hundred thirty-two thousand dollars (\$332,000) to plan, design, construct and equip improvements, including electrical and accessibility improvements, to the Oscar Huber memorial ball park and grandstands in Madrid in Santa Fe county;.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.

c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.

d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: Santa Fe County  
Name: Agnes Leyba-Cruz  
Title: Administration Manager  
Address: PO Box 276, Santa Fe, NM, 87504  
Email: alopez@santafecounty.org  
Telephone: (505)995-651  
FAX: (505)992-9869

Department: DFA/Local Government Division  
Name: Ms. Barbara J Romero  
Title: Line Manager II  
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501  
Email: barbara.romero@state.nm.us  
Telephone: 505-827-4602  
FAX: 505-827-4948

effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V.B.

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and

(ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI. D. herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II. herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI.A., the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

A. This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within 15 calendar days from the date of cashing or depositing of the State warrant.

#### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II. herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The Grantee hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Grantee insures compliance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time

account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Grantee may immediately terminate this Agreement by giving Contractor written notice of such termination. The Grantee's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. The Contractor hereby waives any rights to assert an impairment of contract claim against the Grantee, DFA, or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Grantee or DFA."

IN WITNESS WHEREOF, the Grantee and the Division do hereby execute this Grant Agreement as of the date of the first above written.

THIS GRANT AGREEMENT has been approved by:

GRANTEE

\_\_\_\_\_  
Mayor, County Commission Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Type or Print Name)

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

Approved as to form  
Santa Fe County Attorney  
By: [Signature]  
Date: 9/12/13

[Signature] 9/14/13

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_

seal

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

My Commission Expires: \_\_\_\_\_

DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

By: \_\_\_\_\_  
Ryan Gleason, Director

\_\_\_\_\_  
Date

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_

seal

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

My Commission Expires: \_\_\_\_\_

STATE OF NEW MEXICO  
SPECIAL APPROPRIATIONS PROJECTS  
Request for Payment Form  
Exhibit "II"

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
\_\_\_\_\_  
City State Zip  
C. Phone No: ( ) \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Grant Amount: \_\_\_\_\_  
B. AIPP Amount (If Applicable) \_\_\_\_\_  
C. Funds Requested to Date: \_\_\_\_\_  
D. Amount Requested this Payment: \_\_\_\_\_  
E. Grant Balance: \_\_\_\_\_  
F. ☐ GF ☐ STB (attach wire if 1st draw)  
G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**

(check one)

(Jan-Jun) ☐

(Jul-Dec) ☐

Fiscal

Year \_\_\_\_\_

**IV. Certification:**

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct, expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer \_\_\_\_\_

Printed Name \_\_\_\_\_

Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED

before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

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

My Commission expires \_\_\_\_\_

Grantee Representative \_\_\_\_\_

Printed Name \_\_\_\_\_

Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED

before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

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

My Commission expires \_\_\_\_\_

**(DFA/Local Government Division Use Only)**

Vendor Code: \_\_\_\_\_

Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

Division Fiscal Officer

Date

I certify that the Local Government financial and vendor  
file information agree with the above submitted  
information.

Division Project Manager

Date

I certify that the Local Government records and related appropriation  
laws agree with the above submitted information.

STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
SEVERANCE TAX BOND CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or "DFA", and the Santa Fe County, hereinafter called the "Grantee." The Effective Date of this agreement is the date of the last signature by both the Department and the Grantee.

RECITALS

WHEREAS, in the Laws of 2012, Chapter 64, Section 16, Para. 115 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1. NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iii) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (iv) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

12-L-G-1476      \$332,000.00      Appropriation Reversion Date: June 30, 2016  
Laws of 2012, Chapter 64, Section 16, Paragraph 115, Three hundred thirty-two thousand dollars (\$332,000) to plan, design, construct and equip improvements, including electrical and accessibility improvements, to the Oscar Huber memorial ball park and grandstands in Madrid in Santa Fe county;.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.



This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, requests for payment and reports.

## ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse\* Grantee (hereinafter referred to as "Notice of Obligation") for invoices. Notice of Obligation's will be issued in increments of \$50,000.00. This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a.) The Adjusted Appropriation Amount identified in Article I. A., herein or (b.) The total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein; and
- (v) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

\* "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.

c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.

d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: Santa Fe County  
Name: Agnes Leyba-Cruz  
Title: Administration Manager  
Address: PO Box 276, Santa Fe, NM, 87504  
Email: alopez@santafecounty.org  
Telephone: (505)995-651  
FAX: (505)992-9869

Department: DFA/Local Government Division  
Name: Ms. Barbara J Romero  
Title: Line Manager II  
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501  
Email: barbara.romero@state.nm.us  
Telephone: 505-827-4602  
FAX: 505-827-4948

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2016**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V. herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### ARTICLE V. EARLY TERMINATION

##### A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V. A.

##### B. Early Termination Before Reversion Date Due to Non-Appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the

effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V.B.

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and

(ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI. D. herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II. herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI.A., the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

A. This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit I. The Department shall provide the Grantee with a minimum of thirty (30) days advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

#### **B. Paper Final Report**

The Grantee shall submit to the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit I. The Department shall provide Grantee with a minimum of thirty (30) days advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

#### **C. Paperless Reporting**

In lieu of the paper reports described in subparagraphs A and B of this Article, the Department may, in its discretion, require Grantee to report periodic and final Project activity by entering such Project information as the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days advance, written notice of the switch to or from paperless reporting. The Department shall also give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

#### **D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII., the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article.

### **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit II. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III. herein, that the expenditures are valid or are liabilities incurred by the

Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within 15 calendar days from the date of cashing or depositing of the State warrant.

#### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed **\$25,000**; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II. herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The Grantee hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).

(ii) The Grantee insures compliance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time

of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."

(iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance written approval.

(v) The Grantee has the legal authority to receive and expend the Project's funds.

(vi) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(vii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.

(viii) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(ix) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(x) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and federal whistleblower laws. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(xi) The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub-awards, including subcontracts, loans and cooperative agreements. All sub-recipients shall be required to certify accordingly.

(xii) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

#### ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS: PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank

account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Grantee may immediately terminate this Agreement by giving Contractor written notice of such termination. The Grantee's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. The Contractor hereby waives any rights to assert an impairment of contract claim against the Grantee, DFA, or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Grantee or DFA."



ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA Grant Agreement. Should the DFA early terminate the grant agreement, the Grantee may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Grantee's only liability shall be to pay Contractor or vendor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. SEVERANCE TAX BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursement rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]



Date \_\_\_\_\_

Approved as to form

**Santa Fe County Attorney**

By: Robert H. [Signature]

Date: 2/12/13

Amg 3/13/12

seal

Notary Public

My Commission Expires: \_\_\_\_\_

Date \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

seal

Notary Public

My Commission Expires: \_\_\_\_\_

**STATE OF NEW MEXICO  
SPECIAL APPROPRIATIONS PROJECTS  
Periodic/Final Report Form  
Exhibit "I"**

☐ PERIODIC REPORT      ☐ FINAL REPORT

(Complete one report form for each project included in the Agreement)

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

A. Contracts (provide contract #, vendor name, dates entered and termination)

Contract # \_\_\_\_\_ Vendor \_\_\_\_\_

Contract amount # \_\_\_\_\_ Date executed \_\_\_\_\_ Termination \_\_\_\_\_

B. Project Phase

Bonds sold ☐ Plan/design ☐ Bid documents ☐ Construction Phase ☐  
(provide anticipated date of commencement and completion for each phase)

2. Project Amount: \_\_\_\_\_

Expended to date: \_\_\_\_\_

Grant Balance: \_\_\_\_\_

☐ PERIODIC REPORT

I hereby certify that the aforementioned Special Appropriations Project funds are being expended in accordance with the Project description (Exhibit A) of the Grant Agreement, and in compliance with all other applicable state statutory/regulatory requirements.

☐ FINAL REPORT

I hereby certify that the aforementioned Special Appropriations project funds have been completed and funds were expended in accordance with the Project description (Exhibit A) of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO**  
**SPECIAL APPROPRIATIONS PROJECTS**  
**Request for Payment Form**  
**Exhibit "II"**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
\_\_\_\_\_  
City State Zip  
C. Phone No: ( ) \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Grant Amount: \_\_\_\_\_  
B. AIPP Amount (If Applicable) \_\_\_\_\_  
C. Funds Requested to Date: \_\_\_\_\_  
D. Amount Requested this Payment: \_\_\_\_\_  
E. Grant Balance: \_\_\_\_\_  
F. ☐ GF ☐ STB (attach wire if 1st draw)  
G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:** \_\_\_\_\_ (Jan-Jun) ☐ Fiscal  
(check one) \_\_\_\_\_ (Jul-Dec) ☐ Year \_\_\_\_\_

**IV. Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**(DFA/Local Government Division Use Only)**

Vendor Code: \_\_\_\_\_  
Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

Division Fiscal Officer	Date
I certify that the Local Government financial and vendor file information agree with the above submitted information.	

Division Project Manager	Date
I certify that the Local Government records and related appropriation laws agree with the above submitted information.	

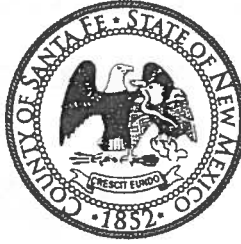




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**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:** *February 13, 2013*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director* 

**VIA:** *Katherine Miller, County Manager*

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

REQUEST APPROVAL OF A JOINT POWERS AGREEMENT BETWEEN THE  
GREATER GLORIETA COMMUNITY REGIONAL MUTUAL DOMESTIC WATER  
CONSUMERS AND SEWAGE WORKS ASSOCIATION AND SANTA FE COUNTY  
(PUBLIC WORKS/ ADAM LEIGLAND)

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**BACKGROUND AND SUMMARY:**

Santa Fe County has received a Community Development Block Grant to provide financial assistance for the construction of a new water line which will connect the Glorieta Estates with the Village of Glorieta, via the Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association (GGCRMDWCSWA) water system.

The GGCRMDWCSWA has received funding from the Water Trust Board (WTB) totaling \$363,282.00 for the project. Santa Fe County has received \$424,759.00 in CDBG funds for the project. The engineers estimate for the total project is \$788,047.00.

The attached Joint Powers Agreement (JPA) provides a mechanism for the County and GGCRMDWCSWA to cooperate on the construction of the project and share the resources both entities are able to provide for funding the water line extension. The GGCRMDWCSWA has reviewed the JPA but not signed it. Staff is requesting that the Board approve the attached JPA contingent upon the GGCRMDWCSWA signing it and upon any requested changes being nonsubstantial.

**ACTION REQUESTED:**

Staff is requesting that the Board of County Commissioners approve a Joint Powers Agreement between the GGCRMDWCSWA and Santa Fe County for the construction of a new water line to serve the greater Glorieta area, contingent upon the signature by the GGCRMDWCSWA upon any requested changes being nonsubstantial.

**Santa Fe County**  
**Fiscal Impact Report**

Department: Public Works / Projects, Facilities and Open Space

Action Item for discussion: Greater Glorieta Water System Improvements

Agreement Number: \_\_\_\_\_

Indicate with An X below	Section 1 Identify the type of document below for BCC Consideration and Approval
	Revenue, e.g. Grant, charges and fees, etc.
X	Contractual Services (includes change orders), e.g. Professional services agreement, construction, price agreement, joint powers agreement, lease agreement, etc.
	Loan/Grant Agreement
	Other:

Indicate with An X below	Section 2 Funding Source Identify the item below for BCC Consideration and Approval
	General Fund, e.g. Property taxes, gross receipt Taxes, etc.
	Special Revenue Funds, e.g. Fire, Indigent, etc.
X	Capital Outlay GRT, (capital infrastructure only, Does not include maintenance or repair costs)
	Bond Proceeds
X	Grant Funds Match <u>YES</u> or N If yes, indicate the percentage and amount required % and/or \$, and source. 10%, \$42,475.00, Utilities – match for grant approved by BCC on Mar 12, 2013
	Other:

**Section 3 Ongoing operations and maintenance (O&M) requirements:**

Short Term (specify needs for the current fiscal year only)

N/A

New FTE's	#	N / A	Position	Hourly Rate
Current Fiscal Year Cost \$				

Initial Costs (vehicle, computer, office space, etc.)

O & M (Concisely identify the recurring needs, supplies, equipment, and the resources necessary for carrying out the job duties)

N / A

Current Fiscal Year Cost \$

Annual Cost \$

Long Term Specify the needs for the next four (4) years. This will include staff, O & M, asset renewal and replacement costs, and additional capital needs.

N / A

Salary & Benefits:

All other expenses:



**Additional Narrative (Should include additional information such as significant issues, administrative issues and technical issues. What consequences, if any, may occur if this item is not acted upon):**

**JOINT POWERS AGREEMENT  
BETWEEN THE  
GREATER GLORIETA COMMUNITY  
REGIONAL MUTUAL DOMESTIC WATER CONSUMERS  
AND SEWAGE WORKS ASSOCIATION  
AND  
SANTA FE COUNTY**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and entered into by the **Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association** (hereinafter “GGMDWCA”) and **Santa Fe County** (hereinafter “County”) pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1, *et seq.* The purpose of this Joint Powers Agreement (hereafter “Agreement”) is to provide for the agreement to provide mutual assistance and cooperation for the completion of improvements to the GGMDWCA water system to the benefit of both parties.

**WHEREAS**, the GGMDWCA was incorporated as a domestic nonprofit in 2010 and commenced active water utility operations in 2012 by the merger of three former mutual domestics: Glorieta Estates Mutual Domestic Water Consumers Association, Glorieta Water Users Association, and East Glorieta Mutual Domestic Water Consumers Association. The three mutual domestics merged into the GGMDWCA. The purpose of the GGMDWCA is to improve the public health of the residents of the community of Glorieta and the greater Glorieta region through the acquisition, construction and improvement of water supply reuse, storm drainage and wastewater facilities;

**WHEREAS**, Santa Fe County is a political subdivision of the State of New Mexico and the GGMDWCA is a mutual domestic water association organized and existing as a domestic nonprofit corporation and a political subdivision of the State of New Mexico;

**WHEREAS**, the GGMDWCA needs to complete improvements to its water line to improve the water quality of the utility and improve the infrastructure to benefit its residents, community and citizens of the County;

**WHEREAS**, the GGMDWCA has secured \$368,282.00 (“NMFA Loan/Grant No. 192-WTB,” hereinafter referred to as “WTB funds”) from the Water Project Fund administered by the New Mexico Finance Authority (“NMFA”), as authorized by the Water Trust Board (hereinafter “WTB”) for improvements to the infrastructure of the water system that benefits the GGMDWCA;

**WHEREAS**, the County, on behalf of the GGMDWCA, applied for and received a Community Development Block Grant (“CDBG No. 12-C-NR-I-01-G-36”) from the State of New Mexico in the amount of \$424,759.00 to assist the GGMDWCA to make necessary improvements to its waterline system;

**WHEREAS**, the GGMDWCA has procured the services of licensed engineer HDR

Engineering, Inc. (the "Engineer") to design and provide construction administration for the construction of the improvements to the GGMDWCA waterline. The Engineer's estimate of probable construction cost of the waterline improvement project is \$788,047.00;

**WHEREAS**, the County and the GGMDWCA are willing to cooperate to provide for the design and construction of the waterline improvements with funds from NMFA Loan/Grant No. 192-WTB and CDBG No. 12-C-NR-I-01-G-36;

**WHEREAS**, it is necessary for the parties to enter into this Agreement to provide for the duties and responsibilities in the construction, construction administration, ownership and maintenance of the water system improvements and each party's responsibilities; and

**WHEREAS**, the County and GGMDWCA are authorized by law to enter into this Joint Powers Agreement, and the common power to be exercised is to own, operate and maintain a public water utility system.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

#### **Article 1**

##### **General Purpose of Agreement**

1.1. The purpose of this Agreement is to state the agreement and understanding of the parties for the construction, ownership and responsibilities for continued operation and maintenance of the improved water utility system that serves the Village of Glorieta and the greater Glorieta region. The improvements to be completed pursuant to this Agreement are (hereinafter referred to collectively as the "Improvements"):

1. Installation of approximately 4,300 lineal feet of new 8" waterline, fittings and joint restraints;
2. Installation of gate valves;
3. Installation of fire hydrants;
4. Connections to the existing waterline system;
5. Replacement of 101 existing service connection with services that includes water meters and meter boxes equipped for remote meter reading;
6. Installation of automated/remote water meter reading hardware and software.

Construction will occur along Avenida Ponderosa in the unincorporated community of Glorieta to connect the portion of GGMDWCA's water utility system serving Glorieta Estates to the portion of GGMDWCA's water utility system serving the central portion of the unincorporated community of Glorieta. The waterline will be installed at a minimum depth of 4 feet from the ground surface and the existing roadway will be restored to its original condition consisting of a chip seal road surface.

## Article 2 Obligations and Duties of the Parties

### 2.1 The County agrees to:

- (1) To accept the Limited Assignment and assume the duties of the Owner under the Contract between GGMDWCA and the Engineer.
- (2) To obtain a construction easement or license from BNSF for the portions of the BNSF right-of-way that will be affected by construction of the Improvements.
- (3) Procure a construction contract for services of a qualified and licensed contractor to complete the construction of the Improvements in accordance with the Engineer's design and specifications.
- (4) Cooperate with the GGMDWCA by providing documentation and information necessary for the GGMDWCA's submission of documentation and information for reimbursement of project expenses from WTB funds.
- (5) To timely provide to GGMDWCA all necessary information and documentation held by the County that would assist the GGMDWCA in any audit requirement imposed on the expenditure or disbursement of the WTB funds or CDBG No. 12-C-NR-I-01-G-36.
- (6) Upon issuance of final payment to the contractor, the County shall assign all rights and duties of the Owner under the construction contract to the GGMDWCA including any general guarantees or warranties regarding materials or workmanship and convey ownership of the Improvements to the GGMDWCA.
- (7) Upon conveyance of the Improvements to the GGMDWCA, grant an easement to the GGMDWCA for the GGMDWCA's continued operation and maintenance of the waterline system and improvements.

### 2.2 The GGMDWCA agrees to:

- (1) Assign its rights and duties to the County as stated in the Limited Assignment of Contract attached hereto as Exhibit A.
- (2) Work with and cooperate with the County in GGMDWCA's performance of the duty to make payments to and compensate the Engineer including any determination regarding liquidated damages.
- (3) To timely provide to the County all necessary information and documentation held by the GGMDWCA that would assist the County in any audit requirement imposed on the expenditure or disbursement of CDBG No. 12-C-NR-I-01-G-36 or the WTB funds.
- (4) Cooperate with the County by providing documentation and information necessary for the County's submission of documentation and information for reimbursement or payment of funds from CDBG No. 12-C-NR-I-01-G-36.
- (5) Accept the County's conveyance of the Improvements for continued operation and maintenance of the waterline and improvements.
- (6) Obtain an easement or license from BNSF and the County for GGMDWCA's ownership and operation of the waterline system.

- (7) Be fully responsible for the continued operation and maintenance of the waterline system and improvements.

### **Article 3**

#### **Funds to be Paid and Disbursed by the Parties**

3.1 The parties agree that payment for completion of the Improvements described above shall be provided by both parties: Three Hundred Sixty-Three Thousand Two Hundred Eight-Two Dollars (\$363,282.00) of WTB funds, part of which have been expended for the project prior to this Agreement, will be made available by the GGMDWCA and Four Hundred Twenty-Four Thousand Seven Hundred Fifty-Nine Dollars (\$424,759.00) in CDBG Grant funds (CDBG # No. 12-C-NR-I-01-G-36) will be made available by the County.

3.2 The parties understand and agree that all funds shall be expended for allowable costs under the terms and conditions of the WTB funds and CDBG # No. 12-C-NR-I-01-G-36. The parties recognize that the WTB funds must be expended no later than October 14, 2014 and CDBG No. 12-C-NR-I-01-G-36 no later than two (2) years from the date of the State of New Mexico's acceptance of the CDBG No. 12-C-NR-I-01-G-36 Grant Agreement.

### **Article 4**

#### **Term and Termination**

4.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

4.2 At all times during this Agreement's term, either party may terminate the Agreement for cause (i.e. any violation of this Agreement's terms). This Agreement shall not be terminated while the County has an ownership interest in the Improvements.

### **Article 5**

#### **Disposition of Property; Return of Surplus Funds**

5.1 Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, the property and the funds shall be returned to each party and if less than the original amount of property or funds contributed remains, then returns shall be in proportion to the parties' original contribution.

5.2 Upon expiration or termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of the Improvements and a full accounting.

**Article 6**  
**Appropriations**

6.1 The terms of this Agreement are contingent upon sufficient appropriations and authorizations being granted by the New Mexico State Legislature and the Santa Fe County Commission, as appropriate. If sufficient appropriations or authorizations are not granted, the County may terminate this Agreement, or suspend performance pending approval of sufficient appropriations or authorizations, upon written notice from one to the other, regardless of any other provisions in this Agreement. The County's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the GGMDWCA.

**Article 7**  
**Insurance**

7.1 The parties, each at its own expense, shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

7.2 The insurance required by this Agreement shall be from a reliable insurance company and such policy shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to the other party at a party's request.

**Article 8**  
**Records and Audits, Strict Accountability**

8.1 Both parties shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to the GGMDWCA, the County, State of New Mexico Department of Finance and Administration, New Mexico Finance Authority and the State Auditor upon request, and shall maintain all such records for three (3) years after this Agreement has expired or has been terminated.

**Article 9**  
**Liability**

9.1 No party hereto shall be responsible for liability incurred as a result of one of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* as amended.

**Article 10**  
Third Party Beneficiary

10.1 The parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any right whatsoever such as but not limited to the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**Article 11**  
Dispute Resolution

11.1 Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, then either party may seek redress of their respective issues in a New Mexico state court of competent jurisdiction.

**Article 12**  
Governing Law

12.1 The laws of the State of New Mexico shall govern this Agreement.

12.2 The parties stipulate and agree that funding for this project and completion of the Improvements was sought prior to the adoption of Santa Fe County Resolution 2012-58 and that County Resolution 2012-58 does not pertain to this project or completion of the Improvements.

**Article 13**  
Notice

13.1 Any notice, demand, request or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To County:               County Manager  
                                Santa Fe County  
                                102 Grant Avenue  
                                P.O. Box 276  
                                Santa Fe, NM 87504-0276

With Copy to:           Paul Olafson  
                                Community Projects Division

Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504-0276

To GGMDWCA: Anna Hamilton, President  
Greater Glorieta Community Regional Mutual  
Domestic Water Consumers and Sewage Works  
Association  
P.O. Box 223  
Glorieta, NM 87535

**Article 14**  
Amendment

14.1 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the Secretary of the New Mexico Department of Finance and Administration.

**Article 15-**  
Entire Agreement

15.1 This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth herein.

**IN WITNESS WHEREOF**, the parties have herein set their hand.

**SANTA FE COUNTY**

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

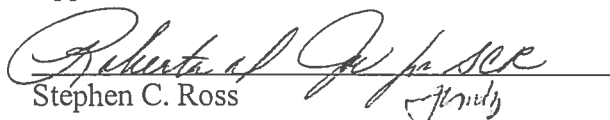
Date: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

Date: \_\_\_\_\_

Approved as to form:

  
Stephen C. Ross  
Santa Fe County Attorney

Date: March 12, 2013  
3/12/13



**GREATER GLORIETA COMMUNITY REGIONAL MUTUAL DOMESTIC WATER  
CONSUMERS AND SEWAGE WORKS ASSOCIATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Anna Hamilton, President

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
John L. Appel  
Coppler Law Firm, P.C.

Date: \_\_\_\_\_

**APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature and title)

## Limited Assignment of Contract

I. Assignment. For good and valuable consideration, the undersigned Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association (Assignor) hereby assigns, transfers and sets over to Santa Fe County (Assignee) rights, title and interest held by Assignor subject to certain exception and amendment, in and to the following described contract: **AGREEMENTS FOR ENGINEERING SERVICES (Publicly Funded Project) dated December 28, 2010 between The Greater Glorieta Water and Wastewater Association and HDR Engineering, Inc.,** as amended by Amendment No. 1 dated October 5, 2011, Amendment 2 dated February 22, 2012, and Amendment 3, dated July 24, 2012 (hereinafter referred to as the "Contract"). **This Limited Assignment of Contract specifically excludes Amendment 4 of the Contract, dated January 14, 2013.**

Purpose. The purpose of this Limited Assignment is for Assignee to administer and expend Community Development Block Grant No. 12-C-NR-I-01-G-36 obtained by the Assignee for the construction of a waterline connection and associated appurtenances between the Village of Glorieta and Glorieta Estates communities in Glorieta, New Mexico.

II. EXCEPTIONS TO ASSIGNMENT. Assignor's rights and duties under said contract are herein assigned to Santa Fe County **EXCEPT** the following provisions of the Contract and certain Exhibits for which the Assignor shall retain the rights, duties and obligations as OWNER:

- 1) Section A of the Contract, Article 7. Payment,
- 2) Section A of the Contract, Article 8(b)(1) – (4) Contract Time and Liquidated Damages as more specifically provided for at Paragraphs 2, 4, 5 and 8 of ATTACHMENTS,
- 3) Section B of the Contract, Paragraphs 1 and 2 of Engineering Services During the Planning Phase, Paragraph 3 of Engineering Services During the Design Phase, and Paragraphs 26 through 31 of Engineering Services During the Operation Phase,
- 4) Exhibit A to the Contract, PART 1, A1.01 (*Study and Report Phase*) through A.1.03.D.
- 5) Amendment 1, dated October 6, 2011, COMPENSATION on Page 3,
- 6) Amendment 2, dated February 22, 2012, in its entirety,
- 7) Amendment 3, dated July 24, 2012, COMPENSATION,
- 8) Amendment 4, dated January 14, 2013, in its entirety, and
- 9) Any subsequent amendments entered into between the Assignor and HDR Engineering for other phases of the Greater Glorieta Regional Water Supply Project that are unrelated to the expenditure of Community Development Block Grant No. 12-C-NR-I-01-G-36, unless otherwise stated in the amendment.

### III. Amendments.

- 1) Assignor and Assignee agree that this Limited Assignment of Contract shall incorporate an amendment to the contract to insert the following provisions in SECTION A, as Article 22 (MACC for CDBG funded projects) and Article 23 (Federal Terms and Conditions for Professional Services (for CDBG funded projects).



## **22. Maximum Allowable Construction Cost (for CDBG funded projects)**

(a) Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

(b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

(c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.

(d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

(f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost.

(g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed Seven Hundred Eighty-Eight Thousand Forty-Seven Dollars (\$788,047.00).

### **23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)**

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the

Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) Assign ability. The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) Reports and Information. The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available

for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) Compliance with Local Laws. The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) Equal Employment Opportunity. During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises



any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

2) Assignor and Assignee further agree that this Limited Assignment of Contract shall also incorporate an amendment to the Contract to indicate in SECTION D of the Contract (Special Provisions or Modifications to the Standard Language in this Agreement), a modification to Article 22(g) above. Insert into SECTION D the following:

2. SECTION A, Article 22(g) of this Agreement is deleted and replaced with:

(g) If the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association elects to reduce the Probable Construction Cost, the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association shall cooperate with the Engineer in revising the quality and scope of the Project. If requested by the Owner and approved by the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association, the Engineer shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for any changes to the Drawings and Specifications to bring the Construction Cost within the MACC. The Greater

Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for additional costs associated with a re-bid if the Owner with the concurrence of the Greater Glorieta Mutual Domestic Water Consumer's and Sewage Works Association determines that a rebid is necessary. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

IV. Assignor warrants that said the Contract is in full force and effect and is assignable upon mutual consent of the parties thereto to the extent of this Limited Assignment set forth herein.

V. Assignee hereby assumes and agrees to perform the remaining executor obligations of Assignor under the Contract to the extent of the Limited Assignment set forth herein.

VI. Assignor warrants that the Contract as amended is without modification except as set forth in the amendments described herein, and remains on the terms thereon.

VII. Assignor further warrants that it has the right and authority to assign the Contract to the extent of the Limited Assignment herein, and that the Contract rights assigned herein are free of lien, encumbrances or adverse claim.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**Assignor Greater Glorieta Mutual Domestic  
Water Consumers and Sewage Works Association**

\_\_\_\_\_  
Anna Hamilton, President

Date: \_\_\_\_\_

**Approved by HDR Engineering, Inc.**

\_\_\_\_\_  
Peter Brakenhoff, V.P. Operations Manager

Date: \_\_\_\_\_

**Assignee Santa Fe County**

\_\_\_\_\_  
Kathleen S. Holian, 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: March 12, 2013

**Agency Concurrence – NMED Construction Programs Bureau**

By: \_\_\_\_\_  
(signature and title)

Date: \_\_\_\_\_

**JOINT POWERS AGREEMENT  
BETWEEN THE  
GREATER GLORIETA COMMUNITY  
REGIONAL MUTUAL DOMESTIC WATER CONSUMERS  
AND SEWAGE WORKS ASSOCIATION  
AND  
SANTA FE COUNTY**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and entered into by the **Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association** (hereinafter “GGMDWCA”) and **Santa Fe County** (hereinafter “County”) pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1, *et seq.* The purpose of this Joint Powers Agreement (hereafter “Agreement”) is to provide for the agreement to provide mutual assistance and cooperation for the completion of improvements to the GGMDWCA water system to the benefit of both parties.

**WHEREAS**, the GGMDWCA was incorporated as a domestic nonprofit in 2010 and commenced active water utility operations in 2012 by the merger of three former mutual domestics: Glorieta Estates Mutual Domestic Water Consumers Association, Glorieta Water Users Association, and East Glorieta Mutual Domestic Water Consumers Association. The three mutual domestics merged into the GGMDWCA. The purpose of the GGMDWCA is to improve the public health of the residents of the community of Glorieta and the greater Glorieta region through the acquisition, construction and improvement of water supply reuse, storm drainage and wastewater facilities;

**WHEREAS**, Santa Fe County is a political subdivision of the State of New Mexico and the GGMDWCA is a mutual domestic water association organized and existing as a domestic nonprofit corporation and a political subdivision of the State of New Mexico;

**WHEREAS**, the GGMDWCA needs to complete improvements to its water line to improve the water quality of the utility and improve the infrastructure to benefit its residents, community and citizens of the County;

**WHEREAS**, the GGMDWCA has secured \$368,282.00 (“NMFA Loan/Grant No. 192-WTB,” hereinafter referred to as “WTB funds”) from the Water Project Fund administered by the New Mexico Finance Authority (“NMFA”), as authorized by the Water Trust Board (hereinafter “WTB”) for improvements to the infrastructure of the water system that benefits the GGMDWCA;

**WHEREAS**, the County, on behalf of the GGMDWCA, applied for and received a Community Development Block Grant (“CDBG No. 12-C-NR-I-01-G-36”) from the State of New Mexico in the amount of \$424,759.00 to assist the GGMDWCA to make necessary improvements to its waterline system;

**WHEREAS**, the GGMDWCA has procured the services of licensed engineer HDR

Engineering, Inc. (the "Engineer") to design and provide construction administration for the construction of the improvements to the GGMDWCA waterline. The Engineer's estimate of probable construction cost of the waterline improvement project is \$788,047.00;

**WHEREAS**, the County and the GGMDWCA are willing to cooperate to provide for the design and construction of the waterline improvements with funds from NMFA Loan/Grant No. 192-WTB and CDBG No. 12-C-NR-I-01-G-36;

**WHEREAS**, it is necessary for the parties to enter into this Agreement to provide for the duties and responsibilities in the construction, construction administration, ownership and maintenance of the water system improvements and each party's responsibilities; and

**WHEREAS**, the County and GGMDWCA are authorized by law to enter into this Joint Powers Agreement, and the common power to be exercised is to own, operate and maintain a public water utility system.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

#### **Article 1**

##### **General Purpose of Agreement**

1.1. The purpose of this Agreement is to state the agreement and understanding of the parties for the construction, ownership and responsibilities for continued operation and maintenance of the improved water utility system that serves the Village of Glorieta and the greater Glorieta region. The improvements to be completed pursuant to this Agreement are (hereinafter referred to collectively as the "Improvements"):

1. Installation of approximately 4,300 lineal feet of new 8" waterline, fittings and joint restraints;
2. Installation of gate valves;
3. Installation of fire hydrants;
4. Connections to the existing waterline system;
5. Replacement of 101 existing service connection with services that includes water meters and meter boxes equipped for remote meter reading;
6. Installation of automated/remote water meter reading hardware and software.

Construction will occur along Avenida Ponderosa in the unincorporated community of Glorieta to connect the portion of GGMDWCA's water utility system serving Glorieta Estates to the portion of GGMDWCA's water utility system serving the central portion of the unincorporated community of Glorieta. The waterline will be installed at a minimum depth of 4 feet from the ground surface and the existing roadway will be restored to its original condition consisting of a chip seal road surface.

## Article 2 Obligations and Duties of the Parties

### 2.1 The County agrees to:

- (1) To accept the Limited Assignment and assume the duties of the Owner under the Contract between GGMDWCA and the Engineer.
- (2) To obtain a construction easement or license from BNSF for the portions of the BNSF right-of-way that will be affected by construction of the Improvements.
- (3) Procure a construction contract for services of a qualified and licensed contractor to complete the construction of the Improvements in accordance with the Engineer's design and specifications.
- (4) Cooperate with the GGMDWCA by providing documentation and information necessary for the GGMDWCA's submission of documentation and information for reimbursement of project expenses from WTB funds.
- (5) To timely provide to GGMDWCA all necessary information and documentation held by the County that would assist the GGMDWCA in any audit requirement imposed on the expenditure or disbursement of the WTB funds or CDBG No. 12-C-NR-I-01-G-36.
- (6) Upon issuance of final payment to the contractor, the County shall assign all rights and duties of the Owner under the construction contract to the GGMDWCA including any general guarantees or warranties regarding materials or workmanship and convey ownership of the Improvements to the GGMDWCA.
- (7) Upon conveyance of the Improvements to the GGMDWCA, grant an easement to the GGMDWCA for the GGMDWCA's continued operation and maintenance of the waterline system and improvements.

### 2.2 The GGMDWCA agrees to:

- (1) Assign its rights and duties to the County as stated in the Limited Assignment of Contract attached hereto as Exhibit A.
- (2) Work with and cooperate with the County in GGMDWCA's performance of the duty to make payments to and compensate the Engineer including any determination regarding liquidated damages.
- (3) To timely provide to the County all necessary information and documentation held by the GGMDWCA that would assist the County in any audit requirement imposed on the expenditure or disbursement of CDBG No. 12-C-NR-I-01-G-36 or the WTB funds.
- (4) Cooperate with the County by providing documentation and information necessary for the County's submission of documentation and information for reimbursement or payment of funds from CDBG No. 12-C-NR-I-01-G-36.
- (5) Accept the County's conveyance of the Improvements for continued operation and maintenance of the waterline and improvements.
- (6) Obtain an easement or license from BNSF and the County for GGMDWCA's ownership and operation of the waterline system.

- (7) Be fully responsible for the continued operation and maintenance of the waterline system and improvements.

### **Article 3**

#### **Funds to be Paid and Disbursed by the Parties**

3.1 The parties agree that payment for completion of the Improvements described above shall be provided by both parties: Three Hundred Sixty-Three Thousand Two Hundred Eight-Two Dollars (\$363,282.00) of WTB funds, part of which have been expended for the project prior to this Agreement, will be made available by the GGMDWCA and Four Hundred Twenty-Four Thousand Seven Hundred Fifty-Nine Dollars (\$424,759.00) in CDBG Grant funds (CDBG # No. 12-C-NR-I-01-G-36) will be made available by the County.

3.2 The parties understand and agree that all funds shall be expended for allowable costs under the terms and conditions of the WTB funds and CDBG # No. 12-C-NR-I-01-G-36. The parties recognize that the WTB funds must be expended no later than October 14, 2014 and CDBG No. 12-C-NR-I-01-G-36 no later than two (2) years from the date of the State of New Mexico's acceptance of the CDBG No. 12-C-NR-I-01-G-36 Grant Agreement.

### **Article 4**

#### **Term and Termination**

4.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

4.2 At all times during this Agreement's term, either party may terminate the Agreement for cause (i.e. any violation of this Agreement's terms). This Agreement shall not be terminated while the County has an ownership interest in the Improvements.

### **Article 5**

#### **Disposition of Property; Return of Surplus Funds**

5.1 Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, the property and the funds shall be returned to each party and if less than the original amount of property or funds contributed remains, then returns shall be in proportion to the parties' original contribution.

5.2 Upon expiration or termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of the Improvements and a full accounting.

**Article 6**  
Appropriations

6.1 The terms of this Agreement are contingent upon sufficient appropriations and authorizations being granted by the New Mexico State Legislature and the Santa Fe County Commission, as appropriate. If sufficient appropriations or authorizations are not granted, the County may terminate this Agreement, or suspend performance pending approval of sufficient appropriations or authorizations, upon written notice from one to the other, regardless of any other provisions in this Agreement. The County's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the GGMDWCA.

**Article 7**  
Insurance

7.1 The parties, each at its own expense, shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

7.2 The insurance required by this Agreement shall be from a reliable insurance company and such policy shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to the other party at a party's request.

**Article 8**  
Records and Audits, Strict Accountability

8.1 Both parties shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to the GGMDWCA, the County, State of New Mexico Department of Finance and Administration, New Mexico Finance Authority and the State Auditor upon request, and shall maintain all such records for three (3) years after this Agreement has expired or has been terminated.

**Article 9**  
Liability

9.1 No party hereto shall be responsible for liability incurred as a result of one of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* as amended.



**Article 10**  
**Third Party Beneficiary**

10.1 The parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person, any right whatsoever such as but not limited to the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.

**Article 11**  
**Dispute Resolution**

11.1 Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, then either party may seek redress of their respective issues in a New Mexico state court of competent jurisdiction.

**Article 12**  
**Governing Law**

12.1 The laws of the State of New Mexico shall govern this Agreement.

12.2 The parties stipulate and agree that funding for this project and completion of the Improvements was sought prior to the adoption of Santa Fe County Resolution 2012-58 and that County Resolution 2012-58 does not pertain to this project or completion of the Improvements.

**Article 13**  
**Notice**

13.1 Any notice, demand, request or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

To County:           County Manager  
                          Santa Fe County  
                          102 Grant Avenue  
                          P.O. Box 276  
                          Santa Fe, NM 87504-0276

With Copy to:       Paul Olafson  
                          Community Projects Division

Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504-0276

To GGMDWCA: Anna Hamilton, President  
Greater Glorieta Community Regional Mutual  
Domestic Water Consumers and Sewage Works  
Association  
P.O. Box 223  
Glorieta, NM 87535

**Article 14**  
Amendment

14.1 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the Secretary of the New Mexico Department of Finance and Administration.

**Article 15-**  
Entire Agreement

15.1 This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth herein.

**IN WITNESS WHEREOF**, the parties have herein set their hand.

**SANTA FE COUNTY**

By: \_\_\_\_\_  
Kathleen S. Holian, 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: March 12, 2013  
3/13/13

**GREATER GLORIETA COMMUNITY REGIONAL MUTUAL DOMESTIC WATER  
CONSUMERS AND SEWAGE WORKS ASSOCIATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Anna Hamilton, President

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
John L. Appel  
Coppler Law Firm, P.C.

Date: \_\_\_\_\_

**APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature and title)

## Limited Assignment of Contract

I. Assignment. For good and valuable consideration, the undersigned Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association (Assignor) hereby assigns, transfers and sets over to Santa Fe County (Assignee) rights, title and interest held by Assignor subject to certain exception and amendment, in and to the following described contract: **AGREEMENTS FOR ENGINEERING SERVICES (Publicly Funded Project) dated December 28, 2010 between The Greater Glorieta Water and Wastewater Association and HDR Engineering, Inc.**, as amended by Amendment No. 1 dated October 5, 2011, Amendment 2 dated February 22, 2012, and Amendment 3, dated July 24, 2012 (hereinafter referred to as the "Contract"). **This Limited Assignment of Contract specifically excludes Amendment 4 of the Contract, dated January 14, 2013.**

Purpose. The purpose of this Limited Assignment is for Assignee to administer and expend Community Development Block Grant No. 12-C-NR-I-01-G-36 obtained by the Assignee for the construction of a waterline connection and associated appurtenances between the Village of Glorieta and Glorieta Estates communities in Glorieta, New Mexico.

II. EXCEPTIONS TO ASSIGNMENT. Assignor's rights and duties under said contract are herein assigned to Santa Fe County **EXCEPT** the following provisions of the Contract and certain Exhibits for which the Assignor shall retain the rights, duties and obligations as OWNER:

- 1) Section A of the Contract, Article 7. Payment,
- 2) Section A of the Contract, Article 8(b)(1) – (4) Contract Time and Liquidated Damages as more specifically provided for at Paragraphs 2, 4, 5 and 8 of ATTACHMENTS,
- 3) Section B of the Contract, Paragraphs 1 and 2 of Engineering Services During the Planning Phase, Paragraph 3 of Engineering Services During the Design Phase, and Paragraphs 26 through 31 of Engineering Services During the Operation Phase,
- 4) Exhibit A to the Contract, PART 1, A1.01 (*Study and Report Phase*) through A.1.03.D.
- 5) Amendment 1, dated October 6, 2011, COMPENSATION on Page 3,
- 6) Amendment 2, dated February 22, 2012, in its entirety,
- 7) Amendment 3, dated July 24, 2012, COMPENSATION,
- 8) Amendment 4, dated January 14, 2013, in its entirety, and
- 9) Any subsequent amendments entered into between the Assignor and HDR Engineering for other phases of the Greater Glorieta Regional Water Supply Project that are unrelated to the expenditure of Community Development Block Grant No. 12-C-NR-I-01-G-36, unless otherwise stated in the amendment.

### III. Amendments.

1) Assignor and Assignee agree that this Limited Assignment of Contract shall incorporate an amendment to the contract to insert the following provisions in SECTION A, as Article 22 (MACC for CDBG funded projects) and Article 23 (Federal Terms and Conditions for Professional Services (for CDBG funded projects).



## **22. Maximum Allowable Construction Cost (for CDBG funded projects)**

(a) Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

(b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

(c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.

(d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

(f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost.

(g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed Seven Hundred Eighty-Eight Thousand Forty-Seven Dollars (\$788,047.00).

**23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)**

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the

Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) Assign ability. The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) Reports and Information. The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available

for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) Compliance with Local Laws. The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) Equal Employment Opportunity. During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.



4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises

any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

2) Assignor and Assignee further agree that this Limited Assignment of Contract shall also incorporate an amendment to the Contract to indicate in SECTION D of the Contract (Special Provisions or Modifications to the Standard Language in this Agreement), a modification to Article 22(g) above. Insert into SECTION D the following:

2. SECTION A, Article 22(g) of this Agreement is deleted and replaced with:

(g) If the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association elects to reduce the Probable Construction Cost, the Owner in consultation with the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association shall cooperate with the Engineer in revising the quality and scope of the Project. If requested by the Owner and approved by the Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association, the Engineer shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Greater Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for any changes to the Drawings and Specifications to bring the Construction Cost within the MACC. The Greater

Glorieta Mutual Domestic Water Consumers and Sewage Works Association will compensate the Engineer for additional costs associated with a re-bid if the Owner with the concurrence of the Greater Glorieta Mutual Domestic Water Consumer's and Sewage Works Association determines that a rebid is necessary. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

IV. Assignor warrants that said the Contract is in full force and effect and is assignable upon mutual consent of the parties thereto to the extent of this Limited Assignment set forth herein.

V. Assignee hereby assumes and agrees to perform the remaining executor obligations of Assignor under the Contract to the extent of the Limited Assignment set forth herein.

VI. Assignor warrants that the Contract as amended is without modification except as set forth in the amendments described herein, and remains on the terms thereon.

VII. Assignor further warrants that it has the right and authority to assign the Contract to the extent of the Limited Assignment herein, and that the Contract rights assigned herein are free of lien, encumbrances or adverse claim.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**Assignor Greater Glorieta Mutual Domestic  
Water Consumers and Sewage Works Association**

\_\_\_\_\_  
Anna Hamilton, President

Date: \_\_\_\_\_

**Approved by HDR Engineering, Inc.**

\_\_\_\_\_  
Peter Brakenhoff, V.P. Operations Manager

Date: \_\_\_\_\_

**Assignee Santa Fe County**

\_\_\_\_\_  
Kathleen S. Holian, 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: March 12, 2013

**Agency Concurrence – NMED Construction Programs Bureau**

By: \_\_\_\_\_  
(signature and title)

Date: \_\_\_\_\_

