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: *April 8, 2014*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* BT

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

ITEM AND ISSUE: *BCC Meeting April 29, 2014*

REQUESTING BCC APPROVAL FOR PRICE AGREEMENTS #2014-0263-A-PW/MS VARIOUS SPECIFIED OILS AND EMULSIONS WITH WESTERN EMULSIONS, INC. AND #2014-0263-B-PW/MS VARIOUS SPECIFIED OILS AND EMULSIONS WITH HOLLY FRONTIER REFINING AND MARKETING, LLC. (***Bill Taylor, Purchasing/Adam Leigland, Public Works)***

Issue:

Santa Fe County Purchasing Division on behalf of the Public Works Department, Roads Maintenance Division issued an Invitation for Bid (IFB) #2014-0263-PW/MS Various, Specified Oils and Emulsions. Santa Fe County intended to award a multiple source price agreement pursuant to Section 13-1-153 NMSA 1978. Two bids were received from the following qualified bidders:

Western Emulsions, Inc. (Roswell, NM)
Holly Frontier Refining & Marketing LLC (Albuquerque, NM)

Background:

The oils and emulsions will be used for the road maintenance's pavement preservation projects. With the state price agreement we were limited to purchase the oil from only one vendor. Having our own price agreement gives us the option to purchase the oil from more than one vendor. This gives us the ability to purchase different types of oil for our pavement preservation projects. Depending on the condition of the road it might be beneficial to use specific oil for the treatment that is not on the state price agreement.

By approving both price agreements, it will assist the department staff in processing the invoices in accordance with Santa Fe County procurement procedures.

Action Requested:

Board of County Commission approval and authorization to enter into Price Agreement #2014-0263-A-PW/MS Various Specified Oils and Emulsions with Western Emulsions, Inc. and #2014-0263-PW/MS Various Specified Oils and Emulsions with Holly Frontier Refining and Marketing LLC.

SANTA FE COUNTY
PRICE AGREEMENT
VARIOUS, SPECIFIED OILS AND EMULSIONS

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

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

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

2. GOODS TO BE PROVIDED

A. **Purchase.** Attachment A of this Price Agreement are the prices for the Contractor's tangible goods and services. Attachment A also indicates any specifications required for the tangible goods and services that are subject of this Price Agreement.
B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any service ordered by the County must be a service described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2014-0263-B-PW/MS.
C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the item(s) or services listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Price Agreement. The Contractor is required to accept the Purchase Order and furnish the item(s) and service.
D. **Specifications.** The services furnished under this Price Agreement shall meet or exceed the specifications provided in IFB# 2014-0263-B-PW/MS including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s) or services(s).

E. Delivery and Billing Instructions.

1. The Contractor shall deliver the items and services in accordance with the County's instructions. The Contractor shall also deliver, with the services ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever, the Using Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within thirty (30) days that a deliverable is unacceptable by the Using Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices and rates for the items and services.

3. PAYMENT

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

A. Inspection. Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Contractor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed purchase orders are valid under this Price Agreement.

D. Invoices. The Contractor may submit invoices for payment no more frequently than monthly. All invoices **must** include the Invoice Number, Purchase Order (PO) number, name of the County Road, and project number. In some instances there may be more than one PO and road associated with a single order and delivery, in these instances all POs and the roads associated with the Purchase Order need to be indicated on the Invoice. The supplier of the oil will sample and test performance-graded asphalt binders in accordance with the NMDOT's *Standard Practice for Certifying Suppliers of Performance-Graded Asphalt Binders* and in accordance with Section 402.2.5 Performance-Graded Asphalt Binder (PGAB) of the Standard Specifications. The supplier of the oil will furnish Santa Fe County with the test certificates at the County's request.

E. Payment of Invoices. Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed

tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.

F. **Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Price Agreement is one (1) year. The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years in one (1) year increments. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

5. CANCELLATION

A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the services or deliverables fail to meet the requirements of this Price Agreement.

B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.

C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION

A. **For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date

of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.

B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

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

8. ASSIGNMENT

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

9. NON-COLLUSION

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

10. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the

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

12. CONFLICT OF INTEREST

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

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

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

14. SCOPE OF AGREEMENT, MERGER

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

15. NOTICE

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

16. INDEMNIFICATION

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY

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

18. NEW MEXICO TORT CLAIMS ACT.

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

19. INSURANCE.

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.

C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW

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

21. CHOICE OF LAW

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

22. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or

commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT

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

24. SURVIVAL

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

25. NOTICES

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

To the County:

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

To the Contractor:

Holly Frontier Refining and Marketing LLC
P.O. Box 26743
Albuquerque, NM 87125

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

26. FEDERAL REQUIREMENTS

Federal funds may be utilized for this Price Agreement. The following attached federal documents are an integral part of the Price Agreement:

A. Required contract Provisions, Federal Aid Construction contracts
B. Notice to Contractors – Equal Employment

C. Special Provision -- Specific EEO Responsibilities (23 U.S.C. 140)
D. Standard Federal EO Construction Contract Specification (Executive Order 11246)
E. Notice to Contractors Modifying Standard Federal EEO Construction Contract Specifications
F. Notice of Requirement for Affirmative Action to Ensure EEO (Executive Order 11246)
G. Federal-Aid Proposal Notices – Notices to Prospective Federal-Aid Construction Contractors
H. Notice to Contractors (Form FHWA 1273) Record of Materials
I. Notice to Contractors Preference Employment of Indian Tribes
J. Notice to Contractors – Toll Free Number to Report Bid Rigging – NMDOT
K. Notice to Contractors – Submission of Weekly Payrolls
L. Notice to Contractors – Apprentices
M. Notice to Contractors – Required Contract Provisions title VI Civil Rights Act
N. Notice to Contractors – Non-Collusion Declaration
O. Declaration of Non-Collusion for Award of Contract
P. Notice to Contractors – Certification for Federal-Aid Contract
Q. Disclosure of Lobbying Activities
R. Notice to Contractors – Reference Wage Rates
S. Notice to Contractors – Minimum Wage Rates
T. General Decision Rates: (General Decision Number: NM140048 01/03/2014 NM48) at http://www.wdol.gov/dba.aspx
U. Department of Labor – Notice "Public Works Apprenticeship and Training Act"
V. Article 4D – Public Works Apprenticeship and Training Complete

27. PRICE INCREASES AND DECREASES

In the event of a product cost increase a request for price increase from the Contractor will be considered and reviewed by the County on an individual basis and based on the Consumer Price Indexes (CPI). Price increases shall only be allowed for actual product increases and shall not be approved for increase in the Contractor's profit margin. Contractor shall also submit any product price decreases to the County. If the Contractor's prices are reduced for any reason the County shall have the benefit of such price reduction. Price increases will not be applied retroactively to orders already submitted to and processed by the County or any backorders. Orders pursuant to this Price Agreement will be filled at the prices in effect on the date of receipt or the order by the Contractor.

Request for price increases shall be submitted to the County and include the following information:

A. Contract Item Number
B. Current Item Price
C. Proposed New Price
D. Percentage of Increase
E. Mill/Supplier Notification of price increase indicating percentage of increase including reason for increase.

28. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints Joel M. Carson, a New Mexico Resident whose address is 207 S. 4th Street, Artesia, NM 88211-1720, as the agent for acceptance of services as a New Mexico resident, and as its agent upon process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that the service upon its designated agent shall have the same effect as through the Contractor were actually and personally serviced within the State of New Mexico.

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

SANTA FE COUNTY

Daniel W. Mayfield, Chair
Board of County Commissioners

Date

SANTA FE COUNTY

Katherine Miller, Manager

4.11.14
Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM

Santa Fe County Attorney

4-7-14
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Finance Department

4-10-14
Date

CONTRACTOR

Signature

4/10/14
Date

RANDALL CLARK MKT MNG.
Print Name and Title

FEDERAL TAX I.D. NUMBER: 20-2008139

Holly Frontier Refining & Mktg.

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
VARIOUS SPECIFIED OILS AND EMULSIONS
REVISED BID SHEETS(FINAL)
IFB #2014-0263-PW/MS

ITEM #	EST. QTY (Tons	ITEM DESCRIPTION	UNIT	UNIT PRICE	WRITTEN IN WORDS
		CATIONIC HIGH FLOAT RAPID SET POLYMER MODIFIED EMULSTIONS (CHFRS-2P)			
1	750	Cationic High Fload Rapid Set Polymer Modified Emulsions (CHRFS-2P) OR APPROVAL EQUAL	Ton	$585.00	Five hundred Eighty Five dollars and no cents per ton FOB vendor's facility
		CATIONIC RAPID SET (CRS-2P)			
2	750	Cationic Rapid Set (CRS-2P) OR APPROVED EQUAL	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility
		FASTSET 60% EMULSION 40% WATER			
3	750	FastSet 60% Emulsion 40% Water OR APPROVAL EQUAL	Ton	NO BID	NO BID
		POLYMER ASPHALT SURFACE SEALER (PASS)			
4	750	Polymer Asphalt Surface Sealer (Pass) OR APPROVED EQUAL	Ton	NO BID	NO BID
		PASS RECYCLE EMULSION - REJUVINATING (PASS-R)			
5	750	PASS Recycle Emulsion - Rejuvinating (PASS-R) OR APPROVED EQUAL	Ton	NO BID	NO BID
		POLYMER ASPHALT SURFACE SEALER - CHIP RETENTION (PASS-CR)			
6	750	Polymer Asphalt Surface Sealter - Chip Retention (PASS-CR) OR APPROVED EQUAL	Ton	NO BID	NO BID
		POLYMER ASPHALT SURFACE SEALER - QUICK BREAK (PASS-QB) 50% EMULSION 50% WATER			
7	750	Polymer Asphalt Surface Sealter - Quick Break (PASS-QB) 50% Emulsion 50% Water OR APPROVED EQUAL	Ton	NO BID	NO BID
		PLASTIC AND SEAL 60% EMULSION 40% WATER			
8	750	Plastic and Seal 60% Emulsion 40% Water OR APPROVED EQUAL	Ton	NO BID	NO BID
		GSB-88 GILSONITE SEALER/REJUV 67% EMULSION 33% WATER			
9	750	GSB-88 Gilsonite Sealer/Rejuv 67% Emulsion 33% Water OR APPROVED EQUAL	Ton	NO BID	NO BID

ATTACHMENT A

GSB-88 GILSONITE SEALER/REJUV 50% EMULSION 50% WATER					
10	750	GSB-88 Gilsonite Sealer/Rejuv 50% Emulsion 50% Water OR APPROVED EQUAL	Ton	NO BID	
TEXTURE SEAL SANDING OF FOG SEALS WITH BSA-35 SAND					
11	750	Texture Seal Sanding of Fog Seals with BSA-35 Sand OR APPROVED EQUAL	Sq Yd	NO BID	
SPREADING CHARGES FOR EMULSIONS					
12	As Needed	Spreading Charges for Emulsion with Distributor and Driver (24 Ton Minimum per Day)	Ton	$35.00	Thirty Five dollars and no cents per ton.
DELIVERY CHARGES FOR EMULSIONS					
13	As Needed	Delivery Charges for Emulsions All Locations in the County (24 Ton Minimum Per Day)	Ton	$25.54	Twenty Five dollars and fifty four cents per ton.
14	As Needed	Demurrage Charge for Delivery Trucks (First Two Hours Free)	Per/Hour	$70.00	Seventy dollars and no cents per hour.
15	As Needed	Pump Charge to Pump Into Customer Storage Tank	Load	$75.00	Seventy Five dollars and no cents per load.
ASPHALT EMULSIONS AND ASSOCIATED PRODUCTS					
16	750	AEP	Ton	$560.00	Five hundred Sixty dollars and no cents per ton FOB vendor's facility
17	750	PEP	Ton	$400.00	Four hundred dollars and no cents per ton FOB vendor's facility.
18	750	HFE-60	Ton	$465.00	Four hundred Sixty Five dollars and no cents per ton FOB vendor's facility.
19	750	HFE-60P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility
20	750	HFE-90	Ton	$465.00	Four hundred Sixty Five dollars and no cents per ton FOB vendor's facility.
21	750	HFE 100-1/1.1	Ton	$300.00	Three hundred dollars and no cents per ton FOB vendor's facility
22	750	HFRS-2P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.

23	750	HFE-100P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility
24	750	HFE-150	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.
25	750	HFD-300	Ton	$560.00	Five hundred Sixty dollars and no cents per ton FOB vendor's facility
26	750	HFE-300P	Ton	$625.00	Six hundred Twenty Five and no dollars per ton FOB vendor's facility.
27	750	CSS-1P/1:1	Ton	$335.00	Three hundred Thirty five dollars and no cents per ton FOB vendor's facility
28	750	CRS-2P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.
29	750	CHFRS-2P	Ton	$585.00	Five hundred Eighty Five dollars and no cents per ton FOB vendor's facility.
30	As Needed	DISTRIBUTOR	Per/Hour	$105.00	One hundred Five dollars and no cents per ton FOB vendor's facility.
			FOGSEAL		
31	As Needed	Rubberized Fogseal OR APPROVED EQUAL	Ton	NO BID	NO BID

Holly Frontier Refining & Mktg.

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
VARIOUS SPECIFIED OILS AND EMULSIONS
REVISED BID SHEETS(FINAL)
IFB #2014-0263-PW/MS

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4	750	Polymer Asphalt Surface Sealer (Pass) OR APPROVED EQUAL	Ton	NO BID	NO BID
		PASS RECYCLE EMULSION - REJUVINATING (PASS-R)			
5	750	PASS Recycle Emulsion - Rejuvinating (PASS-R) OR APPROVED EQUAL	Ton	NO BID	NO BID
		POLYMER ASPHALT SURFACE SEALER - CHIP RETENTION (PASS-CR)			
6	750	Polymer Asphalt Surface Sealter - Chip Retention (PASS-CR) OR APPROVED EQUAL	Ton	NO BID	NO BID
		POLYMER ASPHALT SURFACE SEALER - QUICK BREAK (PASS-QB) 50% EMULSION 50% WATER			
7	750	Polymer Asphalt Surface Sealter - Quick Break (PASS-QB) 50% Emulsion 50% Water OR APPROVED EQUAL	Ton	NO BID	NO BID
		PLASTIC AND SEAL 60% EMULSION 40% WATER			
8	750	Plastic and Seal 60% Emulsion 40% Water OR APPROVED EQUAL	Ton	NO BID	NO BID
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18	750	HFE-60	Ton	$465.00	Four hundred Sixty Five dollars and no cents per ton FOB vendor's facility.
19	750	HFE-60P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility
20	750	HFE-90	Ton	$465.00	Four hundred Sixty Five dollars and no cents per ton FOB vendor's facility.
21	750	HFE 100-1/1:1	Ton	$300.00	Three hundred dollars and no cents per ton FOB vendor's facility
22	750	HFRS-2P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.

23	750	HFE-100P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility
24	750	HFE-150	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.
25	750	HFD-300	Ton	$560.00	Five hundred Sixty dollars and no cents per ton FOB vendor's facility
26	750	HFE-300P	Ton	$625.00	Six hundred Twenty Five and no dollars per ton FOB vendor's facility.
27	750	CSS-1P/1:1	Ton	$335.00	Three hundred Thirty five dollars and no cents per ton FOB vendor's facility
28	750	CRS-2P	Ton	$540.00	Five hundred Forty dollars and no cents per ton FOB vendor's facility.
29	750	CHFRS-2P	Ton	$585.00	Five hundred Eighty Five dollars and no cents per ton FOB vendor's facility.
30	As Needed	DISTRIBUTOR	Per/Hour	$105.00	One hundred Five dollars and no cents per ton FOB vendor's facility.
			FOGSEAL		
31	As Needed	Rubberized Fogseal OR APPROVED EQUAL	Ton	NO BID	NO BID

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

• • • • •

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

• • • • •

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5 The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

APPENDIX G

DECLARATION OF NON-COLLUSION FOR AWARD OF CONTRACT

Form No. A-870
New 11-89

New Mexico State Highway and Transportation Department

DECLARATION OF NON-COLLUSION FOR AWARD OF CONTRACT

(Unsworn Declaration Under Penalty of Perjury)

The following declaration must be typed with no blanks prior to signing.

STATE OF NEW MEXICO)
)ss.
COUNTY OF Bernalillo)

I, RANDALL E CLACK affirm the following:

1. That I am over the age of 18 years.

2. That I am the NM Marketing Mgr (Title) of HollyFrontier Refining & Marketing, LLC (Name of Organization)

and that I am presenting the declaration to the New Mexico State Highway and Transportation Department as part of the consideration for the award of the contract in Project No. IFB #2014-0263-PW/MS.

3. That the above listed organization and its officers and employees or subsidiaries or parent corporations (check box a. or b. as appropriate):

( ) a. have not in any way participated in any activities in restraint of trade, or been debarred with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally assisted contract during the five year period immediately preceding this proposal or either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

( ) b. have participated in activities in restraint of trade with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally assisted contract during the five year period immediately preceding this proposal or entered into collusion, or restraint of free competitive bidding on this contract, and are of the opinion that they are a responsible bidder entitled to the award of a contract involving public moneys and attach hereto an explanation of their activities in restraint of free trade, restraint of free competitive bidding or collusion.

4. Activities in restraint of trade include those set forth in New Mexico Statutes Annotated, Section 57-1-1 (1978) Edition as amended, and following). The undersigned declares that this section has been read and is fully understood.

HollyFrontier Refining & Marketing, LLC
Organization

By: R. E. Clack

Title: New Mexico Marketing Manager

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See bottom of Instructions Page for public reporting burden disclosure)

Approved by OM 0348-0046

1. Type of Federal Action: ☐ a. Contract ☐ b. Grant ☐ c. Cooperative agreement ☐ d. Loan ☐ e. Loan guarantee ☐ f. Loan insurance N/A	2. Status of Federal Action: ☐ a. Bid/offer/application ☐ b. Initial award ☐ c. Post-award N/A	3. Report Type: ☐ a. Initial filing ☐ b. Material change For Material Change Only Year: _____ Quarter: N/A Date of last report:
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ☐ *if known:* Congressional District, *if known:* N/A	5. If Reporting Entity in No. 4. is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency: N/A	7. Federal Program Name/Description: CFDA Number, *if applicable:* N/A	
8. Federal Action Number, *if known:* N/A	9. Award Amount, *if known:* $ _____ N/A	
10 a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):* N/A	10. b. Individuals Performing Services *(including address if different from No. 10.a.) (last name, first name, MI):* N/A	
(attach Continuation Sheet(s) SF-LLL-A if necessary)		
11. Amount of Payment *(check all that apply):* $ ~~0~~ ☐ Actual ☐ Planned	13. Type of Payment *(check all that apply):* ☐ a. Retainer ☐ b. One-time fee ☐ c. Commission ☐ d. Contingent fee ☐ e. Deferred ☐ f. Other; specify: N/A	
12 Form of Payment *(check all that apply):* ☐ a. Cash ☐ b. In-kind; specify: nature: value: N/A		
14 Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment indicated in Item 11: NONE *(attach Continuation Sheet(s) SF-LLL-A if necessary)*		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: R E Clark Print Name: RANDALL E CLARK Title: NM Marketing Manager Telephone No: 505-344-3526 Date: 4-1-14	

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Standard Form – LLL

(Rev. 11/24/98)

INSTRUCTIONS FOR COMPLETION OF SF-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all Items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in Item 4. checks "Subawardee," enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1.). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1. (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4. or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4.) to the lobbying entity (Item 10.). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not an SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SANTA FE COUNTY
PRICE AGREEMENT
VARIOUS SPECIFIED OILS AND EMULSIONS

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

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

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

2. GOODS TO BE PROVIDED

A. **Purchase.** Attachment A of this Price Agreement are the prices for the Contractor's tangible goods and services. Attachment A also indicates any specifications required for the tangible goods and services that are subject of this Price Agreement.
B. **Items Listed on Attachment A.** The County may issue Purchase Orders for the purchase of the items listed on Attachment A. Any service ordered by the County must be a service described on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2014-0263-A-PW/MS.
C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may purchase any quantity of the item(s) or services listed on Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) or services be issued under this Price Agreement. The Contractor is required to accept the Purchase Order and furnish the item(s) and service.
D. **Specifications.** The services furnished under this Price Agreement shall meet or exceed the specifications provided in IFB# 2014-0263-A-PW/MS including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s) or services(s).

E. Delivery and Billing Instructions.

1. The Contractor shall deliver the items and services in accordance with the County's instructions. The Contractor shall also deliver, with the services ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever, the Using Department does not accept any deliverable and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.
3. The Department will inform the Contractor within thirty (30) days that a deliverable is unacceptable by the Using Department.
4. Prices listed in Attachment A, for each item, shall be the fixed prices and rates for the items and services.

3. PAYMENT

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

A. Inspection. Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Contractor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed purchase orders are valid under this Price Agreement.

D. Invoices. The Contractor may submit invoices for payment no more frequently than monthly. All invoices **must** include the Invoice Number, Purchase Order (PO) number, name of the County Road, and project number. In some instances there may be more than one PO and road associated with a single order and delivery. In these instances all POs and the roads associated with the Purchase Order need to be indicated on the Invoice. The supplier of the oil will sample and test performance-graded asphalt binders in accordance with the NMDOT's *Standard Practice for Certifying Suppliers of Performance-Graded Asphalt Binders* and in accordance with Section 402.2.5 Performance-Graded Asphalt Binder (PGAB) of the Standard Specifications. The supplier of the oil will furnish Santa Fe County with the test certificates at the County's request.

E. Payment of Invoices. Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed

tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.

F. **Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Price Agreement is one (1) year. The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years in one (1) year increments. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

5. CANCELLATION

A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the services or deliverables fail to meet the requirements of this Price Agreement.

B. The failure of the Contractor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.

C. The Contractor may be excused from performance if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor, unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.

E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.

6. TERMINATION

A. **For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date

of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.

B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

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

8. ASSIGNMENT

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

9. NON-COLLUSION

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

10. RECORDS

During the term of this Price Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

11. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the

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

12. CONFLICT OF INTEREST

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

13. APPROVAL OF CONTRACTOR'S REPRESENTATIVES

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

14. SCOPE OF AGREEMENT, MERGER

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

15. NOTICE

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

16. INDEMNIFICATION

The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Department, its officers or employees.

17. THIRD PARTY BENEFICIARY

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

18. NEW MEXICO TORT CLAIMS ACT.

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

19. INSURANCE.

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less *than $1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.

C. Worker's Compensation Insurance. The Contractor shall comply with the provisions of the Worker's Compensation Act.

D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

20. APPLICABLE LAW

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

21. CHOICE OF LAW

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

22. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or

commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT

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

24. SURVIVAL

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

25. NOTICES

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

To the County:

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

To the Contractor:

Western Emulsions, Inc. 3900 E. Broadway Blvd Tucson, Arizona 85711	Or	49 E. Martin Street Roswell, NM 88203

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

26. FEDERAL REQUIREMENTS

Federal funds may be utilized for this Price Agreement. The following attached federal documents are an integral part of the Price Agreement:

A. Required contract Provisions, Federal Aid Construction contracts
B. Notice to Contractors – Equal Employment

C. Special Provision – Specific EEO Responsibilities (23 U.S.C. 140)
D. Standard Federal EO Construction Contract Specification (Executive Order 11246)
E. Notice to Contractors Modifying Standard Federal EEO Construction Contract Specifications
F. Notice of Requirement for Affirmative Action to Ensure EEO (Executive Order 11246)
G. Federal-Aid Proposal Notices – Notices to Prospective Federal-Aid Construction Contractors
H. Notice to Contractors (Form FHWA 1273) Record of Materials
I. Notice to Contractors Preference Employment of Indian Tribes
J. Notice to Contractors – Toll Free Number to Report Bid Rigging – NMDOT
K. Notice to Contractors – Submission of Weekly Payrolls
L. Notice to Contractors – Apprentices
M. Notice to Contractors – Required Contract Provisions title VI Civil Rights Act
N. Notice to Contractors – Non-Collusion Declaration
O. Declaration of Non-Collusion for Award of Contract
P. Notice to Contractors – Certification for Federal-Aid Contract
Q. Disclosure of Lobbying Activities
R. Notice to Contractors – Reference Wage Rates
S. Notice to Contractors – Minimum Wage Rates
T. General Decision Rates: (General Decision Number: NM140048 01/03/2014 NM48) at http://www.wdol.gov/dba.aspx
U. Department of Labor – Notice "Public Works Apprenticeship and Training Act"
V. Article 4D – Public Works Apprenticeship and Training Complete

27. PRICE INCREASES AND DECREASES

In the event of a product cost increase a request for price increase from the Contractor will be considered and reviewed by the County on an individual basis and based on the Consumer Price Indexes (CPI). Price increases shall only be allowed for actual product increases and shall not be approved for increase in the Contractor's profit margin. Contractor shall also submit any product price decreases to the County. If the Contractor's prices are reduced for any reason the County shall have the benefit of such price reduction. Price increases will not be applied retroactively to orders already submitted to and processed by the County or any backorders. Orders pursuant to this Price Agreement will be filled at the prices in effect on the date of receipt or the order by the Contractor.

Request for price increases shall be submitted to the County and include the following information:

A. Contract Item Number
B. Current Item Price
C. Proposed New Price
D. Percentage of Increase
E. Mill/Supplier Notification of price increase indicating percentage of increase including reason for increase.

28. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints Trevor Smallwood, a New Mexico Resident whose address is 49 E. Martin Street, Roswell, NM 88203, as the agent for acceptance of services as a New Mexico resident, and as its agent upon process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that the service upon its designated agent shall have the same effect as through the Contractor were actually and personally serviced within the State of New Mexico.

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

SANTA FE COUNTY

Daniel W. Mayfield, Chair
Board of County Commissioners

Date

SANTA FE COUNTY

Katherine Miller, Manager

4.11.14
Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM

Santa Fe County Attorney

4-7-14
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Director
Finance Department

4/8/14
Date

CONTRACTOR

Signature

4-8-2014
Date

Trevor Smallwood
Print Name and Title

FEDERAL TAX I.D. NUMBER: 86-0336082

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
VARIOUS SPECIFIED OILS AND EMULSIONS
REVISED BID SHEETS(FINAL)
IFB #2014-0263-PW/MS

Western Emulsions Inc.

ITEM #	EST. QTY (Tons	ITEM DESCRIPTION	UNIT	UNIT PRICE	WRITTEN IN WORDS
		CATIONIC HIGH FLOAT RAPID SET POLYMER MODIFIED EMULSTIONS (CHFRS-2P)			
1	750	Cationic High Fload Rapid Set Polymer Modified Emulsions (CHRFS-2P) OR APPROVAL EQUAL	Ton	610.00	Six hundred ten + 00/100s.
		CATIONIC RAPID SET (CRS-2P)			
2	750	Cationic Rapid Set (CRS-2P) OR APPROVED EQUAL	Ton	560.00	Five hundred sixty + 00/100s
		FASTSET 60% EMULSION 40% WATER			
3	750	FastSet 60% Emulsion 40% Water OR APPROVAL EQUAL	Ton	402.00	Four hundred two + 00/100s
		POLYMER ASPHALT SURFACE SEALER (PASS)			
4	750	Polymer Asphalt Surface Sealer (Pass) OR APPROVED EQUAL	Ton	850.00	Eight hundred fifty + 00/100s
		PASS RECYCLE EMULSION - REJUVINATING (PASS-R)			
5	750	PASS Recycle Emulsion - Rejuvinating (PASS-R) OR APPROVED EQUAL	Ton	611.00	Six hundred eleven + 00/100s
		POLYMER ASPHALT SURFACE SEALER - CHIP RETENTION (PASS-CR)			
6	750	Polymer Asphalt Surface Sealter - Chip Retention (PASS-CR) OR APPROVED EQUAL	Ton	850.00	Eight hundred fifty + 00/100s
		POLYMER ASPHALT SURFACE SEALER - QUICK BREAK (PASS-QB) 50% EMULSION 50% WATER			
7	750	Polymer Asphalt Surface Sealter - Quick Break (PASS-QB) 50% Emulsion 50% Water OR APPROVED EQUAL	Ton	361.00	Three hundred sixty one + 00/100s
		PLASTIC AND SEAL 60% EMULSION 40% WATER			
8	750	Plastic and Seal 60% Emulsion 40% Water OR APPROVED EQUAL	Ton	518.00	Five hundred eighteen + 00/100s
		GSB-88 GILSONITE SEALER/REJUV 67% EMULSION 33% WATER			
9	750	GSB-88 Gilsonite Sealer/Rejuv 67% Emulsion 33% Water OR APPROVED EQUAL	Ton	999.00	Nine hundred ninty nine + 00/100s

ATTACHMENT A

		GSB-88 GILSONITE SEALER/REJUV 50% EMULSION 50% WATER			
10	750	GSB-88 Gilsonite Sealer/Rejuv 50% Emulsion 50% Water OR APPROVED EQUAL	Ton	746.00	Seven hundred forty six + 00/100
		TEXTURE SEAL SANDING OF FOG SEALS WITH BSA-35 SAND			
11	750	Texture Seal Sanding of Fog Seals with BSA-35 Sand OR APPROVED EQUAL	Sq Yd	.10	Ten cents
		SPREADING CHARGES FOR EMULSIONS			
12	As Needed	Spreading Charges for Emulsion with Distributor and Driver (24 Ton Minimum per Day)	Ton	45.00	Forty five + 00/100
		DELIVERY CHARGES FOR EMULSIONS			
13	As Needed	Delivery Charges for Emulsions All Locations in the County (24 Ton Minimum Per Day)	Ton	43.00	Forty three + 00/100
14	As Needed	Demurrage Charge for Delivery Trucks (First Two Hours Free)	Per/Hour	80.00	Eighty + 00/100
15	As Needed	Pump Charge to Pump Into Customer Storage Tank	Load	80.00	Eighty + 00/100
		ASPHALT EMULSIONS AND ASSOCIATED PRODUCTS			
16	750	AEP	Ton	No Bid	—
17	750	PEP	Ton	No Bid	—
18	750	HFE-60	Ton	488.00	Four hundred eighty eight + 00/100
19	750	HFE-60P	Ton	560.00	Five hundred sixty + 00/100
20	750	HFE-90	Ton	488.00	Four hundred eighty eight + 00/100
21	750	HFE 100-1/1:1	Ton	320.00	Three hundred twenty + 00/100
22	750	HFRS-2P	Ton	560.00	Five hundred sixty + 00/100

23	750	HFE-100P	Ton	560.00	Five hundred sixty + 00/100
24	750	HFE-150	Ton	560.00	Five hundred sixty + 00/100
25	750	HFD-300	Ton	550.00	Five hundred fifty + 00/100
26	750	HFE-300P	Ton	610.00	Six hundred ten + 00/100
27	750	CSS-1P/1:1	Ton	360.00	Three hundred sixty + 00/100
28	750	CRS-2P	Ton	560.00	Five hundred sixty + 00/100
29	750	CHFRS-2P	Ton	610.00	Six hundred ten + 00/100
30	As Needed	DISTRIBUTOR	Per/Hour	45.00	Forty Five + 00/100
			FOGSEAL		
31	As Needed	Rubberized Fogseal OR APPROVED EQUAL	Ton	No Bid	

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1 d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1 b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Wilful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U S C 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

• • • • •

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

• • • • •

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

• • • • •

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

APPENDIX G

DECLARATION OF NON-COLLUSION FOR AWARD OF CONTRACT

Form No. A-870
New 11-89

New Mexico State Highway and Transportation Department

DECLARATION OF NON-COLLUSION FOR AWARD OF CONTRACT

(Unsworn Declaration Under Penalty of Perjury)

The following declaration must be typed with no blanks prior to signing.

STATE OF NEW MEXICO)
)ss.
COUNTY OF Chaves)

I, Rusty Smallwood affirm the following:

1. That I am over the age of 18 years.

2. That I am the Regional DIR. (Title) of Western Emulsions, Inc. (Name of Organization)

and that I am presenting the declaration to the New Mexico State Highway and Transportation Department as part of the consideration for the award of the contract in Project No. _____.

3. That the above listed organization and its officers and employees or subsidiaries or parent corporations (check box a. or b. as appropriate):

( ) a. have not in any way participated in any activities in restraint of trade, or been debarred with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally assisted contract during the five year period immediately preceding this proposal or either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

( ) b. have participated in activities in restraint of trade with relation to public contracts either in the State of New Mexico or any other State of the United States or on any federally assisted contract during the five year period immediately preceding this proposal or entered into collusion, or restraint of free competitive bidding on this contract, and are of the opinion that they are a responsible bidder entitled to the award of a contract involving public moneys and attach hereto an explanation of their activities in restraint of free trade, restraint of free competitive bidding or collusion.

4. Activities in restraint of trade include those set forth in New Mexico Statutes Annotated, Section 57-1-1 (1978) Edition as amended, and following). The undersigned declares that this section has been read and is fully understood.

Western Emulsions, Inc.
Organization

By: Rusty Smallwood

Title: Regional Director

APPENDIX H

DISCLOSURE OF LOBBYING ACTIVITIES

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See bottom of Instructions Page for public reporting burden disclosure)

Approved by OM 0348-0046

1. Type of Federal Action: ☐ a. Contract ☐ b. Grant ☐ c. Cooperative agreement ☐ d. Loan ☐ e. Loan guarantee ☐ f. Loan insurance	2. Status of Federal Action: ☐ a. Bid/offer/application ☐ b. Initial award ☐ c. Post-award	3. Report Type: ☐ a. Initial filing ☐ b. Material change For Material Change Only Year: _____ Quarter: _____ Date of last report:

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ☐ *if known:* Congressional District, *if known:*	5. If Reporting Entity in No. 4. is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $ _____
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	10. b. Individuals Performing Services *(including address if different from No. 10a.)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A if necessary)

11. Amount of Payment *(check all that apply)*: $ _____ ☐ Actual ☐ Planned	13. Type of Payment *(check all that apply)*: ☐ a. Retainer ☐ b. One-time fee ☐ c. Commission ☐ d. Contingent fee ☐ e. Deferred ☐ f. Other; specify:
12. Form, of Payment *(check all that apply)*: ☐ a. Cash ☐ b. In-kind; specify: nature: value:	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: R Smallwood Print Name: Rusty Smallwood Title: Regional Dir. Telephone No: 806-787-0557 Date: 3-31-14

Federal Use Only
Authorized for Local Reproduction
Standard Form – LLL

(Rev. 11/24/98)

INSTRUCTIONS FOR COMPLETION OF SF-LLL
DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in Item 4. checks "Subawardee," enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1.). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1. (e.g., Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4. or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4.) to the lobbying entity (Item 10.). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not an SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: Page of

N/A

Authorized for Local Reproduction
Standard Form – LLL-A

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *April 16, 2014*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* BT
Agnes Leyba-Cruz, Public Works

VIA: *Katherine Miller, County Manager* KM
Adam Leigland, Public Works Department Director
Jeffery Trujillo, ASD Director

ITEM AND ISSUE: BCC Meeting April 29, 2014

REQUEST APPROVAL OF LEASE AGREEMENT NO. 2014-0027-PW/GG AMENDMENT NO. 1 BETWEEN SANTA FE COUNTY AND CHRISTUS ST. VINCENT MEDICAL CENTER LOCATED AT 2052 GALISTEO ST. TO DECREASE THE LEASED OFFICE SPACE FROM 6,439 SQ. FT. TO 4,374 SQ. FT. TO OPERATE A SOBERING CENTER AND CARE CONNECTION PROGRAM IN SANTA FE COUNTY. (*Bill Taylor, Purchasing/Agnes Leyba-Cruz, Public Works)*

Issue:

The Community Services Department (CSD) is requesting approval of Amendment No. 1 to Lease Agreement No. 2014-0027-PW/GG between Santa Fe County and Christus St. Vincent to relocate the Teen Court Division to the facility located at 2052 Galisteo St. in Santa Fe.

CSD has worked in coordination with Christus St. Vincent to reallocate office space within the facility to accommodate both Christus St. Vincent and the Teen Court operations. The reallocation will result in a reduction of office space utilized by Christus St. Vincent from 6,439 square feet to 4,374 square feet; subsequently reducing the rental income to the County from $103,024 per year to $69,984 per year.

The leased space is valued at $16.00 per square foot in accordance with a Market Rent Study completed by Hippauf & Associates in April, 2013.

This lease amendment will also require State Board of Finance approval (SBoF).

Background:

Santa Fe County owns the 11,374 square foot facility located at 2052 Galisteo St, in Santa Fe, New Mexico. In August of 2013, Santa Fe County and Christus St. Vincent Medical Center entered into a lease agreement for 6,439 square feet of office space to operate a Sobering Center and Care Connection Program for Santa Fe County residents.

Recommendation:

Staff requests approval of Lease Agreement No. 2014-0027-PW/GG Amendment No. 1 between Santa Fe County and Christus St. Vincent Medical Center to reduce the leased office space in which to operate a Sobering Center and Care Connection Program.

AMENDMENT NO. 1
TO PROPERTY LEASE AGREEMENT
BETWEEN SANTA FE COUNTY AND
CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER

This Amendment No. 1 is made and entered into as of this ___ day of _____, 2014 by and between Santa Fe County, a political subdivision of the State of New Mexico and Christus St. Vincent Regional Medical Center.

WHEREAS, Santa Fe County and Christus St. Vincent Regional Medical Center entered into Property Lease Agreement No. 2014-0027-PW/GG on August 26, 2013 to provide for the County's lease to the Christus St. Vincent Medical Center of a facility located at 2052 South Galisteo Street;

WHEREAS, according to the Property Lease Agreement and Exhibit A of the Property Lease Agreement, the leased premises consist of 6,439.50 square feet of a facility for use as a center to provide healthcare resources to the community;

WHEREAS, according to Article 26 (Final Agreement and Amendments) of the Property Lease Agreement the parties may amend the Lease by an instrument in writing executed by the parties and approved by the New Mexico Board of Finance;

WHEREAS, the parties desire to amend the Property Lease Agreement replace Exhibit A and Exhibit B with a superseding exhibit showing a re-designation of the leased premises and amend the Lessee's monthly rental payment for the reduced square footage;

WHEREAS, this Amendment No. 1 will result in a replacement of Exhibit A and Exhibit B with superseding exhibits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Exhibit A referenced and attached to Property Lease Agreement No. 2014-0027-PW/GG is replaced in its entirety with the attached Exhibit A which depicts the leased premises.

2. Article 1.B (Term) of the Lease Agreement is amended by inserting a subparagraph "a" to read as follows:

   a. Pursuant to Amendment No. 1 and written notice from the Lessee to the Lessor, the parties agree to renew the term of the Lease Agreement commencing November 1, 2013 to November 1, 2017.

3. Article 2 (Rent) of Property Lease Agreement No. 2014-0027-PW/GG is amended by inserting the following subparagraph "A" to read as follows:

   A. Pursuant to Amendment No. 1 to this Agreement, commencing June 1, 2014, Lessee shall pay to Lessor rent for the Leased Premises (see Exhibit A) in the amount of five thousand eight hundred thirty two dollars

($5,832.00) per month, due and payable on or before the first day of each calendar month at the following address: 102 Grant Avenue, P.O. Box 276, Santa Fe, N.M. 87504-0276. The rental payment amount for any partial month shall be prorated on a daily basis.

4. Article 3.E (Conditions of Lease), "Exhibit B" referenced and attached to the Property Lease Agreement No. 2014-0027-PW/GG between Santa Fe County and Christus St. Vincent Regional Medical Center is replaced in its entirety with the attached "Exhibit B."

5. All other provisions of Lease Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

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

LESSOR - SANTA FE COUNTY

_____ Date _____

Daniel W. Mayfield, Chair
Santa Fe Board of County Commissioners

ATTEST:

_____ Date _____

Geraldine Salazar
Santa Fe County Clerk

Approved as to form

Date 4/4/14

Stephen C. Ross
Santa Fe County Attorney

APPROVED

Finance Department

Date 4/7/14

Teresa C. Martinez, Director

Date 4.7.14

Katherine Miller
Santa Fe CountyManager

LESSEE - CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER

_____ Date _____
(signature and title)

By:_____
(print name)

Its: _____
(title)

NEW MEXICO STATE BOARD OF FINANCE

_____ Date _____
(signature and title)

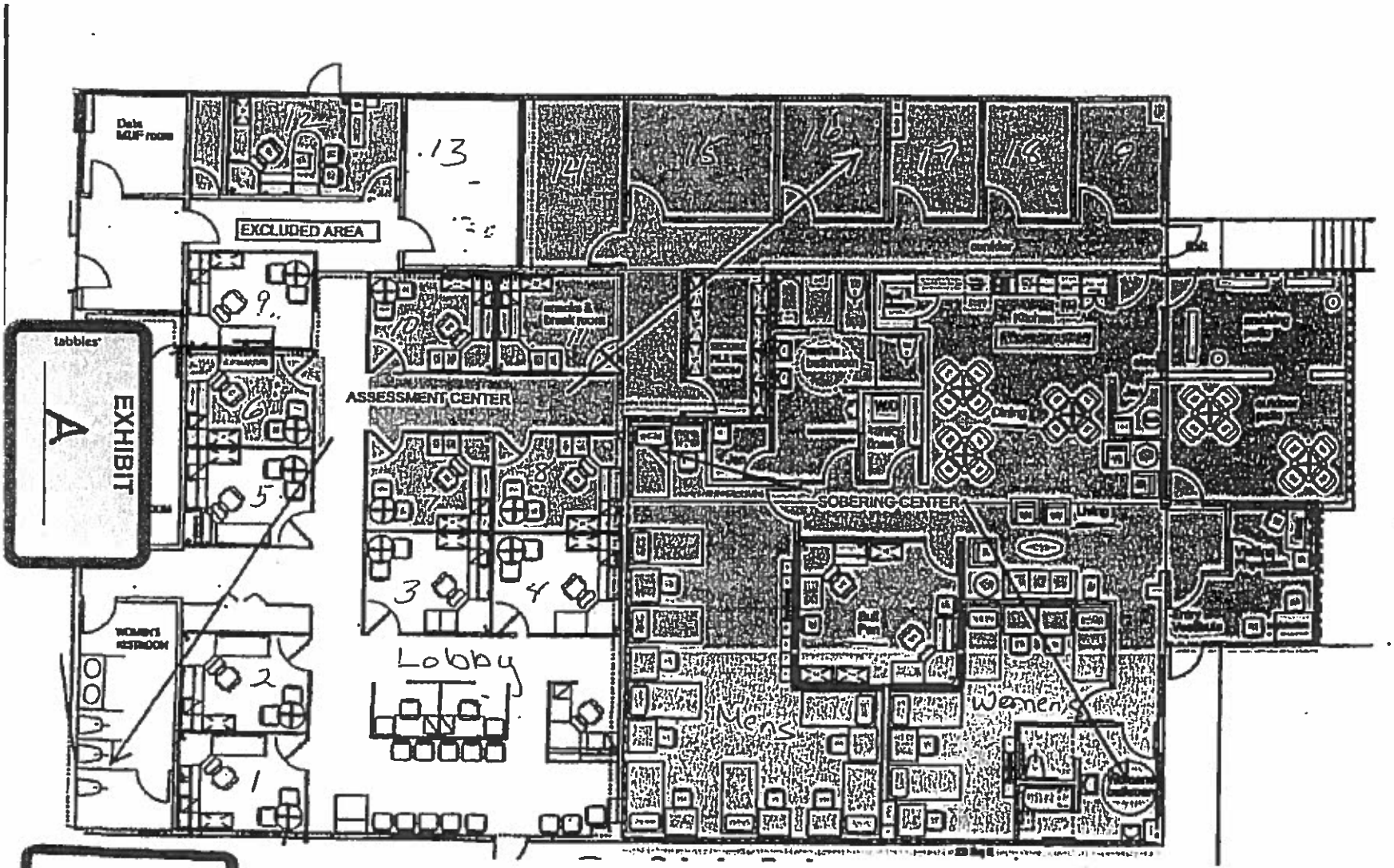

EXCLUDED AREA
ASSESSMENT CENTER
SOBERING CENTER
WOMEN'S RESTROOM
Lobby
Mens
Women
EXHIBIT
A

Exhibit B

Care Connection			
ROOM	ITEM	QTY	COUNTY ID#
Office 6	green chair	1	IE005654
	executive chair	1	IE005086
	3-drawer cabinet	1	IE005730
	desk w/hutch	1	IE005726
	wardrobe w/4-drawer cabinet	1	no ID
	hutch	1	no ID
Office 7	round table	1	IE005576
	3-drawer cabinet	2	IE005616
	desk w/hutch	1	IE005620
	hutch	1	IE005623
	1/2 desk	1	IE005622
Office 8	desk w/hutch	1	IE005558
	hutch	1	IE005552
	1/2 desk	2	IE005727
			IE005570
10- Meeting Room	green chair	7	IE005687
	large conference table	1	IE005653
Office 11	desk w/hutch	1	IE005670
	hutch	1	IE005671
	1/2 desk	1	IE005761
	wardrobe w/4-drawer cabinet	1	IE006679
Office 12	green chair	2	IE005619
	executive chair	1	IE005088
	desk w/hutch	1	IE005740
	hutch	1	IE005739
	3-drawer cabinet	1	IE005595
Break Room	wardrobe w/4-drawer cabinet	1	IE005735
File Room 2	Large 4-drawer file cabinet	8	IE005535

EXHIBIT

B

Sobering Center			
1	Built-In Microwave	broke & replaced	Replacement /broken
1	Stand Alone	broke & replaced (hospital buy)	working
2	Standing Locking Closets	1 in current use 2nd returned to SFC?	not tagged
1	Shredder	Broke (not replaced)	
1	Twin-Var –View Dome	Returned to SFC (Christina's Office)	
1	Defibrillator	Tagged (FAO17249)	In current use
8	Client Chairs	6 identified (no tags)	Current use
1	2006 Ford Van	IFBNE31L060DB02020	current use
1	Plantronic Headset	unknown	
Lucero, Richard	1 executive chair Client Chair Client Chair Floor Lamp Cabinet	Traded out currently in office 8 IE00S48 IE00548 Returned to County IEO5775	Current Use Current Use Current USE Current Use

2	Desk Lamps	Not tagged	Current Use
1	Printer cart	Large File Room (not tagged)	Current Use
2	Mini-Refrigerators	Returned to the SFC	
1	Water Cooler	Operations Office (not tagged)	Current Use
2	Small rolling carts	unknown	
4	Chairs	unidentifiable	
30	Fold Trays	Returned to Kitchen at Juvie ?	
8	Folding Chairs	Not tagged	Current Use
1	Rectangle table (brown)	Returned to SFC 2010	
4	Clothes bins	Not tagged	Current use
15	Beds, Mattresses, 5 pillows	Not Tagged	Current Use
8	2 drawer file cabinets	Not tagged	Current Use
16	Storage Lockers	15 (not tagged) 1 broke	Current Use

PROPERTY LEASE AGREEMENT
BETWEEN
SANTA FE COUNTY AND
CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER

This Lease Agreement ("Lease") is made and entered into on this 26th day of August 2013, ("the Effective Date") by and between Santa Fe County ("Lessor") and Christus St. Vincent Regional Medical Center ("Lessee").

Lessor is the owner of land and improvements at 2052 South Galisteo Street, Santa Fe, New Mexico 87505. Lessor is making available a lease to a portion of the building at said address used in the operation of an assessment center and sobering center providing services similar to those provided by the Santa Fe County CARE Connection Assessment Center and the Santa Fe County Sobering Center (collectively, "the Center") and which space is identified on Exhibit A attached hereto (the "Leased Premises").

Lessor desires to lease the Leased Premises to Lessee, and Lessee desires to lease the Leased Premises from Lessor for the term, at the rental and upon the provisions set forth herein.

THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, it is agreed:

1. <u>Term</u>.

A. The Term of the Lease shall begin on August 31, 2013, and end on the 1st of November, 2013 ("Term"). Lessor shall use its best efforts to put Lessee in possession of the Leased Premises on the beginning of the Lease term. If Lessor is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Lessee shall make no other claim against Lessor for any such delay.

B. Lessee may renew the Lease for a successive term of no more than four (4) years, subject to approval of the State Board of Finance, pursuant to NMSA 1978, Section 13-6-2.1(A). Lessee shall exercise such renewal option by providing written notice to Lessor not less than thirty (30) days prior to the expiration of the Term. The renewal term shall be upon the covenants, conditions and provisions as contained in this Lease.

2. <u>Rent</u>.

Lessee shall pay to Lessor during the Term rent in the amount of eight thousand five hundred eighty six dollars ($8,586.00) per month, due and payable on or before the first day of each calendar month at the following address: 102 Grant Avenue, P.O. Box 276, Santa Fe, N.M. 87504-2076. The rental payment amount for any partial calendar months shall be prorated on a daily basis.

3. **Conditions of Lease.**

A. Lessee agrees to occupy the Leased Premises for the sole and exclusive purpose of operating the Center to provide healthcare resources to the community. Lessor hereby grants Lessee all rights, titles and privileges to operate the Center in accordance with the terms of this Lease. Lessee commits to continue the Center's operations at the same or superior level of offered services in place under Lessor's operation of the Center as of the Effective Date. Lessee shall not voluntarily reduce the services offered at the Center unless and until it provides written notice to Lessor at least 120 days prior to the effective date of any change in services. Lessee shall continue to provide services free of charge to the indigent consistent with the Center's historical practices and policies. Lessee shall no less than once each three months during the Term, and any successive renewals thereof, provide a written report to Lessor describing services it is providing at the Center and expenses incurred to provide those services. Lessee shall also meet with Lessor's Board of County Commissioners at least once every three months to discuss health care needs of the community being served at the Center and how Lessee can best address those needs.

B. Lessee agrees to utilize local vendors and providers of goods and services to the extent feasible.

C. Lessee agrees to be Lessor's successor for the purpose of all licenses, certificates of exemption, certificates of compliance, accreditations, authorizations, registrations, grants or permits necessary to operate the Center to the extent assignable and transferable.

D. Lessee agrees to keep and maintain the Leased Premises in good order, condition and repair and shall be responsible for those items which are of a permanent nature to the building, including every part and appurtenance thereof, including without limitation, the exterior and interior of all doors, door checks, windows, glass, walls, ceilings, floors, building front, fixtures, plumbing and sewage facilities within or connected to the Leased Premises including the free flow up to the main sewer line, heating and cooling systems, electrical systems and sprinkler systems. Lessee shall further be responsible for (i) sweeping and snow removal on the sidewalk immediately in front of the Leased Premises; (ii) sweeping and snow removal on the sidewalk immediately in front of any front and rear doors to the Leased Premises and (iii) sweeping and snow removal within the smoking and outdoor patios. Lessee shall provide all janitorial services for the Leased Premises.

E. Lessee shall be entitled to use for the operation of the Center all personal property identified on Exhibit "B" attached hereto and for which a separate Equipment Lease Agreement is to be executed by and between the parties. Lessee shall keep such personal property in good order, condition and repair, normal wear and tear excepted so long as this Lease remains in effect.

F. Lessee shall take possession of all inventories of supplies, drugs not prescribed to a specific patient, food, janitorial and office supplies and other disposables and consumables located in the Leased Premises as of the Effective Date of this Lease. In addition, Lessee shall

take possession of drugs specifically prescribed for patients then in residence at the Center on the Effective Date and shall thereafter be responsible for administering said drugs to the patients as prescribed by the patients' physicians.

G. Lessee shall maintain records for patients treated at the Center after the Effective Date. Lessor shall transfer to Lessee possession and ownership of all patient records in its possession as of the Effective Date and Lessee hereby agrees to defend, indemnify, and hold harmless Lessor and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Lessor's transfer of patient medical records to Lessee. Lessee agrees that Lessor shall have the right to participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the transfer of medical records for which Lessee is indemnifying Lessor and that such suit will not be settled without Lessor's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of Lessor and Lessee in such demand, suit, or cause of action, Lessor shall retain its own counsel to represent the Lessor's interest. Lessee shall maintain the integrity of the records turned over pursuant to this paragraph for a period of six years and shall make such records accessible to Lessor to the extent necessary to ensure that Lessor can honor its obligations under any state grants utilized to fund the sobering center and care connection while those programs were owned and operated by Lessor.

H. Lessor agrees that no motor vehicle identified on Exhibit "B" shall be used for any purpose other than the Center's operations and that any of Lessee's agents or employees operating such vehicle(s) shall hold a valid and current New Mexico driver's license. Lessee shall insure all vehicles and name the County as an additional insured on those policies.

I. Lessee agrees to permit Lessor to continue to maintain its local server in a storage closet located within the Leased Premises and to include as part of its utility cost under Section 9 hereof the cost for air cooling of that closet to ensure the server's optimum performance.

J. Lessee shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

4. **Sublease and Assignment.**

Lessee shall not assign this Lease without Lessor's written consent to a business with which Lessee may merge or consolidate, to any subsidiary of Lessee, to any corporation under common control with Lessee, or to a purchaser of substantially all of Lessee's assets. Further, Lessee shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Lessor's written consent.

5. **Repairs.**

During the Term of the Lease and any successive renewal thereof, Lessee shall make, at Lessee's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

6. **Alterations and Improvements.**

Lessee, at Lessee's expense, shall have the right, upon obtaining Lessor's consent, and in compliance with applicable law, building ordinances, and any regulations of governmental authorities having jurisdiction over the Leased Premises, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Lessee may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Lessee shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the Leased Premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Lessee at the commencement of the Lease Initial Term or placed or installed on the Leased Premises by Lessee thereafter, shall remain Lessee's property free and clear of any claim by Lessor. Lessee shall have the right to remove the same at any time during the term of this Lease provided that Lessee shall repair, at Lessee's expense, all damage to the Leased Premises caused by such removal. In doing and performing such work as may be herein provided, no lien of mechanics, material men, laborers, architects, artisans, contractors, subcontractors, or any other lien of any kind whatsoever, shall be created or imposed upon the Leased Premises or any part thereof.

7. **Property Taxes.**

If applicable, Lessee shall be responsible for paying all personal property taxes with respect to Lessee's personal property at the Leased Premises.

8. **Insurance.**

A. The Lessee shall submit evidence of insurance as required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. The Lessee shall procure and maintain during the Term of this Lease, and any successive renewal thereof, coverage for property insurance for the Leased Premises in amounts not less than $1,050,000 combined single limit coverage of bodily injury, property damage or combination thereof. The Lessor shall be a named additional insured on the policy.

C. The Lessee shall procure and maintain during the Term of this Lease, and any successive renewal thereof, a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000 combined single limits of liability for bodily injury,

including death and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed by Lessee; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Lease is an insured contract. The Lessor shall be a named additional insured on the policy.

D. Lessee shall procure and maintain during the Term of this Lease, and any successive renewal thereof medical malpractice insurance in amounts not less than $1,050,000 per occurrence. The Lessor shall be a named additional insured on the policy.

E. Lessee shall procure and maintain during the Term of this Lease, and any successive renewal thereof, Director's and Officer's insurance for the officers of the Center and Christus St. Vincent Medical Center in amounts not less than $1,050,000 per occurrence. The Lessor shall be a named additional insured on the policy.

F. The Lessee shall comply with the provisions of the Workers' Compensation Act.

G. If, during the Term of this Lease and any successive renewal thereof, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Lessee shall increase the maximum limits of any insurance required herein.

H. If the Leased Premises or any other part of the building is damaged by fire or other casualty resulting from any act of negligence by Lessee or by any of Lessee's agents, employees or invitees, rent shall not be diminished or abated while such damage is under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

I. Lessor shall maintain fire and extended coverage insurance on the building and the Leased Premises in such amount as Lessor shall deem appropriate. Lessee shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

9. <u>Utilities; Surveillance Video and Alarm</u>.

A. Lessee shall be responsible for the payment of all electric, gas, refuse, water and sewer, telephone, internet and other communication utilities charges attributable to the Leased Premises during the Term and any successive renewal thereof. Lessor shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges. Lessee shall pay such all such utility charges prior to the due date. Lessee acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Lessee shall not use any equipment or devices that utilize excessive electrical energy or which may, in Lessor's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

B. Lessee shall be responsible for the payment of the video surveillance and alarm system provided and maintained for the Leased Premises during the Term and any successive renewal thereof.

10. **Signs.**

Following Lessor's consent, Lessee shall have the right to place on the Leased Premises, at locations selected by Lessee, any signs which are permitted by applicable zoning ordinances and private restrictions. Lessor may refuse consent to any proposed signage that is in Lessor's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Lessee shall repair all damage to the Leased Premises resulting from the removal of signs installed by Lessee.

11. **Entry.**

Lessor shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Lessor shall not thereby unreasonably interfere with Lessee's business on the Leased Premises.

12. **Parking.**

During the Term of this Lease and any successive renewal thereof, Lessee shall have the non-exclusive use in common with Lessor, other tenants of the building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to any requirements that may be prescribed from time to time by Lessor. Lessor reserves the right to designate parking areas for Lessee and Lessee's agents and employees. Lessee shall provide Lessor with a list of all license numbers for the cars owned by Lessee, its agents and employees.

13. **Building Requirements.**

Lessee will comply with the requirements of the building adopted and altered by Lessor from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such requirements will be sent by Lessor to Lessee in writing.

14. **Damage and Destruction.**

If the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects, such damage or defects not being the result of any act of negligence by Lessee or by any of Lessee's agents, employees or invitees, that the same cannot be used for Lessee's purposes and the Lessor is unable or unwilling to provide alternative premises for Lessee's use to conduct the Center's operations, then Lessee shall have the right within ninety (90) days following damage to elect by notice to Lessor to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Lessee's purposes, Lessor shall promptly repair such damage at the cost of the Lessor. In making the repairs called for in

this Section, Lessor shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Lessor. Lessee shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Lessee's purposes.

15. Default.

In the event of a default made by Lessee in the payment of rent when due to Lessor, Lessee shall have fifteen (15) days after receipt of written notice thereof to cure such default. In the event of a default made by Lessee in any of the other covenants or conditions to be kept, observed and performed by Lessee under this Lessee, Lessee shall have thirty (30) days after receipt of written notice thereof to cure such default. In the event that the Lessee shall fail to cure any default within the time allowed under this paragraph, Lessor may declare the term of this Lease ended and terminated by giving Lessee written notice of such intention, and if possession of the Leased Premises is not surrendered, Lessor may reenter said premises. Lessor shall have, in addition to the remedy above provided, any other right or remedy available to Lessor on account of any Lessee default, either in law or equity. Lessor shall use reasonable efforts to mitigate its damages.

16. Termination.

Either party may terminate this Lease, with or without cause, within ninety (90) days prior written notice to the other party. In the event either party terminates this Lease, the Lessor shall reacquire from Lessee the Leased Premises, control of the Center, and all matters relating to or necessary to continue to operate the Center, including but not limited to all personal property leased by Lessee pursuant to Section 3.E hereof and described on Exhibit "B", the security alarm system, the video surveillance system,, all medical records pertaining to patients of the Center created and maintained by Lessee, the current inventory of items described in Section 3.H hereof, and any other matter or thing of any nature or kind necessary for Lessor to continue the operation of the Center. Further, the Lessee agrees to take all action necessary to assign and transfer, to the extent assignable and transferrable, all licenses, etc. covered by Section 2.E hereof that were assigned and transferred by Lessor to Lessee at the beginning of this Lease. Any alterations or improvements to the Leased Premises made by Lessee in accordance with Section 6 hereof not removed prior to Lessee vacating the Leased Premises shall become the property of Lessor. Lessee shall identify the financial obligations and commitments assumed by Lessee directly necessary to operate the Center and Lessor and Lessee shall agree on which obligations Lessor may assume and on an orderly process for Lessor's assumption of the financial obligations and commitments in compliance with state law Lessor agrees to assume. Lessor shall not assume any of Lessee's financial obligations or commitments unless directly related to the operation of the Center and agreed to by Lessor.

17. **Quiet Possession.**

Lessor covenants and warrants that upon performance by Lessee of its obligations hereunder, Lessor will keep and maintain Lessee in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

18. **Condemnation.**

If any legally, constituted authority condemns the building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Lessor and Lessee shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

19. **Subordination.**

Lessee accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the building and to any renewals, refinancing and extensions thereof, but Lessee agrees that any such mortgagee shall have the right at any time to subordinate this lease to such mortgage, deed of trust or other lien on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Lessor is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the building. Lessee agrees that it will from time to time upon request by Lessor execute and deliver to such persons as Lessor shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Lessor is not in default hereunder (or if Lessee alleges a default stating the nature of such alleged default) and further stating such other matters as Lessor shall reasonably require.

20. **Notice.**

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

Lessor:

Santa Fe County
Attn: Katherine Miller, Manager
102 Grant Avenue
P.O. Box 276
Santa Fe, N.M. 875040276

Lessee:

CHRISTUS St. Vincent Regional Medical Center
Attn: Chief Executive Officer
455 St. Michael's Drive
Santa Fe, NM 87504

Lessor and Lessee shall each have the right from time to time to change the place notice is to be given under this Section by written notice thereof to the other party.

21. Waiver.

No waiver of any default of Lessor or Lessee hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

22. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

23. Successors.

The provisions of this Lease shall extend to and be binding upon Lessor and Lessee and their respective legal representatives, successors and assigns.

24. Consent.

Lessor and Lessee shall not unreasonably withhold or delay their consent with respect to any matter for which Lessor's or Lessee's consent is required or desirable under this Lease.

25. Compliance with Law.

Lessee and Lessor each shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

26: Final Agreement and Amendments.

This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease may be amended only by a further writing that is duly executed by both parties and approved by the New Mexico Board of Finance.

27. Indemnity.

A. The Lessee shall defend, indemnify, and hold harmless the Lessor and its officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Lessee's occupation, activities and use of the Leased Premises under this Lease, including but not limited to, the Lessee's breach of any of its obligations under this Lease.

B. The Lessee agrees that the Lessor shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the Lessor and that such suit will not be settled without the Lessor's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the Lessor and the Lessee in such demand, suit, or cause of action, counsel shall be retained by Lessee to represent the Lessor's interest.

C. The Lessee's obligations under this Section shall not be limited by the provisions of any insurance policy the Lessee is required to maintain under this Lease.

28. New Mexico Tort Claims Act.

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

29. Independent Entity.

The Lessee and its agents and employees are independent entities and are not employees or agents of the Lessor. Accordingly, the Lessee and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use the Lessor's vehicles, or participate in any other benefits afforded to employees of Lessor. Except as may be expressly authorized elsewhere in this Lease, the Lessee has no authority to bind, represent, or otherwise act on behalf of the Lessor and agrees not to do so.

30. Appropriations and Authorizations.

This Lease is contingent upon sufficient appropriations and authorizations being made for performance of this Lease by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Lease shall terminate upon written notice by the Lessor to the Lessee. Such termination shall be without penalty to the Lessor and the Lessor shall have no duty to reimburse the Lessee for expenditures made under this Lease. The Lessor is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by Santa Fe County. The Lessor's decision as to whether sufficient appropriations and authorizations have been made

for the fulfillment of this Lease shall be final and not subject to challenge by the Lessee in any way or forum, including a lawsuit.

31. Scope of Agreement; Merger.

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

32. Force Majeure.

Whenever a period of time is herein prescribed for action to be taken by either party, said party shall not be liable or responsible for, and there shall be excluded from the computation for any period of time, any delays due to strikes, riots, acts of God, war, restrictive governmental laws or regulations or any other causes of any kind whatsoever which are beyond the control of the parties.

33. Applicable Law.

This Lease shall be construed in accordance and governed by the laws of the State of New Mexico and federal and state regulations where directly applicable. Lessee agrees to operate the Center in accordance with and to at all times comply with said laws and all local laws, ordinances, regulations, applicable accreditation standards and the stated mission and values of the Center. Lessee agrees that any disputes regarding this lease shall be resolved in the state district court located in Santa Fe County, New Mexico.

34. Release.

Upon the expiration or termination of this Lease, the Lessee releases the Lessor, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Lease.

35. Severability.

If any clause or provision of this Lease is declared to be illegal, invalid or unenforceable by a court of competent jurisdiction, then and in that event, the remainder of this Lease shall not be affected thereby, and that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Survival.**

The provisions of the following paragraphs shall survive termination of this Contract: 3(I), 8, 27, and 33.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LESSOR:
SANTA FE COUNTY

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

8/27/2013
Date

ATTEST

Geraldine Salazar
Santa Fe County ~~Attorney~~ Clerk H.S.

8/27/2013
Date

APPROVED AS TO FORM

Stephen C. Ross
Santa Fe County Attorney

8/19/13
Date

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Santa Fe County Finance Director

8/19/13
Date

LESSEE:
CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER

Bruce Tassin
President/CEO

8/26/13
Date

FEDERAL TAX I.D. NUMBER: 85010694

NEW MEXICO STATE BOARD OF FINANCE

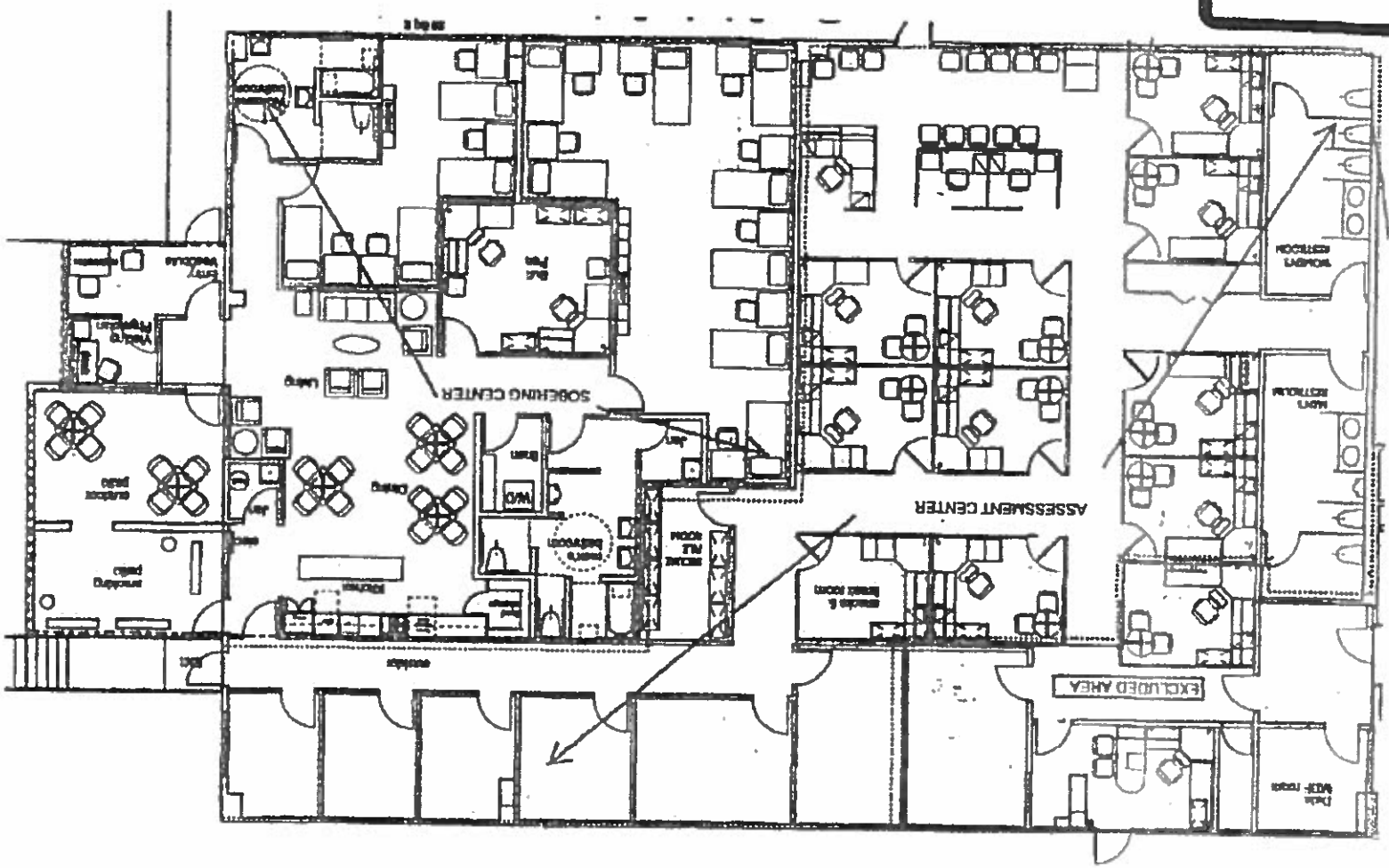
_____ 10/18/13

(signature and title) Director

Date

EXHIBIT

A



Major Assets Item for Care Connection Assessment Center

Assessment Center					
Office Location	Quantity	Item Description	Model Number	Inventory Tag #	Note
Apodaca, Gloria					
Automobile	1	2004 Chevy Impala	Unit# 852	G-58668	
Cardenas, Betty					
Client Area (Under Table)					
Client Area (Main)					
Copy Room (Front)	1	Standing Locker		IE003537	List
	1	Standing Locker		IE005550	List
	1	Standing Locker		No Tag	List
Evans, Christina					
File Room (Forward)	8	4 Drawer File Cabinets		No Tags	List
	1	IBM Selectric Typewriter		No Tag	List
	1	Brother IntelliFax	2820	No Tag	List
File Room (Rear)	9	HON 5 Drawer File Cabinet		IE005535	List
				IE005533	List
				IE005531	List
				IE005530	List

EXHIBIT
B

				IE005532	List
				IE005534	List
				IE005536	List
				No Tag	List
				No Tag	List
	1	HON 4 Drawer File Cabinet		No Tag	List
Justice, Mary					
Kaiser, Joan					
Meeting Room (Rear)	1	Water Dispenser		No Tag	List
	1	Toaster Over		No Tag	List
	1	Microwave		No Tag	List
	1	Small Refrigerator		No Tag	List
	1	Conference Table		No Tag	List
Pacheco, Diana					
Reception Desk					
	1	Plantronics Headset		No Tag	List
Salack, Joseph					
	1	HP Printer	1012	No Tag	List
Varela, Camille					
	1	Dell Printer	1710	No Tag	List
	1	HP Scan jet	7800	No Tag	List
Walters, Susan					
	1	HP LaserJet	1012	No Tag	List
Assessment Center					
Office Location	Quantity	Item Description	Model Number	Inventory Tag #	Note
Apodaca, Gloria	1	5 Shelf Bookcase			List
	1	Round Table			List
	2	Client Chairs			List
	1	Executive chair			List

	1	Cabinet			List
	1	Desk/with Hutch			List
Cardenas, Betty	1	Desk/with Hutch			List
	1	1/2 desk			List
	1	Client Chair			List
	1	Cabinet		IE005639	List
	1	Executive chair			List
Client Area	6	Round Table			List
	1	Client Chair		IE005091	List
	1	Client Chair		IE005080	List
	1	Client Chair		IE005086	List
	8	Client Chairs			List
	1	Desk/with Hutch			List
	1	Table			List
Evans, Christina	1	Desk/with Hutch			List
	1	Executive chair			List
	2	Client Chairs			List
Justice, Mary	1	Round Table			List
	1	Desk/with Hutch			List
	1	Cabinet			List
Kaiser, Joan	1	Round Table			List
	1	Desk/with Hutch			List
	1	Executive chair			List
	2	Client Chairs			List
Meeting Room (Rear)	1	5 Shelf Bookcase			List
	1	Cabinet			List
	10	Chairs			List
	1	Conference Table			List
Pacheco, Diana	1	Executive chair			List
	1	Client Chair			List
	1	Cabinet			List
Salack, Joseph	1	Desk/with Hutch			List
	1	Desk lamp			List
	3	Client Chairs			List
	1	Round Table			List
	1	2 Drawer file cabinet			List
	1	Executive chair			List
Varela, Camille	1	Cabinet			List
	1	Desk/with Hutch			List
	1	Round Table			List

	1	Executive chair			List
	2	Client Chairs			List
Walters, Susan	1	Desk/with Hutch			List
	1	Chair			List

Sobering Center			
Office Location	Quantity	Item Description	Model Number
Bailey, Adam			
Lucero, Richard			
Sobering Center	1	Built-In Microwave	
	1	Stand-Alone Microwave	
	1	Side by Side Fridge	
	2	Standing Locking Closets	
	1	JVC TV (Movable)	
	1	Shredder	
	1	Twin-Var-View-Dome	
	1	Defibrillator	
	1	Storage Shed	
	1	2006 Ford Van	
Storage Room	2	HON 5 Drawer Cabinets	
	1	HP Scan Jet	7800

OTHER OFFICE FURNITURE

SOBERING CENTER

Office Location	Quantity	Item Description	Model Number
Bailey, Adam	1	Executive Chair	
	1	Printer Cart	
	1	Desk/with hutch	
	1	Folding Chair	
	1	Client Chair	
	1	Plantronics Headset	
Lucero, Richard	1	Executive Chair	
	1	Client Chair	
	1	Floor lamp	
	1	Cabinet	
Sobering Center	3	Desk lamps	
	2	Mini Refrigerators	
	1	Water Cooler	
	1	Stand-Alone Microwave	
	2	Small Rolling Carts	
	1	Rolling File Drawer	
	4	Chairs	
	30	Fold Trays	
	8	Folding Chair	
	3	Desk Chairs	
	1	Rectangle table (Brown)	
	4	clothes bins	
	15	Beds, Mattress, 5 pillows	
	8	2 drawer file cabinet	
	16	Storage Lockers	

	4	Chair	
Storage Room	2	HON 5 Drawer Cabinets	
Supervisor I	1	Executive Chair	
	1	2 drawer file cabinet	
	1	desk	
	1	1/4 corner desk with hutch	
	2	Chairs	
Supervisor II	1	desk with hutch	
	1	2 drawer file cabinet	
	1	3 drawer file cabinet	
	1	2 shelf book case	
	1	Executive Chair	
	2	Client Chair	

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: *April 16, 2014*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Director*

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

ITEM AND ISSUE: *BCC Meeting April 29, 2014*

REQUEST APPROVAL OF LEASE AGREEMENT NO. 2014-0078-PW/PL AMENDMENT NO. 1 BETWEEN SANTA FE COUNTY AND THE ESPANOLA PUBLIC SCHOOL DISTRICT EXTENDING TERM OF LEASE FOR THE BENNIE J. CHAVEZ SENIOR CENTER FOR AN ADDITIONAL YEAR-Bill Taylor/Procurement

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BACKGROUND AND SUMMARY

Santa Fe County entered into a Lease Agreement dated April 30, 1979 wherein the Espanola Schools agreed to lease to the County a facility known as the Benny J. Chavez Senior Center. In 1987, the lease was amended to extend the term of the lease through April 29, 2012. In 2013 Santa Fe County entered into a new Lease Agreement No. 2014-0078-PW/PL which continued the lease by Santa Fe County through April 30, 2014 and allowed for the extension of the lease for an additional year.

Santa Fe County staff would like to continue leasing the facility to provide senior services and community services to the surrounding community for an additional year.

ACTION REQUESTED

The Public Works Department requests approval of Lease Agreement No. 2014-0078-PW/PL Amendment No. 1 between Santa Fe County and the Espanola School District extending the term of the lease for the Bennie J. Chavez Senior Center for an additional year.

AMENDMENT NO. 1 TO LEASE AGREEMENT BETWEEN SANTA FE COUNTY AND THE ESPANOLA PUBLIC SCHOOL DISTRICT

THIS AMENDMENT is made and entered into on the ___, __day of _____ _____, __, 2014 by and between Santa Fe County (hereinafter referred to as the "County") and the Espanola Public School District, 714 Calle Don Diego (hereinafter referred to as "Espanola Schools").

WHEREAS, the County and the Espanola Schools entered into a Lease Agreement dated April 30, 1979 (the "1979 Lease") wherein the Espanola Schools agreed to lease to the County certain real property, described in the 1979 Lease by reference to "Exhibit A," for public purposes as the County may determine;

WHEREAS, the 1979 Lease was amended in 1987 solely to extend the term of the Lease to April 29, 2012;

WHEREAS, by mutual agreement of the parties, in 2013 the parties agreed to continue the term of the Lease until April 30, 2014;

WHEREAS, the County continues to use, occupy and benefit from its leasehold interest in the property and wishes to continue to lease the property for a period of one (1) year with the option to renew thereafter.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. In consideration of the mutual covenants and agreements between the parties, Espanola Schools agrees to lease the property, described in the 1979 Lease, as amended, a copy of which is attached hereto and incorporated by reference to "Attachment 1," to the County on the same terms and conditions as 1979 Lease Agreement, as amended, for a term of one year (1) year commencing on April 30, 2014.

2. Insert the following as subparagraph "a" in Paragraph 2 of the 1979 Lease, as amended,

   a. As provided in Amendment No. 1 to Lease Agreement 2014-0078-PW/PL, the term of this Lease shall continue for a period of one (1) year beginning on April 30, 2014 and ending on April 30, 2015.

3. All other provisions of Lease Agreement No. 2014-0078-PW/PL not specifically amended by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date first written above.

SANTA FE COUNTY

_____ Date: _____

Daniel W. Mayfield, Chair
Santa Fe Board of County Commissioners

ATTEST:

_____ Date: _____

Geraldine Salazar
Santa Fe County Clerk

Approved as to legal sufficiency:

Date: 1/29/14

Stephen C. Ross
County Attorney

Approved by:

Finance Department

Date: 2/3/14

Teresa C. Martinez
Director

Santa Fe County Manager

Date: 2.4.14

Katherine Miller

ESPANOLA PUBLIC SCHOOL DISTRICT

_____ Date: April 2, 2014

Dr. Daniel Trujillo
Superintendent

Ralph Medina Date: April 2, 2014

Ralph Medina
President
Espanola Public School Board

L E A S E

THIS LEASE is entered into as of the 30th day of April, 1979, between THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY (referred to in this Lease as "County") and ESPANOLA MUNICIPAL SCHOOL DISTRICT (referred to in this Lease as "Espanola Schools").

1. The Espanola Schools leases to the County the real estate described in Exhibit "A" attached to this Lease, together with all improvements thereon and all furniture, personal property and fixtures therein.

2. The term of this Lease shall be for a period of 25 years beginning on the 30th day of April, 1979, and ending at midnight on the 29th day of April, 2004.

3. The County shall pay as rent to Espanola Schools at such place as Espanola Schools may designate in writing from time to time for this purpose, the sum of $1.00 each year on or before January 30th.

4. The County agrees that it has examined the premises prior to the execution of this Lease and knows the condition of the premises and accepts the condition of the premises as is.

5. Espanola Schools agrees that the County may make such improvements on the premises for public purposes as the County may, in its discretion, determine. Upon the termination of this Lease, the County shall receive from Espanola Schools compensation for the fair market value of such improvements should Espanola Schools and the County not renew this Lease upon the same terms and conditions.

6. Espanola Schools shall not be liable for any damage to persons or property arising from any act of negligence of the County, or its sublessees, or from the use, maintenance or occupation of the premises by the County, and the County hereby agrees to indemnify and hold harmless Espanola Schools from any and all

claims and liabilities for damage to persons or property arising from the County's use and possession of the premises.

7. Lessee shall at all times carry fire and extended coverage insurance on the buildings on the leased premises in the minimum unit prescribed for insurance of public buildings. Such insurance shall be payable to lessor and lessee. In the event of a loss and the inability of the parties to agree on disposition of insurance proceeds, the matter shall be decided by the Secretary of Finance and Administration, whose decision shall be final.

8. The County shall not assign all or any portion of this Lease without first obtaining the written consent of Espanola Schools.

9. This Lease incorporates all the agreements and understandings between Espanola Schools and the County concerning the subject matter, and all such understandings have been merged into this written Lease.

10. This Lease may not be amended except in writing executed by Espanola Schools and the County. It is specifically enforceable.

ESPANOLA MUNICIPAL SCHOOL DISTRICT

By _____

Its _____

BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By _____

JOHN R. SPIA, Chairman

APPROVED:

_____

EARL E. POTTER
County Attorney

ATTEST:

_____

CAROLINE HOBBS
County Clerk

STATE OF NEW MEXICO)
: ss.
COUNTY OF RIO ARRIBA)

The foregoing instrument was acknowledged before me this 30th day of April, 1979, by Estimo Lopez Jr. Chmn. of Board of the ESPANOLA MUNICIPAL SCHOOL DISTRICT.

Notary Public

My Commission Expires:
2/8/82

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

The foregoing instrument was acknowledged before me this 2nd day of May, 1979, by [illegible] Chairman of the BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY.

Notary Public

My Commission Expires:
2/22/82

OFFICIAL SEAL
Signature [illegible]
PATRICIA ANN GARCIA
NOTARY PUBLIC - NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires: 2/22/82

EXHIBIT A

Chimayo School Property

DOCUMENTO GARANTIZA — Impreso y de venta por la Compañía Impresora de Nuevo Mexico, Santa Fe, N. M.

ESTA ESCRITURA, Hecha y convenida hoy día doce de Marzo A. D. mil novecientos y treinta y seis por y entre Sabino Trujillo del condado de Santa Fe Estado de Nuevo Mexico, parte de la primera parte, y Pedro Trujillo, Manuel Vigil y Camilo Trujillo directores de escuela Dist. 20 actuando y representando al dicho distrito no. 20 del condado de Santa Fe Estado de Nuevo Mexico, parte de la segunda parte:

DA FE, Que la dicha parte de la primera parte, por y en consideración de la suma de $325.00 trescientos veinte y cinco pesos dinero legal de los Estado Unidos, a el en mano pagado por la dicha parte de la segunda parte, el recibo de la cual es por esta acusado, la dicha parte de la primera parte ha concedido, contratado vendido, traspasado, y confirmado, y por estos presentes concede, contrata, vende, traspasa o confirma a la dicha parte de la segunda parte y a sus herederos, asignados o sucesores, para siempre, todo solar o trecho de terreno o propiedad raiz, descrito a continuacion, situado en, dentro y estando en el Condado de Santa Fe y Estado de Nuevo Mexico, a saber: Un trecho de terreno situado en el Condado de Santa Fe, distrito no. 20. Dicho cuarteron se compone en su ancho de medida de norte a sur (58 yds. 2 pies) cincuenta y ocho yardas y dos pies; lo largo mide (214 yds.) doscientas catorce yardas. Los linderos de dicho cuarteron son como sigue: Norte, Tierras de Juanita M. Trujillo; Oriente, terreno del gobierno; Sur, tierra de Nicasio Ortega; Poniente, el camino Publico.

juntamente con todo y singular tenencias y herencias y pertenencias a las mismas correspondiente y tambien el estado, derecho, titulo e interés, cualquiera que sea tanto en la ley como en la equidad de la dicha parte de la primera parte de y en la misma en toda parte y porcion de la misma, con sus pertenencias.

PARA TENER Y POSEER, las dichas premisas, arriba concedidas y descritas, con las pertenencias, a la dicha parte de la segunda parte, sus herederos, sucesores o asignados, para siempre.

Y la dicha parte de la primera parte, por sus herederos, ejecutores, administradores, sucesores o asignados, conviene, concede, vende y conviene en y con la parte de la segunda parte, sus herederos, ejecutores, administradores, sucesores o asignados, que, a la hora de entregarse y sellarse estas presentes, el estaba en pleno derecho de las premisas arriba concedidas, como estado de herencia legal y que tiene buen derecho, pleno poder y autoridad legal para conceder, tratar, vender y entregar la misma en la forma y manera ya dicha y que las mismas están libres y limpias de todas otras concesiones, tratos, ventas, entregas, hipotecas, asesamientos, impuestos y obligaciones anteriores, de clase o forma cualquiera; y que la dicha parte de la primera parte, garantiza y defenderá, para siempre, la quietud del titulo de las premisas arriba concedidas a la parte de la segunda parte, sus herederos, sucesores o asignados, encontra de todas o cualquier persona o personas que legalmente reclamen o hagan reclamo de toda o cualquier parte de ella.

EN TESTIMONIO de lo cual, la parte de la primera parte ha puesto a esto, su mano y sello el dia y año, primeramente arriba escritos.

Firmado, Sellado y Entregado en la Presencia de

Avedan E. Chavez — Sabino Trujillo (Sello)

Martha Ortega — (Sello)

(Sello)

Attachment 1
Pg 4 of 4

LEASE AGREEMENT
BETWEEN SANTA FE COUNTY
AND
THE ESPANOLA PUBLIC SCHOOL DISTRICT

THIS AGREEMENT is made and entered into on the 10th day of September, 2013, by and between Santa Fe County (hereinafter referred to as the "County") and the Espanola Public School District, 714 Calle Don Diego (hereinafter referred to as "Espanola Schools").

WHEREAS, the County and the Espanola Municipal School District entered into a Lease Agreement dated April 30, 1979 (the "1979 Lease") wherein the Espanola Schools agreed to lease to the County certain real property, described in the 1979 Lease by reference to "Exhibit A," for public purposes as the County may determine;

WHEREAS, the 1979 Lease was amended in 1987 solely to extend the term of the Lease to April 29, 2012;

WHEREAS, since April 2012, by mutual agreement of the parties, the County has continued to use, occupy and benefit from its leasehold interest in the property and wishes to lease the property for a period of one (1) year with the option to renew thereafter.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. In consideration of the mutual covenants and agreements between the parties, Espanola Schools agrees to lease the property, described in the 1979 Lease, as amended, a copy of which is attached hereto and incorporated by reference to "Attachment 1", to the County on the same terms and conditions as 1979 Lease Agreement, as amended, for a term of one year (1) year commencing on April 30, 2013.

2. The parties also agree to delete Paragraph 2 of the 1979 Lease, as amended, in its entirety and replace it with the following:

> 2. The term of this Lease shall be for a period of one (1) year beginning on April 30, 2013 and ending on April 30, 2014.

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

SANTA FE COUNTY

Kathleen S. Holian

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

Date: Sept. 10, 2013

ATTEST:

Geraldine Salazar Date: 9/10/2013

Geraldine Salazar
Santa Fe County Clerk

Approved as to form:

Date: 8/27/13

Stephen C. Ross
County Attorney

Finance Department

Date: 8/27/13

Teresa C. Martinez
Director

COUNTY CLERK
GERALDINE SALAZAR
SANTA FE COUNTY NEW MEXICO

ESPANOLA PUBLIC SCHOOL DISTRICT

Date: 9-9-13

Dr. Daniel Trujillo
Superintendent

Ralph Medina Date: 9-9-13

Ralph Medina
President
Espanola Public School Board

LEASE

THIS LEASE is entered into as of the 30th day of April, 1979, between THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY (referred to in this Lease as "County") and ESPANOLA MUNICIPAL SCHOOL DISTRICT (referred to in this Lease as "Espanola Schools").

1. The Espanola Schools leases to the County the real estate described in Exhibit "A" attached to this Lease, together with all improvements thereon and all furniture, personal property and fixtures therein.

2. The term of this Lease shall be for a period of 25 years beginning on the 30th day of April, 1979, and ending at midnight on the 29th day of April, 2004.

3. The County shall pay as rent to Espanola Schools at such place as Espanola Schools may designate in writing from time to time for this purpose, the sum of $1.00 each year on or before January 30th.

4. The County agrees that it has examined the premises prior to the execution of this Lease and knows the condition of the premises and accepts the condition of the premises as is.

5. Espanola Schools agrees that the County may make such improvements on the premises for public purposes as the County may, in its discretion, determine. Upon the termination of this Lease, the County shall receive from Espanola Schools compensation for the fair market value of such improvements should Espanola Schools and the County not renew this Lease upon the same terms and conditions.

6. Espanola Schools shall not be liable for any damage to persons or property arising from any act of negligence of the County, or its sublessees, or from the use, maintenance or occupation of the premises by the County, and the County hereby agrees to indemnify and hold harmless Espanola Schools from any and all

claims and liabilities for damage to persons or property arising from the County's use and possession of the premises.

7. Lessee shall at all times carry fire and extended coverage insurance on the buildings on the leased premises in the minimum unit prescribed for insurance of public buildings. Such insurance shall be payable to lessor and lessee. In the event of a loss and the inability of the parties to agree on disposition of insurance proceeds, the matter shall be decided by the Secretary of Finance and Administration, whose decision shall be final.

8. The County shall not assign all or any portion of this Lease without first obtaining the written consent of Espanola Schools.

9. This Lease incorporates all the agreements and understandings between Espanola Schools and the County concerning the subject matter, and all such understandings have been merged into this written Lease.

10. This Lease may not be amended except in writing executed by Espanola Schools and the County. It is specifically enforceable.

ESPANOLA MUNICIPAL SCHOOL DISTRICT

By _____

Its _____

BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By _____

JOHN R. ERTA, Chairman

APPROVED:

_____
EARL R. POTTER
County Attorney

ATTEST:

_____
CAROLYN GONZALES
County Clerk

STATE OF NEW MEXICO)
: ss.
COUNTY OF RIO ARRIBA)

The foregoing instrument was acknowledged before me this 30th day of April, 1979, by Eutimio Lugan Jr. Chmn. of Board of the ESPANOLA MUNICIPAL SCHOOL DISTRICT.

Notary Public

My Commission Expires:
2/8/82

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

The foregoing instrument was acknowledged before me this 3rd day of May, 1979, by [illegible] Chairman of the BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY.

Notary Public

My Commission Expires:
2/22/82

OFFICIAL SEAL
Signature
PATRICIA ANN GARCIA
NOTARY PUBLIC - NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires: 2/22/82

EXHIBIT A

Chimayo School Property

DOCUMENTO GARANTIZA — Impreso y de venta por la Compañía Impresora de Nuevo Mexico, Santa Fe, N. M.

ESTA ESCRITURA, Hecha y convenida hoy día doce de Marzo A. D. mil novecientos y treinta y seis por y entre Sabino Trujillo del condado de Santa Fe Estado de Nuevo Mexico, parte de la primera parte, y Pedro Trujillo, Manuel Vigil y Camilo Trujillo, directores de escuela Distrito 20 actuando y representando al dicho distrito No. 20 del condado de Santa Fe Estado de Nuevo Mexico, parte de la segunda parte:

DA FE, Que la dicha parte de la primera parte, por y en consideración de la suma de $325.00 trescientos veinte y cinco pesos dinero legal de los Estado Unidos, a el en mano pagado por la dicha parte de la segunda parte, el recibo de la cual es por esta acusado, la dicha parte de la primera parte ha concedido, contratado vendido, traspasado, y confirmado, y por estas presentes concede, contrata, vende, traspasa o confirma a la dicha parte de la segunda parte y a sus herederos, asignados o sucesores, para siempre, todo solar o trecho de terreno o propiedad raiz, descrito a continuacion, situado en, dentro y estando en el Condado de Santa Fe y Estado de Nuevo Mexico, a saber: Un trecho de terreno situado en el Condado de Santa Fe, distrito No. 20. Dicho cuarteron se compone de su ancho de medida de norte a sur (58 yds. 2 pies) cincuenta y ocho yardas y dos pies; lo largo mide (214 yds) doscientas catorce yardas. Los linderos de dicho cuarteron son como sigue: Norte, Tierras de Juanita M. Trujillo; Oriente, terreno del gobierno; Sur, tierras de Nicasio Ortega; Poniente, el camino Publico.

juntamente con todo y singular tenencias y herencias y pertenencias a las mismas correspondiente y tambien el estado, derecho, titulo e interés, cualquiera que sea tanto en la ley como en la equidad de la dicha parte de la primera parte de y en la misma en toda parte y porcion de la misma, con sus pertenencias.

PARA TENER Y POSEER, las dichas premisas, arriba concedidas y descritas, con las pertenencias, a la dicha parte de la segunda parte, sus herederos, sucesores o asignados, para siempre.

Y la dicha parte de la primera parte, por sus herederos, ejecutores, administradores, sucesores o asignados, conviene, concede, vende y conviene en y con la parte de la segunda parte, sus herederos, ejecutores, administradores, sucesores o asignados, que, a la hora de entregarse y sellarse estas presentes, el estaba en pleno derecho de las premisas arriba concedidas, como estado de herencia legal y que tiene buen derecho, pleno poder y autoridad legal para concedér, tratár, vendér y entregár la misma en la forma y manera ya dicha y que las mismas están libres y limpias de todas otras concesiones, tratos, ventas, entregas, hipotecas, asesamientos, impuestos y obligaciones anteriores, de clase o forma cualquiera; y que la dicha parte de la primera parte, garantiza y defenderá para siempre, la quietúd del titulo de las premisas arriba concedidas a la parte de la segunda parte, sus herederos, sucesores o asignados, encontra de todas o cualquier persona o personas que legalmente reclamen o hagan reclamo de toda o cualquier parte de ello.

EN TESTIMONIO de lo cual, la parte de la primera parte ha puesto a esto, su mano y sello el dia y año, primeramente arriba escritos.

Firmado, Sellado y Entregado en la Presencia de

Avedan L. Chavez — Sabino Trujillo (Sello)

Martha Ortega — (Sello)

(Sello)

Attachment 1
Pg 4 of 4

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: *April 2, 2014*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting April 29, 2014*
REQUEST APPROVAL OF THE SALE AGREEMENT BETWEEN SANTA FE COUNTY AND SUSAN B. SCHNEIDER FOR 932.3 SQUARE FEET OF PROPERTY (PUBLIC WORKS/ROBERT MARTINEZ)

BACKGROUND AND SUMMARY:

Susan B. Schneider is the owner of the residence at 14 Waldo Street, Cerrillos, New Mexico. At the time Ms. Schneider purchased this property, there were existing encroachments on Waldo and Third Streets, which are on County rights-of-way. The encroachments include portions of the residence, garage, fence, sidewalk, adobe wall, propane tank, and landscaping. Ms. Schneider would like to purchase a total of 932.3 square feet of County right-of-way to cure the encroachments. The right-of-way width on Waldo and Third Streets are 60 feet and the widest portion Ms. Schneider is requesting to purchase is 8.37 feet.

The County ordered an appraisal to determine the fair market value of the property, but Ms. Schneider paid the cost of the appraisal. The fair market value, based on the appraisal, is Two Thousand Three Hundred and Fifty Dollars ($2,350.00).

ACTION REQUESTED:

Public Works requests approval of the purchase and sale agreement between Santa Fe County and Susan B. Schneider.

Attachments:
1. Appraisal

Appraisal of Two Tracts of Land located in Waldo and 3rd Streets
Cerrillos, New Mexico 87010

Date of Appraisal
February 4, 2014

Date of Report
February 5, 2014

Prepared for:
Mr. Robert Martinez
County of Santa Fe
P. O. Box 276
Santa Fe, New Mexico 87504-0276

Prepared by:
Travis D. Engelage, MAI
P.O. Box 93875
Albuquerque, New Mexico 87199

Table of Contents

General Location Map ..... - 1 -
Neighborhood Map ..... - 1 -
Identification and Location of the Subject Property ..... - 2 -
Legal Description ..... - 2 -
Purpose of the Appraisal ..... - 2 -
Property Rights Appraised ..... - 3 -
Effective Date of Value ..... - 3 -
Intended Use and Intended Users ..... - 3 -
Date of Report ..... - 3 -
Competency Provision ..... - 3 -
The Scope of Work ..... - 3 -
History and Ownership of the Property ..... - 4 -
Area Description ..... - 4 -
Subject Immediate Area ..... - 5 -
The Subject Property ..... - 6 -
  Site Description-Tract A ..... - 7 -
  Encroachments: ..... - 7 -
  Site Description-Tract B ..... - 7 -
  Encroachments: ..... - 7 -
  Flood Hazard Potential ..... - 7 -
  Zoning ..... - 7 -
  Soils Conditions/Environmental Issues ..... - 7 -
  Conclusions ..... - 8 -
Highest and Best Use ..... - 8 -
  As Vacant ..... - 8 -
  Property as Improved ..... - 9 -
Appraisal Methodology ..... - 9 -
  Applicability of the Approaches to the Appraisal Problem ..... - 9 -
Valuation ..... - 11 -
  Valuation Analysis ..... - 11 -
  Property Rights Conveyed ..... - 11 -
  Conditions of Sale ..... - 11 -
  Financing ..... - 11 -
  Market Conditions ..... - 11 -
  Size ..... - 12 -
  Location ..... - 12 -
  Utilities ..... - 12 -
Final Reconciliations and Conclusions ..... - 14 -
Marketing Period ..... - 14 -
Certification ..... - 15 -
Assumptions and Limiting Conditions ..... - 16 -
Qualifications of the Appraiser ..... - 18 -
Addenda 19

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February 5, 2014

Mr. Robert Martinez
County of Santa Fe
P. O. Box 276
Santa Fe, New Mexico 87504-0276

RE: Appraisal of Two Tracts of Land located in Waldo and 3rd Streets located in Cerrillos, New Mexico 87010

Dear Mr. Martinez:

Pursuant to your request, enclosed you will find my appraisal on the above referenced property. The property consists of a two vacant land parcels containing 932 square feet of land. This appraisal sets forth the analyses which are the basis of the valuation of the property. The purpose of the appraisal is to estimate the market value of the fee simple interest in the subject real estate. The effective date of valuation is February 4, 2014, the date of inspection.

The conclusions presented in this report are the result of a complete appraisal process in which no departures from USPAP guidelines were invoked. The report represents an abbreviated level of detail of the data, analysis, reasoning, and conclusions of the appraisal. The summary appraisal report format complies with the reporting requirements recited in USPAP Standards Rule 2-2(b). Documentation supporting the appraisal is retained in my file, which is available to authorized users of the report upon request.

The Estimated Market Value of the Fee Simple Interest in the Subject Property as of February 4, 2014 is:

Two Thousand Three Hundred Fifty Dollars

($2,350.00)

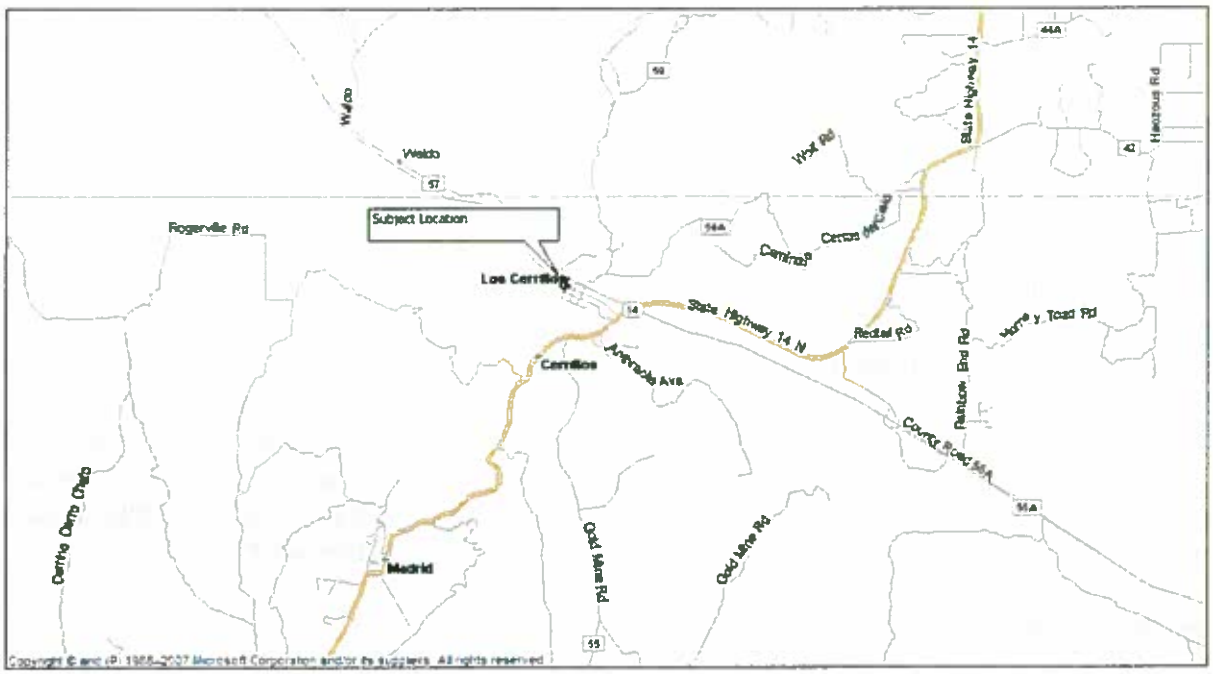
The report is subject to the assumptions contained within the report. Special assumptions of the report are shown below:

None

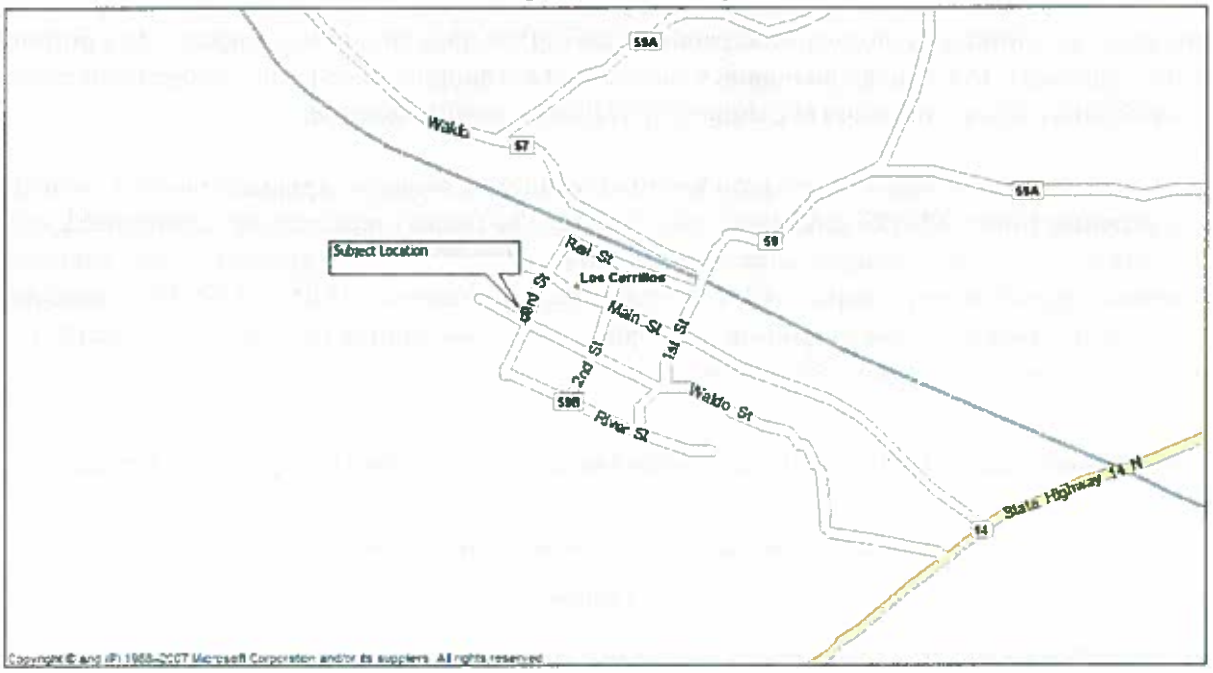
Respectfully submitted,

Travis D. Engelage, MAI

General Location Map



Neighborhood Map



This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended uses stated below. The appraiser is not responsible for unauthorized use of this report.

Identification and Location of the Subject Property

The subject of this appraisal are two tracts of land containing a total of 932 square feet located within the right of ways of Waldo Street and 3rd Street, Cerrillos, New Mexico.

Legal Description

The property is legally described as:

> Metes and bounds description within Waldo Street and 3rd Street in Cerrillos, , County of Santa Fe, New Mexico.

The area of the subject property as shown on the survey is 932 square feet, more or less.

Tract A:	698.1 Sq.Ft.
Tract B	234.2 Sq.Ft.
Total	932.3 Sq.Ft.

A copy of the survey is found in the addenda of the report along with the metes and bounds . It is noted that the survey identifies the tracts as Easement Area A and Easement Area B with the intentions of granting easements. The client has now given me instructions that the transfer instrument will be a Quit Deed.

Purpose of the Appraisal

Purpose of the appraisal is to estimate the subject property's Market Value. The function of the report is possible disposal. Property is appraised as of February 4, 2014, the date of inspection. Market Value is defined as:

> *The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*
>
> *a. buyer and seller are typically motivated;*

b. both parties are well informed or well advised, and each acting in what he considers his own best interest;

c. a reasonable time is allowed for exposure in the open market;

d. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Property Rights Appraised

The real property rights appraised are those of the Fee Simple Estate with marketable title.

Fee Simple Estate is defined as:

> *Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, 5th Edition, Appraisal Institute.)*

Effective Date of Value

The effective date of this report is February 4, 2014, the date of inspection.

Intended Use and Intended Users

The intended use of the report is for possible disposal. The intended user of the report is County of Santa Fe.

Date of Report

The appraisal is transmitted to the client by means of this report on February 5, 2014.

Competency Provision.

I am competent to accept this appraisal assignment based on my education and experience in appraising properties involving industrial vacant land as well as my knowledge of the local real estate market. Significant time has been spent in the collection and analysis of sales, rents, local costs, and demographics in order to obtain the necessary understanding of the local market.
I am a general certified appraiser in the State of New Mexico.

The Scope of Work

The scope of work encompassed the necessary research and analysis to prepare a report reflecting the market value of the subject real estate in accordance with its highest and best use. The following steps were undertaken in the appraisal process:

The subject property was inspected on February 4, 2014. The photographs of the subject which appear in this report were taken on this date. Subject property data was obtained by inspection and the compilation of data in the offices of the Santa Fe County Clerk's, Treasurer's, and Assessor's offices.

Community and neighborhood data were based on information which was collected from various public and privately published reports along with the appraisers' inspection of the neighborhood and general area.

The market data which forms the basis of the highest and best use and valuation analyses were compiled from the subject property, public records, and interviews with market participants, and published private data. Note that New Mexico law does not require public disclosure of real estate sale prices or financing terms. The sources from which my data was obtained are believed to be reliable, and the information gathered from them is assumed to be accurate.

After assembling information and analyzing all data gathered a final value estimate was determined for the subject property in accordance with the definition of market value as defined on page one of this report.

The subject tracts have been encroached upon by the property improvement located at 14 Waldo Street for a considerable number of years. A recent transfer and subsequent property surveys revealed the encroachments. The property ownership is attempting to solve the encroachment problem, which has necessitated this appraisal of the two tracts identified within the legal description. In order to value the street, I have considered the value of the adjacent lots and applied the unit value to the subject. This is commonly referred to Across the Fence Valuation.

History and Ownership of the Property

No title report was supplied to me, county roads within Santa Fe County are owned by the County of Santa Fe.

Area Description

Santa Fe is New Mexico's state capital and the oldest capital city in the United States. The city is located in a valley formed by the Rio Grande River, bordered on the west by the volcanic Jemez Mountains and on the east by the Sangre de Cristo range of the Rocky Mountains.

The city is located approximately 60 miles north of Albuquerque, 70 miles south of Taos, and 35 miles east of Los Alamos, all major cities/destinations within New Mexico. This central location results in many more visitors to the city than just its immediate population. Santa Fe was just named the third best traveled city in the US by Travel and Leisure magazine. Santa Fe's key location in the national highway provides travelers an ideal central destination to discover the well-known cities of New Mexico.

Interstate 25 makes an S-shaped form through Santa Fe and its neighboring counties, but carries primarily north/south traffic. Outside of the county, the freeway turns south to be the main Interstate to Albuquerque, and north to Denver and beyond. The bordering states – Colorado to the north, Arizona to the west, and Texas to the east and south – all have major urban cities within a day's drive or a few hours flying time.

The urban area includes 43,500 acres or nearly 70 square miles in all. The city area includes 23,905

acres or nearly 37.4 square miles. Growth is only somewhat restricted by geography, with several miles to the east and west prior to limitations by mountains, many miles south, and hills to the north which somewhat limit density but do not preclude development. Development from the City is expanding in all directions, primarily within unincorporated areas of the County.

Water

Lack of water is a significant limiting factor to development in Santa Fe, as well as the State of New Mexico and the southwest United States. The State and the County have been struggling with ways to mitigate the limitation for many years. The State and County currently have plans in action that do not allow any "dry" development, or development without sufficient water rights to support the proposed development. Many areas have limited development to certain minimum lot sizes, others have required water flow or connection to a municipal supply prior to development.

In areas in and around the City of Santa Fe, where municipal water is available, the property must be connected to the municipal water supply. For larger developments connection currently requires an exchange of water rights from the property to the City, in an amount sufficient to supply the development. In the future the City is hoping to purchase additional rights so that connection would only require payment of money instead of an exchange, allowing sites whose water has already been sold off to buy the needed water for development.

Population

The City of Santa Fe's population growth has been reasonably consistent since 1980, adding a total of 6,699 people between 1980 and 1990, adding another 6,344 people between 1990-2000 and adding another 5,744 people between 2000-2010. Total population for the City of Santa Fe for 2010 was 67,947 and for the county the population is 144,606.

The total County population has grown over three times the rate than that of the City over the period of 1990-2000 and between 2000 and 2010 the growth rate has been 11.5%. The difference in growth is primarily due to the limited availability of vacant developable land within the city limits and that development is occurring in all directions outside of the city boundaries. Areas immediately surrounding the City of Santa Fe are experiencing the majority of growth in the County.

Employment

While there are approximately 144,606 residents within the county, only 75,276 are employed both inside and outside the county with an unemployment rate of 5.5% as of March, 2012. The unemployment rate for Santa Fe MSA as of March, 2011 was 6.2%. which was below New Mexico's rate of 7.2% for March, 2012 and 7.5% for March, 2011.

The majority of local industry is either government or tourism based.

Summary and Conclusion

The City and County of Santa Fe are increasingly supporting a year round economy in addition to growing tourism. Overall the area is supporting its growth with decreasing unemployment, and this trend is expected to continue into the foreseeable future.

Subject Immediate Area

The subject property is located in Cerrillos along Third Street and Waldo Street in the western portion of Cerrillos. Neighborhood boundaries can be described as that area north and west of Cerrillos known as the

Cerrillos Hills, east of Cerrillos along the Gallisteo Creek. Area is historically known as being the mining district of Cerrillos. The Galisteo Creek runs through the area, roughly east to west.

Land Use

The neighborhood is primarily characterized by rural residential, ranch and agricultural properties. The majority of properties in the area are a minimum of 120 acres, many, such as the subject, are larger. Cerrillos is a small historic community with no services. The lots within Cerrillos generally measure 25' X 100' and typically, multiple lots are used for a residential site. The last known sale of lots within Cerrillos occurred in 2002. Shopping, hospitals and community services are located in Santa Fe approximately 25 miles to the north.

Major Streets

Major streets within the neighborhood include:

Interstate Highway 25, a six lane access controlled highway extending from the southern portions of the Las Cruces to Santa Fe and Raton, New Mexico. The highway is the major north south access road for the City.

State Highway 14 is a paved two-lane rural road. The highway which runs from Santa Fe south through Los Cerrillos and Madrid.

County Road 55, a paved two lane two way road running north and south providing access from Highway 14 south to residential areas.

County Road 59, a graded road running north and south providing access from Cerrillos to the Cerrillos Hills State Park.

County Road 55 (Waldo Canyon Road), a graded road running east to west providing access from Cerrillos to I-25.

Majority of roads in the area are county maintained graded roads.

Trends and Conclusions

Subject property is located within Cerrillos along Third Street and Waldo Street within the western portion of Cerrillos. Mixed residential improvements tend to define the community. Little growth has occurred within the Cerrillos area. Growth has been limited to rural residential uses.

The Subject Property

The subject of this appraisal is Two Tracts of Land located in Waldo and 3rd Streets, The property is part of the right of way of Third Street and of Waldo Street. Copies of maps, plats and aerial photo locating the property is found in the addenda of the report.

Site Description-Tract A

Size:	698.1 square feet.
Shape:	Irregular.
Dimensions:	South, 8.37'; North-two courses, 8.37', East—two courses, 117.81'; West. 117.95'.
Topography:	level.

Encroachments:

Subject property is encroached upon by the adjacent property. Encroachments include portions of a residence, converted garage, adobe wall, LP gas tank, and landscaping.

Site Description-Tract B

Size:	234.2 square feet.
Shape:	Irregular.
Dimensions:	South, 50.0'; North, 50.01', East, 5.26'; West. 4.11'.
Topography:	level.

Encroachments:

Subject property is encroached upon by the adjacent property. Encroachments include a wooden fence, sidewalk, and landscaping.

Flood Hazard Potential

Per Federal Emergency Management Agency (FEMA) Community-Panel 35049C0625E, effective 12/4/2012, it appears the subject is in a Zone X, an area outside the 500 year flood plain. A copy of the portion of the map showing the subject location is included in the addenda.

Zoning

Subject property is zoned residential, single family residential. Principle uses of land with this zoning is single family residential uses.

Soils Conditions/Environmental Issues

My inspection did not reveal any obvious environmental concerns. The present use of the property is for Palomas Avenue, a graded county road. My inspection did not reveal any noticeable items of concern, However, the appraiser is not an environmental expert and is not trained to detect problems of this nature. The appraisal assumes that the property is free from environmental problems related to any source whether on- or off-site. Should subsequent information contradict this assumption, the value estimate reported in this appraisal may be invalid. If the client requires more detailed data

regarding this issue, I recommend the procurement of a Phase I Environmental Site Assessment to be performed by a qualified expert.

Conclusions

The subject property is two tracts of land with a total area of 932 square feet. Residential improvement encroachments have crept onto the tracts.

Surrounding properties are residential in nature. Overall location is considered as average.

Highest and Best Use

Highest and best use is defined as:

> *The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. (Source: The Appraisal of Real Estate, Appraisal Institute, 10th Edition).*

In estimating highest and best use, consideration is given to uses legally permitted, physical attributes of the property with respect to various uses, and apparent need or likely demand for such uses.

In review, the subject site contains a total of 932 square feet of land zoned residential, single family residential. The sites of Two Tracts of Land located in Waldo and 3rd Streets is within the western portion of the community.

As Vacant

Legally Permissible Uses

As noted in the property description, the subject property is zoned residential, for single family residential. Principle uses of land with this zoning is for single family residential uses.

The residential designation limits the uses to single family uses.

Physically Possible Uses

The subjects are level, ranging from Rectangular to irregular sites. They contain 932 square feet and has all utilities readily available. The location is conducive for supporting of single family uses. For these reasons, use of the site for road right of way uses is considered to be physically possible.

Financially Feasible/Maximally Productive Use

The subject property is located along the intersection of Waldo Street and Third Street, which is considered to be minor residential roadways. Property uses in the vicinity of the subject are limited to single family residential uses. The utility of the site would most likely be maximized by continued use as a road right of way. Based on the above-mentioned factors, I believe the most feasible use of the subject whole property, as vacant, is for use as a residential access street.

Property as Improved

Absent any encroachment, The subject property is unimproved, and an analysis of the highest and best use as improved is not applicable.

Appraisal Methodology

There are three approaches to the valuation of an improved property: the Cost Approach, the Income Capitalization Approach, and the Sales Comparison Approach. Each produces a value estimate from a unique perspective, but all derive an estimate of the market value for a given property as of a given date.

The Cost Approach

The Cost Approach is based on the economic Theory of Substitution, which holds that a prudent buyer will not pay more for a given property than the cost of constructing a similar property perceived to be of equal utility. The approach values the land as if vacant and available for development to its highest and best use. An estimate of the reproduction or replacement cost of the improvements is developed from which all accrued depreciation deducted. The depreciated value of the improvements is added to the land value to derive a value estimate by the Cost Approach.

The Sales Comparison Approach

Also based on the Theory of Substitution, the Sales Comparison Approach is developed from the standpoint that a prudent buyer will not pay more for a given property than the price of acquiring a similar property perceived to be of equal utility. The focus the analysis is data from sales of competing properties which compared and adjusted to similarity with the subject property.

Adjustments are made for differences between the comparable and the subject for items such as size, location, modernity, quality, market conditions, financing, etc., and are applied to the sale price of the comparable to arrive at an indication of the what that property would have sold for if it had been essentially the same as the subject. The adjusted sale prices are then correlated into an indication of value for the subject property.

The Income Capitalization Approach

This approach is predicated on the Theory of Anticipation, which holds that value is directly related to the future income a property is expected to produce. An estimate of potential gross income is developed, from which vacancy and operating expenses are deducted to produce an estimate of net operating income. This figure, NOI, is capitalized at an appropriate rate to produce an estimate of value for the subject property.

Applicability of the Approaches to the Appraisal Problem

Of the three standard approaches to value, only the Sales Comparison Approach is applicable to the appraisal problem and is the sole basis of the value estimate. No rentals were found which would supply a market rent analysis. The Income Capitalization Approach is not developed.

The subject property is vacant land and as such a cost approach is not applicable.

In order to value the street, I have considered the value of the adjacent lots and applied the unit value to the subject. This is commonly referred to Across the Fence Valuation.

Valuation

The Sales Comparison Approach

Summarized below are six closed sales of vacant land sites within the subject market area. The sales define the data base upon which the land value estimate is based. The comparable land sales map showing the location of the comparables in relation to the subject is presented in the addenda.

Summary of Land Sales

Comparable No.	Seller	Buyer	Sale Date	Sales Price	Total Square Feet	Price/ Sq. Ft.	Utilities *	Location
1	El Verde Properties, LLC	Timothy J. McLaughlin	1/8/10	$46,000	128,937	$0.36	W,T	1 Cerrillos Heights
2	Cecil C. Carnes, Jr.	Martin Doordan, etux	8/28/12	$20,000	24,987	$0.80	W,E	6 Camino Querencia
3	Richard Cromble, etux	Steve Gibons, etux	1/4/12	$28,000	47,266	$0.59	W,E	21 Yerba Buena
4	Michael Martinez, etux	Barbara Richards	7/19/10	$45,000	30,492	$1.48	W,T	SH 14, Madrid
5	Los Alamos Nt'l Bank	Lucille Gray, Trustee	11/4/10	$28,000	43,560	$0.64	None	SH 14, Madrid
6	Michael L. Hogrebe	James Manning	4/19/11	$32,000	23,261	$1.38	E	Back Rd., Madrid

W=Water, E=Electricity, T=Telephone

Valuation Analysis

Several factors influence the prices paid for vacant sites in the subject's competitive market. Potential differences between the subject and the comparables have been considered in the following order:

Property rights conveyed;
Conditions of sale (buyer and seller motivations);
Financing terms;
Market conditions (changes in value with the passage of time);
Location; and
Physical characteristics; and

Property Rights Conveyed

The appraisal is of the fee simple interest in the subject property. The comparable sales represents the transfer of fee simple title. No adjustments are warranted.

Conditions of Sale

Adjustments for conditions of sale are made when atypical circumstances lead to a sale price which differs from market value. Examples include distress sales and sales between related parties. None of the comparable sales was found to have occurred under circumstances requiring adjustment.

Financing

Each of the comparable sales was for cash or equivalent terms. No adjustments are required.

Market Conditions

The sales are very limited and time comparisons are difficult because of the differing factors affecting the sales. The sales occurred during the 2010-2012 period. No comparison is available in which to obtain any time comparison. Discussions with area realtors suggest little or no appreciation has occurred during this time frame. No time adjustment has been applied.

Size

The characteristic of size can also affect value. Research has indicated that the relative sizes and relative size differences are more important than the absolute size differences. An econometric model using the natural logarithm has been designed and tested that accurately represents the influence of size on the sale price. This model insures consistence in the size adjustments. All of the comparables were adjusted for size using the model and consideration was also given to analysis of sales within the data set. Each sale is adjusted for the differences in size between the sale and the subject property.

Location

Sales 1, 2 and 3 are considered to have inferior locations. Comparisons are made to sales located within Madrid, a similar type of community, located 3 miles south.

	Location Adjustment			
	Sale No.	to	Sale No.	Ind. Adjust.
	4		2	
Size	30,492		24,987	
Price/Sq.Ft	$2.13		$1.08	97.28%
	Sale No.	to	Sale No.	Ind. Adjust.
	5		3	
Size	43,560		47,266	
Price/Sq.Ft	$1.16		$0.74	36.13%
	Sale No.	to	Sale No.	Ind. Adjust.
	6		2	
Size	23,261		24,987	
Price/Sq.Ft	$2.24		$1.08	106.88%

The comparisons above indicate a 100% adjustment to sales 1, 2 and 3.

Utilities

The subject property adjacent to the subjct has electricity, telephone, water and sewer. The comparable sales have varied utilities. The adjustments are based on Water-(well) $13,000; Electricity $2,500; Sewer $7,000. Telephone is not adjusted.

The sales and the adjusted indications of value are presented on the following chart.

Comparable	Subject	1	2	3	4	5	6
Date	02/03/14	01/08/10	08/28/12	01/04/12	07/19/10	11/04/10	04/19/11
Price	N/A	$46,000	$20,000	$28,000	$45,000	$28,000	$32,000
Total Square Feet	5,287	128,937	24,987	47,266	30,492	43,560	23,261
Price/Square Foot (Land)	N/A	$0.36	$0.80	$0.59	$1.48	$0.64	$1.38
Property Rts	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Adjustment		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Adjus. Price/Sq. Ft.		$0.36	$0.80	$0.59	$1.48	$0.64	$1.38
Cond. of Sale	Normal	Normal	Normal	Normal	Normal	Normal	Normal
Adjustment		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Adjus. Price/Sq. Ft.		$0.36	$0.80	$0.59	$1.48	$0.64	$1.38
Financing	Cash	Cash	Cash	Cash	Cash	Cash	Cash
Adjustment		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Adjus. Price/Sq. Ft.	N/A	$0.36	$0.80	$0.59	$1.48	$0.64	$1.38
Adjustments:							
Market Cond. (Date of App.)	2/3/14	1/8/10	8/28/12	1/4/12	7/19/10	11/4/10	4/19/11
Adjustment		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Size	5,287	128,937	24,987	47,266	30,492	43,560	23,261
Adjustment		$0.18	$0.20	$0.18	$0.37	$0.19	$0.34
Location	14 Waldo Street	Inferior	Inferior	Inferior	Similar	Similar	Similar
Adjustment		$0.36	$0.80	$0.59	$0.00	$0.00	$0.00
Utilities	E, T, W, S	W,T	W,E	W,E	W,T	None	E
Adjustment		$0.07	$0.28	$0.15	$0.66	$0.52	$0.86
Other	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant
Adjustment		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Indicated Price/Sq.Ft.		$0.97	$2.08	$1.51	$2.50	$1.35	$2.58

After adjustments the sales indicated a range in indicated value from $0.97 to $2.58 per square foot. The mean indication of value is $1.83 per square foot. Comparable sale 1 is a larger tract and irregular in shape. This sale is considered as the floor of the indicated values. Sales 2, 4 and 6 are the most similar in size and suggest a value in the upper end of the range. Considering the data and the subject location, I believe the subject has a land value of $2.50 per square foot.

Tract A	698.10	Square Feet @	$2.50	/Square Foot =	$1,745.25
Tract B	234.20	Square Feet @	$2.50	/Square Foot =	$585.50
Total	932.30				$2,330.75
					Rounded To
					$2,350.00

Final Reconciliations and Conclusions

The Sales Comparison Approach has been used to derive a market value estimate for the subject property. The sales comparison approach to land value used six sales. Considering the size and location of the tracts, the final estimate of value for the subject property as of February 4, 2014 is:

Two Thousand Three Hundred Fifty Dollars

($2,350.00)

Marketing Period

Assuming the subject is a typical residential property, the actual marketing times of the comparable sales used in the Sales Comparison Approach are varied and ranged from 3 months to one year. It would be reasonable to expect a sale of the subject property to be achieved within one year given reasonable pricing expectations.

Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- I have not performed a previous appraisal of the subject property involving the subject property within the three years prior to this assignment.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.

  As of the date of this report, I have completed the continuing education program of the Appraisal Institute.

The final opinion of Market Value as of February 4, 2014 is:

Two Thousand Three Hundred Fifty Dollars

($2,350.00)

Travis D. Engelage, MAI

Assumptions and Limiting Conditions

The certification of the Appraiser appearing in the appraisal report is subject to the following conditions and to such other specific and limiting conditions as are set forth by the Appraiser in this report.

1. This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it includes full discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value.

2. No responsibility is assumed for legal title considerations. Title to the property is assumed to be good and marketable unless otherwise stated in this report.

3. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.

4. Responsible ownership and competent property management are assumed unless otherwise stated in this report.

5. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.

6. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.

7. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.

8. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.

9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in this appraisal report.

10. It is assumed that all required licenses, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.

11. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reader references purposes only. No guarantee as to the accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purposes of this report.

12. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.

13. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be

taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The appraiser's value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of routine observations made during the appraisal process.

14. Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's value, marketability, or utility.

15. Any proposed improvements are assumed to be completed in good workmanlike manner in accordance with the submitted plan and specifications.

16. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

17. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event, only with property written qualification and only in its entirety.

18. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news sales, or other media without prior written consent and approval of the appraiser.

Special assumptions of the report are shown below:

None

Qualifications of the Appraiser

Travis D. Engelage, MAI, SRA

New Mexico Real Estate Appraisers Certificate Number 00091-G

Education And Training

Professional appraiser with offices located in Albuquerque, New Mexico. BBA degree in Finance and Accounting - Eastern New Mexico University.

Appraisal Institute

Seminars:

Uniform Appraisal Standards for Professional Practice	2012
Appraisal Review	2011
Analyzing Distressed Real Estate	2011
Business Practices and Ethics	2011
Appraisal Curriculum Overview	2011
Uniform Appraisal Standards for Federal Land Acquisitions	2009
Attacking and Defending an Appraisal in Litigation	2008
Office Valuation	2008
Appraising Agricultural Land in Transition	2005
Real Estate Finance, Value and Investment	2004
Rates, Ratios making sense of OARs,GIMs and DCF	2004
Valuation for Financial Reporting Purposes	2004
Analyzing Commercial Lease Clauses	2003
Appraising Natural Resources	2002
Real Estate Fraud	2001
Conservation Easements	2001
Appraising Special Purpose Properties	2001
Flood Zone Issues: Myths and Facts	2000
Appraising from Blueprints and Plans	2000
Case Studies in Commercial Highest and Best Use	2000

Courses:

SPP	Standards of Professional Practice	2010
Course 1-A	Basic Principles	1971,1984
Course 1-B	Income Capitalization	1972
Course II	Urban Properties	1973
Course IV	Eminent Domain	1976

General Experience:

1971 - 1975 New Mexico State Highway Department

Appraisals included farm and grazing lands, urban properties, single - family residential and commercial properties for eminent domain purposes.

1975 - 1977 Federal Aviation Administration

Appraisals included farm and grazing lands, urban properties commercial, industrial, special use properties and air rights easements. Also, determinations for fair rental value on new and existing leases were made.

1977 - 1979 Bureau of Indian Affairs, Gallup, New Mexico

Appraisal assignments included agricultural, Urban, residential, commercial, industrial and special use properties. Reports were used for the purpose of purchasing, selling and leasing for the Navajo Tribe.

1978 -1981 Independent Fee Appraiser with Armand Smith and Associates

Appraisal assignments included residential, commercial, industrial and agricultural properties for various lending institutions and private individuals.

1981 - Present: Independent Fee Appraiser in Albuquerque, New Mexico

Appraisal assignments have included multi-family residential, commercial, industrial and agricultural properties for various lending institutions, government institutions and private individuals.

Professional Organizations:

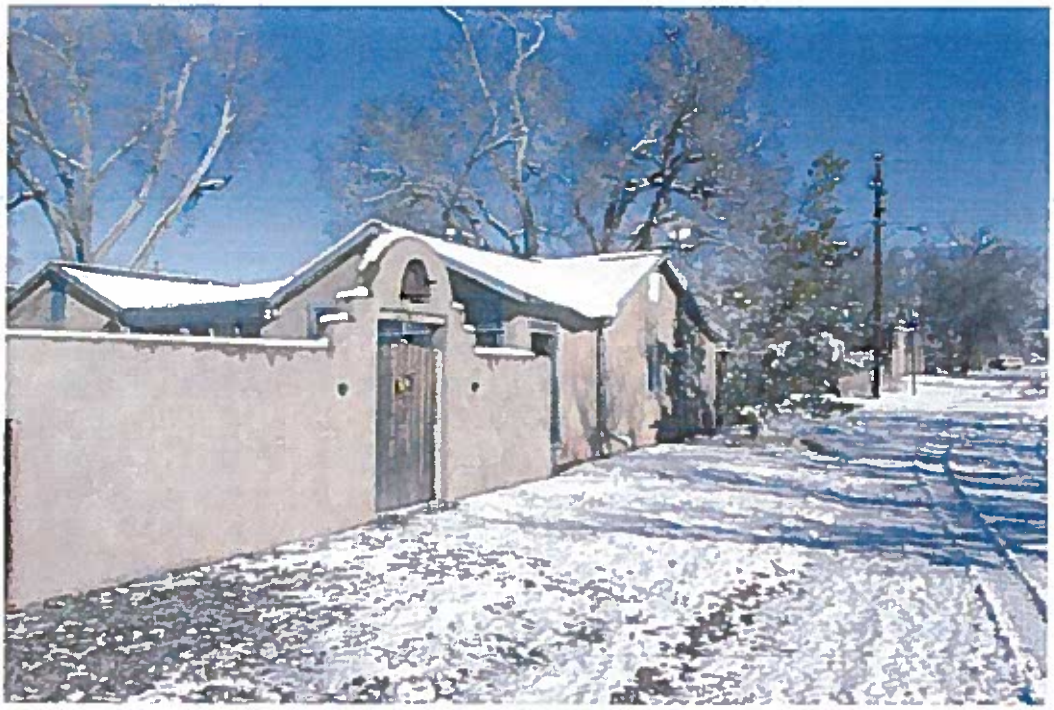
Member of Appraisal Institute -Awarded the MAI designation on May 4, 1981, certificate number 6255. Awarded the RM designation on April 28, 1980, certificate number 1431.

Addenda

Photographs of Subject Property

Southerly view Third Street subject on the right side of photograph.

Easterly view of Waldo Street with subject on right side of photograph.



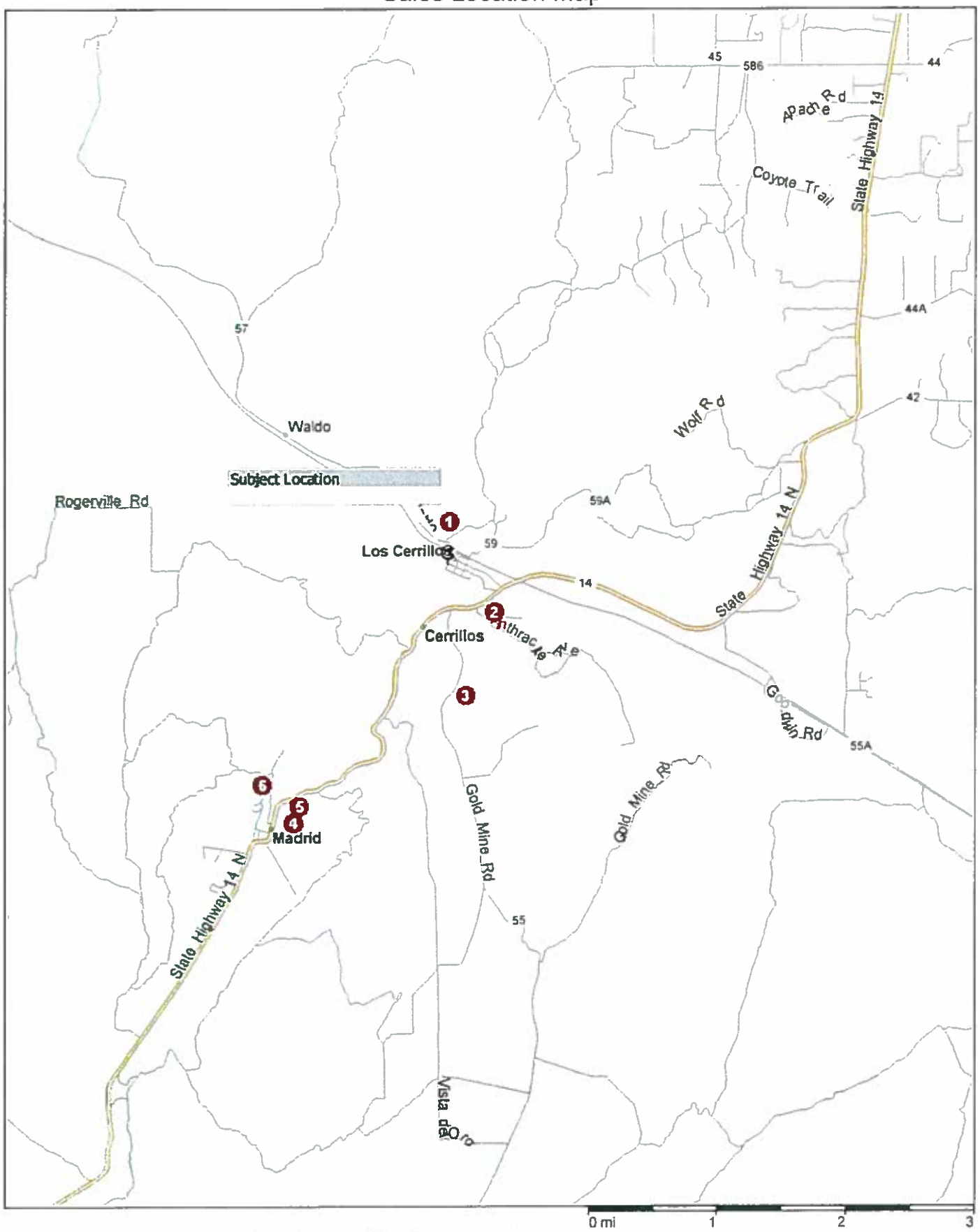
Northwesterly view of subject Tract A.

Westerly view of Tract B.

Aerial view of subject property.

Vacant Land Sales Location Map

Sales Location Map



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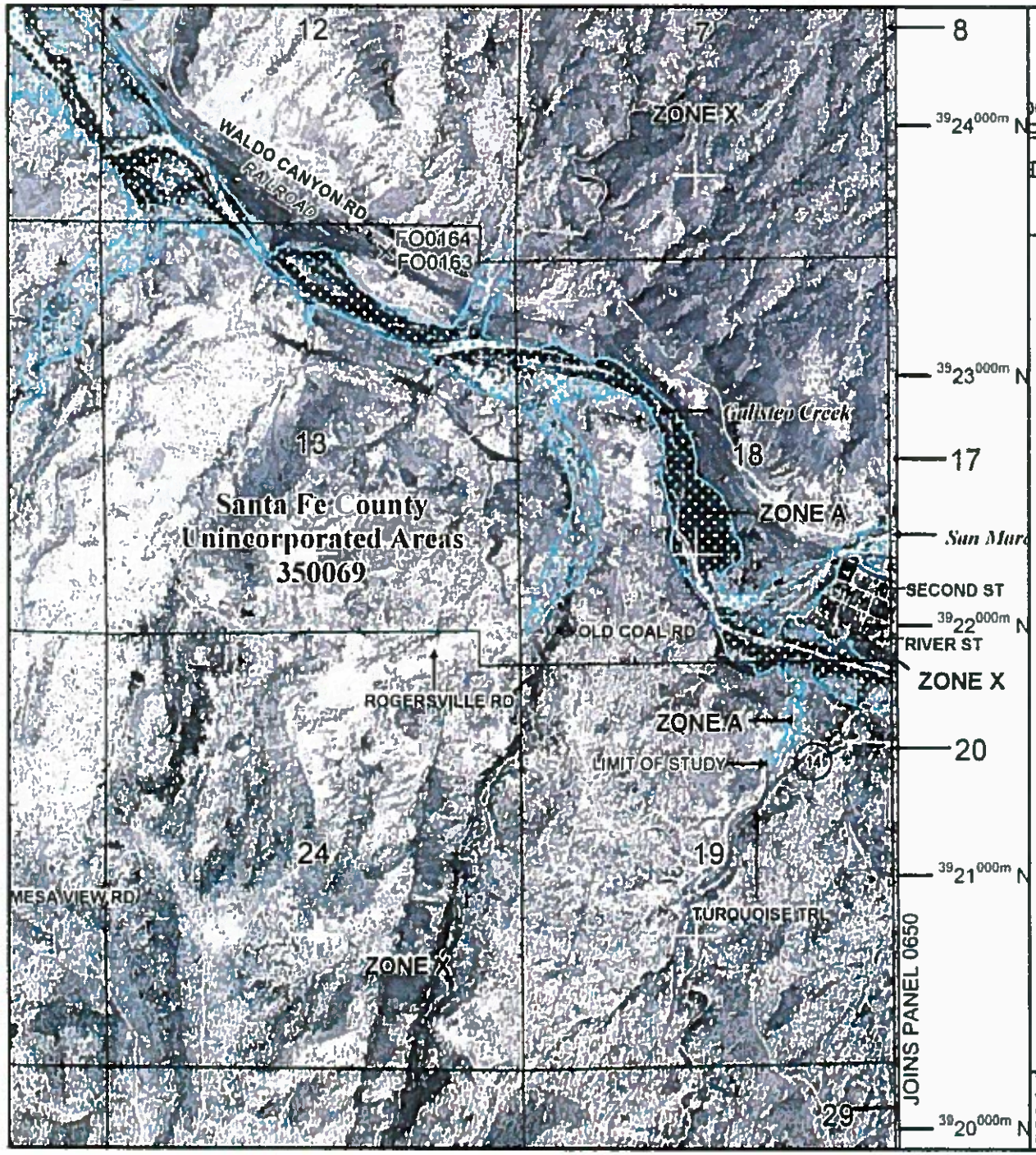
Certain mapping and direction data © 2007 NAVTEQ. All rights reserved. The Data for areas of Canada includes information taken with permission from Canadian authorities, including: © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario. NAVTEQ and NAVTEQ ON BOARD are trademarks of NAVTEQ. © 2007 Tele Atlas North America, Inc. All rights reserved. Tele Atlas and Tele Atlas North America are trademarks of Tele Atlas, Inc.

FEMA Flood Map



MAP SCALE 1" = 2000'

00 0 2000 4000 FEET

0 600 1200 METERS

NFIP

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0625E

FIRM

FLOOD INSURANCE RATE MAP

SANTA FE COUNTY, NEW MEXICO

AND INCORPORATED AREAS

PANEL 625 OF 1100

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
SANTA FE COUNTY (UNINCORPORATED AREAS)	350069	0625	E
SANTO DOMINGO, PUEBLO OF	350081	0625	E

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
35049C0625E

MAP REVISED
DECEMBER 4, 2012

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

Survey and Legal Description of Subject Property

Easement Exhibit

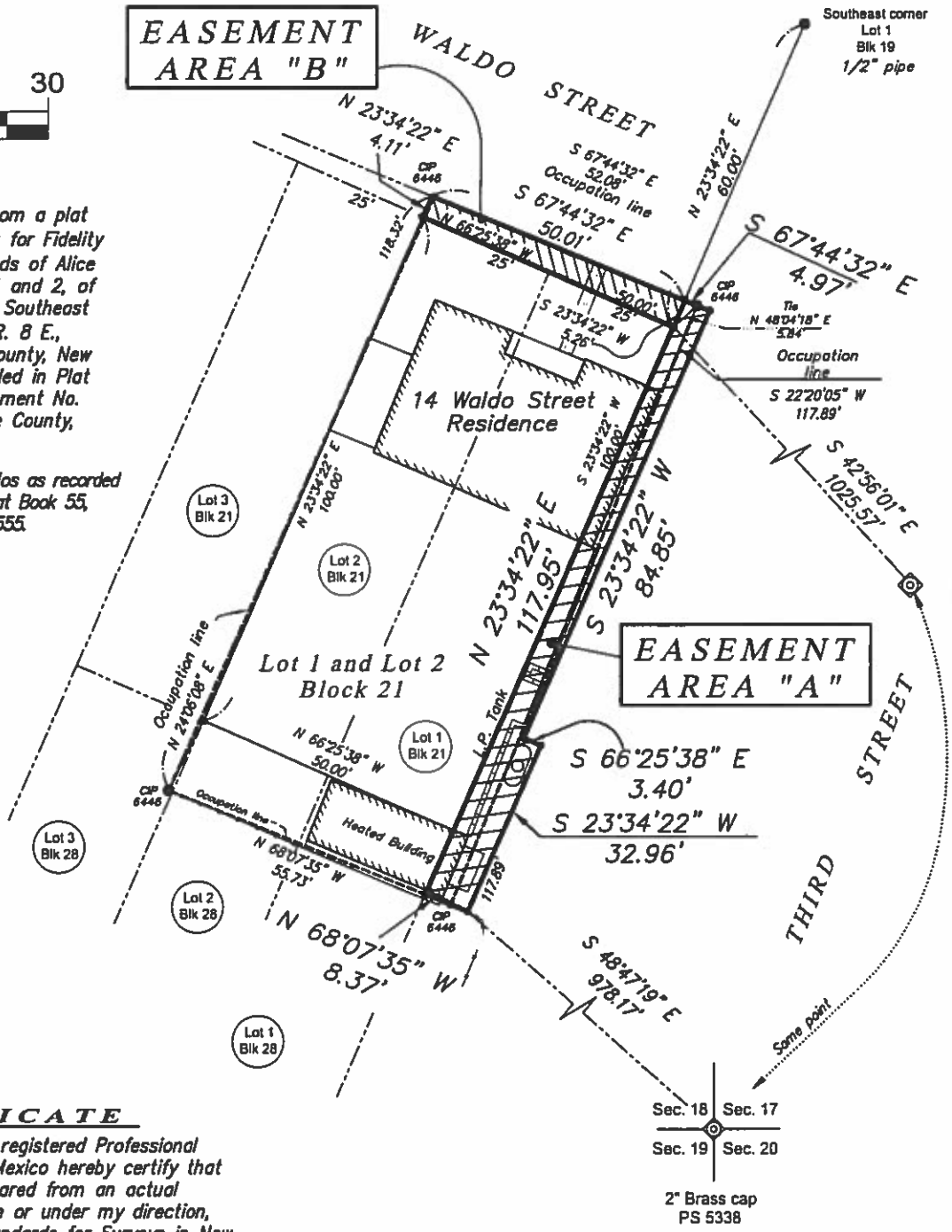
Within Third Street and Waldo Street,
Townsite of Cerrillos
Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M.
Cerrillos, Santa Fe County New Mexico

NORTH

SCALE: 1" = 30'

FEET: 0 30

SCALE:



NOTES

Basis for this Exhibit taken from a plat entitled "Boundary Survey Plat for Fidelity National Title Group, Inc." Lands of Alice M. Messina, Trustee on Lots 1 and 2, of Block 21 Townsite of Cerrillos Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M. Cerrillos, Santa Fe County, New Mexico 14 Waldo Street recorded in Plat Book 715, page 033 as Instrument No. 1,595,986 records of Santa Fe County, New Mexico

Reference plat: Townsite of Cerrillos as recorded in Plat Book 20, page 47 and Plat Book 55, Page 038 as Document No. 406,555.

DAVID E. COOPER
NEW MEXICO
9052
REGISTERED PROFESSIONAL SURVEYOR

CERTIFICATE

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Easement Exhibit was prepared from an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

FOR REVIEW

Title: Easement Exhibit	
14 Waldo Street, Cerrillos, Santa Fe County, New Nexico	
August 27, 2012	Page 1 of 2

SIERRA LAND SURVEYING, Inc.
1452 South St. Francis Drive
Santa Fe New Mexico
505-983-5932 Fax: 505-983-5960
Email: sls@ SierraLandSurveys.com

Legal Description Area "A"

A tract of land located within the right of way of Third Street and Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County,New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,

N 48°47'19" W a distance of 978.17 feet to the POINT OF BEGINNING, thence,

N 68°07'35" W a distance of 8.37 feet to a point; thence, N 23°34'22" E a distance of 117.95 feet to a point; thence, S 67°44'32" E a distance of 4.97 feet to a point; thence, S 23°34'22" W a distance of 84.85 feet to a point; thence, S 66°25'38" E a distance of 3.40 feet to a point; thence, S 23°34'22" W a distance of 32.96 feet to the point of beginning. Containing 698.1 square feet or 0.016 acres more or less.

Legal Description Area "B"

A tract of land located within the right of way of Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County,New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,

N 42°56'01" W a distance of 1025.57 feet to the POINT OF BEGINNING, thence,

N 66°25'38" W a distance of 50.00 feet to a point; thence, N 23°34'22" E a distance of 4.11 feet to a point; thence, S 67°44'32" E a distance of 50.01 feet to a point; thence, S 23°34'22" W a distance of 5.26 feet to the point of beginning. Containing 234.2 square feet or 0.005 acres more or less.

DAVID E. COOPER
NEW MEXICO
9052
REGISTERED PROFESSIONAL SURVEYOR

STATE OF NEW MEXICO
COUNTY OF SANTA FE

This instrument was acknowledged before me on this
_____ day of _____ 2012

by: David E. Cooper

Notary Public *My Commission expires*

CERTIFICATE

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Legal Description was prepared from an Easement Exhibit that represents an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

FOR REVIEW

Title: Easement Exhibit	SIERRA LAND SURVEYING, Inc. 1452 South St. Francis Drive Santa Fe New Mexico 505-983-5932 Fax: 505-983-5960 Email: sls@ SierraLandSurveys.com
14 Waldo Street, Cerrillos, Santa Fe County, New Nexico	
August 27, 2012 / Page 1 of 2	

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT FOR PURCHASE AND SALE (the "Agreement"), dated the _____ day of _____, 2014, is made and entered into by and between the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico ("Seller"), and Susan A. Schneider, a single woman ("Buyer").

Recitals:

A. Buyer is the owner of 14 Waldo Street, Cerrillos, New Mexico more particularly described as Lots 1 and 2, Block 21, Townsite of Cerrillos, Southeast ¼ of Section 18, T. 14 N., R. 8 E., N.M.P.M. (14 Waldo St.). At the time of Buyer's purchase of 14 Waldo Street improvements made by Buyer's predecessors in title encroached into *the County right of way for Third Street and Waldo Street.*

B. Buyer desires to cure the encroachments into the County rights of way and the County is willing to sell the areas of encroachment to Buyer on the terms and conditions set forth herein.

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

1. PURCHASE AND SALE OF THE PROPERTY.

1.1 Purchase and Sale: Seller agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase from Seller the following described property (the Property), Cerrillos, Santa Fe County, New Mexico to wit:

SEE ATTACHED EXHIBIT A

1.2 Purchase Price: As consideration for the conveyance of the Property, Buyer shall pay to Seller Two Thousand Three Hundred and fifty Dollars ($2,350.00).

2. CLOSING DATE.

Unless otherwise extended by written agreement of the parties, the Closing Date shall be no more than thirty (30) days following the approvals, authorizations and consents that are required of Seller that enables consummation of the transactions contemplated by this Agreement, and provided all conditions precedent have been fulfilled.

3. REVIEW, INSPECTION, TITLE AND SURVEY.

Buyer acknowledges that she has been given the opportunity to inspect the Property and review title documents and surveys of the Property. Buyer further acknowledges that the Property is being sold "as is, where is" with no warranties or representations except as expressly

obligations under this Agreement) on or before the first (1st) anniversary of the date of this Agreement, or such later date as the parties may agree upon;

c) Buyer's disapproval of any inspection, title insurance product, survey or any other document related to the Property, in Buyer's sole and absolute discretion;

d) By either Seller or Buyer, if a material breach of any covenant, warranty, representation, agreement or provision of the this Agreement, that individually or in the aggregate could have a material adverse effect, has been committed by the other party and such breach has not been (i) cured within thirty (30) days after the non-breaching party gives written notice of said breach to the breaching party; or, (ii) waived by the non-breaching party.

7. COSTS

7.1 Buyer shall pay all of the escrow fees, if any, all of the cost of all recording fees, all of the costs associated with title insurance and surveys and the cost of any other obligations of Buyer hereunder.

7.2 Seller represents that Seller is exempt from the payment of ad valorem taxes on the property and that Seller has not entered into any rental agreements, or caused fuel oil charges, water charges, sewer charges, and current common charges or assessments to be imposed on the Property.

7.3 Buyer shall pay any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil charges on the property, water charges, sewer charges, and current common charges or assessments which would be the responsibility of Buyer as the assessed owner of the Property.

7.4 Seller shall cause to be paid to Travis Engelage, MAI all costs and expenses owed as a result of the Appraisal prepared for Seller dated February 5, 2014 from the funds previously collected from Buyer.

8. LIABILITY

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

9. BROKER FEES AND INDEMNIFICATION

9.1 Brokers: Buyer and Seller mutually represent that there are no brokers involved in this transaction to whom a fee may be owed. If a party is alleged to have used a real estate broker, that party shall pay the brokerage fee and any incidental or consequential damages caused thereby.

12. **ASSIGNMENT.**

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

13. **ENTIRE AGREEMENT.**

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

14. **WAIVER.**

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

15. **HEADINGS AND CONSTRUCTION.**

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

16. **COUNTERPARTS.**

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

17. **APPLICABLE LAW, JURISDICTION AND VENUE.**

This Agreement shall, in all respects, be governed by and construed according to the laws of the State of New Mexico applicable to agreements executed and to be wholly performed therein. Venue shall be in the First Judicial District, County of Santa Fe, New Mexico.

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

SELLER

SANTA FE COUNTY

By:_____ Date:_____
Daniel W. Mayfield, Chair
Board of County Commissioners

ATTEST

_____ Date:_____
Geraldine Salazar, Santa Fe County Clerk

APPROVED AS TO FORM

_____ Date:_____
Stephen C. Ross, Santa Fe County Attorney

BUYER

Susan A. Schneider Date: March 17, 2014
Susan A. Schneider

Easement Exhibit

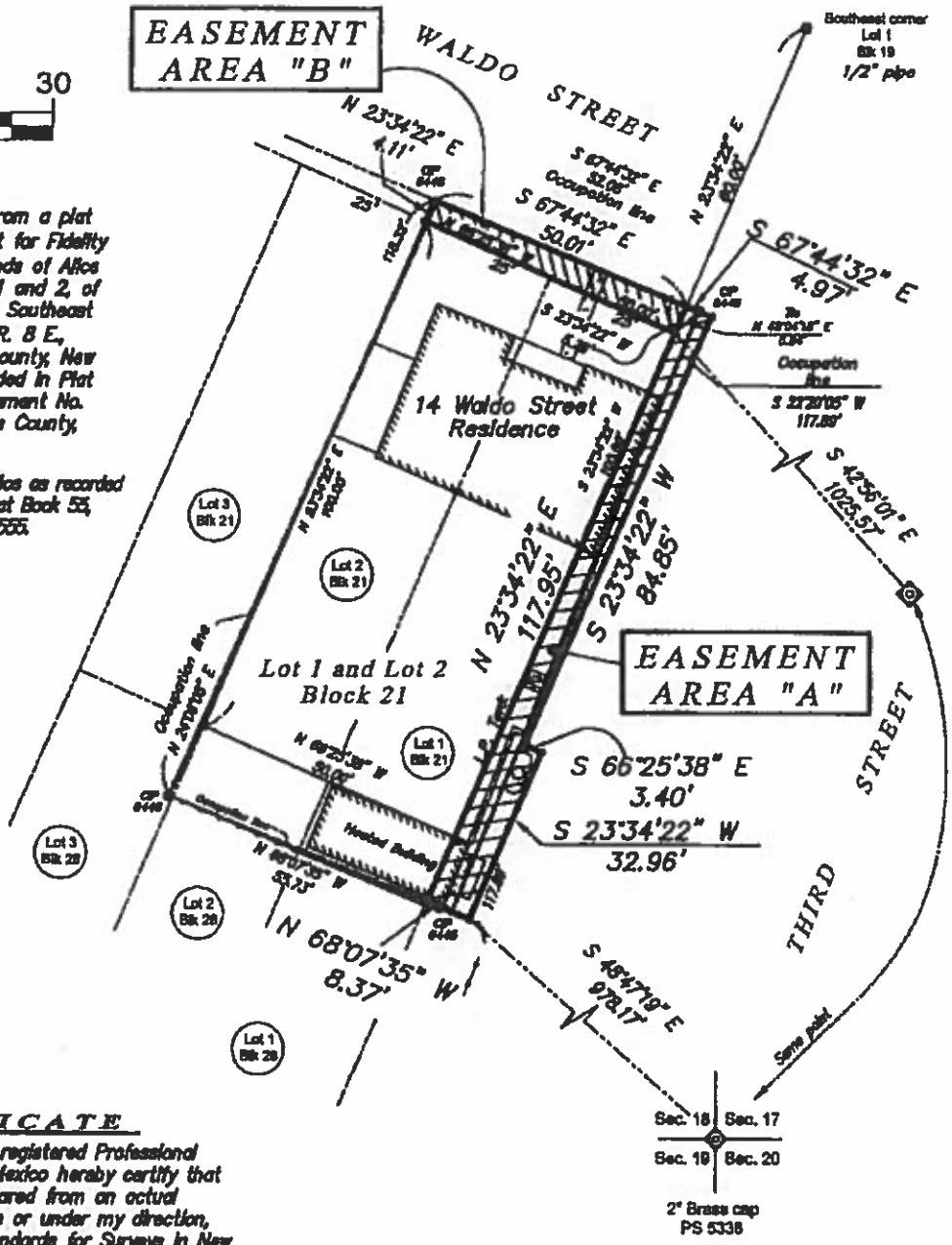
Within Third Street and Waldo Street,
Townsite of Cerrillos
Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M.
Cerrillos, Santa Fe County New Mexico

NORTH

SCALE: 1" = 30'

FEET: 0 30

SCALE:



NOTES

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Reference plat: Townsite of Cerrillos as recorded in Plat Book 20, page 47 and Plat Book 55, Page 038 as Document No. 406,555.

DAVID E. COOPER
NEW MEXICO
9052
REGISTERED PROFESSIONAL SURVEYOR

CERTIFICATE

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Easement Exhibit was prepared from an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

FOR REVIEW

Title: Easement Exhibit		SIERRA LAND SURVEYING, Inc.
14 Waldo Street, Cerrillos, Santa Fe County, New Mexico		1452 South St. Francis Drive Santa Fe New Mexico 505-983-5932 Fax: 505-983-5960
August 27, 2012	Page 1 of 2	Email: sls@ SierraLandSurveys.com

Legal Description Area "A"

A tract of land located within the right of way of Third Street and Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County,New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,

N 48°47'19" W a distance of 978.17 feet to the POINT OF BEGINNING, thence,

N 68°07'35" W a distance of 8.37 feet to a point; thence, N 23°34'22" E a distance of 117.95 feet to a point; thence, S 67°44'32" E a distance of 4.97 feet to a point; thence, S 23°34'22" W a distance of 84.85 feet to a point; thence, S 66°25'38" E a distance of 3.40 feet to a point; thence, S 23°34'22" W a distance of 32.96 feet to the point of beginning. Containing 698.1 square feet or 0.016 acres more or less.

Legal Description Area "B"

A tract of land located within the right of way of Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County,New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,

N 42°56'01" W a distance of 1025.57 feet to the POINT OF BEGINNING, thence,

N 66°25'38" W a distance of 50.00 feet to a point; thence, N 23°34'22" E a distance of 4.11 feet to a point; thence, S 67°44'32" E a distance of 50.01 feet to a point; thence, S 23°34'22" W a distance of 5.26 feet to the point of beginning. Containing 234.2 square feet or 0.005 acres more or less.

DAVID E. COOPER
NEW MEXICO
9052
REGISTERED PROFESSIONAL SURVEYOR

STATE OF NEW MEXICO
COUNTY OF SANTA FE

This instrument was acknowledged before me on this
_____ day of _____ 2012

by: David E. Cooper

Notary Public *My Commission expires*

CERTIFICATE

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Legal Description was prepared from an Easement Exhibit that represents an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

FOR REVIEW

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