Danny "Daniel" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

TO: Santa Fe Board of County Commissioners

FR: Bill Taylor, Purchasing Manager
via Stephen C. Ross, County Attorney

DATE: August 27, 2013

RE: ***Request approval of Professional Service Contract No. 2013-0170-LG/PL-D for general legal services by Modrall, Sperling, Roehl, Harris & Sisk, P.A. in the amount of $95,000, as requested by the County Attorney***

The Santa Fe County Attorney requires the legal services of specialists and experienced attorneys to represent the County in legal matters and legal cases involving specialized litigation and other areas of law.

The Legal Department and Purchasing Division issued Request for Proposals No. 2013-0170-LG/PL on January 6, 2013. The RFP was advertised on February 6 and 7, 2013 in the Albuquerque Journal and New Mexican, respectively, and posted on the County's website. Six agreements were approved by the BCC at the April 2013 meeting. The attached contract between the County and Modrall, Sperling, Roehl, Harris & Sisk, P.A. is one of the selected contractors in this procurement for legal services. This agreement was not presented with the other agreements at the April BCC meeting due to outstanding issues that were under discussion with the contractor.

ACTION REQUESTED

The County Attorney and the Purchasing Division request authorization to enter into Professional Services Contract No. 2013-0170-LG/PL-D with Modrall, Sperling, Roehl, Harris & Sisk, P.A. to provide legal services as required by the County Attorney.

PROFESSIONAL SERVICES AGREEMENT BETWEEN SANTA FE COUNTY AND MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____ 2013, by and between **Santa Fe County**, hereinafter referred to as the "County" and the law firm of Modrall, Sperling, Roehl, Harris & Sisk, P.A., with its principal place of business located at 123 East Marcy, Suite 201, Santa Fe, New Mexico, 87103-2168, hereinafter referred to as the "Contractor".

WHEREAS, the County requires legal assistance on matters as directed by the County Attorney;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-153 of the Procurement Code, a request for proposals was issued for a multiple source award for legal services and completed through RFP No. 2013-0170-LG/PL;

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall render the following legal services:

A. Legal services, including without limitation matters of appellate, civil rights, condemnation (inverse and direct), labor and employment law, torts, construction, mandamus and injunctive relief, and other legal matters as directed by the Santa Fe County Attorney, but excluding water rights, environmental and land use legal matters;

B. Legal representation of Santa Fe County in state and federal courts, state agencies and other governmental entities;

C. Legal assistance with litigation involving Santa Fe County;

D. As directed by the Santa Fe County Attorney, brief County officials, employees, legal counsel and consultants. Contractor shall also participate in consultations with County officials, employees and consultants on questions of federal and state law which impact the County.

2. COMPENSATION AND INVOICING

A. The total compensation to be paid under this Agreement, including fees and costs, shall not exceed Ninety-Five Thousand Dollars ($95,000.00) exclusive of gross receipts tax.

The County shall pay to the Contractor for fees and reimbursable expenses based on the following:

Staff Member	Hourly Rate
Senior Partner	$ 285.00
Consultants	$ (requires County pre-approval)
Partners	$ 260.00
Associates	$ 195.00
Law Clerks	$ 130.00
Paralegals	$ 120.00
Clerical	$ No charge
Travel (mileage)	$ .44/mile
Copies or document reproduction:	$ .10/page (B/W)/page; .59/page(color)/color
Other (please describe)	$ 0

B. The Contractor shall submit quarterly status reports to the County Attorney updating the County Attorney on the status of any litigation and all legal matters including related expenditures, for which the Contractor has provided legal services pursuant to this Agreement.

C. The Contractor shall provide copies of all pleadings and correspondence produced by the Contractor and received by the Contractor in connection with any litigation or legal matter engaged in by the Contractor pursuant to this Agreement.

D. The Contractor shall submit a written request for payment to the County once a month. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

E. The County shall reimburse the Contractor reasonable travel expenses. Authorized travel shall be reimbursed at the rate set forth in the Travel and Per Diem Act, NMSA 1978, Section 10-8-4, et.seq as amended by the County and at the mileage rate set forth in the Per Diem and Mileage Act and DFA Rule 95-1 regulations governing the Per Diem and Mileage Act. Reimbursement for approved travel expenses shall not exceed amounts established in the Per Diem and Mileage Act and DFA Rule (2.42.2 NMAC).

F. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

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

3. EFFECTIVE DATE AND TERM

This Agreement shall be effective upon the date indicated above. The term of this Agreement shall be from the effective date until June 30, 2015. The term of this Agreement is subject to extension in one (1) year increments not to exceed a term of four (4) years total, unless earlier terminated pursuant to Section 5 (Termination), of this Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all services set forth in Paragraph 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Paragraph 2 (Compensation and Invoicing) of this Agreement, subject to the following. At the outset of each legal matter and at agreed upon periodic intervals thereafter, Contractor shall provide a proposed budget for each legal matter for which the County seeks legal representation from Contractor. If the budget for a particular legal matter plus the costs, fees and expenses of other work completed or budgeted by the Contractor exceeds the $95,000.00 cap stated in Paragraph 2.A above, the County and Contractor may amend this Agreement consistent with the rates stated in Paragraph 2.

B. The County may from time to time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective fifteen (15) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right

to cure the breach. If, however, the breach cannot with due diligence be cured within fifteen (15) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than ten (10) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. INDEPENDENT CONTRACTOR

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

7. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting

or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. INDEMNITY

A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

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

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

11. RECORDS AND INSPECTIONS

To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

12. APPROPRIATIONS AND AUTHORIZATIONS

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

have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

13. PERMITS, FEES, AND LICENSES

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

14. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

15. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the County.

16. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

17. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement. Conflicts that arise may be consented to or waived by the County in writing upon request by the Contractor and such waiver of, or consent to a conflict shall not be unreasonably withheld. Contractor shall disclose any known conflict which arises during the term of this Agreement. Contractor shall not proceed with any obligations under this Agreement unless the County provides written consent to, or a waiver of a conflict.

The County reserves the right to revoke consent or terminate the Contractor's services under this Agreement. This provision shall not be construed or interpreted as advance consent to or waiver of a conflict and advance consent or waiver shall not be implied.

18. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work) of this

Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

19. ENTIRE AGREEMENT; INTEGRATION

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

20. EQUAL OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

21. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

22. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

23. NOTICE OF PENALTIES

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

24. NO THIRD-PARTY BENEFICIARIES

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

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2 (Compensation and Invoicing) of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NEW MEXICO TORT CLAIMS ACT

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

28. INSURANCE

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.

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

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

Increased Limits. If, during the life of this 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.

Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than $3 million.

29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Secretary of State on Contractor's behalf.

30. SURVIVAL

The provisions of paragraphs 8, 9, 10, 11, 14, 15, 16, 22, 26, 27 and 28 shall survive termination of this Agreement.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. NOTICES

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

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

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:

Walter Stern, President
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
123 East Marcy, Suite 201

Santa Fe, New Mexico 87103-2168

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

SANTA FE COUNTY:

_____ _____
Kathleen S. Holian, Chairperson Date
Board of County Commissioners

ATTEST

_____ _____
Geraldine Salazar Date
Santa Fe County Clerk

APPROVED AS TO FORM:

Roberta [illegible] for SCR July 31, 2013
Stephen C. Ross, Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez 8/3/13
Teresa C. Martinez Date
Santa Fe County Finance Director

CONTRACTOR:

Walter E. Stern 7/25/13
(Signature) Date

WALTER E. STERN
(Print Name) PRESIDENT, MORRALL SPIRLING

FEDERAL IDENTIFICATION NO.: 85-0283491

Danny "Daniel" 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: August 27, 2013

TO: Board of County Commissioners

FR: Bill Taylor, Procurement Manager

VIA: Domingo P. Martinez, County Assessor

RE: ***Request approval of Agreement No. 2010-0322-AS/TRV Amendment No. 4 with Bridget Jacober for legal services in the amount of $65,000 for a total contact amount of $295,870, exclusive of GRT- (Bill Taylor/Purchasing)***

The County Assessor's Office and the Purchasing Division solicited legal services to represent the Assessor's Office in legal matters and legal cases involving property valuation, formal protest hearings and District Court cases. The County awarded the contract to Bridget Jacober for these services on March 18, 2010 in the amount of $45,000 for a term not to exceed four years in duration.

Ms. Jacober has approximately thirty years of property tax litigation experience. Prior to contracting with the Assessor's office, she was the in-house counsel to the State of New Mexico Property Tax Division, which has supervisory authority over all Assessors in the state.

Amendment No. 1 dated August 18, 2010 increased the compensation by $65,250
Amendment No. 2 dated September 1, 2011 increased compensation by $60,310
Amendment No. 3 dated August 7, 2012 increased compensation by $60,310

This Amendment No. 4 will increase compensation to the end of the contract term in the amount of $65,000 for a total contract amount of $295,870.00

ACTION REQUESTED

The County Assessor and the Purchasing Division request approval of Amendment No. 4 to the Bridget Jacober Agreement #2010-0322 in an amount of $65,000, exclusive of GRT, for a total contract amount of $295,870.00.

AMENDMENT NO. 4
TO SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH BRIDGET JACOBER
TO PROVIDE LEGAL SERVICES

THIS AMENDMENT is made and entered into this _____day of _____2013, by and between **Santa Fe County**, hereinafter referred to as "County", and Bridget Jacober, (hereinafter referred to as "the Contractor".

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 through 13-1-117, the County and the Contractor entered into a Professional Services Agreement to provide legal services dated March 18, 2010 in the amount of $45,000.00;

WHEREAS, Article 17, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties;

WHEREAS, Amendment No. 1 increased compensation in the amount of $65,250.00 for a total contract amount of $110,250.00;

WHEREAS, Amendment No. 2 increased compensation in the amount of $60,310.00 for a total contract amount of $170,560.00;

WHEREAS, Amendment No. 3 increased compensation in the amount of $60,310.00 for a total contract amount of $230,870.00.

WHEREAS, the parties desire to enter into this Amendment No. 4 to increase compensation in the amount of $65,000 for a total contract amount of $295,870.00.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Article 2. Paragraph A, "COMPENSATION AND INVOICING" is hereby amended to read as follows:

> In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed $295,870.00, exclusive of gross receipts tax.

2. All other provisions of the Agreement, not amended, replaced or superseded by this Amendment No. 4 shall remain in full force and effect.

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

SANTA FE COUNTY:

Kathleen S. Holian, Chair
Board of County Commissioners

Date

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to Form

Stephen C. Ross
Santa Fe County Attorney

8/8/13
Date

Finance Department Approval

Teresa C. Martinez
Santa Fe County Finance Director

8/12/13
Date

CONTRACTOR:

(Signature)

9/12/2013
Date

By: Bridget Jacobey
(Print Name)

Its: Attorney
(Print Title)

FEDERAL TAX I.D. NUMBER: 521-78-6814

AMENDMENT NO. 3
TO SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH BRIDGET JACOBER

THIS AMENDMENT is made and entered into this 7th day of August 2012, by and between **Santa Fe County**, hereinafter referred to as "County", and Bridget Jacober, (hereinafter referred to as "the Contractor".

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 through 13-1-117, the County and the Contractor entered into a Professional Services Agreement to provide legal services dated March 18, 2010 in the amount of $45,000.00;

WHEREAS, Article 17, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties;

WHEREAS, Amendment No. 1 increased compensation in the amount of $65,200.00 for a total contract amount of $110, 250.00;

WHEREAS, Amendment No. 2 increased compensation in the amount of $60,310.00 for a total contract amount of $170,560.00;

WHEREAS, the parties desire to enter into this Amendment No. 3 to increase compensation in the amount of $60,310.00 for a total contract amount of $230,870.00.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Article 2. Paragraph A, "COMPENSATION AND INVOICING" the second subparagraph is deleted in its entirety and replaced with:

> In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed $230,870.00, exclusive of gross receipts tax.

2. All other provisions of the Agreement, not amended, replaced or superseded by this Amendment No. 3 shall remain in full force and effect.

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

SANTA FE COUNTY:

Katherine Miller 8.7.12
Katherine Miller Date
Santa Fe County Manager

Approved as to Form

8-1-12
Stephen C. Ross Date
Santa Fe County Attorney

Finance Department Approval

8/5/12
Teresa Martinez Date
Santa Fe County Finance Director

CONTRACTOR:

8/7/2012
(Signature) Date

By: Bridget Jacober
Print Name)

Its: Attorney
(Print Title)

FEDERAL TAX I.D. NUMBER

521-78-6814

AMENDMENT NO. 2
TO SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH BRIDGET JACOBER
TO PROVIDE LEGAL SERVICES

THIS AMENDMENT is made and entered into as of this 1st day of September, 2011, by and between the **Santa Fe County**, (hereinafter referred to as "the County"), and **Bridget Jacober,** (hereinafter referred to as "the Contractor").

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 through 13-1-117, the County and the Contractor entered into a Professional Services Agreement to provide legal services dated March 18, 2010 in the amount of $45,000.00;

WHEREAS, Article 17, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties;

WHEREAS, Amendment No. 1 increased compensation in the amount of $65,250.00 for a total contract amount of $110,250.00; and

WHEREAS, the parties desire to enter into this Amendment No. 2 to increase compensation in the amount of $60,310.00 for a total contract amount of $170,560.00.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Article 2, paragraph A, "**COMPENSATION AND INVOICING**" is hereby amended to read as follows:

   In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed $170,650.00, exclusive of gross receipts tax.

   All other provisions of Article 2, "COMPENSATION AND INVOICING," not amended, replaced or superseded by this Amendment No. 2 shall remain in full force and effect.

2. All other provisions of the Agreement, not amended, replaced or superseded by this Amendments No. 2 shall remain in full force and effect.

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

SANTA FE COUNTY

Katherine Miller

Katherine Miller
Santa Fe County Manager

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

20 July 2011
Date

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Santa Fe County Finance Director

28 July 2011
Date

CONTRACTOR:

By: Bridget Jacober

25 July 2011
Date

Bridget Jacober, Atty
Printed Name and Title

SANTA FE COUNTY
AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT
WITH BRIDGET JACOBER
TO PROVIDE LEGAL SERVICES

THIS AMENDMENT is made and entered into as of this 18th day of August, 2010, by and between **Santa Fe County,** a political subdivision of the State of New Mexico (hereinafter referred to as "the County") and **Bridget Jacober,** (hereinafter referred to as "the Contractor").

WHEREAS, Pursuant to NMSA 1978, Sections 13-1-112 through 13-1-117, the County and the Contractor entered into a Professional Services Agreement to provide legal services dated March 18, 2010 in the amount of $45,000.00;

WHEREAS, Article 17, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of the Agreement allows the parties to amend the Agreement by an instrument in writing executed by the parties;

WHEREAS, the parties desire to enter into this Amendment No. 1 to increase compensation in the amount of $65,250.00 for a total contract amount of $110,250.00.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Article 2, "COMPENSATION AND INVOICING," is amended to read as follows:

   In no event shall the total compensation paid to Contractor by County under this Agreement exceed $110,250.00, exclusive of gross receipts tax.

   All other provisions of Article 2, "COMPENSATION AND INVOICING," not amended, replaced or superseded by this Amendment No. 1 shall remain in full force and effect.

2. All other provisions of the Agreement not amended, replaced, or superseded 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.

SANTA FE COUNTY

interim County Manager.
Santa Fe County Manager

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

8-10-10
Date

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Santa Fe County Finance Director

8/13/2010
Date

BRIDGET JACOBER:

Bridget Jacober

8/18/2010
Date

SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH BRIDGET JACOBER
TO PROVIDE LEGAL SERVICES

THIS AGREEMENT is made and entered into this 18th day of March, 2010 by and between Santa Fe County, hereinafter referred to as "the County", and Bridget Jacober, a sole proprietor with a principal address located at 128 Grant Avenue, Suite 215, Santa Fe, NM 87501, hereinafter referred to as "the Contractor".

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2010-0322-AS/TRV, for the provision of the professional services; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of determining the most qualified Offeror, the County has determined Contractor as the most responsive and highest rated Offeror; and

WHEREAS, the County desires to engage the Contractor to render legal services, and the Contractor is willing to render such services; and

WHEREAS, the County requires these services and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

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

1. **SCOPE OF WORK**

The Contractor shall advise and represent the County on property tax matters as directed by the County Attorney in consultation with the County Assessor. The advice and representation may include:

A. Provide legal research and write legal memoranda regarding property valuation matters and administrative law;

B. Prepare pleadings and briefs for district, appellate and supreme courts;

C. Represent the County Assessor in certain protest proceedings and tax refund claims;

D. Draft informational documents and instructions for property owners as well as appraisal staff;

E. Interface with any property owner's attorney for exchange of information necessary to appraise property;

F. Work with the District Attorney's office in relation to charges of criminal tax evasion;

G. Interface with taxpayers, attorneys and tax consultants who contact the Assessor's office;

H. Work with attorneys and administrators of the Taxation and Revenue Department, the County Assessor and other Counties regarding issues that have state-wide property tax implications.

I. Brief County Officials, employees and others on issues pertinent to this scope of work.

2. **COMPENSATION AND INVOICING**

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

In no event shall the total compensation paid to Contractor by County under this Agreement exceed $45,000 exclusive of gross receipts tax.

The County shall pay Contractor at an hourly rate of $150.00, exclusive of gross receipts tax, for services performed.

B. The Contractor shall submit a written request for payment to the County, on a monthly basis, when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

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

3. **EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate four years later, unless earlier terminated pursuant to Section 4. "TERMINATION", of this Agreement.

4. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

5. INDEPENDENT CONTRACTOR

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

6. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

9. INDEMNITY

A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

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

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

10. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and

(iii) to keep such books and records in accordance with GAAP.

11. APPROPRIATIONS AND AUTHORIZATIONS

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

12. PERMITS, FEES, AND LICENSES

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

13. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

14. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the County.

15. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

16. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this

Agreement.

17. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

18. ENTIRE AGREEMENT; INTEGRATION

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

19. EQUAL OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

20. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

21. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, ordinances, and obligations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

22. NOTICE OF PENALTIES

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

23. NO THIRD-PARTY BENEFICIARIES

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

24. FACSIMILE SIGNATURES

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

25. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING", of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

26. NEW MEXICO TORT CLAIMS ACT

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

27. INSURANCE

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

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

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions

of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this 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.

E. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than $1,000,000 per occurrence, $2,000,000 per aggregate.

28. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. She is a sole proprietor under the laws of the State of New Mexico.

B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

C. She will maintain throughout the life of this Agreement, registration and licensure to conduct business in the State of New Mexico.

E. Contractor has a minimum of ten years experience practicing in the area of property and tax law including but not limited to the following; extensive knowledge of the Property Tax Code, administrative law and procedure, litigation experience, and property valuation experience to include appraisal standards and practice.

F. Contractor has been licensed to practice law in New Mexico for at least ten years and has at all times been in good standing with the New Mexico State Bar.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

30. NOTICES

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

Santa Fe County
Legal Department
102 Grant Avenue / P.O. Box 276
Santa Fe, NM 87504-0276

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to

Bridget Jacober
128 Grant Avenue, Suite 215
Santa Fe, NM 87501

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, COPYRIGHT, COMPLIANCE WITH APPLICALBLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, INSURANCE, AND SURVIVAL.

THIS SPACE LEFT BLANK INTENTIONALLY

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

SANTA FE COUNTY

Roman Abeyta,
Santa Fe County Manager

APPROVED AS TO FORM

Stephen C. Ross
Santa Fe County Attorney

5 March 2010
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez
Santa Fe County Finance Director

3/12/2010
Date

BRIDGET JACOBER

Bridget Jacober

3/18/2010
Date

FEDERAL IDENTIFICATION NUMBER: 521-78-6814

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: *August 14, 2013*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* BT

VIA: *Katherine Miller, County Manager*
Adam Leigland, Public Works Director 8/13/13

ITEM AND ISSUE: *BCC Meeting August 27, 2013*

REQUEST APPROVAL OF AWARD OF AGREEMENT #2013-0352-PW/MS COUNTY ROAD 98 WIDENING PHASE II TO MOUNTAIN STATES CONSTRUCTORS, INC. IN THE AMOUNT OF $1,297,523.80, EXCLUSIVE OF GRT (*BILL TAYLOR/PURCHASING*)

Issue:

Santa Fe County Purchasing Division on behalf of the Public Works Department issued an Invitation for Bid (IFB) # 2013-0352-PW/MS County Road 98 Widening Phase II to request bids. Bids were received from:

Mountain States Constructors, Inc. (Albuquerque, NM)
MAXTEK Contractors, Inc. (Albuquerque, NM)
Meridian Contracting, Inc. (Albuquerque, NM)

Background Information:

The Public Works Department initially received funding from New Mexico Department of Transportation (NMDOT) to widen County Road 98 (Juan Medina Road) due to lack of sufficient shoulder width and providing sufficient safety for the large amount of patrons who make the pilgrimages to the Santuario de Chimayó during Holy Week. The funds were enough

to complete the design of the road widening and drainage structures for the west side of the road. Santa Fe County will complete the road widening for County Road 98 using its own funds.

ACTION REQUESTED:

Santa Fe County Public Works Department requests the Board of County Commission approval and authorization to enter into an agreement with Mountain States Constructors, Inc. for work in the amount of $1,297,523.80, exclusive of GRT.

2013-0352-PW/MS

Santa Fe County

Fiscal Impact Report

Department / Division: Public Work / Road Projects

Action Item to be Considered: Construction Service Contract Approval for CR98 Phase II

Agreement Number: To Be Determined

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

Indicate with a ☑ below	Section 2 - Funding Source Identify the item below for BCC Consideration and Approval
☐	General Fund, e.g. property taxes, gross receipt taxes, etc.
☐	Special Revenue Funds, e.g. Fire, Indigent, etc.
☑	Capital Outlay GRT, (capital infrastructure only, does not include maintenance or repair costs)
☑	Bond Proceeds (general obligation and gross receipt tax revenue bonds)
☐	Grant Funds. If yes, indicate the percentage and amount required % and/or $, and source. % $ Source
☐	Other:

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

Short Term (Specify needs for the current fiscal year only)
None

New FTE's # 0 Position N/A Hourly Rate $

Current Fiscal Year Cost $ Annual Cost $

Initial Costs (Vehicle, computer, office space, etc.)
None

O & M (Concisely identify the recurring needs, supplies, equipment, and the resources

necessary for carrying out the job duties)

Road maintenance crew, equipment and material necessary to perform pavement preservation treatments and pavement

Current Fiscal Year Cost $ **Annual Cost $ 10,500.00**

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

Included in O&M above

Salary & Benefits:

None

All other expenses:

None

Section 4 - Revenue

Short Term (Specify the revenue potential for the current fiscal year only. If a grant, specify the total grant award amount and the term. If a fee or charge for service, explain basis of revenue projection).

None

Current FY Estimate $

Long Term (Specify the revenue potential for the next four (4) fiscal years. If a grant, specify the total grant award amount and the term. If a fee or charge for service, explain basis of revenue projection).

None

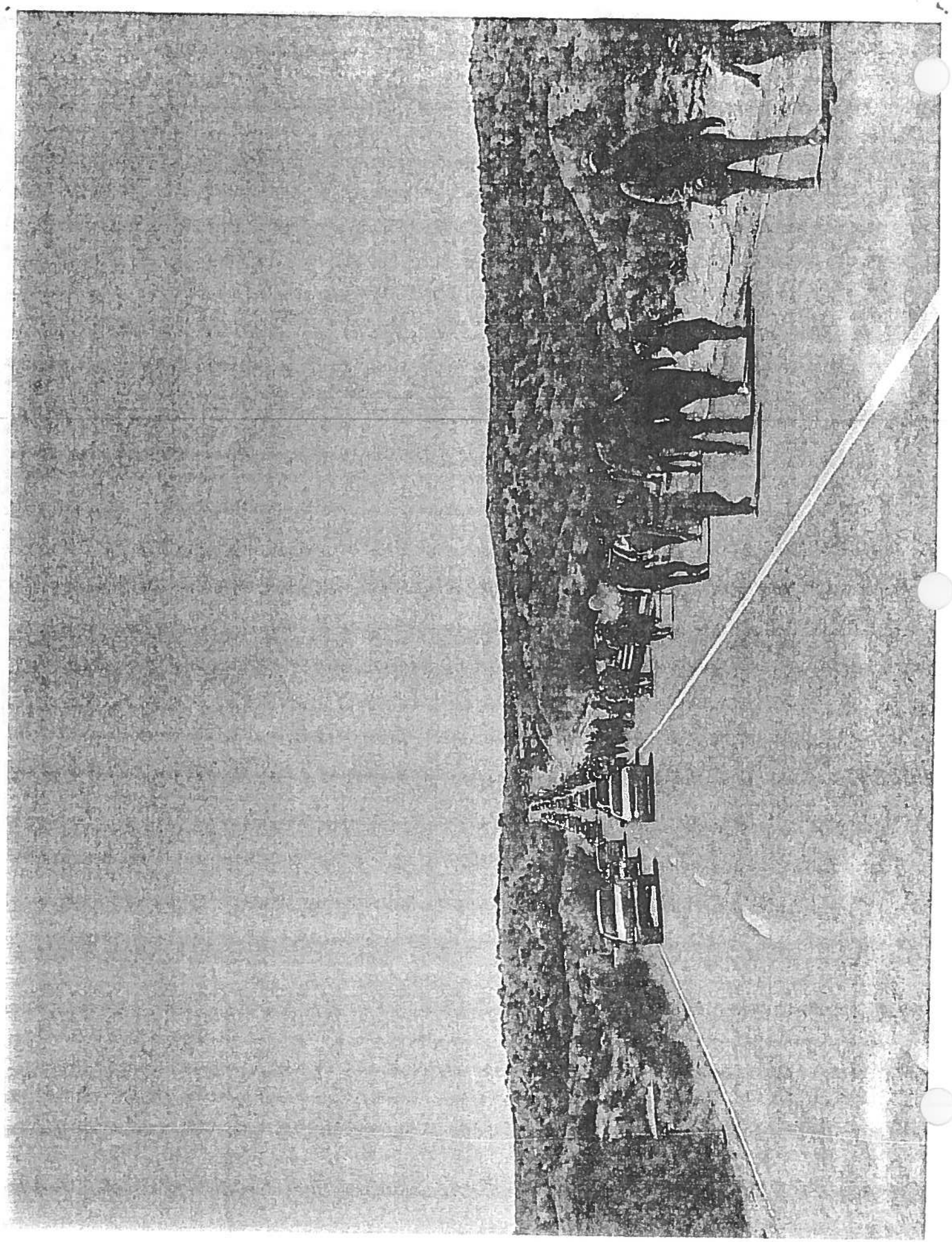
Annual Estimate $ **Total (next 4 years) $**

Additional Narrative

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

The first phase to widen the road shoulder completed it's initial task to provide a safer means for multimodal usage on this road and well as provide a means for vehicle drivers to remove themselves out of the line of traffic for personal or emergency reasons. Phase II will complete this task. See attached Before and After Photos of Phase I of this project.

Prepared by Chuck Vigil **Reviewed by**



2013-0352-PW/MS

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

(As modified by Santa Fe County indicated by underlined and strikeout text)

THIS AGREEMENT is by and between Santa Fe County ("Owner") and Mountain States Constructors, Inc., 3601 Pan American Frwy, NE #111, Albuquerque, NM 87107 ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: The widening of the east shoulder of CR 98 (Juan Medina Road) in Santa Fe County. The length of road or area comprising the project is 2.26 miles.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Construction consists of road widening, clearing and grubbing, earthwork, modification to existing drainage structures, subgrade preparation base course placement, asphalt paving of shoulder, road striping, road signage, guardrail, traffic control, and miscellaneous construction in accordance with construction standards of the NMDOT Standard Specifications for Highway and Bridge Construction (2007 Ed.).

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by The Louis Berger Group, Inc (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Engineer has designated a Project Representative for this Project.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Substantial Completion and Final Payment*

~~A.~~ The Work will be substantially completed within ninety (90) working days from the date indicated in the Notice to Proceed issued by the Owner, ~~on or before _____~~; and completed and

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ready for final payment in accordance with Paragraph 14.07 of the General Conditions within no more than one hundred (120) working days after the date indicate in the Notice to Proceed issued by the Owner. ~~on or before _____. [or]~~

~~4.02 *Days to Achieve Substantial Completion and Final Payment*~~

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

4.03 *Liquidated Damages*

B. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner $2,100.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner $2,100.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment. Contractor agrees that the liquidated damages herein provided are reasonable and represent the amount of damages reasonably anticipated to the Owner in the event the work is not completed as provided in Paragraph 4.02 herein.

ARTICLE 5 – Contract Price

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

A. For all Work ~~other than Unit Price Work~~, a lump sum of: $____ One Million Two Hundred Ninety Seven Thousand Five Hundred Twenty Three Dollars and Eighty Cents ($1,297,523.80), exclusive of NM GRT.

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

~~B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item.:~~

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~~UNIT PRICE WORK~~

~~Item No.~~	~~Description~~	~~Unit~~	~~Estimated Quantity~~	~~Bid Unit Price~~	~~Bid Price~~

~~Total of all Bid Prices (Unit Price Work)~~ ~~$_____~~

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

C. For all Work, at the prices stated in Contractor's Bid~~., attached hereto as an exhibit~~.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

~~a. _____ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~

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~~b. _____ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor ~~to _____ percent of the~~ for Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less the percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

~~*NOTE TO USER*~~

~~*Typical values used in Paragraph 6.02.B are 100 percent and 200 percent respectively.*~~

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer (including any recommended withholding of amount of liquidated damages) as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

7.01 Payment for amounts due to the Contractor shall be paid within twenty-one (21) days after the Owner receives an undisputed request for payment (Engineer's recommendation) based on work completed or service provided under this Agreement. If the Owner fails to pay the Contractor within twenty–one (21) days after receipt of an undisputed request (Engineer's recommendation) for payment the Owner shall pay interest to the Contractor beginning on the twenty-second (22) day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until the payment issued. If the Owner receives an improperly completed invoice, the Owner shall notify the sender of the invoice within seven (7) days of receipt in what way the invoice is improperly completed, and the Owner has no further duty to pay on the improperly completed invoice until it is submitted as complete.

7.01 ~~All moneys not paid when due as provided in Article 14 of the General Conditions~~ shall bear ~~interest at the rate of ___ percent per annum~~.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

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

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

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B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement. ~~(pages 1 to __, inclusive).~~

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2. Performance bond for 100% of the Contract Sum. ~~(pages _____ to _____, inclusive).~~

~~3.~~ Payment bond for 100% of the Contract Sum. ~~(pages _____ to _____, inclusive).~~

4. Other bonds (pages _____ to _____, inclusive).

   a. _____ (pages _____ to _____, inclusive).

   b. _____ (pages _____ to _____, inclusive).

   c. _____ (pages _____ to _____, inclusive).

5. General Conditions (EJCDC C-700). ~~(pages _____ to _____, inclusive).~~

6. Santa Fe County's Supplementary Conditions to General Terms and Conditions of Construction Contract. ~~(pages _____ to _____, inclusive).~~

7. Specifications as listed in the table of contents of the Project Manual.

8. ~~Drawings consisting of _____ sheets with each sheet bearing the following general title: _____ [or] the~~ Drawings listed on attached INDEX OF SHEETS marked as Exhibits A and B and attached hereto. ~~sheet index.~~

9. Addenda (numbers _____ to _____, inclusive).

10. Exhibits to this Agreement (enumerated as follows):

    a. ~~Contractor's Bid (pages to _____, inclusive).~~

    ~~b.~~ Documentation submitted by Contractor prior to Notice of Award ~~(pages _____ to _____, inclusive).~~

    c. *[List other required attachments (if any), such as documents required by funding or lending agencies].*

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

    a. Notice to Proceed ~~(pages _____ to _____, inclusive).~~

    b. Work Change Directives.

    c. Change Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

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D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to

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establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

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

This Agreement will be effective on the date of last signature by the parties (which is the Effective Date of the Agreement).

OWNER:

By: Kathleen S. Holian

Title: Chair, Santa Fe Board of County Commissioners

Attest:

Title: Geraldine Salazar, Santa Fe County Clerk

Address for giving notices:

102 Grant Avenue

Santa Fe, New Mexico 87501

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR MOUNTAIN STATES CONSTRUCTORS, INC.

David Otoski, Pres.

By: David Otoski

Title: President

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

Attest: Maria B. Sanchez

Title: Procurement Spec. Senior

Address for giving notices:

3601 Pan American Freeway NE #111

Albuquerque, NM 87107

License No.: 18467

(Where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Agent for service of process:

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APPROVED AS TO FORM:

Date July 30, 2013

Stephen C. Ross
Santa Fe County Attorney

FINANCE DEPARTMENT

Date 8/9/13

Teresa C. Martinez for TCM
Director

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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CONSTRUCTION SPECIFICATIONS INSTITUTE

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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

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27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

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40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

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

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

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

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times: Notice to Proceed*

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

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2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

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Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

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

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

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3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation , (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

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

3.04 *Amending and Supplementing Contract Documents*

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

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

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1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

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

3.06 *Electronic Data*

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

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

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

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4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

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contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data;

b. locating all Underground Facilities shown or indicated in the Contract Documents;

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

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consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

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

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C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

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

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

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meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

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

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

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a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

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5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

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members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

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1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

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

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

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

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interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

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B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

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

6.05 *Substitutes and "Or-Equals"*

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

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

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

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

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2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

3) it has a proven record of performance and availability of responsive service.

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

1) there will be no increase in cost to the Owner or increase in Contract Times; and

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

2. *Substitute Items:*

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

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

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c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

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required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

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

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner.

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Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

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

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

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

6.08 *Permits*

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

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6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

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by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

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shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

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

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

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

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

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

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required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

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

2. *Samples:*

a. Submit number of Samples specified in the Specifications.

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

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

C. *Submittal Procedures:*

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

a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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

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

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

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6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

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

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

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

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B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

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8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

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

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continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

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9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

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

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

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exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

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10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

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

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

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shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

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1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

   a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

   c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

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said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

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limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

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the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

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

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

   f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

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neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

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13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

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C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

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1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

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13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

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Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

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involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work, or

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

   d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

   b. the Contract Price has been reduced by Change Orders;

   c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

   d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

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

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D. *Reduction in Payment:*

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

   a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling Owner to a set-off against the amount recommended; or

   d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

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final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

   b. consent of the surety, if any, to final payment;

   c. a list of all Claims against Owner that Contractor believes are unsettled; and

   d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

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

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

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ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

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so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

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

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

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to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

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1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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SANTA FE COUNTY'S SUPPLEMENTARY CONDITIONS TO GENERAL TERMS AND CONDITIONS OF CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC-700 2007 Ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

(1) With respect to matters pertaining to contract management and administration procedures including change orders, the provisions of Contract 2013-0352-PW/MS, Standard General Conditions of the Construction Contract (as modified by Santa Fe County), and these Supplementary Conditions shall govern. In conflicts or discrepancies between these documents, the most restrictive, specific and otherwise most beneficial to the County shall take precedence.

(2) With respect to matters pertaining to specifications for construction of the Work, including technical requirements and specifications of construction, quality of materials, construction standards and testing the Engineer's Plans and Drawings shall govern. In the case of a conflict or discrepancy between the Engineer's Plans and Drawings and the applicable provision of the NMDOT Standard Specifications for Construction of Highways and Bridges, 2007 Ed., the most restrictive and otherwise most beneficial to the County shall take precedence.

Under no circumstances is a change order that changes the Contract Time or Contract Sum valid and binding until approved by the Santa Fe County Manager or the Santa Fe County Board of County Commissioners.

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

1.02.C. *Day* is deleted in its entirety and replaced with:

C. *Day* :

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight. "Working day" means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather and the actual Work performed by the Contractor, the Project Representative will determine if the Owner will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, a Working Day will be charged.

2.03.A is amended by deleting the phrase "on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given,"

2.04 *Starting the Work*

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

2.07.A.1 *Progress Schedule:* The Progress Schedule required to be submitted by the Contractor shall include the Contractor's preparation and completion of thorough and accurate "Red Lines" to be submitted no later than Contractor's submission the Application for Final Payment as provided in 14.07.

4.03.C.1. *Possible Price and Times Adjustments*

The word "will" is replaced with "may."

4.04.B.2. is deleted in its entirety and replaced with:

2. If Project Representative and Owner conclude that a change in the Contract Documents is required, a Work Change Directive or a Change Order may be issued to reflect and document such consequences. An equitable adjustment may be made in the Contract Sum or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. The allowance for the combined overhead (general administration overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders and Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

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

4.06.G. Is deleted in its entirety.

5.04 *Contractor's Liability Insurance*

Delete Paragraph 5.04.A through B are deleted in their entirety and replaced with the following:

5.04.A. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

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

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

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

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

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

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

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

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

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

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

5.05 *Owner's Liability Insurance*

Delete 5.05.A. in its entirety and replace it with the following:

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

5.06 *Property Insurance*

5.06.A.1 through A.7, 5.06.B, 5.06.C, 5.06.D and 5.06.E are deleted in their entirety and replaced with:

5.06 *Property Insurance*

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

5.07 *Waiver of Rights*

5.07.A, 5.07.B, and 5.07.C are deleted in their entirety and replaced with:

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

5.08 *Receipt and Application of Insurance Proceeds*

Delete the second sentence of 5.08A. in its entirety and replace it with: Owner shall distribute any money so received in accordance with such agreement as the parties in interest may reach.

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

5.09.A. Delete the fourth sentence it its entirety and replace it with:

Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order may be issued to adjust the Contract Price accordingly.

6.06.G is deleted in its entirety and replace with the following:

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not Owner, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

6.07.B is deleted in its entirety.

6.12 *Record Documents*

6.12.A is supplemented by adding the following sentence: Record documents shall include final and accurate "red lines" acceptable to Project Representative and Owner.

6.20.C is supplemented by inserting a subparagraph 3 that reads:

3. or to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees, or agents.

7.02 *Coordination* is supplemented by adding the following as subparagraph 7.02.C, D and E:

C. The Contractor will coordinate the Work with the Owner's Project Representative as provided in this Agreement. The Owner's Project will be managed and inspected by the Project Representative who will act as Owner's representative on the Site and have the construction and contract administration duties as provided in this Agreement

D. The Project Representative will determine the days that will be charged by the Owner as a working day based on the Project Representative's review of the weather and actual work performed by the Contractor. A working day will be charged if the Contractor was able to perform on a critical path item for six (6) or more hours on a Saturday, Sunday or holiday recognized by Santa Fe County.

D. The Engineer identified in this Agreement will have oversight of the Project design documents and specifications and will complete the record documents, including the final "as builts" for the Project.

9.01 is supplemented by adding the following as 9.01.B:

B. Engineer will complete the record documents including the final "as-builts" for the Project.

10.01. *Authorized Changes in the Work*

Amend 10.01 by adding the following provision as 10.01.C:

C. The allowance for the combined overhead (general administration, overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders or Work Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

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

12.01.C.1 and 2.a. through 2.f. are deleted in their entirety and replaced with:

12.01.C. *Contractor's Fee:* Any fees for overhead and profit, including the Contractor's. shall be determined according to the schedule in 10.01.C.

14.02.C.1. *Payment Becomes Due:*

Delete the reference to "Ten" and replace it with "Twenty One."

Article 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures:* 16.01.A through C.1 – 3 are deleted in their entirety and replaced with:

16.01 *Method and Procedures*

A. Either Owner or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act. 13-4C-1 NMSA 1978. of any Claim submitted to Project Representative for

a decision under Paragraph 10.05 before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be completed within 60 days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the Public Works Mediation Act.

C. If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* 8/13/13

VIA: *Katherine Miller, County Manager*
Adam Leigland, Public Works Director 8/13/13

REQUEST APPROVAL OF AMENDMENT 2 TO AGREEMENT #2011-0224-CSD/MS ENVIRONMENTAL REMEDIATION SERVICES FOR STEVE HERRERA COURTHOUSE COMPLEX TO INTERA, INC. IN THE AMOUNT OF $95,624.30, EXCLUSIVE OF GRT (PURCHASING/BILL TAYLOR)

Issue:

The Public Works Department requests approval of Amendment No. 2 to Agreement # #2011-0224-CSD/MS Environmental Remediation Services for Steve Herrera Courthouse Complex to Intera, Inc., in the amount of $95,624.30, exclusive of GRT for FY2014. The amendment allows for additional remediation services from August 2013 through August 2014.

Background:

Pursuant to 13-1-112 NMSA 1978, Purchasing Division processed a Request for Proposal (RFP) #2011-0224-CSD/MS for Environmental Remediation Services for Steve Herrera Courthouse Complex. Intera, Inc. was selected and awarded the contract. The remediation services consist of the contractor providing all equipment and labor to complete the contractor's Work Plan for remediation. The services also include the overall remediation management, document review, ground water testing and monitoring, air quality testing and monitoring, oversight of monitoring wells, sampling and reporting to the New Mexico Environment Department (NMED). These services are necessary for the County to ensure compliance with the submitted environmental remediation work plan, as well as, for final completion and approval for the County's acceptance into the Voluntary Remediation Program.

Action Requested:

The Public Works Department requests authorization for Amendment 2 Agreement #2011-0224-CSD/MS with Intera, Inc. for Environmental Remediation Services for Steve Herrera Courthouse Complex.

AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN
SANTA FE COUNTY AND INTERA, INC.

THIS AMENDMENT is made and entered into on this _____ day of _____, 2013, by and between **Santa Fe County**, hereinafter the "County" and **Intera, Inc.**, a Texas corporation registered to do business in the State of New Mexico with a corporate address of 6000 Uptown Blvd. NE #100, Albuquerque, NM , hereinafter the "Contractor."

WHEREAS, the County is committed to the environmental safety and health of the citizens of the City of Santa Fe and Santa Fe County. The County's goal is to protect air quality and prevent the release of petroleum products into the environment and ensure that air and ground contamination is handled and disposed of without harming natural resources;

WHEREAS, in accordance with Section 13-1-112, NMSA 1978, the County issued a Request for Proposals (RFP No. 2011-0224-CSD/MS) for environmental remediation services;

WHEREAS, the County and Contractor entered into Agreement No. 2011-0224-CSD/MS on August 30, 2011 for the provision of environmental remediation and monitoring services;

WHEREAS, the Contractor is a qualified full service environmental engineering and consulting firm and is capable of providing remediation services at the County's Steve Herrera Courthouse Complex which was completed in 2013;

WHEREAS, as part of its application to the Voluntary Remedial Activities (VRA) program, the County requires the continuation of certain remedial services by the Contractor and the Contractor is willing to continue to provide such services;

WHEREAS, according to Section 16 of Agreement No. 2011-0224-CSD/MS, the Agreement may be amended by and instrument in writing executed by the parties;

WHEREAS, by Amendment No. 1 and pursuant to Section 3 of Agreement No. 2011-0224-CSD/MS, the County exercised its unilateral option to extend the term of the Agreement to August 30, 2013;

WHEREAS, the County needs Contractor to continue certain remediation, monitoring and voluntary remediation activities for the Courthouse Complex and therefore proposes to amend the Agreement to extend the term to August 30, 2014, provide for an option to renew the Agreement for one (1) year thereafter, and increase the compensation to provide for the Contractor's continuation of certain remediation tasks as indicated herein.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section 3 EFFECTIVE DATE AND TERM, insert the following as subsection "c":

   c. By Amendment No. 2, the parties agree to an extension of the term of this Agreement to August 30, 2014 at the same hourly rates(s) and term and conditions as stated in Agreement No. 2011-0224-CSD/MS. Pursuant to Amendment No. 2 this Agreement shall expire August 30, 2014, unless earlier terminated pursuant to Sections 4 or 10. The County has the unilateral option to extend the term of this Agreement for one (1) year.

2. Section 2 COMPENSATION, insert the following as subsection "4":

   4. **Not-To-Exceed Amount for period of August 30, 2013 to August 30, 2014.** In no event shall the compensation paid to Contractor for Task 3b (Project Management/Operation and Maintenance), Task 4 (Document Review), Task 5 Groundwater Monitoring), Task 6 (Air Quality Monitoring), and Task 10 (VRA) services provided during the period of August 30, 2013 to August 30, 2014 exceed Ninety Five Thousand Six Hundred Twenty Four Dollars and Thirty Cents ($95,624.30), exclusive of gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Amendment No. 2 shall be paid by the County to the Contractor.

   The contract sum for the term of this Agreement, as extended through August 30, 2014 is Three Hundred Sixty Three Thousand Seven Hundred Sixty Eight Dollars and Eighty Cents ($363,768.80), exclusive of NM grt.

3. All other provisions of Agreement No. 2011-0224-CSD/MS not specifically amended or modified by Amendment No.1 and this Amendment No. 2, shall remain in full force and effect.

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

SANTA FE COUNTY

_____ _____

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

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to form

Stephen C. Ross
Santa Fe County Attorney

7/23/13
Date

Finance Department

Teresa C. Martinez for TCM

7/25/13
Date

CONTRACTOR

(signature and title)

8-13-13
Date

Cynthia Ardito Vice President
Printed name and title

Federal ID No. 743010638

SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH INTERA INC.
TO PROVIDE ENVIRONMENTAL REMEDIATION SERVICES FOR THE
STEVE HERRERA COURTHOUSE COMPLEX
CONSTRUCTION PROJECT

THIS AGREEMENT is made and entered into this 30th day of August, 2011, by and between Santa Fe County, hereinafter referred to as "the County," and INTERA Inc., a Texas corporation, registered to do business in the State of New Mexico, with a corporate address 6000 Uptown Blvd. NE #100, Albuquerque, NM, 87110, hereinafter referred to as "the Contractor."

WHEREAS, the County is committed to the environmental safety and health of the citizens of the City of Santa Fe and Santa Fe County. The County's goal is to protect air quality and prevent the release of petroleum products into the environment and ensure that air and ground contamination is handled and disposed of without harming natural resources;

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued a Request for Proposal (RFP No. 2011-0224-CSD/MS) for environmental remediation services;

WHEREAS, Contractor is a qualified full service environmental engineering and consulting firm and is capable of providing remediation services at the Steve Herrera Courthouse Complex construction site;

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to perform the Scope of Work indicated in the RFP and as provided in this Agreement;

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

1. SCOPE OF WORK

A. General

1. Contractor will provide environmental remediation services to Santa Fe County in connection with the construction of the Steve Herrera Courthouse Complex Project.
2. Contractor will assist the County in implementing the previously completed report titled "Final Petroleum Contaminated Soil Excavation Work Plan" for the Steve Herrera Courthouse Complex Project.
3. Contractor will furnish all equipment, labor and tools required to perform the Scope of Work. Contractor will provide competent supervision and skilled personnel to perform the Scope of Work.

4. Contractor will comply with all local, state and federal laws including the U.S. Environmental Protection Act (EPA), governing safety, health and sanitation and shall provide all safeguards, safety devices and protective equipment to ensure the health and safety of all employees and the public during the performance of the Scope of Work.

B. Work Plan for Remediation Services

Contractor will submit to the County for its review and approval a detailed Work Plan for this Scope of Work. The Work Plan shall include:

1. detailed description of the Contractor's plan to operate and maintain the existing remediation systems at the site;
2. a description of the Contractor's plan for record keeping, reporting and tasks to be undertaken to ensure that day-to-day operations of the remediation systems are sustained;
3. descriptions of the remediation work to be completed and identify any remediation issues that Contractor will address.

C. Project Management

Contractor shall:

1. Manage the remediation of the site during construction as necessary.
2. Manage the remediation systems' operation, maintenance and monitoring requirements.
3. As requested by the County, provide project planning and conduct meetings with the County and New Mexico Environment Department representatives.
4. Conduct and complete site specific field sampling.
5. As requested by the County, attend weekly construction meetings and brief team members on environmental regulatory and technical issues affecting construction. Contractor will attend two meetings per month from July to December 2011, and one meeting per month from January 2012 to July 2013.

D. Document Review

1. Perform document review of New Mexico Environment Department (NMED) Petroleum Storage Tank Bureau (PSTB) Reports for the regional remediation systems operating at adjoining properties.
2. Review quarterly ground water monitoring and soil vapor extraction systems. O&M Reports are scheduled to be generated quarterly until approximately January 2013. Contractor shall provide quarterly written report of salient findings and issues of interest to the County.

E. Ground Water Monitoring

1. Operations and Maintenance

Contractor will provide monthly O&M for the remediation system at the Steve Herrera Courthouse Complex. O&M tasks include maintenance of all equipment and all services required to accomplish the quarterly site monitoring.

2. Quarterly Groundwater Sampling

Quarterly groundwater sampling will be conducted for the next two (2) years from July 2011 to July 2013. The Contractor will gauge and sample all thirteen (13) ground monitoring wells (SFCMW-01, SFCMW-02, SFCMW-03, SFCMW-06, SFCMW-07, SFCMW-08, SFCMW-09, SFCMW-09D, SFCMW-10, SFCMW-11, SFCMW-12, TMW-06, TMW-06D) and one test well for comparison purposes, at the Steve Herrera Courthouse Complex. Groundwater samples will be analyzed for analyze samples for the following constituents: BTEX, EDC, total naphthalene, and MTBE via EPA Method 8260, EDB via EPA Method 504.1, TPH GRO and DRO via EPA Method 8015, and lead via EPA Method 6010.

Once the quarterly groundwater sampling is completed for the first two years, monitoring will continue with semi-annual monitoring for 2 years (January 2014, June 2014, January 2015, and June 2015).

3. As requested by the County, Contractor will meet with Santa Fe County representatives, per event, to report the results.

4. Conduct Air Quality Monitoring

The Contractor will conduct air quality monitoring for the Santa Fe County District Attorney building (DA Building) located on the northeast corner of the site to ensure compliance with federal and state regulations to include the National Ambient Air Quality Standard (NAAQS) based on state and federal requirements. The current air quality monitoring consists of the use of government-furnished equipment (GFE) which includes an ion photo-ionization sensor. Six (6) ION VOC Sensors permanently placed with four (4) in the DA Building and two (2) outside near the construction site. The work must be performed by a Certified Industrial Hygienist to monitor the air quality in the DA Building. The monitoring will include bi-monthly events from July 2011 through December 2012.

Contractor will be responsible for monitoring activities on at least a quarterly basis for a minimum of two years following a baseline event within the Steve

Herrera Judicial Complex building expected to begin in December 2012 (December 2012 to December 2014). The indoor air samples will be analyzed for gasoline-constituents. Quarterly reports will be prepared for the County outlining the results of all sampling and provide the County with recommendations for any additional activities based on the findings.

F. Install Soil Vapor Conveyance Piping

1. Contractor will install soil vapor conveyance piping within the subsurface surrounding the two-level parking garage. Approximately 600 feet of 4-inch conveyance piping will be buried approximately 3-feet below ground surface and will exit the subsurface near the northeast corner of the site. The piping will be connected to 28 perimeter monitoring wells previously installed. The piping will be completed with surface vents and act as a passive venting system initially with the potential to be converted to an active venting system if determined necessary.

G. Recomplete Two Monitoring Wells

1. Contractor will re-complete two previously installed monitoring wells (TMW-06 and TMW-06D). These wells will need to be extended to the surface and completed with traffic-rated well heads within the subsurface parking garage, below the Courthouse Complex building.

H. River Study Sampling Report

1. Contractor will utilize existing information to complete a River Study Sampling Report consisting of collection of eight (8) soil samples within the bed of the Santa Fe River near the storm sewer outfall located near the Sandoval Street bridge. The soil samples will be collected from river sediments and analyzed for total petroleum hydrocarbons (TPH), gasoline range organics (GRO) and diesel range organics (DRO) by Environmental Protection Agency (EPA) Method 8015B and for volatile organic compounds (VOCs) including benzene, toluene, ethyl benzene, and total xylene (BTEX) by EPA Method 8260B, and the Resource Conservation and Recovery Act (RCRA) metals by EPA Method 6010/6020/7470.

I. Voluntary Remediation Activities

1. Contractor shall perform various Voluntary Remediation activities including a Voluntary Remediation Completion Report (VRCR) which will be submitted to the NMED Voluntary Remediation Program (VRP) by December 2011. The VRCR will summarize the previous remediation activities completed at the Courthouse Complex as well as discuss the results of the initial air and ground water monitoring activities. In addition to the VRCR, the Contractor will prepare quarterly reports summarizing air and ground water monitoring results will be required to be submitted to the NMED VRP from July 2011 until July 2013.

J. Deliverables

1. Any As-Built Reports for remediation systems installed at the site within 60 days from start up. The As-Built Reports shall be comprehensive descriptions of all activities conducted at the site under this Agreement. The As-Built Report shall also contain the remediation systems' as-built drawings, start up data, etc.

2. Based on all laboratory data collected to date, the Contractor shall discuss in a written report the migration of contamination and any impact or potential impact to sensitive environments or public and private water supplies, vapor impacts, etc. Such report will discuss how the remedial implementation will mitigate these existing or potential impacts.

3. Contractor shall describe in detail in a written report the installation of remedial systems utilized to address soil and ground water contamination.

4. Contractor shall discuss in detail any modifications to, or variances from the remedial design which were necessary for installation of Contractor's remedial systems. All variances must be approved by the County in writing.

5. Contractor shall discuss in detail the system start up; identifying and explaining operational adjustments made for optimum system performance.

6. Contractor shall discuss actual system operation and effectiveness as compared to expected parameters used for the remedial design. The Contractor shall describe the observed performance of the remedial systems. Describe and discuss handling, treatment, or disposal of by-products generated by the remedial method implemented; e.g., vapor and fluid effluent from the remedial process. Discuss the remedial system's effectiveness relative to performance criteria.

7. Contractor shall describe any modifications to the remedial design for the free product recovery system necessary for installation.

8. If applicable, Contractor shall discuss the observed effectiveness of the free product recovery system and provide the rate of product recovery.

9. If applicable, Contractor shall describe how the free product is handled, stored on-site, and the method and frequency of its disposal.

10. If applicable, Contractor shall describe how wastes are handled including types of waste generated, quantity of waste generated, storage methods, and laboratory analyses of waste.

11. Provide a written description of any additional services that maybe required and indicate Contractor's fixed hourly rate(s) for such services, a description of materials necessary for such services, costs of the materials, and the estimated number of work days required to perform such additional services.

2. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

1. County shall pay Contractor for Tasks described in the Scope of Work at the following hourly rates at the following rates. See Exhibit A.

2. County shall pay Contractor for additional work or services to be performed at the following hourly rates and costs: (Not applicable.)

3. **Not-To-Exceed Amount for Year One**. In no event shall the total compensation paid to Contractor for services provided during Year One of the term of this Agreement exceed Two Thousand Sixty-Eight One Hundred Forty-Four Dollars and Fifty Cents ($268,144.50) exclusive of gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the items and/or services. Within thirty (30) days of the issuance of a written certification accepting items and services, the County shall tender payment for the accepted items and services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

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

INTERA - July 2013 through June 2014 Cost Estimate
Santa Fe County Judicial Complex

Task 1 - Scope of Work	Complete	
Task 2 - Work Plan	Complete	
Task 3a - Project Management (During Construction)	Complete	
Task 3b - Project Management (Operation and Maintenance)	$	10,563.00
Task 4 - Document Review	$	3,932.00
Task 5 - Groundwater Monitoring	$	49,581.50
Task 6 - Air Quality Monitoring	$	15,997.80
Task 7 - Soil Vapor Conveyence Piping	Complete	
Task 8 - Monitoring Well Recompletion	Complete	
Task 9 - River Study Sampling Report	Complete	
Task 10 - Voluntary Remediation Activities	$	15,550.00
SUBTOTAL:-ALL TASKS	**$**	**95,624.30**
NMGRTX (7.00%)	**$**	**6,693.70**
TOTAL ALL TASKS	**$**	**102,318.00**

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Santa Fe County Board of County Commissioners

From: Teresa C. Martinez, Finance Division Director

Via: Katherine Miller, County Manager

Date: August 27, 2013

Re: **Request Authorization Of The Use Of District 3 Capital Funds, Per Capital Outlay Policy, Allocating $4,000 To Assist In The Purchase of a Marquee Sign for the Edgewood Fire Station**

BACKGROUND

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

ISSUE

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

SUMMARY

The construction budget for the Edgewood Fire Station includes $14,000 for the acquisition of a marquee sign. The Finance Division requests BCC authorization of the use of district 3 capital funds in the amount of $4,000 to assist in the purchase of an enhanced marquee sign for the Edgewood Fire Station.

Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief DMS
Pablo Sedillo, Public Safety Director
Katherine Miller, County Manager

Date: August 27, 2013

Re: A resolution requesting a budget increase to the Fire Protection Fund (209) from cash carryover for various Fire Districts and to adjust the fiscal Year 2014 budget for the current year allocation to the actual distribution amount for each Fire District / $1,616,766. (Public Safety/Fire)

BACKGROUND:

The Santa Fe County Fire Department has received the approval from the State Fire Marshal's Office to carry forward the FY-2013 available cash balances from previous year's fire fund allocations for the fire districts to be expended in FY-2014. This budget resolution is to adjust the FY-2014 fire fund allocations to the actual distribution amount in addition to budgeting the prior year's available cash balances for the fire districts. The fire districts have prioritized their needs in accordance with the Fire Department's Five Year Plan so that this funding is expended in the appropriate categories. Many of the fire districts will be utilizing the funding to purchase fire apparatus, to make fire station upgrades and improvements and purchase or repair fire equipment.

SUMMARY:

Please approve this request for a budget increase/decrease to the various Fire Districts (209) Fire Fund in the amount of $1,616,766.

SANTA FE COUNTY

RESOLUTION 2013 - _____

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

Whereas, the Board of County Commissioners meeting in regular session on August 27, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Various Fire Districts Fund Name: Fire Fund (209)

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

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0831	371	07-00	Fire Allotment		2,504
209	0831	385	02-00	Budgeted Cash / State Funds	88,346	
209	0832	371	07-00	Fire Allotment	16,236	
209	0832	385	02-00	Budgeted Cash / State Funds	58,493	
TOTAL (if SUBTOTAL, check here X)					163,075	2,504

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0831	422	80-09	Capital Purchases/Vehicles	88,346	
209	0831	422	60-02	Supplies/Safety Equipment		2,504
209	0832	422	35-03	Vehicle Expenses/Vehicle Maintenance	5,000	
209	0832	422	80-09	Capital Purchases/Vehicles	69,729	
TOTAL (if SUBTOTAL, check here X)					163,075	2,504

Requesting Department Approval: _____ **Title:** Chief **Date:** 8-13-13

Finance Department Approval: _____ **Date:** 8/14/13 **Entered by:** _____ **Date:** _____

County Manager Approval: _____ FOR TCM **Date:** _____ **Updated by:** _____ **Date:** _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0833	371	07-00	Fire Allotment		5,332
209	0833	385	02-00	Budgeted Cash / State Funds	104,710	
209	0834	371	07-00	Fire Allotment		3,900
209	0834	385	02-00	Budgeted Cash / State Funds	206,406	
209	0835	371	07-00	Fire Allotment		3,706
209	0835	385	02-00	Budgeted Cash / State Funds	39,200	
209	0836	371	07-00	Fire Allotment		2,666
209	0836	385	02-00	Budgeted Cash / State Funds	129,458	
209	0837	371	07-00	Fire Allotment	42,842	
209	0837	385	02-00	Budgeted Cash / State Funds	99,970	
TOTAL (if SUBTOTAL, check here X)					785,661	18,108

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0833	422	80-03	Capital Purchases/Vehicles	90,000	
209	0833	422	80-99	Capital Purchases/Inventory Exempt	9,378	
209	0834	422	80-01	Capital Purchases/Buildings & Structures	202,506	
209	0835	422	80-09	Capital Purchases/Vehicles	35,494	
209	0836	422	70-04	Other Operating Costs/Electricity	3,000	
209	0836	422	70-05	Other Operating Costs/Gas & Heating	3,000	
209	0836	422	70-06	Other Operating Cost/Garbage & Sewer	1,000	
209	0836	422	80-01	Capital Purchases/Buildings & Structures	119,792	
209	0837	422	35-03	Vehicle Expenses/Vehicle Maintenance	5,000	
209	0837	422	70-04	Other Operating Costs/Electricity	2,000	
TOTAL (if SUBTOTAL, check here X)					634,245	2,504

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0838	371	07-00	Fire Allotment		3,155
209	0838	385	02-00	Budgeted Cash / State Funds	109,942	
209	0839	371	07-00	Fire Allotment		3,155
209	0839	385	02-00	Budgeted Cash / State Funds	68,177	
209	0840	371	07-00	Fire Allotment		3,706
209	0840	385	02-00	Budgeted Cash / State Funds	30,242	
209	0841	371	07-00	Fire Allotment		1,950
209	0841	385	02-00	Budgeted Cash / State Funds	152,582	
209	0842	371	07-00	Fire Allotment		1,950
209	0842	385	02-00	Budgeted Cash / State Funds	186,725	
TOTAL (if SUBTOTAL, check here X)					1,333,329	32,024

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0837	422	70-05	Other Operating Costs/Gas & Heating	1,000	
209	0837	422	70-06	Other Operating Costs/Garbage & Sewer	2,000	
209	0837	422	70-37	Other Operating Costs/Printing & Publishing	1,500	
209	0837	422	80-01	Capital Purchases/Buildings & Structures	131,312	
209	0838	422	70-03	Other Operating Costs/Telephone	2,000	
209	0838	422	70-04	Other Operating Costs/Electricity	1,500	
209	0838	422	70-05	Other Operating Costs/Gas & Heating	1,000	
209	0838	422	70-06	Other Operating Costs/Garbage & Sewer	1,500	
209	0838	422	80-09	Capital Purchases/Vehicles	100,787	
209	0839	422	80-09	Capital Purchases/Vehicles	65,022	
209	0840	422	80-99	Capital Purchases/Inventory Exempt	26,536	
209	0841	422	80-01	Capital Purchases/Buildings & Structures	150,632	
209	0842	422	70-03	Other Operating Cost/Telephone	1,000	
209	0842	422	70-04	Other Operating Costs/Electricity	1,500	
TOTAL (if SUBTOTAL, check here X)					1,121,534	2,504

SANTA FE COUNTY

RESOLUTION 2013 - _____

BUDGET ADJUSTMENT CONTINUATION SHEET

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0843	371	07-00	Fire Allotment		3,900
209	0843	385	02-00	Budgeted Cash / State Funds	96,310	
209	0844	371	07-00	Fire Allotment		1,853
209	0844	385	02-00	Budgeted Cash / State Funds	192,858	
209	0846	371	07-00	Fire Allotment		1,950
209	0846	385	02-00	Budgeted Cash / State Funds	33,996	
TOTAL (if SUBTOTAL, check here ____)					1,656,493	39,727

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
209	0842	422	70-05	Other Operating Costs/Gas & Heating	2,000	
209	0842	422	70-07	Other Operating Costs/Water	1,500	
209	0842	422	35-03	Vehicle Expenses/Vehicle Maintenance	7,000	
209	0842	422	80-01	Capital Purchases/Buildings & Structures	171,775	
209	0843	422	40-03	Maintenance/Infrastructure	20,000	
209	0843	422	80-01	Capital Purchases/Buildings & Structures	72,410	
209	0844	422	80-01	Capital Purchases/Buildings & Structures	191,005	
209	0846	422	80-09	Capital Purchases/Vehicles	32,046	
TOTAL (if SUBTOTAL, check here ____)					1,619,270	2,504

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

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

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

- 1) Please summarize the request and its purpose.

  This request is to budget FY-13 available cash balances from Fire Fund (209) distributions for expenditure in FY-14 and to adjust the budget for the current year allocation to the actual distribution amount for each fire district for a total amount of $1,616,766. Each Fire District was requested to prioritize their needs to budget funds in appropriate expenditure categories.

  a) Employee Actions

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

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

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-XX	Additions are being made to carry over funding for future expenditures as needed for buildings, structures, vehicles	1,563,770
	And Equipment.	

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

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

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

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

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

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

    The State Fire Fund Allotment.

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

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

    Not Applicable.

SANTA FE COUNTY

RESOLUTION 2013 - _____

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

Approved, Adopted, and Passed This 27th Day of August, 2013.

Santa Fe Board of County Commissioners

_____
Kathy Holian, Madam Chair

ATTEST:

_____
Geraldine Salazar, County Clerk

Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: David Sperling, Fire Chief DMS
Pablo Sedillo, Public Safety Director
Katherine Miller, County Manager

Date: August 27, 2013

Re: A resolution requesting a budget increase to carry forward GOB Series 2011 (339) Fund for the Town of Edgewood Station Construction ($328,430). (Public Safety/Fire)

BACKGROUND:

The Santa Fe County Fire Department had budgeted GOB Series 2011 funding allocated to the construction of the Town of Edgewood Station in FY-2013. The expenditures that were paid against these 339 funds were re-classed to be paid against the older bond balances in funds 353, 370 and 380 to close out the balances. The reclassification of the FY-2013 expenditures necessitated the need to re-budget the 339 funds that were allocated for the construction of the Town of Edgewood Fire Station.

SUMMARY:

Please approve this request for a budget increase to GOB Series 2011 Fund (339) in the amount of $328,430.

SANTA FE COUNTY

RESOLUTION 2013 - _____

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

Whereas, the Board of County Commissioners meeting in regular session on August 27, 2013, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: GOB Series 2011 Fund (339)

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

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
339	0000	385	04-00	GOB Series 2011 / Budgeted Cash	328,430	
					328,430	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
339	8005	481	80-01	Town of Edgewood Station/Buildings & Structures	328,430	
					328,430	

Requesting Department Approval: _____ **Title:** Fire Chief **Date:** 8-14-13

Finance Department Approval: _____ **Date:** 8/14/13 **Entered by:** _____ **Date:** _____

County Manager Approval: _____ for TCM **Date:** _____ **Updated by:** _____ **Date:** _____

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

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

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

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget increase to budget GOB Series 2011 funds allocated for the construction of the Town of Edgewood Fire Station. These funds were budgeted in FY-2013 and expenditures that were paid against fund 339 were re-classed to utilize older bond balances from fund 353, 370, and 380 creating the necessity to budget the allocation from fund 339 to be expended in FY-2014.

a) Employee Actions

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

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

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-01	Town of Edgewood Fire Station Construction	328,430

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

SANTA FE COUNTY

RESOLUTION 2013 - _____

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

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

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

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES _____ NO __X__ **GOB Series 2011**
  - b) Does this include state or federal funds? YES _____ NO __X__
    If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.

    c) Is this request is a result of Commission action? YES _____ NO __X__
    If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request. *N/A*

SANTA FE COUNTY

RESOLUTION 2013 - _____

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

Approved, Adopted, and Passed This 27th Day of August, 2013.

Santa Fe Board of County Commissioners

_____
Kathy Holian, Madam Chair

ATTEST:

_____
Geraldine Salazar, County Clerk

NO PACKET MATERIAL FOR THIS ITEM

A. MISCELLANEOUS UPDATES

1. Santa Fe County Public Safety Recruitment Campaign

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: *Aug 21, 2013*

TO: *Board of County Commissioners*

FROM: *Katherine Miller, County Manager*

ITEM AND ISSUE: SANTA FE COUNTY CITIZEN SURVEY

DISCUSSION

In the spring of 2013, we discussed developing a survey to gather constituent input and to gauge satisfaction with various aspects of County services, amenities and operations. We discussed a number of options and you directed me to utilize an existing uniform survey tool so that we would be using a statistically valid survey that could be compared with other jurisdictions throughout the country.

National Research Center, Inc. partnered with the International City / County Management Association (ICMA) to develop the National Citizen Survey. This uses many standardized questions and it is designed so that the results will help us in community planning, program improvement and policy making

This survey is conducted on a standard schedule. The National Research Center recommends that we make announcements at meetings and do press releases so that the public knows that they may be selected to participate in the survey. They (NRC) believe that this initial exposure helps the return rate. If we stay on our timeline the survey materials will be mailed to 3000 households in the unincorporated areas of the County starting on September 5. Recipients will receive a "pre-notification" post card so that they can be on the lookout for the survey (postcards scheduled to drop on 9/5). The surveys themselves will be mailed in 2 waves with the 1st wave scheduled to drop on 9/12 and the second wave scheduled to drop on 9/19.

Please review the attached draft so that we can proceed with finalization of the survey and authorize distribution.

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX: 505-995-2740 www.santafecounty.org

The Santa Fe County 2013 Citizen Survey

Please complete this questionnaire if you are the adult (age 18 or older) in the household who most recently had a birthday. The adult's year of birth does not matter. Please select the response (by circling the number or checking the box) that most closely represents your opinion for each question. Your responses are anonymous and will be reported in group form only.

1. Please rate each of the following aspects of quality of life in Santa Fe County:

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
Santa Fe County as a place to live	1	2	3	4	5
Your neighborhood as a place to live	1	2	3	4	5
Santa Fe County as a place to raise children	1	2	3	4	5
Santa Fe County as a place to work	1	2	3	4	5
Santa Fe County as a place to visit	1	2	3	4	5
Santa Fe County as a place to retire	1	2	3	4	5
The overall quality of life in Santa Fe County	1	2	3	4	5

2. Please rate each of the following characteristics as they relate to Santa Fe County as a whole:

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
Overall feeling of safety in Santa Fe County	1	2	3	4	5
Overall ease of getting to the places you usually have to visit	1	2	3	4	5
Quality of overall natural environment in Santa Fe County	1	2	3	4	5
Overall "built environment" of Santa Fe County (including overall design, buildings, parks and transportation systems)	1	2	3	4	5
Health and wellness opportunities in Santa Fe County	1	2	3	4	5
Overall opportunities for education and enrichment	1	2	3	4	5
Overall economic health of Santa Fe County	1	2	3	4	5
Sense of community	1	2	3	4	5
Overall image or reputation of Santa Fe County	1	2	3	4	5

3. Please indicate how likely or unlikely you are to do each of the following:

	Very likely	*Somewhat likely*	*Somewhat unlikely*	*Very unlikely*	*Don't know*
Recommend living in Santa Fe County to someone who asks	1	2	3	4	5
Remain in Santa Fe County for the next five years	1	2	3	4	5

4. Please rate how safe or unsafe you feel:

	Very safe	*Somewhat safe*	*Neither safe nor unsafe*	*Somewhat unsafe*	*Very unsafe*	*Don't know*
In your neighborhood during the day	1	2	3	4	5	6
In Santa Fe County's downtown/commercial area during the day	1	2	3	4	5	6

5. Please rate each of the following characteristics as they relate to Santa Fe County as a whole:

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
Traffic flow on major streets	1	2	3	4	5
Ease of travel by car in Santa Fe County	1	2	3	4	5
Ease of travel by public transportation in Santa Fe County	1	2	3	4	5
Ease of travel by bicycle in Santa Fe County	1	2	3	4	5
Availability of paths and walking trails	1	2	3	4	5
Air quality	1	2	3	4	5
Cleanliness of Santa Fe County	1	2	3	4	5
Overall appearance of Santa Fe County	1	2	3	4	5
Public places where people want to spend time	1	2	3	4	5
Variety of housing options	1	2	3	4	5
Availability of affordable quality housing	1	2	3	4	5
Fitness opportunities (including exercise classes and paths or trails, etc.)	1	2	3	4	5
Recreational opportunities	1	2	3	4	5
Availability of affordable quality food	1	2	3	4	5
Availability of affordable quality health care	1	2	3	4	5
Availability of preventive health services	1	2	3	4	5
Availability of affordable quality mental health care	1	2	3	4	5

6. Please rate each of the following characteristics as they relate to Santa Fe County as a whole:

	Excellent	Good	Fair	Poor	Don't know
Availability of affordable quality child care/preschool	1	2	3	4	5
Opportunities to attend cultural/arts/music activities	1	2	3	4	5
Employment opportunities	1	2	3	4	5
Shopping opportunities	1	2	3	4	5
Cost of living in Santa Fe County	1	2	3	4	5
Overall quality of business and service establishments in Santa Fe County	1	2	3	4	5
Overall quality of new development in Santa Fe County	1	2	3	4	5
Opportunities to participate in social events and activities	1	2	3	4	5
Opportunities to volunteer	1	2	3	4	5
Opportunities to participate in community matters	1	2	3	4	5
Openness and acceptance of the community toward people of diverse backgrounds	1	2	3	4	5
Neighborliness of residents in Santa Fe County	1	2	3	4	5

7. Please indicate whether or not you have done each of the following in the last 12 months.

	No	Yes
Made efforts to conserve water	1	2
Made efforts to make your home more energy efficient	1	2
Observed a code violation or other hazard in Santa Fe County (weeds, abandoned buildings, etc.)	1	2
Household member was a victim of a crime in Santa Fe County	1	2
Reported a crime to the police in Santa Fe County	1	2
Stocked supplies in preparation for an emergency	1	2
Campaigned or advocated for an issue, cause or candidate	1	2
Contacted Santa Fe County (in-person, phone, email or web) for help or information	1	2
Contacted Santa Fe County elected officials (in-person, phone, email or web) to express your opinion	1	2

8. In the last 12 months, about how many times, if at all, have you or other household members done each of the following in Santa Fe County?

	2 times a week or more	2-4 times a month	Once a month or less	Not at all
Used Santa Fe County recreation centers or their services	1	2	3	4
Visited a neighborhood park or County park	1	2	3	4
Used Santa Fe County public libraries or their services	1	2	3	4
Participated in religious or spiritual activities in Santa Fe County	1	2	3	4
Attended a County-sponsored event	1	2	3	4
Used bus, rail, subway or other public transportation instead of driving	1	2	3	4
Carpooled with other adults or children instead of driving alone	1	2	3	4
Walked or biked instead of driving	1	2	3	4
Volunteered your time to some group/activity in Santa Fe County	1	2	3	4
Participated in a club	1	2	3	4
Talked to or visited with your immediate neighbors	1	2	3	4
Done a favor for a neighbor	1	2	3	4

9. Thinking about local public meetings (of local elected officials like City Council or County Commissioners, advisory boards, town halls, HOA, neighborhood watch, etc.), in the last 12 months, about how many times, if at all, have you or other household members attended or watched a local public meeting?

	2 times a week or more	2-4 times a month	Once a month or less	Not at all
Attended a local public meeting	1	2	3	4
Watched (online or on television) a local public meeting	1	2	3	4

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The Santa Fe County 2013 Citizen Survey

10. Please rate the quality of each of the following services in Santa Fe County:

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
Police/Sheriff services	1	2	3	4	5
Fire services	1	2	3	4	5
Ambulance or emergency medical services	1	2	3	4	5
Crime prevention	1	2	3	4	5
Fire prevention and education	1	2	3	4	5
Traffic enforcement	1	2	3	4	5
Street repair	1	2	3	4	5
Street cleaning	1	2	3	4	5
Street lighting	1	2	3	4	5
Snow removal	1	2	3	4	5
Bus or transit services	1	2	3	4	5
Recycling	1	2	3	4	5
Storm drainage	1	2	3	4	5
Drinking water	1	2	3	4	5
Sewer services	1	2	3	4	5
Utility billing	1	2	3	4	5
County parks	1	2	3	4	5
Recreation centers or facilities	1	2	3	4	5
Land use, planning and zoning	1	2	3	4	5
Code enforcement (weeds, abandoned buildings, etc.)	1	2	3	4	5
Animal control	1	2	3	4	5
Economic development	1	2	3	4	5
Health services	1	2	3	4	5
Public information services	1	2	3	4	5
Cable television	1	2	3	4	5
Emergency preparedness (services that prepare the community for natural disasters or other emergency situations)	1	2	3	4	5
Preservation of natural areas such as open space, farmlands and greenbelts	1	2	3	4	5
Santa Fe County open space	1	2	3	4	5
County-sponsored special events	1	2	3	4	5
Overall customer service by Santa Fe County employees (police, receptionists, planners, etc.)	1	2	3	4	5

11. Overall, how would you rate the quality of the services provided by each of the following?

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
Santa Fe County	1	2	3	4	5
The Federal Government	1	2	3	4	5

12. Please rate the following categories of Santa Fe County government performance:

	Excellent	*Good*	*Fair*	*Poor*	*Don't know*
The value of services for the taxes paid to Santa Fe County	1	2	3	4	5
The overall direction that Santa Fe County is taking	1	2	3	4	5
The job Santa Fe County government does at welcoming citizen involvement	1	2	3	4	5
Overall confidence in Santa Fe County government	1	2	3	4	5
Generally acting in the best interest of the community	1	2	3	4	5
Being honest	1	2	3	4	5
Treating all residents fairly	1	2	3	4	5

13. Please check the response that comes closest to your opinion for each of the following questions:

a. How important, if at all, are each of the following services to your quality of life in Santa Fe County?

	Essential	*Very important*	*Somewhat important*	*Not at all important*	*Don't know*
Fire protection	1	2	3	4	5
Emergency medical services	1	2	3	4	5
Parks	1	2	3	4	5
Open space	1	2	3	4	5
Public facilities (such as senior and community centers)	1	2	3	4	5
Infrastructure (like roads, water and sewer lines)	1	2	3	4	5

b. What one service could Santa Fe County change or improve?

_____

_____

_____

_____

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The Santa Fe County 2013 Citizen Survey

Our last questions are about you and your household. Again, all of your responses to this survey are completely anonymous and will be reported in group form only.

D1. How often, if at all, do you do each of the following, considering all of the times you could?

	Never	*Rarely*	*Sometimes*	*Usually*	*Always*
Recycle at home	1	2	3	4	5
Purchase goods or services from a business located in Santa Fe County	1	2	3	4	5
Eat at least 5 portions of fruits and vegetables a day	1	2	3	4	5
Participate in moderate or vigorous physical activity	1	2	3	4	5
Read or watch local news (via television, paper, computer, etc.)	1	2	3	4	5
Vote in local elections	1	2	3	4	5

D2. Would you say that in general your health is:
O Excellent O Very good O Good O Fair O Poor

D3. What impact, if any, do you think the economy will have on your family income in the next 6 months? Do you think the impact will be:
O Very positive O Somewhat positive O Neutral O Somewhat negative O Very negative

D4. What is your employment status?
O Working full time for pay
O Working part time for pay
O Unemployed, looking for paid work
O Unemployed, not looking for paid work
O Fully retired

D5. Do you work inside the boundaries of Santa Fe County?
O Yes, outside the home
O Yes, from home
O No

D6. How many years have you lived in Santa Fe County?
O Less than 2 years O 11-20 years
O 2-5 years O More than 20 years
O 6-10 years

D7. Which best describes the building you live in?
O One family house detached from any other houses
O Building with two or more homes (duplex, townhome, apartment or condominium)
O Mobile home
O Other

D8. Is this house, apartment or mobile home...
O Rented
O Owned

D9. About how much is your monthly housing cost for the place you live (including rent, mortgage payment, property tax, property insurance and homeowners' association (HOA) fees)?
O Less than $300 per month
O $300 to $599 per month
O $600 to $999 per month
O $1,000 to $1,499 per month
O $1,500 to $2,499 per month
O $2,500 or more per month

D10. Do any children 17 or under live in your household?
O No O Yes

D11. Are you or any other members of your household aged 65 or older?
O No O Yes

D12. How much do you anticipate your household's total income before taxes will be for the current year? (Please include in your total income money from all sources for all persons living in your household.)
O Less than $25,000
O $25,000 to $49,999
O $50,000 to $99,999
O $100,000 to $149,999
O $150,000 or more

Please respond to both questions D13 and D14:

D13. Are you Spanish, Hispanic or Latino?
O No, not Spanish, Hispanic or Latino
O Yes, I consider myself to be Spanish, Hispanic or Latino

D14. What is your race? (Mark one or more races to indicate what race you consider yourself to be.)
O American Indian or Alaskan Native
O Asian, Asian Indian or Pacific Islander
O Black or African American
O White
O Other

D15. In which category is your age?
O 18-24 years O 55-64 years
O 25-34 years O 65-74 years
O 35-44 years O 75 years or older
O 45-54 years

D16. What is your sex?
O Female O Male

D17. Do you consider a cell phone or landline your primary telephone number?
O Cell O Land line O Both

Thank you for completing this survey. Please return the completed survey in the postage-paid envelope to: National Research Center, Inc., PO Box 549, Belle Mead, NJ 08502

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

To: Board of County Commissioners

From: Bernadette Salazar, Human Resources Director

Date: August 14, 2013

RE: HR Monthly Report for July 2013

The purpose of this memo is to provide you with information relative to HR functions and statistics for the month of July 2013. Throughout the month of July, HR coordinated/conducted 8 training sessions. In addition to these training sessions, 14 employees attended NMEDGE courses. Santa Fe County hosted the July NMEDGE courses, and they were conducted at our Rancho Viejo Fire Station. Our County Manager, Katherine Miller taught CPM 111-Knowing Your Government and Adam Leigland, Public Works Director taught CPM 156-Improving Your Writing Skills. We are proud to announce that many employees are interested in taking NMEDGE courses and obtaining their certification. This is great for employee development and enhanced county services.

In July, the IAFF negotiating team and the Santa Fe County Management Team finalized the wage-reopener. This resulted in salary increases, enhanced benefits, and a future re-opener prior to the end of the existing contract. This process was efficient and a good outcome for employees and the County.

HR has secured a date for the 2nd Annual Public Safety Day which will be held on Saturday, September 28, 2013. Fliers providing all the details have been developed and are being distributed throughout the community. Our hope is to attract interested people to attend so they can gain more insight to our processes and how we can help them be successful in obtaining County jobs. The event will take place at the Santa Fe County Extension Building.

Attached are the HR Statistics Report, the New Hire Report, and the Labor Statistics Report for July 2013. If you have any questions, I can be contacted at 992-9886. Thank you.

HR STATISTICS FOR THE MONTH OF JULY 2013

Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Female Employees	Male Employees	Vacancies (includes frozen vacancies)	Frozen Vacancies	Total Positions	Total Positions (not including frozen vacancies)	Vacancy Rate (all vacancies)	Vacancy Rate (not including frozen vacancies)	New Hires/Re-employments	Resignations	Retirements	End of term/temp status	Terminations	Total separations	Turnover Rate	HR Actions	Employee Recognitions	Performance Improvement Plans	Posted Jobs	Applications
COUNTY MANAGER'S OFFICE	01-COUNTY MANAGER ADMINIS.	6		6			5	1	1		7	7	14%	14%						0	0%	1			2	27
	02-COMMISSION	5		5	5		3	2			5	5	0%	0%							0%					
	15-HUMAN RESOURCES	10		10			8	2	1		11	11	9%	9%						0	0%					
	21-FINANCE	20		20			17	3	3		23	23	13%	13%						0	0%				1	25
CMO TOTAL		41		41	5		33	8	5	0	46	46	11%	11%	0	0	0	0	0	0	0	1	0	0	3	52
	01-LEGAL ADMINISTRATION	8		8			5	3			8	8	0%	0%						0	0%					
LEGAL TOTAL		8		8			5	3		0	8	8	0%	0%	0	0	0	0	0	0	0%	0	0	0	0	0
ADMINISTRATIVE SERVICES DEPARTMENT	00-ADMINISTRATION	1		1				1	2	1	3	2	67%	50%		1					0%	1			1	25
	02-INFORMATION TECHNOLOGY	11		11			2	9	1		12	12	8%	8%							0%					
	12-PURCHASING	7		7			3	4			7	7	0%	0%							0%	1				
	16-MAIL ROOM	1		1			1				1	1	0%	0%							0%					
	17-RISK MANAGEMENT	3		3				3			3	3	0%	0%							0%					
ASD TOTAL		23		23			6	17	3	1	26	25	12%	8%	0	1				1	4%	2			1	25
COMMUNITY SERVICES DEPARTMENT	01-ADMINISTRATION	2		2			1	1			2	2	0%	0%							0%	1				
	03-MCH GRANT PROJECT								1		0	0	0%	0%							0%					
	20-INDIGENT HOSPITAL FUND	3		3			3				3	3	0%	0%	1						0%	1				
	21-EMS-HEALTH CARE	3		3			3				3	3	0%	0%							0%					
	54-HOME FOR GOOD PROGRAM '06								1	1	1	0	100%	100%							0%					
	74-MOBILE HEALTH FAIR VAN	2	2				1	1	3		5	5	60%	60%							0%				1	0
TOTAL		10	2	8	0	0	8	2	5	1	14	13	36%	31%	1	0	0		0		0%	2			1	0
	04-DWI LOCAL	8		8			6	2	1		9	9	11%	11%						0	0%					
TOTAL		8	0	8	0	0	6	2	1	0	9	9	11%	11%	0	0			0	0	0%	0				
	09-DWI TEEN COURT	2		2			2				2	2	0%	0%						0	0%					
TOTAL		2	0	2	0	0	2	0	0	0	2	2	0%	0%	0		0				0%	0			0	0
	89-SENIOR PROGRAMS - ADMIN.	7		7			5	2	4		11	11	36%	36%							0%					

HR STATISTICS FOR THE MONTH OF JULY 2013

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	90-SR SVCS-CONGREGATE MEALS	6		6		1	3	3	3		9	9	33%	33%							0%				3	15
	92-SR SVCS - HOME DELIVERED	2	1	1		1		2	2		5	5	40%	40%							0%				1	5
	93-SR SVCS - TRANSPORTATION	4		4		1		4			4	4	0%	0%							0%					
TOTAL		19	1	18	0	3	8	11	9	0	29	29	31%	31%	0	0		0	0	0	0%	0			4	20
	01-POJOAQUE SATELLITE OFFICE					1						0	0%	0%							0%					
	02-EDGEWOOD SATELLITE OFFICE					1						0	0%	0%							0%					
TOTAL						2						0	0%	0%							0%					
	30-ADMINISTRATION	11		11			5	6	1		12	12	8%	8%						0	0%				1	11
	49-HOUSING SECTION 8 VOUCHER	2		2			1	1			2	2	0%	0%							0%					
	81-HOUSING CFP - 2011	1		1				1			1	1	0%	0%							0%					
TOTAL		14		14			8	8	1	0	15	15	7%	7%	0	0				0	0%				1	11
CSD TOTAL		53	3	50	0	5	30	23	16	1	69	68	23%	22%	1	0	0	0	0	0	0%	2			6	31
Growth Management Department	01-LAND USE ADMINISTRATION	3		3			3		1		4	4	25%	25%						0	0%				1	39
	02-PLANNING	6		6			2	4	2	1	7	6	29%	17%						0	0%				2	2
	15-AFFORDABLE HOUSING-COUNTY	2		2			1	1			2	2	0%	0%						0	0%	1				
	08-REGIONAL PLANNING AUTHRTY								1	1	1	0	100%	0%							0%					
TOTAL		11	0	11	0	0	6	5	4	2	14	12	29%	17%	0	0	0		0	0	0%	1			3	41
	16-BUILDING & DEVELOPMENT	8		8			3	5	1	2	17	15	6%	-7%						0	0%					
TOTAL		8	0	8	0	0	3	5	1	2	17	15	6%	-7%	0	0	0			0	0%	0	0	0	0	0
	14-GIS	13		13			2	11	4		9	9	44%	44%						0	0%				1	2
		13	0	13	0	0	2	11	4	0	9	9	44%	44%							0%	0				
GMD TOTAL		32	0	32	0	0	11	21	9	4	40	36	23%	14%	0	0	0	0	0	0	0%	1	0	0	4	43
PUBLIC WORKS DEPARTMENT	00-OFFICE OF THE DIRECTORS	6		6			2	4			6	6	0%	0%							0%					
	01-PUBLIC WORKS ADMIN.	12		12			7	5			12	12	0%	0%							0%					
	02-FLEET SERVICE	8		8				8	2	1	10	9	20%	11%	1						0%	2				

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	03-TRAFFIC ENGINEERING	6		6				6	2		8	8	25%	25%							0%	1			1	21
	05-SOLID WASTE	20		20		1	2	18	4	3	24	21	17%	5%						0	0%				1	16
	11-ROAD MAINTENANCE	34		34		1		34	5		39	39	13%	13%	2						0%	2			2	3
TOTAL		86		86		2	11	75	13	4	99	95	13%	9%	3	0	0	0	0	0	0%	5	0		4	40
	96-JUDICIAL COURT COMPLEX								1		1	1	100%	100%							#####					
	02-PROPERTY CONTROL	10		10				10	5	1	15	14	33%	29%		1				1	10%	2			1	3
	62-MAINTENANCE DIVISION	7		7				7			7	7	0%	0%	1						0%	1				
	03-BUILDING SERVICES	15	2	13			1	14	4	1	19	18	21%	17%							0%	1				
	18-PROJECT DEVELOPMENT DIV	8		8			1	7	2	1	10	9	20%	11%							0%	1			3	6
	26-OPEN SPACE	4		4		1	1	3	2		7	7	29%	29%						0	0%					
	08-SANTA FE RIVER GREENWAY								2	1	2	1	100%	100%							0%					
TOTAL		44	2	42	0	1	3	41	16	4	81	57	26%	21%	1	1	0		0	1	2%	5			4	9
	10-WATER	14		14			3	11	4	1	18	17	22%	18%							0%					
	15-AAMODT	1		1				1			1	1									0%					
	20-WASTEWATER								1		1	1	100%	100%							0%					
TOTAL		15		15			3	12	5	1	20	19	25%	21%	0	0	0		0	0	0%	0			0	0
PWD TOTAL		145	2	143	0	3	17	128	34	9	180	171	19%	15%	4	1	0	0	0	1	1%	10	0	0	8	49
PUBLIC SAFETY DEPARTMENT	01-FIRE ADMINISTRATION	24		24			7	17	5	1	29	28	17%	14%						0	0%				1	9
	08-EMERGENCY PREPAREDNESS								1		1	1	100%	100%						0	0%					
	09-FOREST RESTORATION	3		3			1	2			3	3	0%	0%						0	0%	1				
	11-FIRE REGIONS	67		67			8	59	13	7	80	73	16%	8%		1				1	1%	4				
	14-FEMA GRANT	1		1				1			1	1	0%	0%							0%					
	74-YOUTH CONSERV.CORP GRANT					10									1											
TOTAL		95		95		10	16	79	19	8	114	106	17%	10%	1	1	0	0	0	1	1%	5	0		1	9
	01-ADMINISTRATION	10	1	9			4	6	4	2	14	12	29%	17%						0	0%					

HR STATISTICS FOR THE MONTH OF JULY 2013

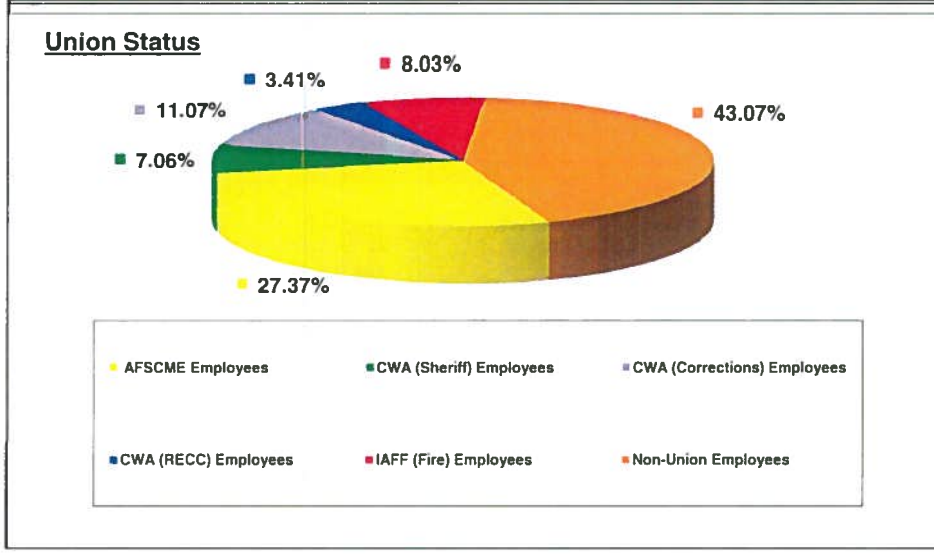
Department	Division	Regular Employees	Part Time Employees	Full Time Employees	Elected/Officials	Temporary Employees	Female Employees	Male Employees	Vacancies (includes frozen vacancies)	Frozen Vacancies	Total Positions	Total Positions (not including frozen vacancies)	Vacancy Rate (all vacancies)	Vacancy Rate (not including frozen vacancies)	New Hires/Re-employments	Resignations	Retirements	End of term/temp status	Terminations	Total separations	Turnover Rate	HR Actions	Employee Recognitions	Performance Improvement Plans	Posted Jobs	Applications
	60-ADULT FACILITY	136		136			43	93	40	20	176	156	23%	13%	1	4			1	5	4%	11			4	33
	63-MEDICAL SERVICES	22		22		1	17	5	16	9	38	29	42%	24%		1				1	5%	2			3	2
	65-ELECTRONIC MONITORING	8		8			2	6	2	1	10	9	20%	11%						0	0%	3				
	70-YOUTH DEVELOPMENT FAC.	24		24		2	9	15	33	28	57	29	58%	17%	3					0	0%				1	4
	72-ADOLESCENT RESIDENCE CTR								17	17	17	0	100%	0%							0%					
	73-DAY REPORTING ASSESSMENT								4	4	4	0	100%	0%							0%					
TOTAL		200	1	199	0	3	75	125	116	81	316	235	37%	15%	4	5			1	6	3%	16		0	8	39
	RECC	37		37			16	21	12		49	49	24%	24%							0%	2			1	23
TOTAL		37		37			16	21	12		49	49	24%	24%	5	6	0	0	1	6	16%	2	0	0	1	23
PSD TOTAL		332	1	331	0	13	107	225	147	89	479	390	31%	15%	10	12	0	0	2	13	87%	23	0	0	10	71
COUNTY CLERK'S OFFICE	01-REPORTING & RECORDING	15		15	1		12	3	7		22	22	0%	0%						0	0%				1	5
	02-BUREAU OF ELECTIONS	12	1	11			5	7			12	12	0%	0%						0	0%					
CLERK'S OFFICE TOTAL		27	1	26	1		17	10	7	0	34	34	21%	21%	0	0	0		0	0	0%	0	0	0	1	5
COUNTY TREASURER'S OFFICE TOTAL	01-COUNTY TREASURER ADMIN.	11		11	1		8	3	1	0	12	12	8%	8%			0			0	0%	1				
COUNTY ASSESSOR'S OFFICE	01-COUNTY ASSESSOR ADMIN.	29		29	1		11	18			29	29	0%	0%						0	0%	4			1	66
	11-PROPERTY VALUATION	13		13			1	12	1		14	14	7%	7%	1					0	0%	1				
ASSESSOR'S OFFICE TOTAL		42		42	1		12	30	1	0	43	43	2%	2%	1	0	0	0	0	0	0%	5	0	0	1	66
COUNTY SHERIFF'S OFFICE	01-ADMIN/ANIMAL CNTRL/ENFORC	105		105	1		29	76	13	0	118	118	0%	0%	5	2					0%	16			2	39
	06-REG III-HIDTA GRANT	2		2			1	1			2	2	0%	0%							0%					
	11-REG III GRANT - PRIOR YR	1		1			1				1	1	0%	0%							0%					
SHERIFF'S OFFICE TOTAL		108		108	1		31	77	13	0	121	121	11%	11%	5	2	0	0	0	2	2%	16	0	0	2	39
COUNTY PROBATE	01-COUNTY PROBATE JUDGE				1							0	0%	0%							0%					
COUNTY SURVEYOR	01-ADMINISTRATION								1	1		0	0%	0%							0%					
COUNTY WIDE TOTAL		822	7	815	10	21	277	545	237	104	1059	955	22%	14%	16	10	0	0	1	11	1%	61	0	0	36	381

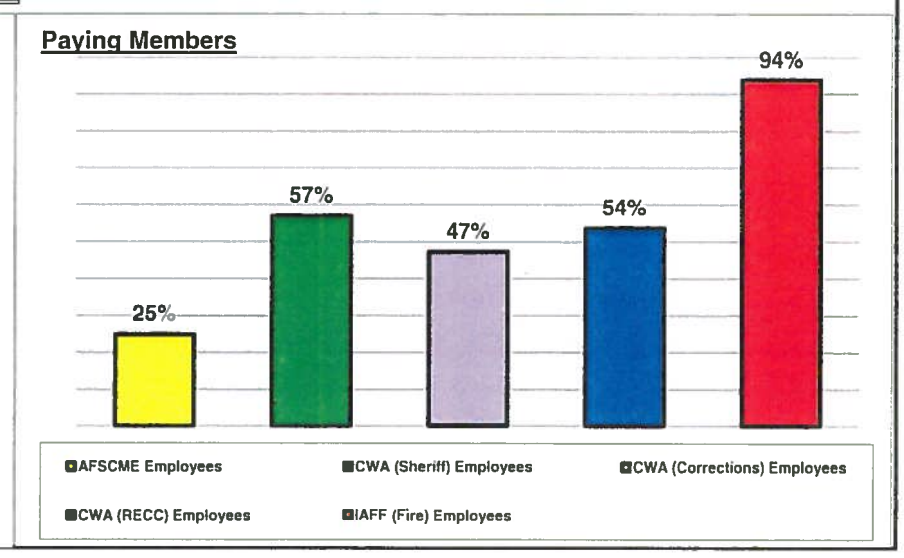
NEW HIRES FOR THE MONTH OF JULY 2013

LAST NAME	FIRST NAME	MIDDLE INITIAL	DEPARTMENT	TITLE	EMP STATUS	HIRE DATE
GRIEGO	LORICE	M	COMMUNITY SERVICES DEPARTMENT	INDIGENT CLAIMS INVESTIGATOR	PB	7/22/2013
DE LORA	MARK	A	COUNTY ASSESSOR OFFICE	FIELD AUDITOR	PB	7/29/2013
CULLISON	CLAY	D	COUNTY SHERIFF'S OFFICE	SHERIFF DEPUTY II	PB	7/29/2013
ECCLES	ERIC	M	COUNTY SHERIFF'S OFFICE	SHERIFF DEPUTY CADET	PB	7/29/2013
FOSTER	RANDY	G	COUNTY SHERIFF'S OFFICE	SHERIFF DEPUTY II	PB	7/29/2013
GUTIERREZ	GLEN	L	COUNTY SHERIFF'S OFFICE	SHERIFF DEPUTY II	PB	7/29/2013
SANCHEZ	ESTEVAN	R	COUNTY SHERIFF'S OFFICE	ANIMAL CONTROL OFFICER	PB	7/29/2013
BATES	JEFFREY	P	PUBLIC SAFETY DEPARTMENT	MAINTENANCE TECHNICIAN	PB	7/1/2013
LEWIS	JAMES	K	PUBLIC SAFETY DEPARTMENT	TEACHER	T	7/2/2013
REANO	DWAYNE	A	PUBLIC SAFETY DEPARTMENT	DETENTION OFFICER	PB	7/23/2013
SISNEROS	ISRAEL	K	PUBLIC SAFETY DEPARTMENT	LIFE SKILLS WORKER I	PB	7/23/2013
SZEKELY	LASZLO	G	PUBLIC SAFETY DEPARTMENT	TEACHER	T	7/2/2013
BURGES TAYLOR	MARGARET	E	PUBLIC SAFETY DEPARTMENT	VOLUNTEER FIRE FIGHTER	VF	7/13/2013
COLLIER	JON	C	PUBLIC SAFETY DEPARTMENT	VOLUNTEER FIRE FIGHTER	VF	7/13/2013
LIVINGSTON	MATTHEW	T	PUBLIC SAFETY DEPARTMENT	VOLUNTEER FIRE FIGHTER	VF	7/13/2013
NORBU	FRANCES	C	PUBLIC SAFETY DEPARTMENT	VOLUNTEER FIRE FIGHTER	VF	7/13/2013
WEBER	ADRIENNE	D	PUBLIC SAFETY DEPARTMENT	FORESTRY TECHNICIAN	T	7/8/2013
YOUNG	ASHLEY	D	PUBLIC SAFETY DEPARTMENT	VOLUNTEER FIRE FIGHTER	VF	7/13/2013
ARCHULETA	FREDERICK	M	PUBLIC WORKS DEPARTMENT	HEAVY EQUIPMENT MECHANIC SR.	PB	7/24/2013
BENAVIDEZ	DAVID		PUBLIC WORKS DEPARTMENT	EQUIPMENT OPERATOR	PB	7/3/2013
VALDEZ	ERIC	S	PUBLIC WORKS DEPARTMENT	CONSTRUCTION INSPECTOR	T	7/22/2013

LABOR STATISTICS FOR JULY 2013

Union Status		Percentage of Union Status		Number of Employees Paying Dues		Percentage Of Employees Paying Union Dues	
AFSCME Employees	225	AFSCME Employees	27.37%	AFSCME Employees	56	AFSCME Employees	25%
CWA (Sheriff) Employees	58	CWA (Sheriff) Employees	7.06%	CWA (Sherriff) Employees	33	CWA (Sheriff) Employees	57%
CWA (Corrections) Employees	91	CWA (Corrections) Employees	11.07%	CWA (Corrections) Employees	43	CWA (Corrections) Employees	47%
CWA (RECC) Employees	28	CWA (RECC) Employees	3.41%	CWA (RECC) Employees	15	CWA (RECC) Employees	54%
IAFF (Fire) Employees	66	IAFF (Fire) Employees	8.03%	IAFF (Fire) Employees	62	IAFF (Fire) Employees	94%
Total Number of Union Employees	468	Total Percentage of Union Employees	56.93%	Total Number of Employees Paying Dues	209		
Non-Union Employees	354	Non-Union Employees	43.07%				
Total Number of Employees	822		100%				





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

Pablo Sedillo, III
Public Safety Director

To: Santa Fe County Board of County Commissioners
From: Pablo Sedillo, III
Public Safety Department Director
Date: 8/27/13
Re: SFC Corrections Department Monthly Report for July 2013

The purpose of this memo is to provide you information relative to the SFC Corrections Department for the month of July 2013. During the month of July, the Detention Officer vacancy rate was 17% with 33 vacant positions, and 5 new hires. There were 782 bookings and 826 releases.

Adult Detention Facility

- Conducted Corrections Emergency Response Team (CERT) Training to staff.
- Perimeter fencing project has been completed.
- 'Labyrinth' is a new program class that was offered to inmates in the month of July.
- An estimated total of $432,323.00 was billed for the month of July.
- 74% of revenue billed has been received for FY 2013 ($5,850,475 billed/$4,337,741 received).

Youth Development Program

- Summer school was conducted for Detention and Day Reporting Programs.
- Completed emergency response Quality Assurance procedures ensuring that all needed emergency equipment was easily assessable and transportable.
- An estimated total of $69,685.80 was billed for the month of July.
- 86% of revenue billed has been received for 2013 ($703,263 billed/$602,110 received).

Electronic Monitoring

- In process of hiring additional staff as approved by the Board of County Commissioners.
- BI Inc. costs continue to be under $25,000.
- The average population in Electronic Monitoring was 252 for the month. Revenue received for July was $11,164.21.

If you have any questions, I can be contacted at 992-3092. Thank you.

Santa Fe County
Public Safety Department
Corrections Division Overview

- Adult Detention Facility
- Youth Development Program
- Electronic Monitoring Program

Corrections Division

Vacancy Rates, Number of Applicants and New Hires

Public Safety/Corrections Division								
FTE Status Report as of 07/31/13								
Facility\Program	Authorized FTE	Authorized Positions	Filled Positions	Vacant Positions	Frozen Positions	Fillable Vacancies	Positions Available	Vacancy Rate
Administration	13.5	14	10	4	2	2	12	17
Adult Facility	176	176	134	42	20	22	156	14
Electronic Monitoring	10	10	8	2	1	1	9	11
Maintenance	7	7	7	0	0	0	7	0
Medical	35.7	39	24	15	9	6	30	20
Youth Development Facility	57	59	26	33	28	5	31	16
Totals	299.2	305	209	96	60	36	245	15

Adult Detention Facility/Security								
Specific Vacancy Rates by Classification as of 07/31/13								
Postion Classification	Authorized FTE	Authorized Positions	Filled Positions	Vacant Positions	Frozen Positions	Fillable Vacancies	Positions Available	Vacancy Rate
Detention Officer	104	104	71	33	18	15	86	17
Corporal	15	15	10	5	0	5	15	33
Sergeant	14	14	12	2	0	2	14	14
Lieutenant	8	8	7	1	0	1	8	13

Medical Services Vacancies July 2013						
POSITION	FTE's	Frozen	Filled	Vacant Not Frozen	Available FTE's	Vacancy Rate
RN's	7	0	6	1	7	14
LPN's	8	2	5	0	6	0
TOTAL	15	2	11	1	13	14

Number of Applicants and New Hires	
Applicants	11
New Hires	5

SFC- Adult Detention Facility's Accomplishments

Program Highlights - July 2013

- Inmate Transport Team was created to assist with new Court House requirements
- Perimeter Fencing Project completed
- Medical/Dental Contracts extended
- Working towards Going GREEN Recycling program – Begin implementation in late August

Training Department – July 2013

- Conducted the Corrections Emergency Response Team (CERT) Training
- Finalized schedule for the next Quarterly Training

SFC- Adult Detention Facility's Accomplishments

Programs – July 2013

AL-ANON
- Five (5)- Classes offered
- Twenty-seven (27) – Female population participants

ALCOHOLIC ANONYMOUS
- Seven (7)- Classes offered
- Sixty seven (67)- Participants

EXERCISE PROGRAM
- Six (6)- Classes offered
- Forty one (41)- participants

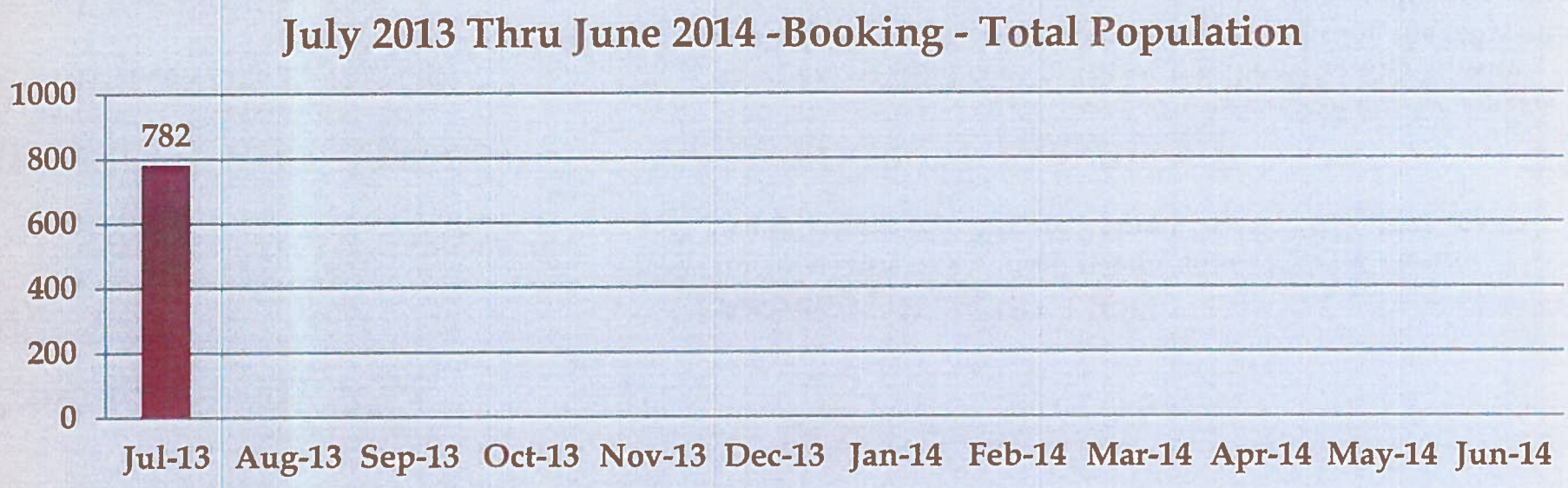
LIBRARY DISTRIBUTION
- Eight hundred and eighty one (881)library books distributed to inmates

SUBSTANCE ABUSE EDUCATION
- Three (3) – Classes offered
- Forty seven (47)- Participants

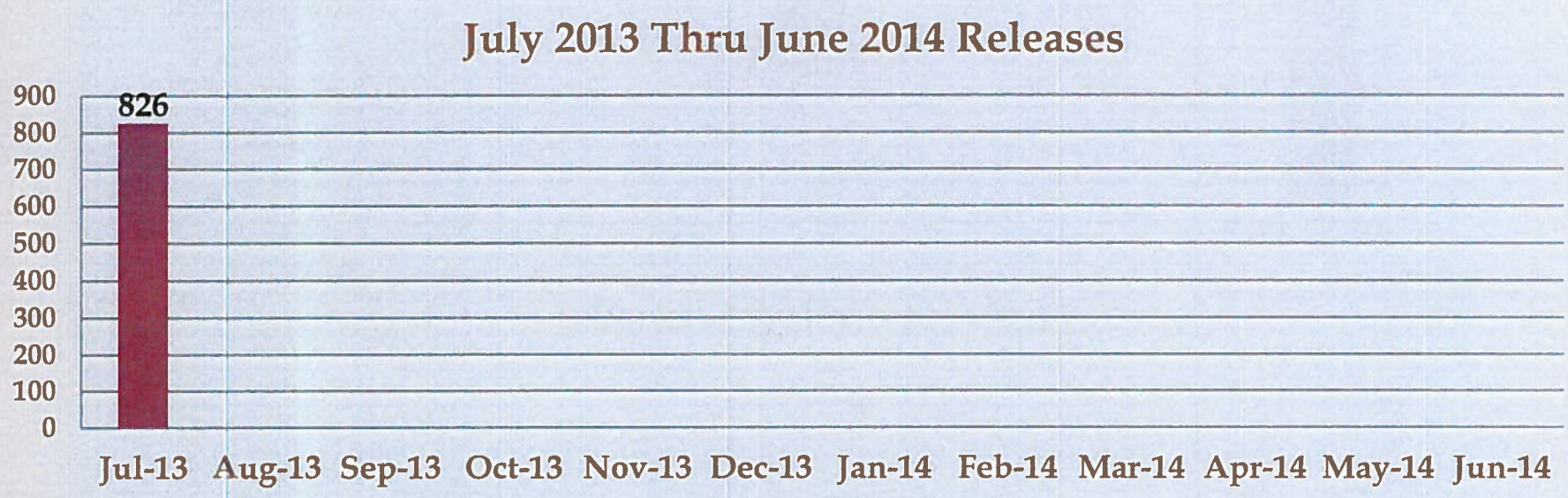
CLASSES/PARTICIPATION
- One thousand six hundred twenty nine (1,629)- Classes
- Two thousand five hundred ninety one (2,591) - Participants

NEW PROGRAM- LABYRINTH
- The labyrinth is a circuitous pathway design; unlike a maze, there are no dead ends or tricks, but the winding pathway leads to the center and back out again. Walking the labyrinth is a popular practice proven to facilitate stress reduction, and often used for personal reflection.
  - Benefits of the Labyrinth in Jail Settings:
    - Exercise
    - Stress reduction
    - Personal Reflection

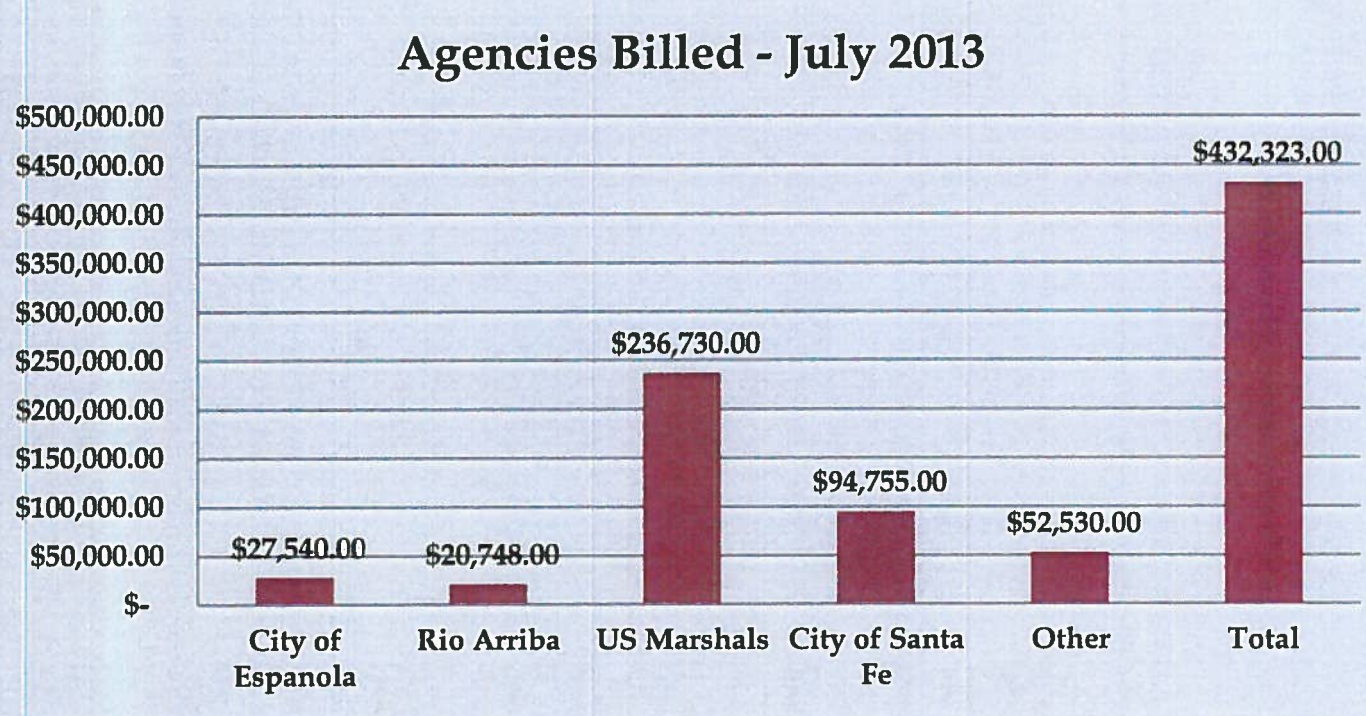
SFC - Adult Facility's
July 2013 Thru June 2014- Bookings
TOTAL POPULATION



SFC - Adult Facility's
July 2013 Thru June 2014 Releases
TOTAL POPULATION



SFC - Adult Facility's Agencies Billed July 2013



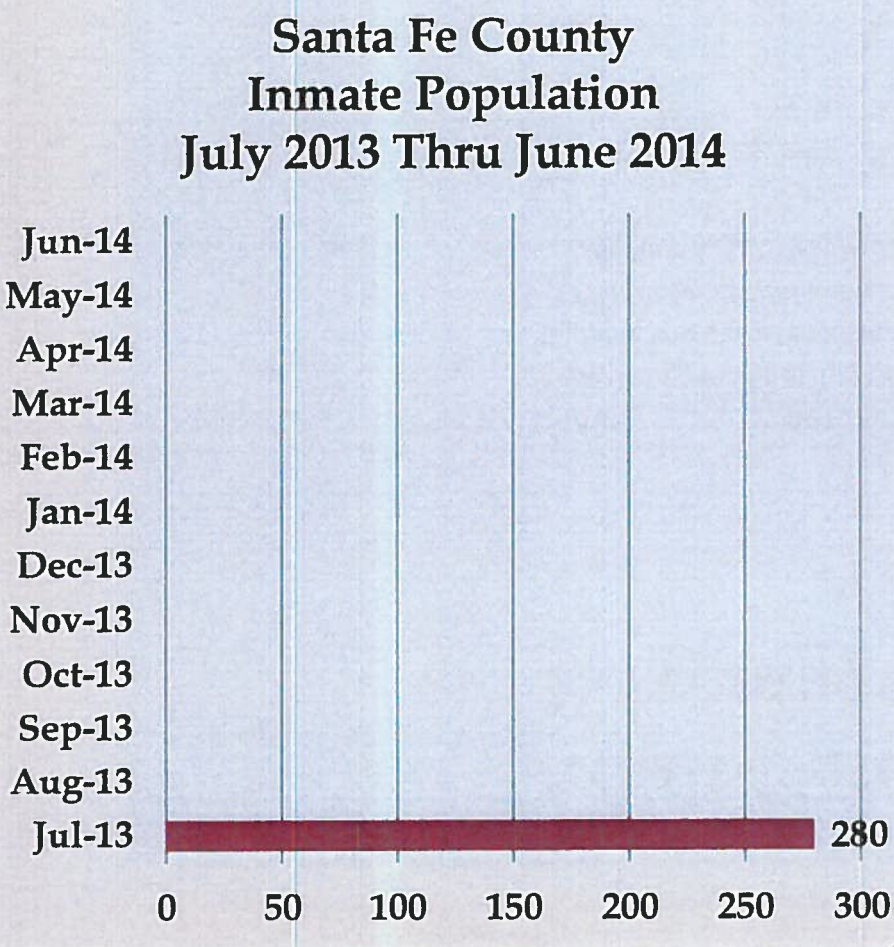
Santa Fe County	$	56,270.00

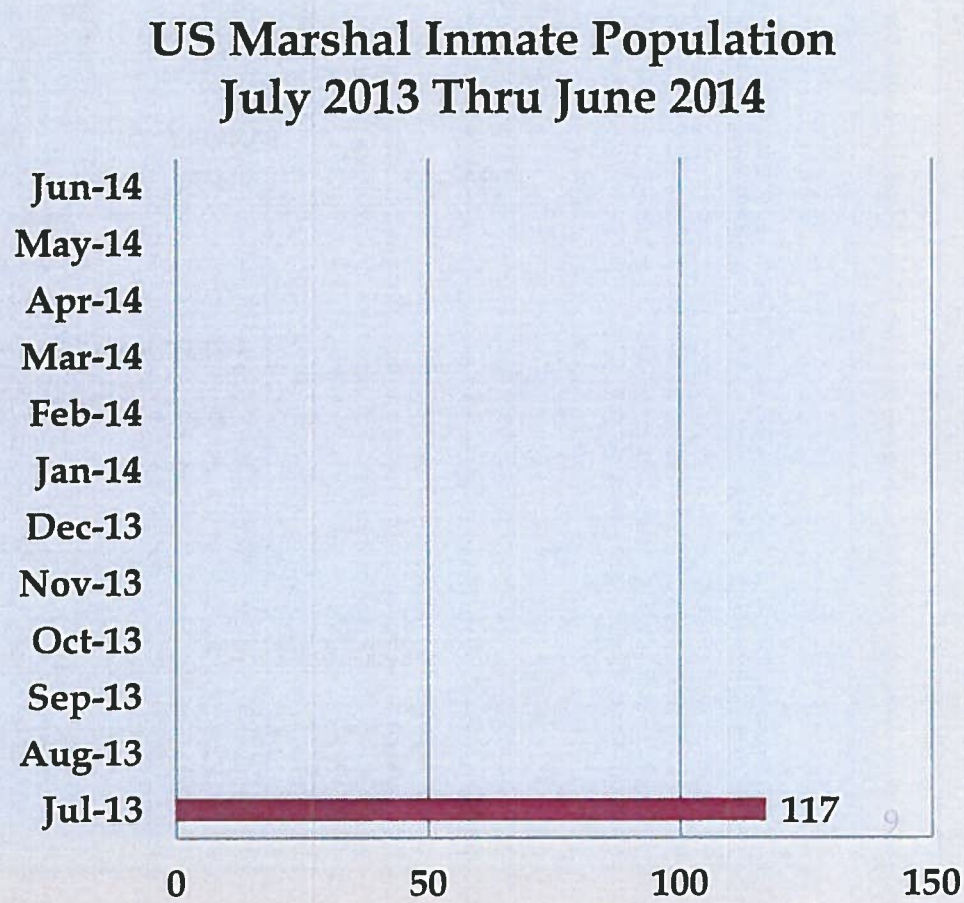
Adult Detention Facility Percentage of Revenues

ADF	ACTUAL WITHIN YEAR		
SF County Public Safety Department\Corrections Billed and Collected Revenues (Finance) ADF Resident Confinement Revenue Line Item 518\247-1860-341.06-01			
Fiscal Year	Billed	Revenue Received	Collection %
2008	3,686,473.12	3,464,231.44	93.97%
2009	2,330,210.26	2,155,758.63	92.51%
2010	2,710,336.85	2,508,848.15	92.57%
2011	3,199,893.91	2,791,796.31	87.25%
2012	4,007,535.67	3,785,394.23	94.46%
2013	5,850,474.87	4,337,741.12	74.14%
2014	436,223.00	0.00	0.00%
Totals	**22,221,147.68**	**19,043,769.88**	**85.70%**

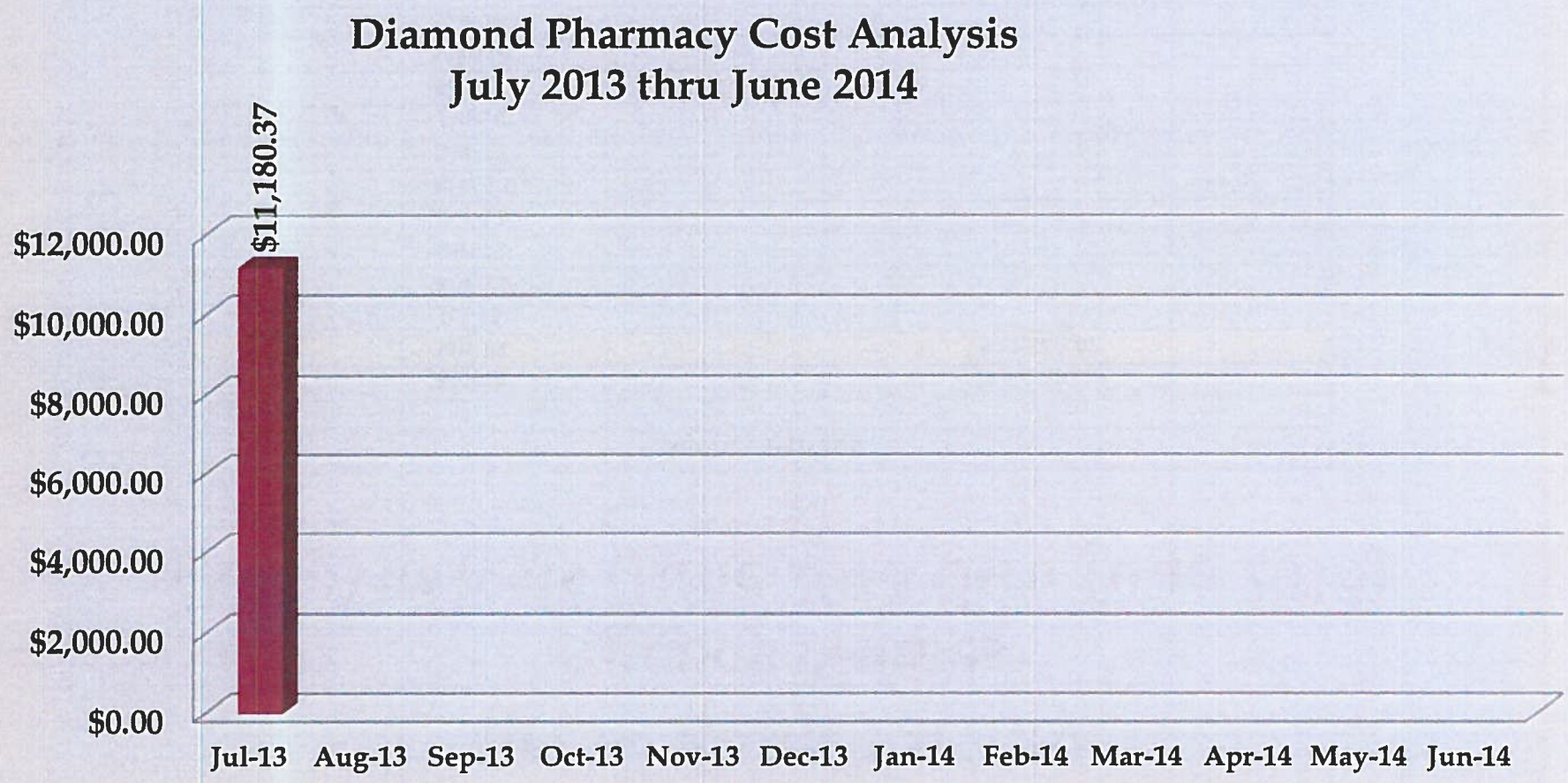
2014 Billing and Current Revenue for July 2014 (Finance)
Some Years may Include Booking/Medical/
Transport/Housing Charges

SFC – Adult Facility's Total Inmate Population Santa Fe County and US Marshal July 2013 thru June 2014





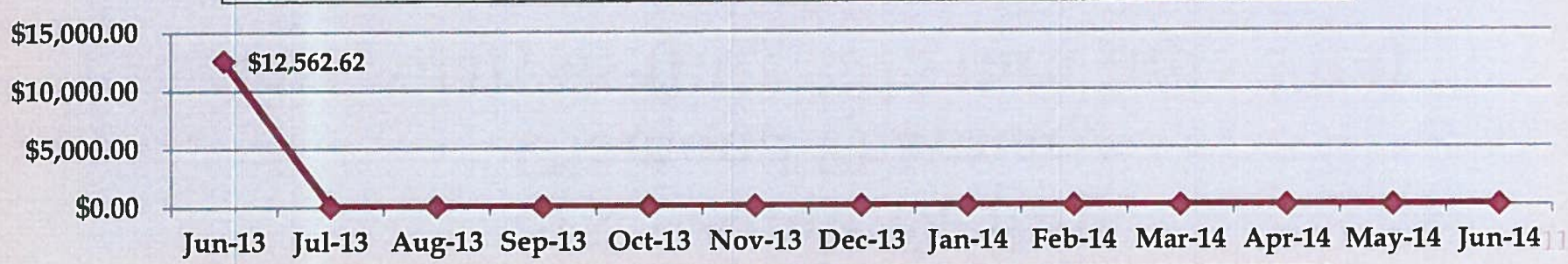
SFC - Adult Facility
Diamond Pharmacy
Cost Analysis (July 2013 thru June 2014)



AMOUNTS ARE SUBJECT TO CHANGE PENDING ANY ADJUSTMENTS OR OUTSTANDING INVOICES.

SFC – Adult Facility
Agency Nurses
Cost Analysis (June 2013 thru June 2014)

Agency Nurses	
Month	Expnediture
Jun-13	$12,562.62
Jul-13	
Aug-13	
Sep-13	
Oct-13	
Nov-13	
Dec-13	
Jan-14	
Feb-14	
Mar-14	
Apr-14	
May-14	
Jun-14	



AMOUNTS ARE SUBJECT TO CHANGE PENDING ANY ADJUSTMENTS OR OUTSTANDING INVOICES.

SFC Youth Development Program's - Accomplishments

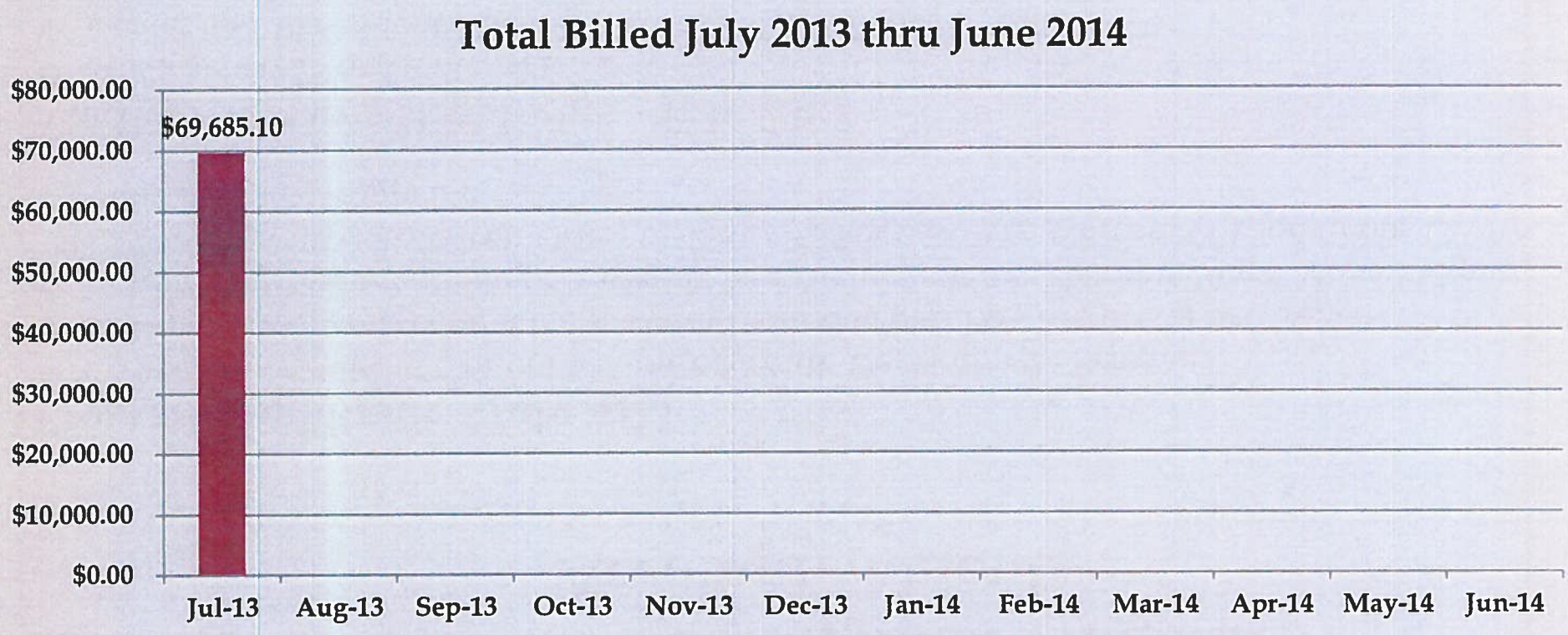
Program Highlights – July 2013

- Corrections Advisory Committee toured Youth Development Program
- Summer school was conducted for both Detention and Day Reporting programs
- Volunteer groups continue on a weekly basis to include Art Therapy, Yoga, Money Mgmt., Traditional Native American Drum making/Basket weaving, Narcotics Anonymous Group, Young Fathers Group. Etc.

Medical Services Highlights – July 2013

- Medical had 25 resident visits
- Dental had 18 resident visits
- Psychiatry had 6 resident visits
- Our emergency response Quality Assurance project has been completed ensuring that all emergency equipment including a gurney and medication that is easily assessable and transportable
- We continue to update the medical policies and procedures with most progress on this project completed by Ann Robinson, LPN
- We continue to keep pharmacy expenses down by reducing stock medication supply, ordering only medications that are currently needed, and returning all unneeded medications to the pharmacy on a weekly basis

SFC - Youth Development Program's Total Billed July 2013 thru June 2014

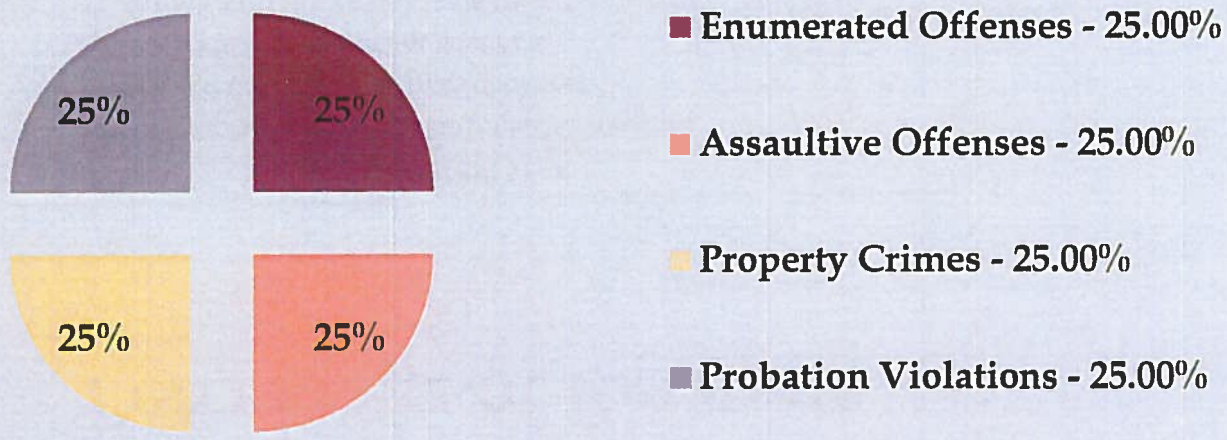


Youth Development Program
Percentage of Revenue

YDP	ACTUAL WITHIN YEAR		
SF County Public Safety Department\Corrections Billed and Collected Revenues (Finance) YDP Resident Confinement Revenue Line Item 518\247-1870-341.06-01			
Fiscal Year	Billed	Revenue Received	Collection %
2008	4,226,474.77	4,172,884.77	98.73%
2009	1,672,085.40	1,438,083.70	86.01%
2010	884,666.28	871,172.03	98.47%
2011	861,595.22	842,546.17	97.79%
2012	782,540.95	702,689.05	89.80%
2013	703,262.88	602,110.18	85.62%
2014	69,685.10	0.00	0.00%
Totals	**9,200,310.60**	**8,629,485.90**	**93.80%**

2014 Billing and Current Revenue for July 2014 (Finance)
Some Years may include Booking/Medical/
Transport/Housing Charges

SFC – Youth Development Program's Average Percent of Offenses July 2013

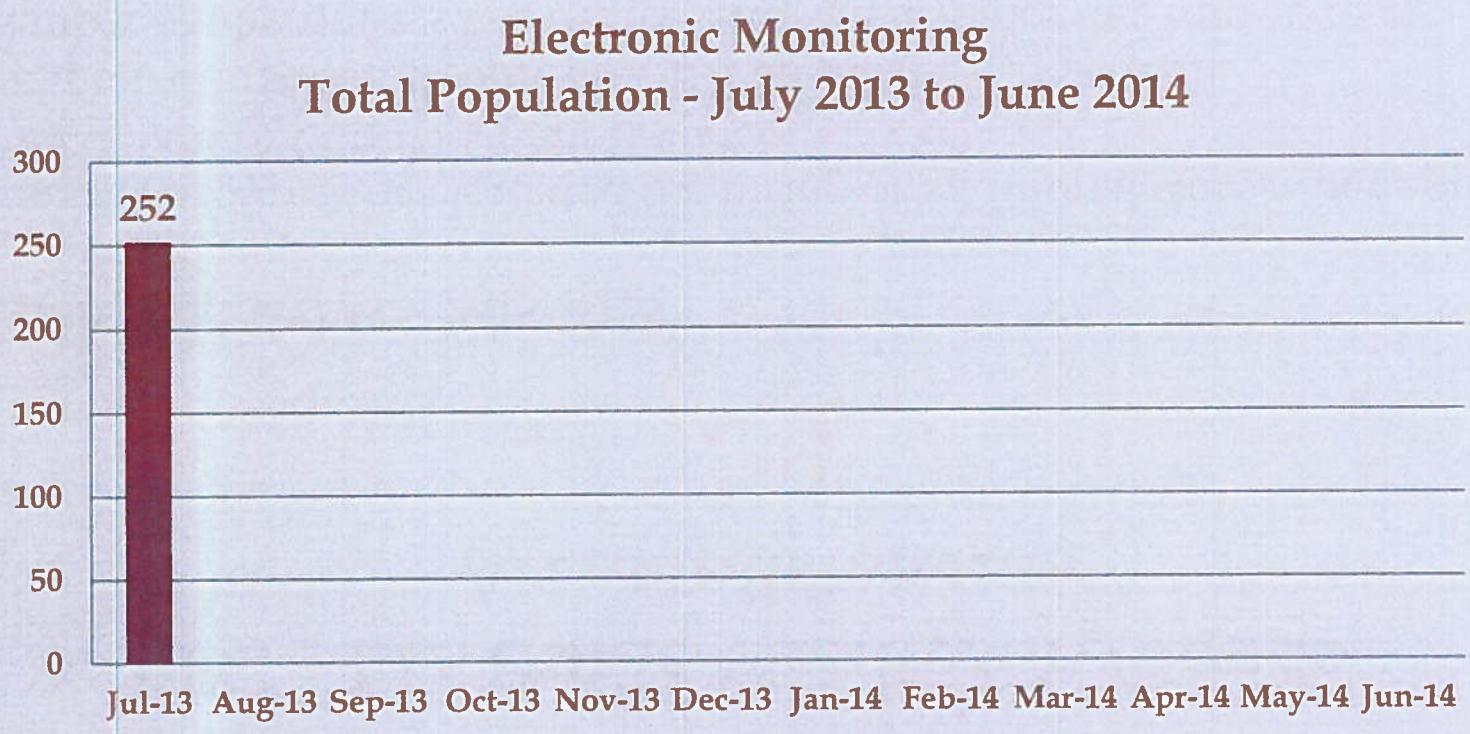


SFC – Electronic Monitoring/Bonds – Accomplishments

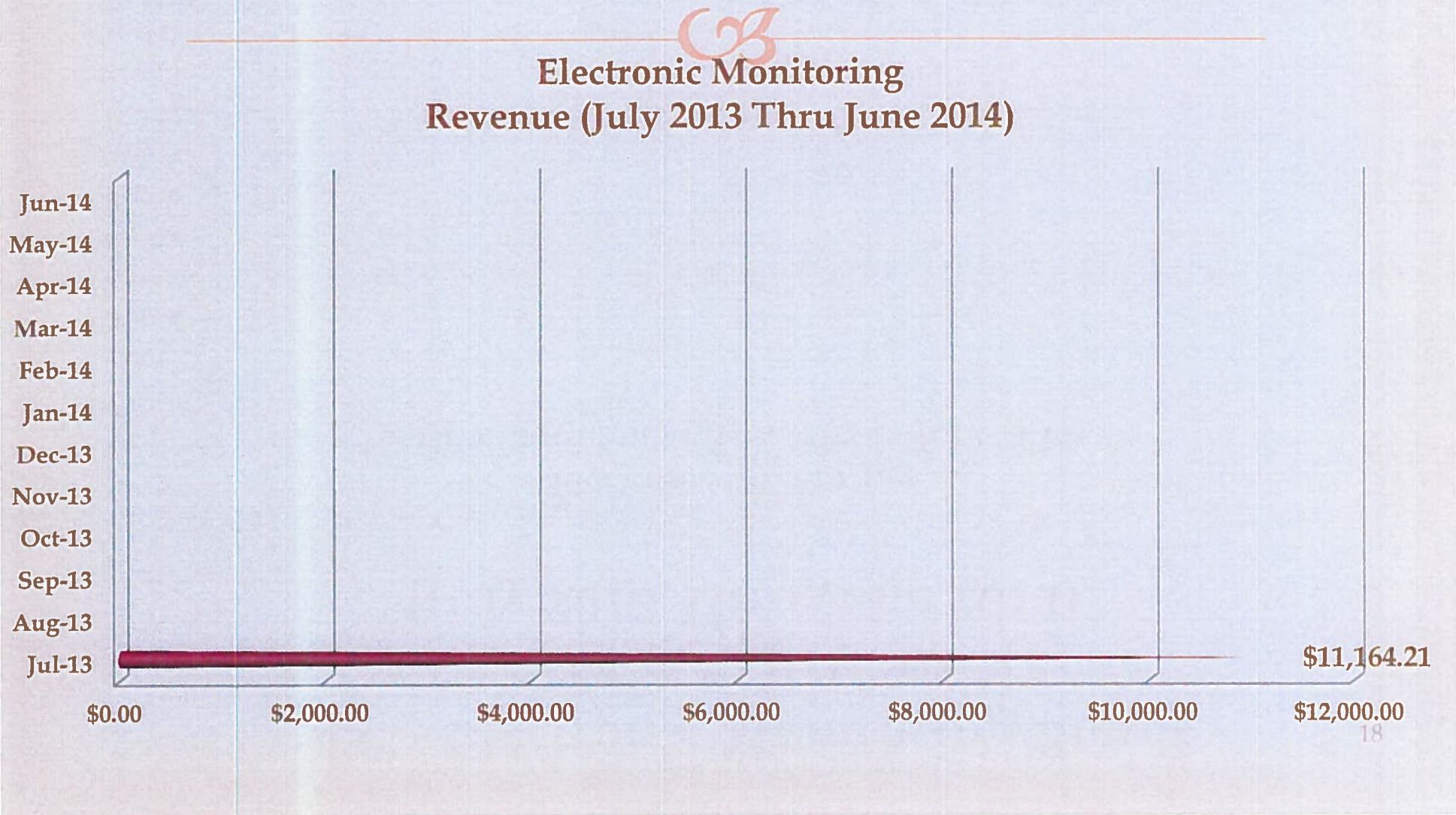
Program Highlights – July 2013

- Human Resources has initiated the hiring of additional staff as per approval of the Board of County Commissioners
- Completed first month of Municipal bonds (new revenue)
- Number of absconders has decreased from last month (from 10 to 3)
- B.I. cost continue to be under $25,000.00

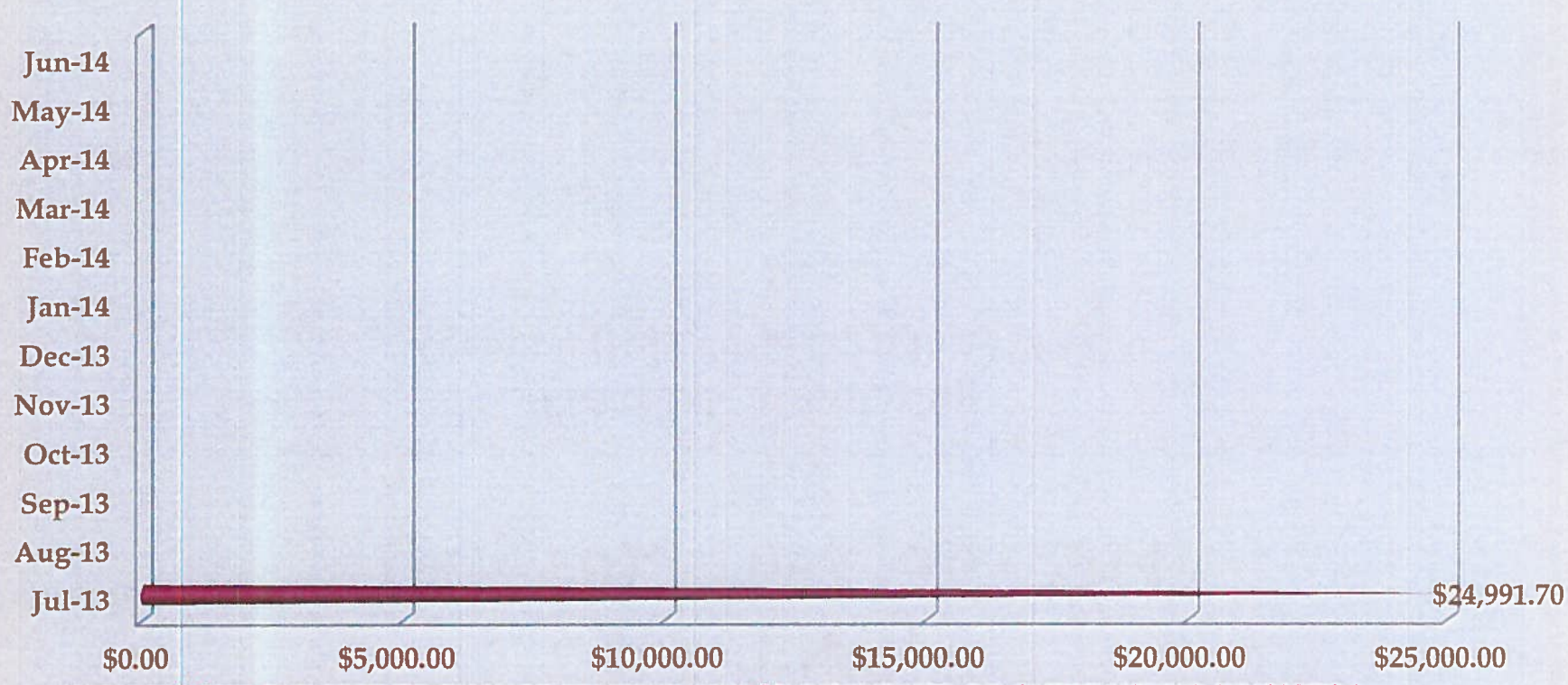
SFC - Electronic Monitoring/Bonds POPULATION (July 2013 Thru June 2014)



SFC - Electronic Monitoring/Bonds
REVENUE
(July 2013 Thru June 2014)

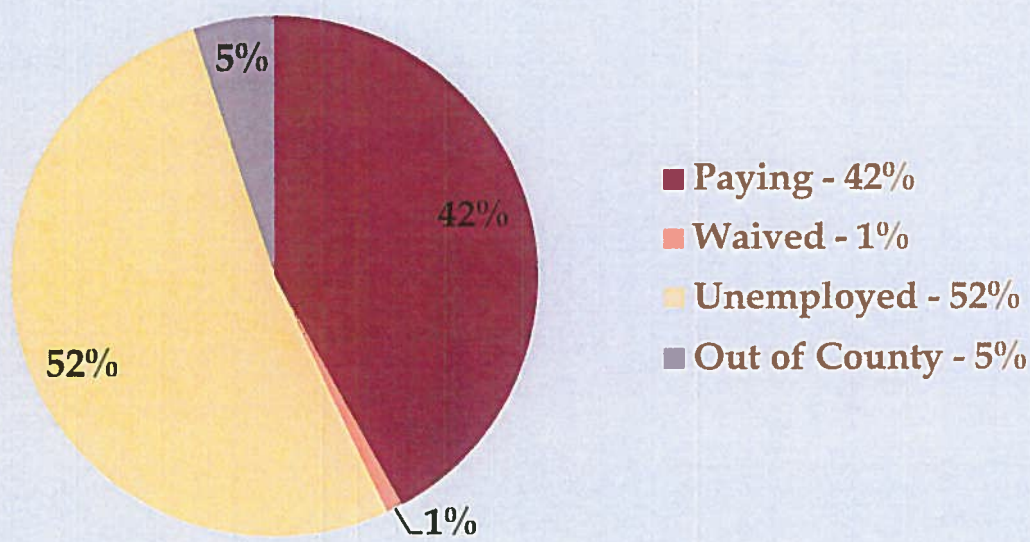


SFC - Electronic Monitoring/Bonds
COST OF EQUIPMENT
(July 2013 Thru June 2014)



AMOUNTS ARE SUBJECT TO CHANGE PENDING ANY ADJUSTMENTS OR OUTSTANDING INVOICES.

SFC – Electronic Monitoring/Bonds Client Financial Obligation July 2013



Memorandum

To: Santa Fe Board of County Commissioners

From: Teresa C. Martinez, Finance Director

Via: Katherine Miller, County Manager

Date: August 27, 2013

Re: ***Financial report for the month ending 07/31/2013***

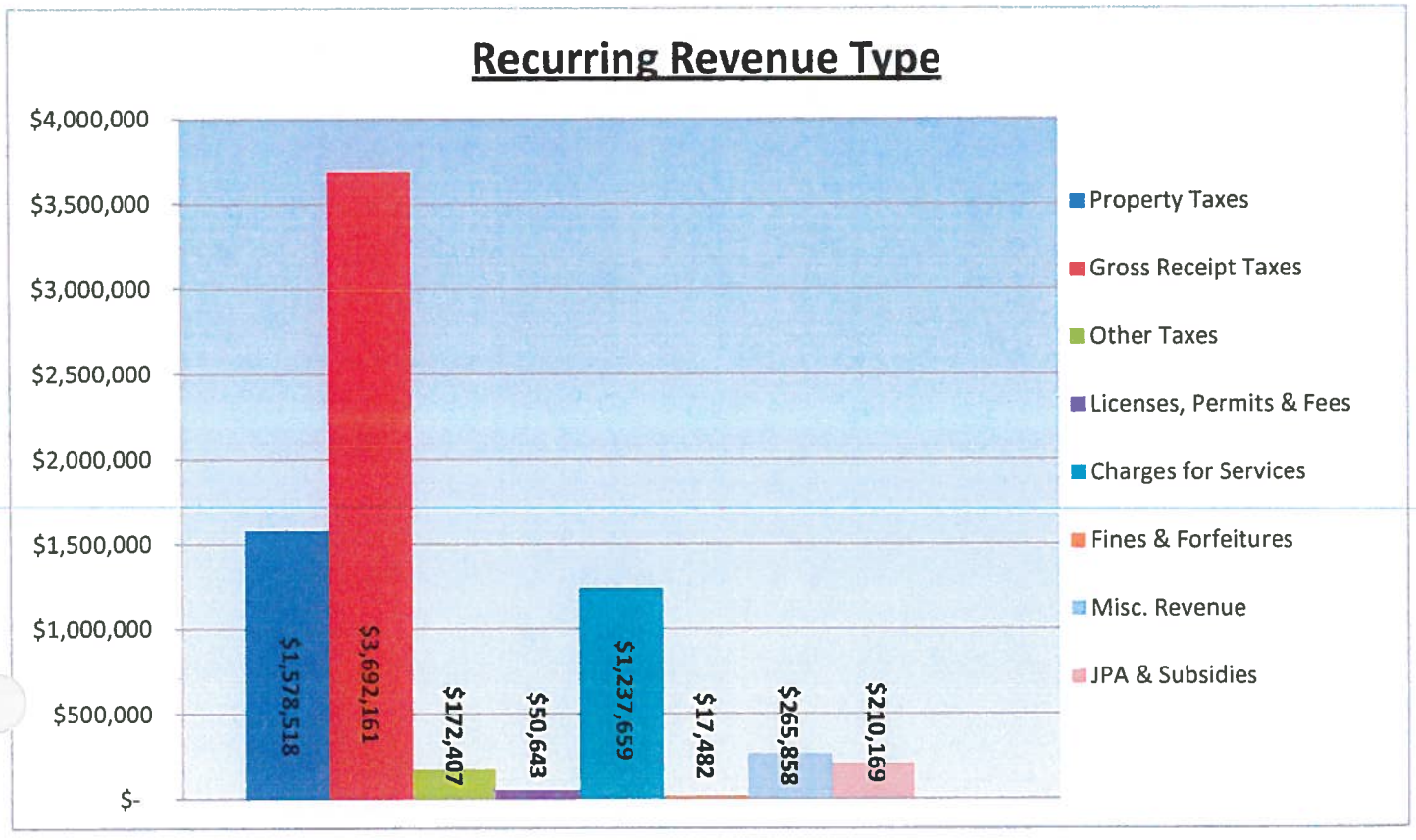
ISSUE:

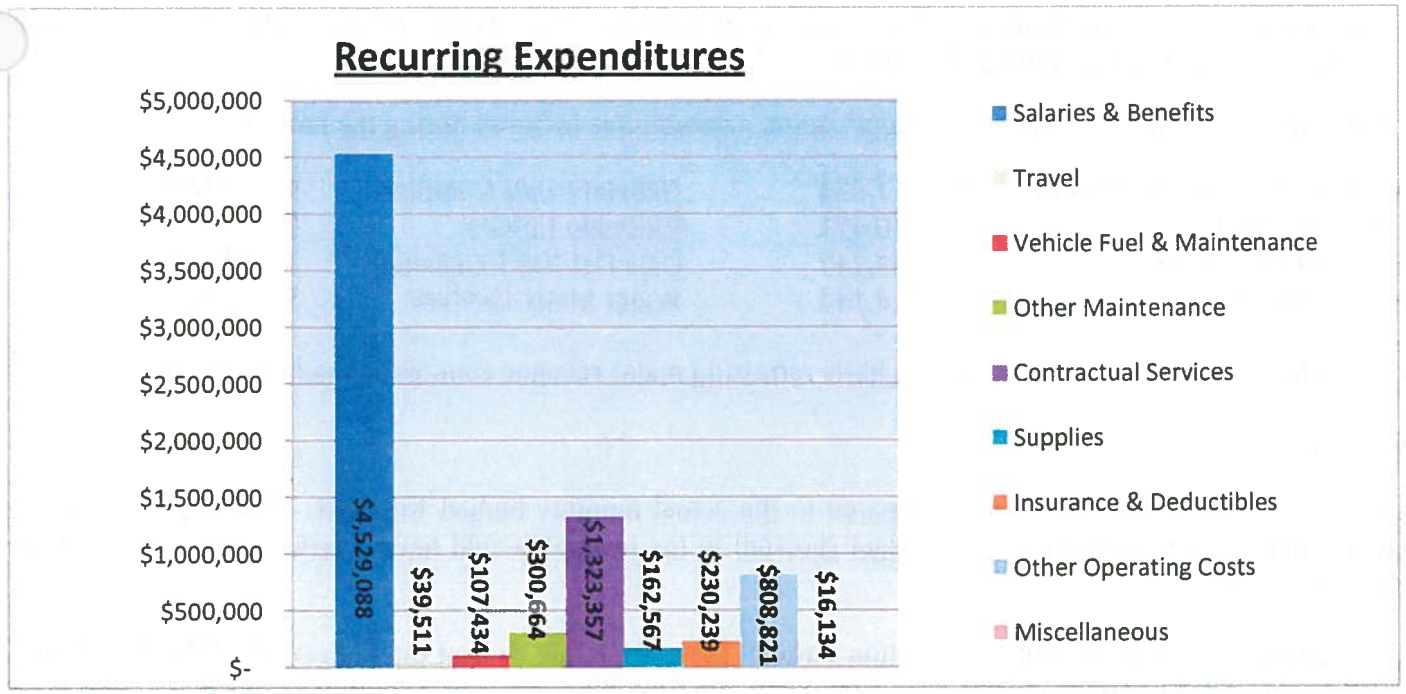
Enclosed is a report summarizing the financial activities of the County through the month ending July 31, 2013.

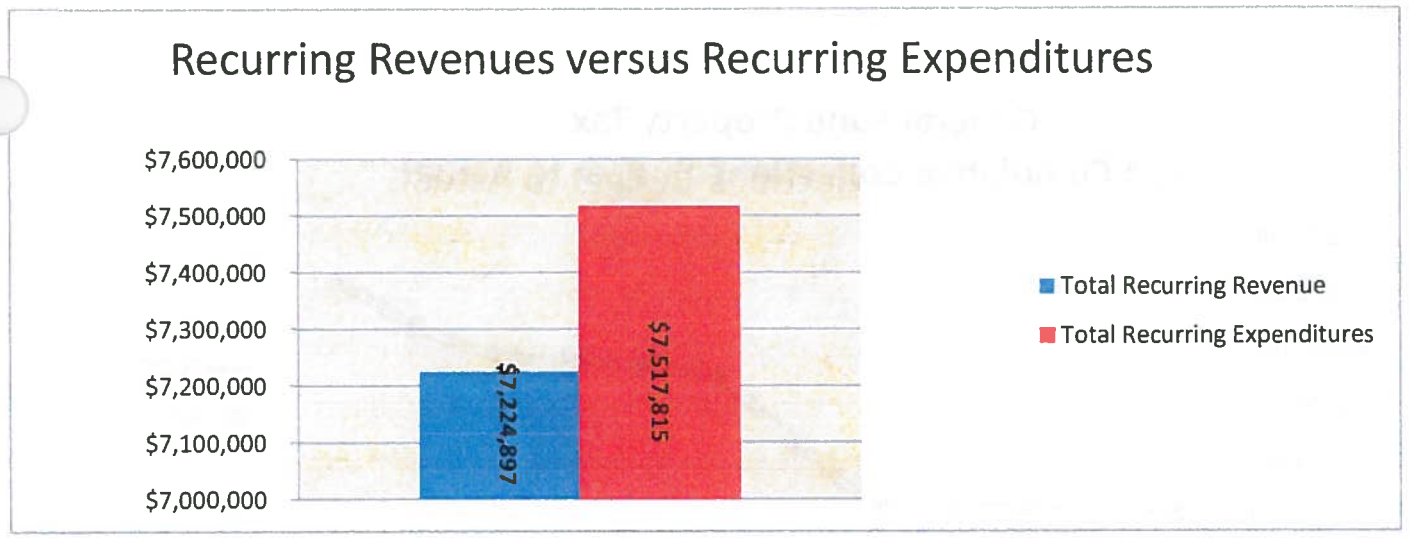
BACKGROUND:

This is a comparison of revenues and expenditures on a recurring versus non-recurring basis. The monthly report will still highlight major revenue sources. Below are several charts that identify 1) the recurring revenue sources, 2) the recurring expenditures and 3) a comparison of the two side by side.

RECURRING VERSUS NON-RECURRING







Through the month of July, as noted in the charts above, the expenditures of $7.5 million exceeded the revenues of $7.2 million. Expenditures exceeding revenue collections at the start of each fiscal year is normal. Typically, the collection of property taxes is cyclical and higher within the months of December – January and May – June. Beginning in the month of December the revenue collections will materialize at a level sufficient to sustain expenditures. In those earlier months, it is the budgeted cash that balances the budget.

NON-RECURRING EXPENDITURES

Capital expenditures are non-recurring expenditures funded by non-recurring sources. Such sources include bond proceeds, special appropriations, grants and cash balances from excess revenues of prior years. The capital expenditures incurred through the month of July 2013 total $2.5 million.

The following is a listing of some of the major capital expenditures incurred during the month of July:

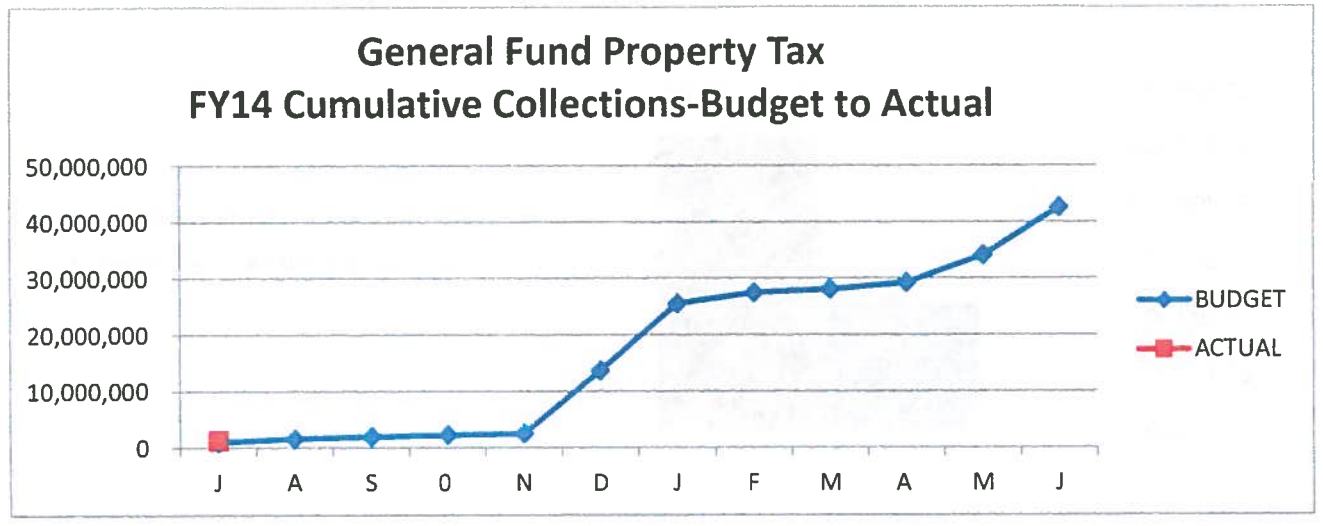
Town of Edgewood Fire Station	$ 317,423	Judicial Court Complex	$ 487,994
Old District Court Bldg	$ 56,493	Eldorado Library	$ 64,774
Edgewood Open Space	$ 55,749	Caja Del Rio Extension	$ 512,051
North Weimar Road	$ 114,142	Water Meter Devices	$ 29,549

Also included for your information are the charts reflecting major revenue sources and collections through July.

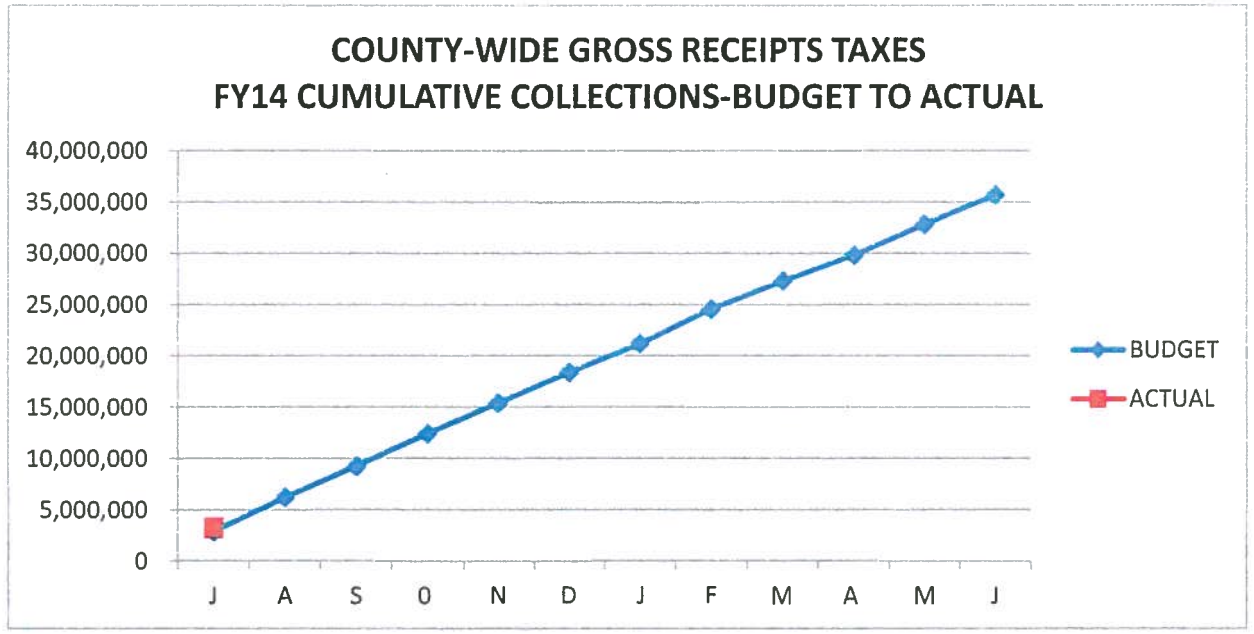
REVENUE:

Property tax is recorded monthly and compared to the actual monthly budget forecasts. Property tax revenue budget estimates are conservative, as a budget shortfall in tax receipts would have a serious impact on various County operations.

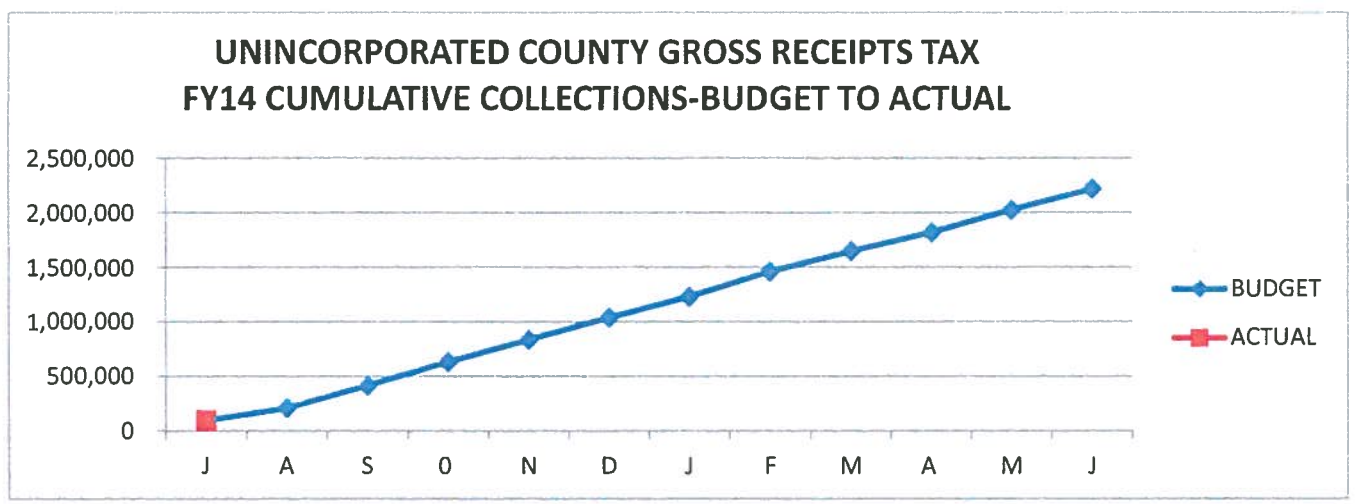
Actual property tax collections of $1.3 million through the end of July exceed the budget of $975K by $370K. The collections are $130,684 or 10% above the prior year's collections for the same time period. The chart below includes collections through July, which reflect that collections are $370,198 better than the established budget.



The gross receipts taxes are estimated from trend data and from economic analysis of the business activities in the areas of construction, wholesale, retail and service sectors. Combined, both the county-wide and the unincorporated gross receipt taxes collected through July total $3.3 million and are $387K greater than or 13% above the budgeted amount of $2.9 million. July collections were greater than the collections of the prior year by $243,859 or 7% for the same time period.



The actual unincorporated GRT collections for FY 2012 consistently fell below the forecasted budget level and began to rebound in FY 2013. In FY 2014 the total unincorporated GRTs for July are above budget by $5,901. The unincorporated GRT collections total $103,739 for the month of July and are 8% or $7,894 above the prior year collections.



SUMMARY:

The finance division is concentrating on the annual audit for FY 2013 and will continue working on the quarterly reviews of established performance measures as well as the completion of the citizen's survey. In the prior year, both property tax and gross receipt tax collections were lower than the amounts collected July 2013. It does appear that the collections are slightly rebounding and hopefully the trends and collections will continue on an upward path.

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: *Aug 19, 2013*

TO: *Board of County Commissioners*

VIA: *Katherine Miller, County Manager*

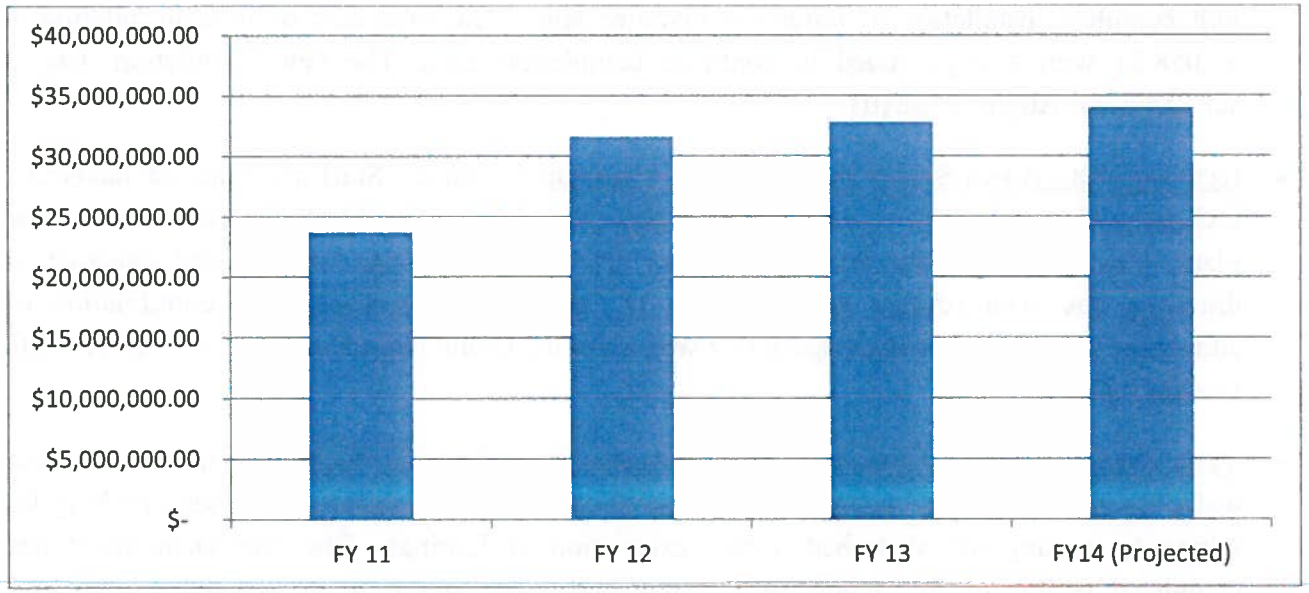
FROM: *Adam Leigland, Public Works Director*

ITEM AND ISSUE: PUBLIC WORKS MONTHLY REPORT FOR AUGUST 2013

DISCUSSION

Capital Project Delivery

The chart below shows the total capital execution per year over the last three fiscal years and FY14 projected workload.



These figures don't include BDD payments or water rights purchases. Not only is FY14 slightly higher in total dollar amount, it is also high in the total number of individual projects. We have already encumbered $5.4M of the FY14 total, so we are on a good track to fully execute by the end of the fiscal year.

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX: 505-995-2740 www.santafecounty.org

We are currently managing 100 procurements. Some highlights below:

- Caja del Rio Road: completed 100% of paving operations
- Hale Road: The base course is complete.
- Roach Road: Sub grade and base course is complete. The chip seal will start Monday, August 19, weather permitting.
- Jaymar Road: Sub grade is complete. Contractor has started on the culverts.
- Vista Redonda Paving. Completed PPR for Engineering Services for Paving and Drainage Design
- Romero Park: A Public Meeting is scheduled for August 20, 2013 from 5:30 to 8:00 PM at the Nancy Rodriguez Community Center
- Northern New Mexico Recreation Complex: A public meeting is scheduled August 28 from 7:00-8:00 PM at Pablo Roybal Elementary Multi-Purpose Room. The public survey for needs assessment has been launched.
- Edgewood Fire Station: Work is progressing smoothly as the project nears completion. The application of grass seeding is scheduled to begin on Monday. Fire Staff budgeted $14,234.61 and is working with Commissioner Anaya's office to identify additional funding for LED marquee sign in the amount of $4,000.00. The Fire Chief approved that the project electrician will complete installation of wires for marquee sign. The total cost of wire installation is $7,058.21 with 4 days added to contracts completion date. The new completion date is scheduled for August 21, 2103.
- Ken and Patty Adam Senior Center/County Community Center: Staff met with the landscape architect and reviewed the first version of design of outdoor spaces. Staff and architect reviewed plans of expansion/addition that are complete. The completion date of design and construction drawings has been revised to September 16, 2013 to accommodate the coordination of additional parking and outdoor space that will serve the Community Center as well as the Vista Grande Library.
- Vista Grande Library Expansion: The contractor is working on backfilling interior of stem walls for preparation for concrete slabs. The electrician is scheduled to complete parking lot wiring to parking lots disturbed during excavation of footings. The Fire Department has completed review of fire suppression system and a meeting is to be scheduled with Fire Department to review fire alarm plans. The completion date is scheduled for October 23, 2013.
- La Cienega Fire Station #2 Addition/Renovation: The topography survey was completed on Friday, August 16, 2013. The soils engineer is scheduled to drill on Friday, August 16th. Staff is requesting the civil engineer to provide a cost proposal for an analysis of septic system, which

maintenance staff feel needs upgrade. The architect has requested a HAZMAT investigation for potential contaminates –lead in paint or asbestos. The schedule for design completion is September 22, 2013.

- La Cienega Fire Station #1 Renovation: The Contractor is nearly complete applying color coat to exterior of building and continues with the installation of drywall and installing interior insulation. The Fire Chief is asking that a new roof be priced for the facility. Discussion was held and the contractor is working on a proposal that would apply new pro-panel over the existing pro-panel.

- Pojoaque Fire Station: Volunteer side interior remodel: A meeting is scheduled with Fire Chief on Tuesday, August 20, to discuss scope of work. Fire Chief is asked to meet with Joseph Gutierrez to establish budget for project.

- Madrid Ball Park Grandstands: With the contract now signed, staff we will set up a Kick off meeting for Phase Two of the Oscar Huber Memorial Ballpark

- Edgewood Community Center Garden: The project has been completed; the concrete slabs for 3 - 3,000 gallon water storage tanks are poured and curing. The remaining work of developing the rainwater harvesting and drip irrigation system for the garden is to be done by the Cooperative Extension Service and the Edgewood Soil & Water Conservation District.

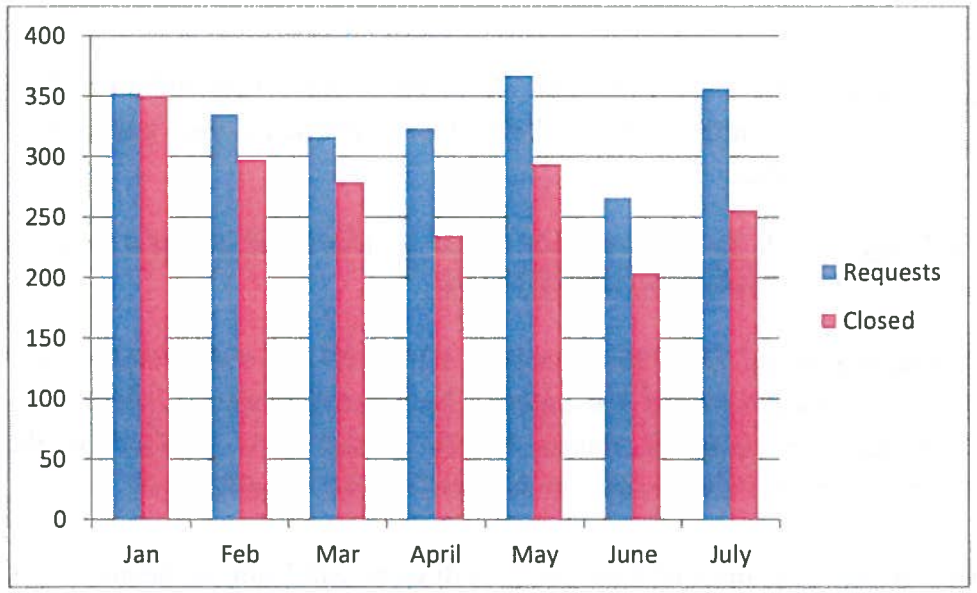
- Rabbit Road Trailhead: The construction NTP has been issued; work will begin on September 9, 2013, with work scheduled to be completed by November 13, 2013.

I am presenting a proposal to the City's Bicycle Technical Advisory Committee (BTAC) on August 21, as the first step in a potential project swap between the City and the County. The County is widening Old Santa Fe Trail (OSFT) to allow for striped shoulders for bicycle and pedestrian safety, from El Gancho Way to City limits. This project was identified as a high priority in the Metropolitan Bicycle Plan, both in and outside of City limits. During public meetings for the project, the public asked if the City portion of the project, which is currently not being planned, could be accelerated. Meanwhile, through the annexation negotiations, the City and County have agreed to jointly address the drainage issues on the section of West Alameda Avenue that will be annexed. In response to the public's request to accelerate the bike lanes inside City limits on OFST, City and County staff came up with the idea of a project swap: The City will take on the entire responsibility of the West Alameda project, while the County will take on the entire OFST bike lane project. At this point, the dollar amounts for the two efforts appear roughly equal, and both staffs feel that the OFST bike lane project will be overall cheaper if one entity manages the entire project. Such a project swap seems to have merit for both sides and will require the execution of agreements between the City and the County. The City public works director has asked that the BTAC presentation be made by the County as the mechanism for him to continue to pursue the idea.

Information on all active projects can be found in the attached Table 1: Capital Project Status Update.

Operation and Maintenance

Work order completion rates for the month of July are shown at Table 2 (attached), while the chart below shows the monthly work order activity levels. Note that for large events like snow removal or storm repair, only one work order per day is opened instead of, say, opening an individual work order for every plowed road. This eases work management but it does somewhat distort the true level of work in the chart below. Completion rates are continuing to slip. The recent storms have seriously hampered the ability of the road maintenance crews to close out work orders. The low rate of facility work order completion is in large part an artifact of the way work orders are being managed and is being addressed.



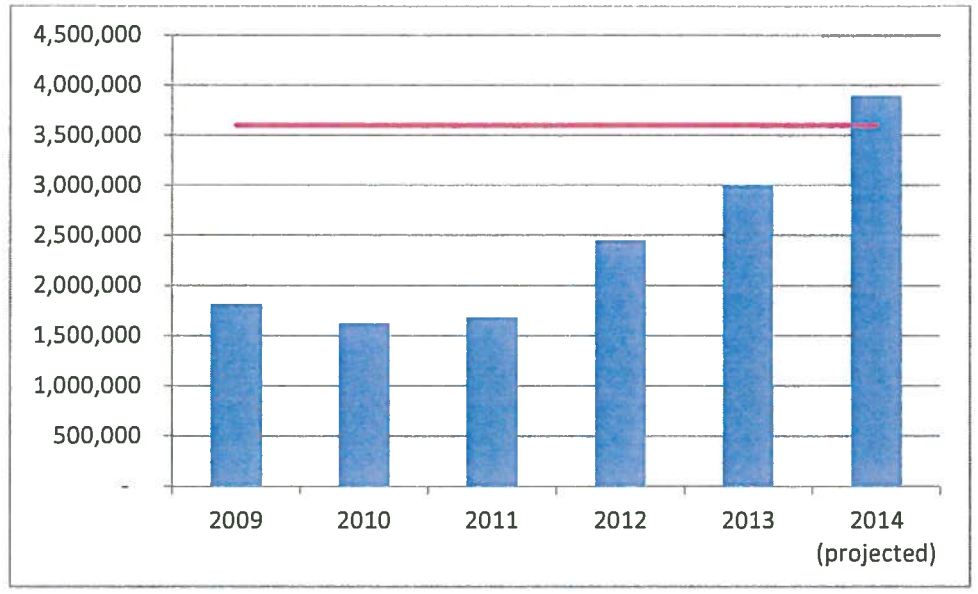
The City is continuing to transfer customers onto solid waste service in the annexation areas, and is about 65% complete. The remaining 35% of customers are currently under contract with the private hauler Waste Management, Inc, (WMI), who has proven reluctant to release customers from their contracts. The City estimates that it may not have full customer transfer until January 2014.

Staff continues to work with the Jacona Land Grant on siting a new solid waste transfer station on the north portion of their grant. They accepted the draft lease agreement that was presented in July, with one small change, and we will present the conceptual site plan to their board on August 29.

The new facility operations and maintenance manager started on August 19. The facility condition assessment study is in the RFP evaluation stage. Nine proposals were received, and interviews with the top three proposers are scheduled for August 30.

Utilities

The chart below shows the Utility's gross revenues over the last five fiscal years, demonstrating a steady upward climb (FY09 is somewhat anomalous because the County sold water to the Railrunner construction contractor that year), along with the FY14 projection. The red line marks the minimum revenues needed for financial autonomy, and the FY14 projections are that we will surpass that line this year. Included in the FY14 projections are the new revenues from supplying the State Penitentiary with water and from the new customers associated with annexation.



Annexation: The assumption of former City water and wastewater customers associated with annexation is in progress. A contract has been awarded to swap out the individual water meters of the new County customers; this will be done in phases over two months. Meanwhile, City and County staff are negotiating a bulk sewer rate so that sewer customers can be transferred at the same time. Transferred customers will be receiving their first bill from the County over the next two months.

The 2005 *Water Resources Agreement* between the City and the County says that any time the County would like a new wholesale water delivery point, it must request it from the City, and that the City may not "unreasonably deny" such requests. Twelve requests for new delivery points have been submitted to the City: ten for annexation, one for Las Campanas, and one for a new line down Old Santa Fe Trail (which will eventually serve UDV). While originally the City said that these requests must go to the City Council, on Aug 19, City staff said that the requests could be approved at the staff level. This is good news and the County's desire since the beginning.

The Chupadero MDWCA asset inventory was completed. Chupadero is appealing its water rights to the Office of the State Engineer, and so the OSE has asked us to pause the acquisition process until the water rights questions is settled, which we were led to believe is imminent. We will now enter into negotiations with the association to finalize the purchase agreement as soon as the Office of the State Engineer gives us the go-ahead.

The Utility Director announcement was posted on August 16th, and interest in the position has been pleasantly high--I have already received numerous enquiries. Meanwhile, the BDD has received a list of candidates for the BDD facility manager position, after the third round of solicitation. I was on the last interview team, and I expect to be so again.

ACTION REQUESTED:

None; for information only.

SANTA FE COUNTY

Capital Project Status Update (As of 8/19/2013 12:04:20 PM)

	PW ProjectNbr	Project Name	Nature of Procurement	% Complete	District	Project Budget	Current Contract Amount	Estimated Start Date	Estimated Completion Date	Project Manager
1	7708	Santa Fe River Greenway: Frenchy's Field to Siler Rd.	Design	100	2	$59,406.47	$59,406.47	3/1/2009	12/31/2013	Colleen Baker
2	7716	South Meadows Open Space	Design	100	2	$58,000.00	$58,000.00	6/4/2012	10/31/2013	Colleen Baker
3	7725	El Rancho and Pojoaque Court Renovation	Construction	100	1	$60,500.00	$55,664.65	4/29/2013	7/29/2013	Scott Rivers
4	0133	Upgrade Edgewood Senior Center Garden	Construction	99	3	$42,000.00	$39,346.58	5/31/2013	8/2/2013	Scott Rivers
5	1860	Adult Detention Facility Plumbing Upgrades	Construction	99	1 2 3 4 5	$105,025.63		8/5/2013	9/30/2013	Joseph Martinez
6	1473	Design Quill Plant Improvements 1	Design	98	3	$200,000.00	$20,300.00	8/24/2012	12/14/2012	Paul Olafson
7	7801	Santa Fe River Greenway: San Isidro Park River Channel Restoration	Construction	98	2		$1,539,324.86	11/1/2012	8/29/2013	Scott Rivers
8	0789	Cundiyo Parking Lot	Design	95	1	$8,557.63	$8,557.63	2/18/2013	7/31/2013	Chuck Vigil
9	6167	CR 54 Los Pinos - Archaeological Study	Archaeology	95	3	$5,798.54	$5,798.54	7/18/2013	8/16/2013	Chuck Vigil
10	7716	Design South Meadows Open Space	Design	95	2		$58,000.00	9/2/2013	11/1/2013	Scott Rivers
11	8005	Edgewood Fire Station	Construction	95	3	$3,370,259.00	$3,192,080.90	9/17/2012	8/21/2013	Ron Sandoval
12	0798	Design Old Santa Fe Trail Multimodial	Design	90	4	$264,692.00	$252,011.10	3/5/2013	7/31/2013	Chuck Vigil
13	6188	Upgrade La Tierra Road	Construction	90	2	$640,000.00		7/8/2013	7/31/2013	David Padilla
14	7120	Santa Fe River Greenway: Wayside Exhibit Planning, Design, Fabrication	Other	86	2	$60,131.50	$60,131.50	7/1/2012	9/30/2013	Colleen Baker
15	1474	Old Santa Fe Trail Water Line	Design	85		$190,000.00	$167,154.00	2/15/2013	8/30/2013	Russell Rodke
16	1870	Youth Development Program Plumbing Upgrades	Construction	85	1 2 3 4 5	$250,000.00		8/5/2013	9/30/2013	Joseph Martinez
17	1870	Youth Development Center Shower Upgrade & Repair	Construction	85	1 2 3 4 5	$148,753.98		8/5/2013	9/30/2013	Joseph Martinez
18	6166	Caja Del Rio Road - Construction	Construction	85	2	$4,100,000.00	$3,800,366.47	9/4/2012	9/27/2013	Chuck Vigil
19	6166	Caja Del Rio - Project Management, QA & Inspection Services	Construction	85	2	$343,872.97	$343,872.97	8/1/2012	10/25/2013	Chuck Vigil
20	6194	Improve North Weimar Road	Construction	80	3	$348,600.00	$364,600.00	7/8/2013	8/29/2013	David Padilla
21	7121	Stanley Wellness Center Phase 1	Design	75	3	$35,000.00	$32,468.15	11/6/2012	8/30/2013	Scott Rivers
22	7121	Stanley Wellness Center Phase 1	Construction	75	3	$190,000.00	$188,963.00	5/7/2013	11/15/2013	Scott Rivers
23	7708	Santa Fe River Greenway Engineering Design Services	Design	74	2	$412,725.85	$199,265.15	10/3/2012	12/20/2013	Colleen Baker
24	0753	Design Ken & Patty Adams Senior Center	Design	70	5	$120,000.00	$46,225.00	10/17/2012	6/30/2013	Ron Sandoval
25	6191	Improve Hale Road	Construction	45	3	$501,325.00	$775,126.82	8/1/2013	8/30/2013	David Padilla
26	7123	District Attorney Complex Energy & Accessibility Improvements	Design	40	1 2 3 4 5	$120,000.00	$78,262.84	12/14/2012	8/30/2013	Paul Olafson
27	0533	Espanola Basin Water Conservation Grant	Other	35	1 2 3 4 5		$77,447.88	3/1/2012	9/30/2013	Joseph Gutierrez
28	6181	NE-SE Connectors Location Study	Plan	35	5	$500,000.00	$420,000.00	2/4/2013	7/18/2014	Chuck Vigil
29	0132	Upgrade Human Resources Building	Construction	30	1 2 3 4 5	$100,000.00	$52,957.78	7/15/2013	9/13/2013	Joseph Martinez
30	7124	Admin Building Computer & Communications Room	Design	30	1 2 3 4 5	$35,000.00	$23,540.00	4/30/2013	8/31/2013	Paul Olafson

SANTA FE COUNTY

Capital Project Status Update (As of 8/19/2013 12:04:20 PM)

31	1449	Design Water Transmission Line TL6S	Design	27	4 5	$333,080.30	$333,080.30	2/17/2012	10/30/2013	Paul Olafson
32	1474	Design Lamy Junction Water Transmission Line	Design	27	4 5	$411,368.96	$411,368.96	5/4/2012	10/30/2013	Paul Olafson
33	0739	Vista Grande Library Addition / Construction	Construction	25	5	$1,470,000.00	$748,237.87	4/30/2013	2/15/2014	Ron Sandoval
34	0840	Add to and Renovate La Cienega Fire Station No. 2	Design	25	3	$350,000.00	$31,590.75	6/30/2013	9/22/2013	Ron Sandoval
35	2219	Old Judicial Complex Redevelopment Study	Plan	25	1 2 3 4 5	$125,000.00	$93,751.80	5/21/2013	10/31/2013	Paul Olafson
36	6163	Improve Jaymar Road	Construction	25	3	$182,300.00	$182,300.00	8/1/2013	8/28/2013	David Padilla
37	0840	Remodel La Cienega Fire Station No. 1	Construction	20	5	$650,000.00	$501,607.62	6/30/2013	10/31/2013	Ron Sandoval
38	1430	Design CR62/Caja del Oro Waterline Extension	Design	20	2	$212,636.00	$23,563.20	7/16/2013	10/31/2013	Paul Olafson
39	1473	Upgrade West Lagoon Liner at Quill Treatment Plant	Construction	20	3	$222,995.44	$222,995.44	5/20/2013	10/13/2013	Paul Olafson
40	7706	Mt. Chalchihuitl	Acquisition	20	3	$988,499.00	$52,859.35	8/1/2012	12/27/2013	Colleen Baker
41	7707	Rabbit Road Trailhead	Construction	20	4	$86,238.12		9/9/2013	10/16/2013	Scott Rivers
42		Design La Cienega Water Line Improvements	Design	15	3	$300,000.00		3/15/2013	11/15/2013	Paul Olafson
43	0732	Romero Park	Design	15	2	$175,000.00	$163,351.00	5/17/2013	1/10/2014	Colleen Baker
44	0790	Nambe Water Quality Improvements	Other	15	1	$13,618.00		9/16/2013	12/6/2013	Scott Rivers
45	1463	Design Valle Vista Force Main	Design	15	3	$11,399.00	$11,399.00	7/15/2013	9/30/2013	Paul Olafson
46	1465	Construct Glorieta MDWCA Water System Improvements	Construction	15	4	$424,759.00		9/10/2013	11/27/2013	Paul Olafson
47	1472	Rio Quemado Watershed Restoration	Design	15	1	$96,681.75	$96,681.75	5/8/2013	11/15/2013	Colleen Baker
48	1473	Replace Pumps at Quill Wastewater Treatment Plant	Construction	15	3	$85,000.00	$54,900.20	7/30/2013	9/30/2013	Paul Olafson
49	1860	Upgrade ADF Security Cameras	Construction	15	1 2 3 4 5	$170,000.00		10/7/2013	12/31/2013	Joseph Martinez
50	1860	Upgrade Adult Detention Facility Perimeter Lighting	Construction	15	1 2 3 4 5	$930,000.00		10/16/2013	12/31/2013	Joseph Martinez
51	1860	Upgrade Adult Detention Light Fixtures	Construction	15	1 2 3 4 5	$105,025.63		10/1/2013	12/31/2013	Joseph Martinez
52	1870	Upgrade Youth Development Program Control Panel	Construction	15	1 2 3 4 5	$310,000.00		8/19/2013	9/30/2013	Joseph Martinez
53	6104	Arroyo Alamo West Drainage Study - FY14	Design	15	1	$15,000.00	$11,813.75	7/29/2013	11/29/2013	Chuck Vigil
54	6167	CR 54 Los Pinos Road All Weather Structure Design	Design	15	3	$95,000.00	$79,411.76	8/12/2013	12/31/2013	Chuck Vigil
55	6170	CR98 Road Widening Phase II - Eng During Construction Svcs	Construction	15	1	$15,270.30	$15,270.30	9/16/2013	4/30/2014	Chuck Vigil
56	6170	CR 98 Road Widenig Phase II - Construction Services	Construction	15	1	$2,362,631.73		9/16/2013	4/30/2014	Chuck Vigil
57	6170	CR98 Road Widiing Phase II - PR, Inspection and QA Services	Construction	15	1	$156,987.27	$156,598.27	9/16/2013	4/30/2014	Chuck Vigil
58	6184	Herrada Road Paving Design	Design	15	5	$100,000.00	$86,474.16	8/12/2013	12/27/2013	Chuck Vigil
59	7701	Arroyo Hondo Trail	Design	15	5	$470,572.00	$442,524.00	12/13/2012	2/28/2014	Colleen Baker
60	7708	Santa Fe River Greenway Acquisition	Acquisition	15	2	$531,756.83	$531,756.83	10/9/2012	11/1/2014	Colleen Baker
61	0150	Public Safety Complex Upgrade Design	Design	10	1 2 3 4 5	$100,000.00		8/15/2013	12/31/2013	Paul Olafson

SANTA FE COUNTY

Capital Project Status Update (As of 8/19/2013 12:04:20 PM)

62	0150	Public Works Programming & Master Plan	Plan	10	1 2 3 4 5	$25,000.00		8/27/2013	12/24/2013	Paul Olafson
63	0751	Oscar Huber Grandstand Phase II	Design	10	3	$22,000.00		8/20/2013	10/31/2013	David Padilla
64	1473	Quill Plant South Field Effluent Distribution Valve Replacement Phase 2	Construction	10	3	$50,000.00		8/15/2013	9/30/2013	Paul Olafson
65	1870	Upgrade Youth Development Perimeter Fencing Phase II	Construction	10	1 2 3 4 5	$94,480.35		8/19/2013	8/30/2013	Joseph Martinez
66	1870	Youth Development Center Perimeter Lighting	Construction	10	1 2 3 4 5	$200,000.00		8/5/2013	9/30/2013	Joseph Martinez
67	6183	Torcido Loop - Archaeological Survey	Archaeology	10		$48,683.69	$48,683.69	7/18/2013	9/27/2013	Chuck Vigil
68	7006	La Bajada Ranch Planning & Programming	Plan	10	3	$120,000.00		9/28/2012	3/29/2015	Mark Hogan
69	7006	La Bajada Ranch Remediation and Reroofing	Construction	10	3	$70,000.00		8/15/2013	10/31/2013	David Padilla
70	7122	Highway 14 Senior/Community Center	Acquisition	10	3	$350,000.00		11/5/2012	10/31/2013	Agnes Leyba-Cruz
71	7125	Northern Santa Fe County Recreation Complex	Plan	10	1	$180,000.00	$168,846.57	7/11/2013	6/19/2014	Colleen Baker
72	7723	Nambe Community Center, Park and Headstart Site Improvements	Design	10	1	$193,029.00	$46,615.39	6/14/2013	9/20/2013	Colleen Baker
73	0736	Pojoaque Sports Field	Design	9	1	$50,000.00				Colleen Baker
74	0834	Design Hondo Fire Station Addition	Design	5	4	$180,000.00		8/15/2013	6/30/2014	Paul Olafson
75	6182	Upgrade County Road 55A General Goodwin Rd.	Design	5	3	$100,000.00		9/23/2013	12/27/2013	Chuck Vigil
76	7707	Santa Fe Rail Trail Segments 2-3	Construction	5	4, 5	$1,289,857.00		7/1/2013	1/31/2014	Colleen Baker
77	1458	La Cienega / Cienguilla Monitoring	Design	2	3	$150,000.00		6/10/2013	2/3/2014	Karen Torres
78	7121	Design Stanley Community Wellness Center Phase 2	Design	2	3	$15,098.41		9/2/2013	12/31/2013	Scott Rivers
79	7707	Santa Fe Rail Trail Segment 4	Construction	2	5	$440,901.00		8/30/2013	1/31/2014	Scott Rivers
80	7732	Agua Fria Monument Signs	Construction	2	2	$83,846.00		9/16/2013	6/30/2014	Colleen Baker
81	7711	Thornton Ranch Open Space	Design	1	3	$200,000.00		2/1/2014	1/30/2015	Colleen Baker
82	0736	Pojoaque Sports Fields	Construction	0	1	$950,000.00				Colleen Baker
83	0753	Construct Addition to Ken & Patty Adam Senior Center	Construction	0	5	$850,000.00		10/30/2013	7/30/2014	Ron Sandoval
84	0842	Construct Santa Fe County Glorieta Fire Station	Design	0	4	$50,000.00	$50,000.00	9/2/2013	3/3/2014	Ron Sandoval
85	1449	TL6S (Rancho Viejo-Eldorado Connector Line	Construction	0	5	$2,500,000.00		2/1/2014	8/1/2014	Paul Olafson
86	1473	Quill Water Reclamation Plant – Treatment Improvements	Construction	0	5	$500,000.00		1/1/2014	10/31/2014	Paul Olafson
87	1476	Construct a Wastewater Collection and Water Reclamation System for Greater Glorieta	Construction	0	4	$600,000.00		1/1/2014	12/31/2014	Paul Olafson
88	2219	Renovate Old Judicial Courthouse Redevelopment	Design	0	1 2 3 4 5	$475,000.00		12/15/2013	6/15/2014	Paul Olafson
89	6184	Herrada Road Improvements - Construction	Construction	0	5	$900,000.00		4/28/2014	9/30/2014	Chuck Vigil
90	6192	Improve Western Road	Construction	0	3	$452,565.00		8/1/2013	9/2/2013	David Padilla
91	6193	Improve B Anaya Road	Construction	0	3	$311,000.00	$311,359.79	8/1/2013	9/2/2013	David Padilla
92	6195	Improve Roach Road	Construction	0	3	$138,540.00	$138,540.00	8/1/2013	9/2/2013	David Padilla

SANTA FE COUNTY

Capital Project Status Update (As of 8/19/2013 12:04:20 PM)

93	6196	Upgrade County Road 26 - Simmons Road	Construction	0	3	$460,000.00	$447,513.66	8/30/2013	9/16/2013	David Padilla
94	7006	Design La Bajada Ranch	Design	0	3	$504,726.00		6/15/2015	6/15/2016	Mark Hogan
95	7122	Construct a Senior / Community Center on HWY 14	Design	0	3 5	$494,839.00		1/1/2014	7/1/2014	Ron Sandoval
96	7123	District Attorney Complex Energy & Accessiblity Improvements	Construction	0	1 2 3 4 5	$650,000.00		11/15/2013	3/30/2014	Paul Olafson
97	7124	Admin Building Computer & Communications Room	Construction	0	1 2 3 4 5	$275,000.00		10/1/2013	12/31/2013	Paul Olafson
98	7716	Construct South Meadows Open Space Phase 1	Construction		2	$400,361.00	$4,111.13	11/15/2013	5/12/2014	Scott Rivers

TABLE 2: WORK ORDER PRODUCTION RATES
July 2013

TRAFFIC

7/1/13 to 7/31/13				YEAR TO DATE			
COMM. DIST.	REQUESTS	ISSUED	CLOSED	COMM. DIST.	REQUESTS	ISSUED	CLOSED
1	41	41	36	1	194	193	187
2	2	2	2	2	169	168	168
3	12	12	10	3	103	102	101
4	2	2	2	4	49	49	49
5	20	20	18	5	124	124	122
TOTAL	**77**	**77**	**68**	TOTAL	**639**	**636**	**627**
		100.00%	88.31%			99.53%	98.12%

BUILDING SERVICES

7/1/13 to 7/31/13				YEAR TO DATE			
COMM. DIST.	REQUESTS	ISSUED	CLOSED	COMM. DIST.	REQUESTS	ISSUED	CLOSED
1	16	15	15	1	88	87	87
2	11	11	11	2	62	61	61
3	4	4	4	3	26	26	26
4	1	1	1	4	4	4	4
5	13	13	13	5	54	54	54
County-wide	20	12	11	County-wide	130	130	130
TOTAL	**65**	**56**	**55**	TOTAL	**364**	**362**	**362**
		86.15%	84.62%			99.45%	99.45%

TABLE 2: WORK ORDER PRODUCTION RATES
July 2013

FACILITIES

7/1/13 to 7/31/13				YEAR TO DATE			
COMM. DIST.	REQUESTS	ISSUED	CLOSED	COMM. DIST.	REQUESTS	ISSUED	CLOSED
1	21	15	9	1	77	66	56
2	7	7	3	2	60	56	47
3	8	4	3	3	35	30	26
4	10	10	6	4	42	40	32
5	19	17	6	5	53	41	26
County-wide	53	40	17	County-wide	425	395	330
TOTAL	**118**	**93**	**44**		**692**	**628**	**517**
		78.81%	37.29%			90.75%	74.71%

ROADS

7/1/13 to7/31/13				YEAR TO DATE			
COMM. DIST.	REQUESTS	ISSUED	CLOSED	COMM. DIST.	REQUESTS	ISSUED	CLOSED
1	32	32	29	1	156	152	147
2	5	5	4	2	46	46	44
3	9	9	9	3	169	167	167
4	34	34	33	4	147	147	135
5	16	15	14	5	102	100	99
TOTAL	96	**95**	**89**	TOTAL	**620**	**612**	**592**
		98.96%	92.71%			98.71%	95.48%

Coming Attractions

Project	What	When
Rabbit Road Trailhead, Rail Trail	Construction begins	Sept 9, 2013
CR 98 Widening Ph II	Construction begins	Sept 15, 2013
HR Building Renovation	Construction completion	Sept 15, 2013
La Cienega FS #2 Expansion/Renovation	Design completion	Sept 22, 2013
Glorieta Mutual Domestic Water System	Award construction contract	Sept 24, 2013, BCC

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

TO: Board of County Commissioners

FROM: County Manager

RE: Jail Inspection Report

DATE: August 27, 2013

On April 3, 2013 Commissioners Chavez, Anaya and Mayfield attended inspections of the Juvenile and Adult Detention Facilities. Also present were County Manager Katherine Miler, Constituent Liaison Juan Rios, and Deputy County Attorney Rachel Brown. Pursuant to NMSA 1978, Section 33-3-4, "[e]ach governing body of a county or municipality shall conduct an annual site visit to the jail or detention center under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body." This report is intended to document the fact that the Board of County Commissioners has fulfilled its statutory obligation to inspect the detention centers of Santa Fe County.

The inspection began at 9:00 a.m. at the Juvenile Detention Facility located at 4250 Airport Road in Santa Fe. Pablo Sedillo, Director of the Public Safety Department and Amanda Valencia, Interim Administrator of the Youth Development Program describe the Youth Development Program and then collaborated in leading a tour of the Day Reporting Program offered for juveniles aged twelve through eighteen and the secure portion of the Juvenile Detention Facility.

The Day Reporting Program is in session Monday through Friday from 8:30 to 4:30 p.m. with parents dropping off their children in the morning and picking them up again at the end of the day. The program is available to juveniles who are not eligible to return to school due to misconduct. The program has a capacity of fifteen, but only had seven participants at the time of the inspection. The program is co-educational. A Santa Fe Public School teacher works with the participants daily with a goal of returning the participants to the public school system. In addition, some participants work towards obtaining a GED. The program also provides group and individual therapy to participants and ensures that juveniles are in contact with their attorneys. The teacher develops a unique curriculum for each juvenile. The teachers work with probation officers daily so that the probation officers know where participants are, even if they are out of the facility for appointments. Juveniles participate in art activities and outdoor recreation.

Apparently the City of Santa Fe approached Mr. Sedillo about donating the Juvenile Detention Facility and staff time to start an expanded day reporting program for juveniles excluded from the public schools. However, Mr. Sedillo emphasized his commitment to ensuring that juveniles are educated through the schools rather than being pushed out of the school system.

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In addition to the Day Reporting Program, many juveniles are incarcerated at the facility. The facilities for incarcerated juveniles are segregated from those for the Day Reporting Program participants. The facility accepts juveniles between the ages of eleven and twenty-one.

The inspection took the Commissioners through all three classrooms utilized for the incarcerated juveniles. The inspectors observed the segregation of juvenile females from juvenile males. Mr. Sedillo confirmed that the juveniles have access to nursing services from 8:00 a.m. through 8:00 p.m. daily and nurses are on call at other times. The program is known for taking serious cases with mental health issues because it offers sufficient professional staff to provide for psychiatry, educational, case management and medical needs for the juveniles in the facility. The New Mexico Children Youth and Families Department auditor has approved the facility as being compliant with state requirements for a juvenile facility. Additionally, some tribal entities send children for thirty to sixty day commitments. Occasionally the US Marshall Service sends juvenile offenders to the facility as well.

The participants in the inspection walked through the secure portion of the facility. The inspection included observation of the operations of master control and the methods of tracking the whereabouts of all in the facility. Mr. Sedillo emphasized the importance of funding improvements to the master control facilities, including replacement of cameras with digital equipment capable of audio recordings. Additionally the sliders in the facility need work.

The inspection went through the recreational area, the medical unit, the booking area and sally ports. Staff demonstrated fingerprinting and described the medical intake process completed prior to allowing law enforcement to leave a juvenile at the facility. There are occasions when the facility declines to accept a juvenile until they are medically cleared by St. Vincent's Hospital. Flu shots are provided to juveniles when seasonally appropriate and occasionally a tetanus shot or other medical care is provided.

Mr. Sedillo described recent capital expenditures at the Juvenile Detention Facility. One phase of a fencing project has been completed and the inspection included a viewing of the new fencing. A second phase of the fencing project is poised to start soon. The outdated boiler system in the building is going to be removed, opening up a large area which will be converted into a vocational training facility, including automotive training space and an area for carpentry. Mr. Sedillo emphasized the importance of expanding life skills in addition to educational opportunities for participants. Although some portions of the facility are carpeted, Mr. Sedillo advised that the carpeting will be removed to improve sanitation. Shower fixtures are going to be replaced.

Incarcerated juveniles are taught the significance of the various aspects of the court proceedings they are a part of. They are given assistance in preparing for court appearances so that they present well when in court. The families of juvenile participants are encouraged to work with participants to improve communication skills. Juvenile inmates participate in various trainings and activities, including anger management, time management, money management, job interview training, meditation, art and yoga. A treatment team meets weekly to evaluate and plan for the needs of each juvenile and to develop probation plans and aftercare plans for the juveniles.

Upon completion of the tour of the Juvenile Detention Facility, the inspection moved on to the Adult Detention Facility located at 4312 State Highway 14. The inspection began in the conference room where various staff members described the facility and major changes to the infrastructure and operations.

Electronic monitoring staff began the presentation by describing the operations associated with electronic monitoring of approximately 150 offenders. The electronic monitoring facilities were recently moved from the Juvenile Detention Facility to the Adult Detention Facility, resulting in heightened security and more convenient interface for adults moved from the Adult Detention Facility to electronic monitoring. Additionally, when a probation violation occurs, an employee from booking can easily retrieve the inmate for placement at the Adult Detention Facility.

Apparently fees for electronic monitoring services have been waived by the courts with increasing frequency, creating financial stresses for the electronic monitoring program. That issue has been addressed through communications with the Courts, and fee waivers are now declining. A policy regarding fees and fee waivers is in the development stages with input from the judiciary. According to Warden Gallegos, monthly fees collected for electronic monitoring services have increased from an average of five thousand per month to an average of fifteen thousand per month since the fee waiver issue came to the attention of the judiciary. Electronic monitoring staff advised that there was a need to increase the number of case managers in the program to manage the growing caseload. In 2003 there were only seventy-five clients at a time. Now the average number of individuals on electronic monitoring is between 175 and 225. Additionally, services used to be provided from 8-5 and now they are provided twenty-four hours per day. The level of staffing has not been modified to accommodate the expansion in use of electronic monitoring. Additionally, the electronic monitoring staff is now running bonding services. Plans are underway to have electronic monitoring staff engaged in case management, including home visits to participants. Commissioner Mayfield inquired whether there were difficulties with inmates getting to the Adult Detention Facility for services and staff assured the Commissioners that there were no access problems.

Anthony Martinez, the Compliance Officer, described the process of revising and updating all policies and procedures utilized at that Adult Detention Facility. He began that project in May of 2012 and is almost done working on 274 policies and procedures. The policies and procedures ensure consistency of operations. Mr. Martinez is working on obtaining accreditation from the Association of Counties for the facility. An application for accreditation was submitted in October 22, 2012. An inspection associated with the accreditation is scheduled for April of this year.

The IT department described improvements to technology at the Facility over the past year. The Warden and IT confirmed that the facility would benefit from high definition cameras which would produce clear video images.

Rene Fernandez, the Programs Manager, described how volunteers are utilized at the Facility. There are currently 60 volunteers working on a regular basis at the facility. The newest volunteer program has animal trainers working with inmates to prepare dogs for adoption through the Humane Society.

Additional classrooms are needed at the facility to ensure that inmates can participate in educational, training and treatment programs without inappropriate contact between inmates.

Several trays of food were provided by the contractor responsible for food service at the Facility. The meals included tortilla, cheese, lettuce, ground meet and corn bread. Commissioner Mayfield sampled the food and confirmed that it was well prepared.

The Classifications Supervisor, Melissa Oberg, described the process of booking approximately thirty inmates per day. Following the booking classification of each inmate, the housing unit case manager has contact and assesses the inmate and establishing programming for that inmate. Lieutenant Carlos Markman Lopez then described how he ensured safe and timely transport of inmates throughout the facility and into the community. In 2012 there were 10,000 inmate bookings and 9,999 releases. Within the classification process, inmates with skills are identified and those inmates are given opportunities to utilize their skills for the benefit of the Facility.

The Training Coordinator, Aaron Martinez, described how he ensures that all employees at the Adult Detention Facility receive forty hours of training annually. He also described the Training Academy which provides 240 hours of training for new cadets. The extensive training coupled with a mentorship program was credited with improved employee retention.

The Maintenance Director and the Food Service Director each described their efforts to ensure the facility is running well. The inspectors met Dennis Benavidez who works both maintenance and security and is responsible for inmate crews performing maintenance at the facility. The staff expressed thanks for the clerk hired to assist the Maintenance Director which his administrative responsibilities.

Following introduction of additional staff, the Commissioners posed questions to the Adult Detention Facility representatives. A recent shooting involving a high level public safety officer sparked a conversation regarding emotional support for employees. Staff has access to the Employee Assistance Program and the behavioral health team at the facility. Debriefings occur following any significant incident at the facility. Referrals are often made to mental health providers or the chaplain who works at the facility when needed. Additionally, constant communication with inmates has lowered the levels of tension and incidence of violence at the facility.

Warden Mark Gallegos described increased efforts to reduce access to drugs within the facility. According to staff, two large drug busts occurred recently and inmates are now complaining that they are not able to get drugs into the facility.

The inspection began at the master control room, where new control panels were demonstrated. All doors appeared to be operable from master control. Lapel cameras worn by detention officers have increased information regarding inmate/officer interactions. The inspection included the recreational areas and the ceremonial sweat lodge. The corridors of the facility were clean and freshly painted. The inspection included observation of the new floor in the kitchen area and the installation of a fully

functional stove in that area. The inspection proceeded through the Charlie unit, the visitation areas and the waiting areas. The waiting area was vastly improved since the last visit, with increased space, privacy and seating. Plans are underway to place couches in the waiting area for the comfort of visitors. The fire system was described as fully functional as was the telephone system. Inmates were observed conversing with visitors utilizing a phone system that appeared to work well. The Warden described plans to improve the camera system in the facility through the next budget cycle. The Warden pointed out new openings in the walls of master control that allow for delivery of fully stocked first aid kits without the need for security staff to leave the master control area. Additionally there was a crash cart in the medical unit which was not present at the time of the last inspection. The crash cart has improved care to inmates because when an inmate experiences a medical crisis they are now provided immediate attention in the pod rather than being transported to the medical unit. Additionally, medical providers are now positioned in the booking area so that prompt evaluations of inmates result in rejection of inmates in need of medical care prior to admission.

The Warden advised that the booking area would be safer if it were expanded so that intakes and releases are more segregated. A request for funding to address renovations of the booking area will be presented to the Board of County Commissioners in the next funding cycle.

Another inspection will occur within twelve months.

NO PACKET MATERIAL

EXECUTIVE SESSION