

SANTA FE COUNTY
PUBLIC WORKS DEPARTMENT
REQUEST FOR PROPOSALS (RFP)



**ENVIRONMENTAL AND RESOURCE
ASSESSMENTS**

**NM Commodity Code(s): (96132,91843,
91816, 91889 & 91897)**

RFP NO. 2022-0088-PW/BT

OCTOBER 2021

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**I. ADVERTISEMENT
SANTA FE COUNTY
ENVIRONMENTAL ASSESSMENT AND RESOURCE INVESTIGATION SERVICES
RFP NO. 2022-0088-PW/BT**

Santa Fe County requests proposals from qualified environmental professionals to provide *environmental assessment and resource investigation services*. All proposals submitted shall be valid for ninety (90) days subject to action by the County. Santa Fe County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. All proposals must be received by **2:00PM on November 12, 2021, at the Santa Fe County Purchasing Division, 102 Grant Avenue, (First Floor), Santa Fe, NM 87501**. To combat the spread of the recent COVID-19 illness, the submission of Proposals **will also be accepted electronically** utilizing a DropBox. Please utilize this link to upload your proposal submission. <https://www.dropbox.com/request/dq4GcWfqvu6llWMBv3Vv>

By submitting a proposal for the requested services each Offeror is certifying that it is a qualified environmental professional organization and its proposal complies with the requirements stated within the Request for Proposals.

A Pre-Proposal Conference will be held at **11:00 AM (local standard time) on November 2, 2021 online via Webex by using the following webex meeting link <https://sfco.webex.com/sfco/j.php?MTID=mbd20d2967bbd7e712e25af952f6255bc> or by calling 1-408-418-9388, meeting number: 2482 230 0808 and passcode: biAStvrP983. The Pre-Proposal Conference is not mandatory, but it is strongly recommended to attend.**

EQUAL EMPLOYMENT OPPORTUNITY: All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex or national origin, ancestry, age, physical and mental handicap, serious medical condition, disability, spousal affiliation, sexual orientation or gender identity.

Request for Proposals will be available by contacting Bill Taylor, Procurement Manager, wtaylor@santafecountynm.gov at 102 Grant Avenue, (First Floor) Santa Fe, New Mexico 87501, or by telephone at (505) 986-6373 or Maricela Martinez, Procurement Planner, mcmartinez@santafecountynm.gov or by telephone at (505) 992-9864 or by viewing the RFP on our website at http://www.santafecountynm.gov/asd/current_bid_solicitations.

PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.

II. INTRODUCTION

A. PURPOSE AND BACKGROUND OF THIS REQUEST FOR PROPOSAL

Santa Fe County (SFC) entered into Road Settlement Agreement(s) with the Pueblo de San Ildefonso, The Pueblo of Tesuque, The Pueblo of Nambe, and the Pueblo of Pojoaque (collectively, “Pueblos”) to amicably resolve claims that County-maintained roads (CMRs) may be in trespass on Pueblo Lands. The Agreement(s) resolve the CMR trespass issue for 198 years and provides a reasonable means by which private property owners may obtain agree-upon legal ingress and egress via a public road. A condition of the agreement requires SFC to conduct environmental assessments and prepare reports that are required to support the Right of Way (ROW) applications under Part 169 for the County-maintained roads (CMRs) on Pueblo Lands.

In compliance with the “Agreement”, SFC is requesting proposals from qualified Environmental Professionals (“Consultant”) to provide environmental assessment (EA) and environmental resource investigation services, in accordance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the Clean Water Act (CWA).

B. SCOPE OF WORK

NEPA aims to ensure that decision-makers take into account the environmental effects of their proposed actions and consider ways to avoid, minimize or mitigate adverse effects before implementing the action. As such, the Consultant will be responsible for the preparation of Environmental Assessment, technical studies and documentation to support the decision making process to include the following tasks:

TASK 1: ENVIRONMENTAL RESOURCE INVESTIGATIONS

- a) Jurisdictional Agencies: Identify land management agencies/entities (not including Santa Fe County) within the project area, including those with management responsibilities for new rights of-way. The appropriate land management agency shall be contacted to address the potential impacts for the proposed action.
- b) Cultural Resource Investigations: Conduct Cultural resource surveys of archeological sites, historic buildings, acequias, and cultural landscapes in accordance with National Historic Preservation Act;

NOTE: This work shall be conducted by permitted archaeologist and historian and coordinated with individual Pueblo Tribal Historic Preservation Office (THPO) representatives.

- i. Traditional Cultural Properties Consultation: Per New Mexico Executive Order 2005-003, documented tribal consultation is required and shall be conducted in collaboration with Santa Fe County representatives.
- c) Natural Resource Investigations: Conduct natural resource surveys including bird, bat, mammal, and other plant and animal species inventories in accordance with the Natural Species Act.

NOTE: This work shall be conducted by qualified biologists and shall be coordinated with individual Pueblo representatives regarding Pueblo access permitting requirements.

- d) Water Resources: Identify any impacts to water resources, including wetlands, resulting from a proposed action and any related permit requirements. Consult FEMA's Flood Insurance Rate Map for the 100-year floodplain boundary. Make note of any Clean Water Act (CWA) permits required for the project, including sections (§) 401, 404.
- e) Right-of-Way: Illustrate pertinent property details including land ownership, residential or commercial, business names, etc. A map of the required right(s)-of-way will be provided by the County. Rights-of-way illustrations should include construction maintenance easements, temporary construction permits, work permits, easements, federal land transfers, or acquisitions of property.
- f) Land Use: Assess whether current land uses are consistent with County land use plans and zoning. Changes in access to private properties should be identified in this section.
- g) Hazardous Materials Analysis: Consult the Environmental Protection Agency (EPA) EnviroMapper for Envirofacts to identify known hazardous material sites in proximity to the project area.
- h) Socioeconomics: Identify any required relocations of residents or businesses that may occur as a result of the proposed action. Also identify if the project would permanently change access to a business, driveway, etc. Change to neighborhood continuity or community cohesion could result if the proposed action reduces pedestrian movements across an existing route, or restricts access to local community sites, and/or private driveways.

TASK 2: NEPA DOCUMENTATION

The Consultant shall complete NEPA documentation (EA level reporting), as directed by the County. NEPA documentation shall comply with all standards developed by BIA and all other federal and state agency standards that are applicable for this project. The level of detail and depth of impact analysis should be limited to the minimum need to determine whether there would be significant environmental effects.

NOTE: SFC independently reviewed the Environmental Impact Statement (EIS) prepared for the Pojoaque Basin Regional Water System with the Record of Decision dated September 11, 2019 and considers subparts of the EIS relevant to environmental assessment solicited herein. As such, it's the County's desire to reference portions of the resource documentation and EIS into this document.

Contents of the Environmental Assessment:

At a minimum, the environmental assessment must include:

1. Cover Sheet
2. Table of Contents
3. The proposal;
4. The need for the proposal;
5. The environmental impacts of the proposed action;
6. The environmental impacts of the alternatives considered; and
7. A list of agencies and persons consulted.

TASK 3: PUBLIC INVOLVEMENT

In order to convey information to the public, solicit input from them, and provide them with an opportunity to review and comment on this project, a wide array of notification methods will be required from the Consultant as follows:

- a) Coordination Letters;
- b) Public Official and/or Stakeholder Group Briefings;
- c) Project Web Site;
- d) Newsletters and Other Direct Mailers; and
- e) Public Meeting (Virtual).

TASK 4: QUALITY CONTROL:

The Consultant shall ensure that all resource investigations are conducted by qualified individuals that meet permitting or qualification standards developed by all applicable federal

and state agencies. The consultant shall ensure that all documentation submitted meets the aforementioned standards and has been quality checked prior to submittal to County.

DELIVERABLES:

Deliverables may include, but not limited to:

- a) Biological Reports, including all documentation
- b) Cultural Resource Reports, including all documentation
- c) Public Meeting PowerPoint Presentation, handouts, and meeting minutes
- d) All GIS data collected or generated for the associated work assignment
- e) Environmental Assessment

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C. INSURANCE REQUIREMENTS

The insurance required by Offeror are listed below.

1. General Conditions. 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.
2. General Liability Insurance, Including Automobile. 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 \$1,000,000 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 County by 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. County of Santa Fe shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.
4. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.
5. 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), Contractor shall increase the maximum limits of any insurance required herein.

D. DESIGNATED PROCUREMENT MANAGER

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Bill Taylor, Procurement Manager
 Santa Fe County Purchasing Division
 102 Grant Avenue, First Floor
 Santa Fe, NM 87501
 Phone: (505) 986-6373
 Email: wtaylor@santafecountynm.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. **Offerors may ONLY contact the Procurement Manager listed above regarding the procurement. Other County employees do not**

have the authority to respond on behalf of the County.

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

This section contains definitions and abbreviations that are used throughout this procurement document.

“BCC” means the Santa Fe County Board of County Commissioners

“Close of Business” means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the date given.

“Contract” or **“Agreement”** means a written agreement for the procurement of items of tangible personal property or services.

“Contractor” means a successful Offeror who enters into a binding contract.

“County” means Santa Fe County.

“Determination” means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” means a body appointed by the County management to perform the evaluation of offeror proposals.

“Finalist” is defined as an offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror’s proposal.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Purchasing Division” means the Santa Fe County Purchasing Division, Finance Department.

“Request for Proposals” or ***“RFP”*** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the RFP.

“Responsive Offer” or ***“Responsive Proposal”*** means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. **SEQUENCE OF EVENTS**

The Procurement Manager will make every effort to adhere to the following schedule:

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issuance of RFP	Purchasing Division	October 24 & 25, 2021
2. Pre-Proposal Conference	Owner/Offerors/ Purchasing	November 2, 2021
3. Acknowledgement of Receipt Form	Offerors	November 3, 2021
4. Deadline to Submit Additional Questions	Offerors	November 3, 2021
5. Response to Written Questions	Purchasing Division	November 5, 2021
6. Submission of Proposal (2:00 PM)	Offerors	November 12, 2021
7. Proposal Evaluation Review	Evaluation Committee	November 15 – 19, 2021
8. Selection of Finalist	Evaluation Committee	November 22, 2021
9. Oral Presentation by Finalists (if applicable)	Offeror	TBD
10. Contract Negotiations	County, Offeror	November 2021
11. Contract Award	Purchasing Division	December 2021

Note: If the Evaluation Committee makes a selection at the Selection of Finalists, event 9 will not occur.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section III, Paragraph A.

1. Issuance of RFP

This RFP is being issued by the Santa Fe County Central Purchasing Office for the Public Works Department.

2. Pre-Proposal Conference

A Pre-Proposal Conference and Site Visit are scheduled to occur on the date indicated in the Sequence of Events at Section III.A. Questions may be submitted at the Pre-Proposal Conference and until the date indicated in the Sequence of Events at Section III.A. **All questions must be in writing and e-mailed to Bill Taylor, Procurement Manager at wtaylor@santafecountynm.gov.** A public log will be kept of the names of potential Offerors who attended the Pre-Proposal Conference and the Site Visit.

3. Acknowledgement of Receipt Form

Potential offerors should hand-deliver, return by facsimile or e-mail the Acknowledgement of Receipt Form provided as Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on ***November 3, 2021***

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Additional Written Questions

Potential offerors may submit written questions regarding this RFP until the close of business on the date indicated in the Sequence of Events at Section III.A. All written questions must be addressed to the Procurement Manager, listed in Section II.E and sent via facsimile or e-mail. ***Any contact with any other County staff member or persons other than the Procurement Manager named in this solicitation may be grounds for disqualification.***

5. Response to Written Questions

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the Sequence of Events at Section III.A, to all potential offerors whose names appear on the procurement distribution list.

Additional written requests for clarification of distributed answers or addenda must be received by the Procurement Manager no later than one (1) day after the answers or addenda were issued.

6. **Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM (local time), November 12, 2021. *Proposals received after this deadline will not be accepted.* The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II.E. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the County's Request for Proposals **No. 2022-0088-PW/BT.** **Proposals may also be submitted electronically via Dropbox at the link provided below.**
<https://www.dropbox.com/request/dq4GcWfqvu6IIWMBv3Vk>

Proposals must be delivered to:

Bill Taylor, Procurement Manager
 Santa Fe County Purchasing Division
 102 Grant Avenue (First Floor)
 Santa Fe, New Mexico 87501

A public log will be kept of the names of all offeror's who submitted proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

7. **Proposal Evaluation**

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Procurement Manager. This process will take place during the timeframe indicated in the Sequence of Events at III.A. During this time, the Procurement Manager may initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. **Discussions SHALL NOT be initiated by the offerors.**

8. **Selection of Finalists (If Applicable)**

The Evaluation Committee may select and the Procurement Manager may notify the finalist offerors on the date indicated in the Sequence of Events at Section III.A. Only finalists will be invited to participate in the subsequent steps of the procurement if the finalist process is used.

9. **Best and Final Offers from Finalists (If Applicable)**

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the date indicated in the Sequence of Events at Section III.A.

10. **Oral Presentation by Finalists (If Applicable)**

Short-listed offerors may be required to present their proposals to the Evaluation Committee as an oral presentation. The Procurement Manager will schedule the time for each offeror's presentation. All offerors that were short-listed will be contacted to schedule presentations providing a location and instructions for the oral presentations. Each presentation will be limited to one (1) hour in duration, including questions and answers from the evaluation committee members.

11. **Contract Negotiations**

The contract will be finalized with the most advantageous offeror during the timeframe indicated in the Sequence of Events at Section III.A. In the event that mutually agreeable terms cannot be reached between the County and the first selected Offeror within the time specified, the County reserves the right to terminate contract negotiations with that Offeror and begin contract negotiations with the next highest ranked offeror without undertaking a new procurement process.

12. **Contract Award**

The County anticipates awarding the contract on the date in the Sequence of Events at Section III.A. These dates are subject to change at the discretion of the Santa Fe County Purchasing Specialist or Procurement Manager.

The contract shall be awarded to the offeror or offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. **Right to Protest**

Any protest by an offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protests must be delivered to the Santa Fe County Purchasing Division:

Santa Fe County Procurement Office
Attn: Bill Taylor, CPO/ Procurement Manger
P.O. Box 276

Santa Fe, New Mexico 87504

Protests will not be accepted by facsimile or other electronic means.
Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and the Santa Fe County Procurement Regulations.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the terms and conditions of the contract template attached hereto as Appendix E.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County. The County will make contract payments to only the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the performance of the contract with the County whether or not subcontractors are used.

5. Amended Proposals

An offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposal must be a complete replacement of the previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposal materials.

6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed

by the offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for 90 days after the due date for receipt of proposals or 90 days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

Proposals shall not be opened publicly and shall not be open to public inspection until after an offeror has been selected for award of a contract.

An offeror may request in writing non-disclosure of confidential data. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7, NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the Santa Fe County Procurement Manager shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates Santa Fe County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient

appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The County requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the County in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of offeror proposals.

15. Contract Terms and Conditions

The contract between the County and the Contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix D.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the County and the selected offeror and shall not be deemed an opportunity to amend the proposal.

17. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA, 1978, subject to Procurement Manager approval.

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor technical irregularities. This right is at the sole discretion of the Evaluation Committee subject to the Procurement Manager approval.

19. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting the County's needs adequately. Any change in contractor representative must receive prior County approval.

20. Notice

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

21. County Rights

The County reserves the right to accept all or a portion of an offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected offerors shall be returned after the expiration of the protest period.

24. Electronic Mail Address Recommended

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that the offeror should have a valid e-mail address to receive e-mail correspondence.

25. Preferences in Procurement by Santa Fe County

a. *New Mexico In-state Preference.*

New Mexico law, Section 13-4-2 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident contractor**”. Application of a resident contractor preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident

contractor. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident contractor certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offerors score.

Certification by the department of taxation and revenue for the resident contractor takes into consideration such activities as the business' payment of property taxes or rent in the state and payment of unemployment insurance on employees who are residents of the state.

OR

b. *New Mexico Resident Veteran Preference.*

New Mexico law, Section 13-4-2 NMSA 1978, provides a preference in the award of a public works contract for a “**resident veteran contractor**”. Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the department of taxation and revenue and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident contractor certificate, 10%, of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score.

The resident contractor preference is not cumulative with the resident veteran contractor preference.

AND

c. *Santa Fe County Business Preference*

Santa Fe County Ordinance 2012-4 provides for a **County preference** for a “Santa Fe County business.” Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa Fe County Procurement Manager.

Certification by the Procurement Manager takes into consideration the business' corporate standing in the state, business licensure or registration, the duration of the business' primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Purchasing Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offerors score.

The Resident Business, Resident Veteran Business or Santa Fe County Business preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

26. Double-Sided Documents

All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse..." all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County".

27. Living Wage

Contractor shall comply with the requirements of Santa Fe County Ordinance No. 2014-1 (Establishing a Living Wage).

IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one response to this RFP.

B. NUMBER OF COPIES

Offerors shall deliver one (1) original and four (4) identical copies of their proposal to the location specified in Section II, Paragraph E on or **before** the closing date and time for receipt of proposals. If submitting responses electronically via Dropbox, please submit two (2) separate files: one file for the proposal response and a separate file the Appendix D Proposed Fee Schedule.

C. PROPOSAL FORMAT

All proposals shall be limited to twenty (20) pages, with exception to professional licenses and certifications, which shall be added as appendices. The document shall be typewritten on standard 8 1/2 x 11 paper, with a font **no smaller than 12 pt. pitch**, with nominal 1” margins and normal line spacing. Proposals shall be bound with tabs delineating each section. To combat the spread of the recent COVID-19 illness, the submission of Proposals **will be accepted electronically** utilizing a DropBox. Please utilize this link to upload your proposal submission. <https://www.dropbox.com/request/dq4GcWfqvu6lIWMbv3Vk>

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- a) Letter of Transmittal
- b) Response to County Terms and Conditions
- c) Table of Contents (optional)
- d) Response to Specifications – Evaluation Factors
- e) Response to County Terms and Conditions
- f) Copy of insurance certificate
- g) Campaign Contribution Disclosure Statement

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP under Section V.B. EVALUATION CRITERIA FACTORS. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The **proposal summary** may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal **MUST**:

- a) Identify the submitting person or organization;
- b) Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) **Explicitly** indicate Acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP;
- h) Acknowledge and acceptance of the terms and conditions of the Agreement attached as Appendix D.

THIS SECTION LEFT INTENTIONALLY BLANK

V. EVALUATION CRITERIA FACTORS

Offerors should respond in the form of a thorough narrative to each evaluation criteria factors listed below. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

A. INFORMATION

Time Frame

The contract is scheduled to begin December 2021. Santa Fe County intends on awarding a contract with an initial term of four years.

B. EVALUATION CRITERIA FACTORS

A brief explanation of each mandatory specification is listed below. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each.

1. Introduction

- Provide the vision/mission and business philosophy of your organization.
- Provide a brief overview of your organizations history, including services provided during that history of similar scope.

2. Technical Competence and Specialized Experience

- Provide information your organization's specific technical experience with providing services comparable to the Scope of Work required in this RFP.
- Include years of experience providing consultation services for similar government or public/private entities of comparable size and complexity.
- Indicate the relevance of previous service contracts to the scope of work, including any specialized experience.
- Describe your organization's knowledge, skills and criteria to provide and implement an environmental assessment and resource investigation services, in compliance to Federal, State and Local Governmental requirements and standards. Include your organization's experience with Tribal consultation services.

3. Evidence of Understanding Scope of Work

- Provide an in-depth response and understanding of the requested scope of work.
- Describe your organizations understanding of implementing the services to be provided that correlates to the scope of work. Include information regarding a work plan.
- Specify how your services will meet the requirements of Federal, State and Local Government requirements.

- Describe any challenges your organization has identified in the scope of work that might be expected based on this service, including existing conditions, location, site or any other factors.
- Any services that cannot be provided as required shall be noted.

4. Capacity and Capability

- Explain your team's organization and working relationships.
- Provide your team's current workload and explain your team's availabilities during the project schedule, in a timely manner.
- Include information of any subcontractor or Sub-consultant services needed as part of the project team including what areas of work they will perform, specifically regarding archeological, historian, tribal consultations, etc.

5. Proximity and/or Familiarity

- Describe your organization's proximity to the project area.
- Describe your organization's familiarity with the area in which the project is located.

VI. EVALUATION

A. EVALUATION SCORING

The County will evaluate responsive proposals and assign a numerical score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror's attention to the factor detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror; however, discussion should be detailed enough to inform and educate the Evaluation Committee Members.

Proposals will be scored based upon a comparison of the information submitted by each Offeror against the evaluation factors outlined below. Each Evaluation Factor is assigned the following points:

1.	Introduction	100 points
2.	Technical Competence & Specialized Experience	200 points
3.	Evidence of Understanding Scope	300 points
4.	Capacity & Capability	200 points
5.	Proximity & Familiarity	200 points
TOTAL POINTS		1000 points

PREFERENCES

If a proposal contains an In-State Resident Business Certificate or Resident Veterans Business Certificate and/or Santa Fe County Business Certificate, the applicable preference will be applied.

5. Proposal contains a valid N.M. Resident Business Certificate.....**50 points**

OR

6. Proposal contains a valid Resident Veteran Business Certificate..... **100 points**

AND

7. Proposal contains a valid Santa Fe County Business Certificate.....**50 points**

B. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section III, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The County may determine to make a final selection based on the highest and most qualified response. In the case that a final selection cannot be made, the Evaluation Committee may short-list no more than three (3) Offerors and recommend an oral presentation by each of the short-listed Offerors. The ‘shortlisted’ firms will be provided questions by the Evaluation Committee for the “Oral Presentations.” Each presentation will be evaluated by the Evaluation Committee. The oral presentation that receives the highest points and is most advantageous to the County, taking into consideration the evaluation factors in Section VI, will be recommended for contract award as specified in Section III, Paragraph B.11. Only the points from the Oral Presentation will be calculated for the most qualified Offeror. Points from the short-listing evaluations will only be used if there is a tie resulting from the Oral Presentations. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A**ACKNOWLEDGEMENT OF RECEIPT FORM
ENVIRONMENTAL ASSESSMENT AND RESOURCE INVESTIGATION SERVICES
RFP NO. 2022-0088-PW/BT**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix I.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **(enter date due)**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the County's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

Bill Taylor, Procurement Manager
Santa Fe County Purchasing Division
102 Grant Avenue (First Floor)
Santa Fe, New Mexico 87501
Phone: (505) 986-6373
Email: wtaylor@santafecountynm.gov

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political

committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

APPENDIX C RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check one box only:

☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be."

"I understand that knowingly giving false or misleading information on this report constitutes a crime".

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory of the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS _____ DAY OF _____, 2021.

NOTARY PUBLIC

My Commission Expires:

APPENDIX D

**U.S. DEPARTMENT OF INTERIOR WASHINGTON DC
RECORD OF DECISION**

**POJOAQUE BASIN REGIONAL WATER SYSTEM
FINAL ENVIRONMENTAL IMPACT STATEMENT**




U.S. Department of the Interior
Washington DC

Record of Decision

**Pojoaque Basin Regional Water System
Final Environmental Impact Statement**

Approval:


Timothy R. Petty

Assistant Secretary for Water and Science

9/11/19
Date

RECORD OF DECISION

Summary of Action

The Secretary of the Interior (Secretary), acting through the Bureau of Reclamation's Upper Colorado Region (Reclamation), was authorized by the Aamodt Litigation Settlement Act (Settlement Act; Title VI of the Claims Resolution Act of 2010; Public Law 111-291, Title VI; 124 Stat. 3065) to plan, design, and construct the Pojoaque Basin Regional Water System. The Settlement Act authorizes any treatment, transmission, storage, and distribution facilities and wellfields for Santa Fe County's distribution system and all Pueblo water facilities that are necessary to distribute up to 4,000 acre-feet of water annually to customers in the Pojoaque Basin or as otherwise authorized by the Settlement Act (Settlement Act, Section 611(a)(2)(B) and 612(c)(2)). The proposed system includes water-diversion facilities from the Rio Grande and water treatment facilities on the Pueblo de San Ildefonso.

Reclamation prepared an environmental impact statement (EIS) to assess the environmental effects associated with the regional water system and connected actions. This was done in cooperation with the Bureau of Indian Affairs (BIA); the Indian Health Service; the U.S. Army Corps of Engineers (USACE); the U.S. Fish and Wildlife Service (Service); the Pueblo of Nambé; the Pueblo of Pojoaque; the Pueblo de San Ildefonso; the Pueblo of Tesuque; the New Mexico Department of Transportation; Santa Fe County; and the City of Santa Fe.

The EIS completes the requirements for environmental compliance in the Settlement Act, Section 616, and the National Environmental Policy Act (NEPA), and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR), Parts 1500–1508), the U.S. Department of the Interior's NEPA Regulations (43 CFR, Part 46), and other relevant federal and state laws and regulations.

Purpose and Need

The purpose of the proposed federal action is to reliably provide a firm, safe supply of treated drinking water for distribution in the Pojoaque Basin, in compliance with the Settlement Act. The need for action is to reduce reliance on groundwater in the Pojoaque Basin and to allow the Settlement Pueblos to receive a portion of the water provided under the Settlement Act.

The proposed federal action also will enable the Settlement Pueblos to use funding made available in the Settlement Act for certain water-related infrastructure improvements, if requested. This funding can be requested before the regional water system is substantially complete. If approved by the Secretary of the Interior (Settlement Act, Section 615(d)), funds can be used for any water-related improvements that will prove to be more cost effective when implemented in conjunction with the regional water system construction.

Alternatives Considered

The Final EIS analyzes the potential environmental impacts of 5 alternatives for the regional water system: no action (Alternative A) and 4 action alternatives (Alternatives B, C, D, and E). Each of the action alternatives addresses 6 components or project elements:

- Firm, reliable water supply
- Primary source water collection
- Water treatment
- Short-term storage tanks
- Water transmission and distribution system, including pipelines, pumping plants, forebay tanks, and other associated facilities
- Electrical power service

Alternative A (No Action Alternative)

The No Action Alternative is the “no build” alternative. Under this alternative, the regional water system would not be constructed and a firm, reliable water supply would not be provided to residents of the Pojoaque Basin. Use of domestic wells would continue to reduce groundwater and surface water supplies in the Pojoaque Basin. The Pueblos would continue to rely on their existing separate water systems, rather than integrating their systems into one regional system with the County.

Alternative B (HKM Implementable Alternative)

Alternative B incorporates the regional water system facilities and components described in the 2008 Engineering Report prepared by HKM Engineering, Inc., as updated through surveys and public input. The HKM Engineering Report served as the preliminary regional water system concept for the Settlement Act. Under this alternative, the regional water system would consist of these components:

- A firm, reliable water supply would be provided by diverting surface flows from the Rio Grande, supplemented by operational planning and scheduling of San Juan-Chama Project water supplies, as well as one of the following three backup aquifer storage and recovery water supply options:
 - Aquifer storage and recovery, involving three deep injection and recovery wells for injecting raw or treated surface water into an aquifer and recovering it for use in the regional water system
 - Aquifer storage and recovery, involving three shallow injection and recovery wells for injecting raw or treated surface water into an aquifer and recovering it for use in the regional water system
 - Aquifer storage and recovery, involving three shallow passive infiltration reaches and recovery wells for infiltrating raw surface water into an aquifer and recovering it for use in the regional water system

- A side-channel surface diversion structure and pumping plant with a sediment removal and return system on the east bank of the Rio Grande on Pueblo de San Ildefonso lands, just north of the Otowi Bridge
- A water treatment plant and pumping plant on the Pueblo de San Ildefonso on the south side of State Highway 502, approximately 0.75 miles east of the Otowi Bridge
- Eleven new short-term storage tanks, in addition to 13 existing storage tanks
- A water transmission and distribution system including approximately 194 miles of pipelines, 7 pumping plants, and pressure-reducing and flow-control valves
- Approximately 15 miles of new electrical distribution lines

Alternative C (the Reclamation Feasibility Report)

Under this alternative, the regional water system would consist of these components:

- A firm, reliable water supply would be provided by collecting flows from the hyporheic zone¹ of the Rio Grande, supplemented by operational planning and scheduling of San Juan-Chama Project water supplies
- A parallel river interceptor drain in the alluvium, below the water table in the bosque (wooded riparian area) on the east side of the Rio Grande north of the Otowi Bridge
- A water treatment plant on the eastern portion of the Pueblo de San Ildefonso, on the east side of County Road 101D near the El Rancho power substation
- Eleven new short-term storage tanks, in addition to 13 existing storage tanks
- A water transmission and distribution system, including approximately 189 miles of pipelines, 1 surge tank, 6 pumping plants, and pressure-reducing and flow-control valves
- Approximately 7 miles of new electrical distribution lines, supplemented by distributed solar generation

Alternative D

Under this alternative, the regional water system would consist of these components:

- A firm, reliable water supply would be provided by collecting flows from the hyporheic zone of the Rio Grande, supplemented by operational planning and scheduling of San Juan-Chama Project water supplies
- An infiltration gallery (an estimated 180 horizontal drains to collect groundwater) on the east bank of the Rio Grande
- A water treatment plant on the eastern portion of the Pueblo de San Ildefonso, on the east side of County Road 101D, near the El Rancho power substation

¹ A below-ground area beneath and alongside a river or streambed that is water saturated and supports invertebrate fauna.

- Sixteen new short-term storage tanks in addition to 13 existing tanks
- A water transmission and distribution system, including approximately 187 miles of pipelines, 1 surge tank, 6 pumping plants, and pressure-reducing and flow-control valves
- Approximately 7 miles of new electrical distribution lines, with facilities capable of being supplemented by distributed solar generation

Alternative E (Preferred Alternative and Selected Alternative)

The selected alternative is Alternative E, identified in the Final EIS as the preferred alternative. The selected alternative consists of these components:

- A firm, reliable water supply would be provided by collecting flows from the hyporheic zone of the Rio Grande, supplemented by operational planning and scheduling of San Juan-Chama Project water supplies
- Existing wells could be used in the future for emergencies lasting longer than 2 days that cannot be supplied by short-term storage tanks
- Four horizontal radial well collectors on the east bank of the Rio Grande, on the Pueblo de San Ildefonso, north of the Otowi Bridge
- A water treatment plant on the west side of County Road 101D, north of State Highway 502
- Seven new short-term storage tanks, in addition to 15 existing storage tanks
- A water transmission and distribution system, including approximately 151 miles of pipelines, 1 surge tank, 6 pumping plants, and pressure-reducing and flow-control valves
- Approximately 7 miles of new overhead and buried electrical distribution lines, with facilities capable of being supplemented by distributed solar generation

Environmentally Preferable Alternative

The No Action Alternative would result in fewer environmental impacts than the action alternatives; however, taking no action would not meet the purpose and need for action. The No Action Alternative would not provide a reliable, firm, safe supply of treated drinking water for distribution in the Pojoaque Basin, it would not reduce reliance on groundwater in the Pojoaque Basin, and it would not allow the Settlement Pueblos to receive a portion of the water provided under the Settlement Act.

Of the action alternatives, Alternative E is the environmentally preferable alternative. This alternative would disturb the fewest acres for project facilities; consequently, it would have the least effect on resources analyzed in the Final EIS.

During the comment period on the Draft EIS, the primary concern noted by the public was visual impacts of the aboveground facilities visible from The Santa Fe Opera. Alternative E was revised in the Final EIS to remove a water storage tank visible from The Santa Fe Opera and to avoid visual impacts as much as possible.

Decision and Rationale for the Decision

The Secretary's decision is to implement Alternative E, as summarized above and described in the Final EIS, contingent on funding availability. The Secretary's decision is based on how this alternative helps offset the effects of groundwater pumping and in consideration of how the components of this alternative avoid or minimize potential environmental impacts, while providing a reliable, firm, and safe supply of treated drinking water for distribution in the Pojoaque Basin in compliance with the Settlement Act. All practicable measures to minimize harm have been incorporated into the selected alternative. Should there be environmental effects due to changes or modifications to Alternative E that were not considered in the Final EIS, Interior will ensure that appropriate consultation and compliance is completed.

The decision to implement Alternative E is in keeping with the Department of the Interior's recognition that negotiating and implementing Indian water settlements is preferable over litigation because they provide more certainty to water users and may help reduce prolonged conflicts over water rights. Selecting and implementing Alternative E helps end the litigation over Pojoaque Basin water rights begun in 1966 (*New Mexico v. Aamodt et al.*, No. 66-cv-6639 D.N.M.) and helps meet the needs of Pueblo and non-Pueblo residents in the basin.

The Secretary is deciding to implement the preferred alternatives for the Pueblo de San Ildefonso's Rio Pojoaque Irrigation Improvement Project (Alternative RP-C), and the Pueblo of Tesuque's Rio Tesuque Channel Modification Project (Alternative RT-D), as analyzed in the EIS.

The decisions made here are based on the Final EIS filed with the U.S. Environmental Protection Agency as 20180004 and the Notice of Availability published by the U.S. Environmental Protection Agency on January 19, 2018. A Notice of Availability was also published in the *Federal Register* on January 12, 2018.

Environmental Issues and Impacts

To scope the issues and alternatives analyzed in the EIS, public open houses on the regional water system were conducted in New Mexico from February 2012 through August 2013. Key issues of public concern identified during the public scoping process are listed below, along with findings of the Final EIS impact analysis for the selected alternative (Alternative E). The Draft EIS was published in January 2017, and 4 public meetings were held. Most comments and concerns were about the proposed water tank location on the former Tesuque Flea Market property, adjacent to The Santa Fe Opera. This tank was removed from the selected alternative, partly in response to these concerns.

Surface Water and Groundwater

Indicators² were changes in flows in the Rio Grande downstream of the Otowi Bridge gage and changes in groundwater elevations. Implementing Alternative E will, over time, reduce

² An indicator is a means of describing or quantifying environmental effects to a resource or one of its important components.

groundwater pumping in the Pojoaque Basin and beneficially increase base flows in surface waters. Flows in the Rio Grande below the Otowi Bridge will not be measurably affected on an average annual basis.

Water Quality

Indicators were contaminant levels in drinking water and conditions of Clean Water Act Sections 401, 402, and 404 permits. Implementing Alternative E will supply safe drinking water to the users and will alleviate potential health and safety issues associated with individual water systems. Water quality is expected to improve under the selected alternative. However, water quality impacts may occur in a reach near and just below the collection point. There is the potential for legacy contamination and forest/range fires to influence runoff and sediment transport, which affect water quality.

Air Quality

Indicators were emissions of particulate matter (PM₁₀³ and PM_{2.5}⁴) from ground disturbance and fuel use. During construction, short-term degradation of air quality will occur due to generation of fugitive dust from surface-disturbing activities. Vehicles, heavy trucks and construction equipment powered by gasoline and diesel engines will generate carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic compounds. These emissions will be temporary, short-term and limited to the immediate area around the construction site. Air pollutants and greenhouse gas emissions associated with operating the regional water system facilities will be less than emissions from construction; however, they will occur over the lifetime of the regional water system.

Wetlands and Floodplains

Indicators were disturbance of jurisdictional wetlands and construction in or changes to floodplains. Alternative E has been designed to avoid most wetlands by boring under arroyos and rerouting pipelines and facilities; however, approximately 1.26 acres (or approximately 57 cottonwood trees) may be disturbed. In addition, 0.98 acres (approximately 44 additional cottonwoods) may be affected by drawdown. Some constructed facilities could be placed within the 100-year floodplain; for example, the caissons associated with the horizontal radial well collectors could have limited impacts on the 100-year floodplain.

Vegetation and Wildlife

Indicators were the acres of aquatic or riparian vegetation communities that could be disturbed and the resulting effects on wildlife. About 14 acres of aquatic habitat will be temporarily affected by construction of Alternative E, but less than 1 acre of aquatic habitat will be permanently lost. Construction of Alternative E will create short-term disturbances of about 700 acres of terrestrial habitat in communities associated with special status plant species, but only 4

³ Particulate matter with an aerodynamic diameter of 10 microns or less.

⁴ Particulate matter with an aerodynamic diameter of 2.5 microns or less.

acres of grasslands and 13 acres of piñon-juniper vegetation will be permanently damaged or lost.

Federally Listed Threatened and Endangered Species

Indicators were adverse effects to listed species or designated critical habitat. In compliance with the Endangered Species Act, Reclamation prepared a biological assessment and consulted with the Service on effects of Alternative E plus connected actions. The Service concurred with the finding that the regional water system and connected actions “may affect, [but are] not likely to adversely affect” the southwestern willow flycatcher and there would be “no effect” on the western distinct population of yellow-billed cuckoo, Mexican spotted owl, New Mexico jumping mouse, and Rio Grande silvery minnow.

Cultural Resources

Indicators were changes in access to Indian sacred sites and the number of historic properties adversely affected. Alternative E will adversely impact one or more historic properties. A Programmatic Agreement that identifies ways to avoid, minimize, or mitigate adverse effects has been signed by the Pueblos, State and Tribal Historic Preservation Officers, the Advisory Council on Historic Preservation, and Reclamation. Reclamation will continue to consult with the Pueblos to ensure there are no effects to Indian sacred sites.

Indian Trust Assets

Indicators were adverse impacts to Indian trust assets. Throughout the EIS process, the BIA and Settlement Pueblos were consulted regarding impacts to trust lands and water rights. The Settlement Pueblos and the United States are satisfied with the proposed use of these resources for the regional water system.

Land Use

Indicators were acres or miles of rights-of-way (ROW) needed for implementation where ownership or uses would be permanently changed. All real property needed to construct and operate the regional water system will be acquired by Reclamation, the BIA, or Santa Fe County consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable state law and requirements. Reclamation, the BIA, and Santa Fe County will provide relocation assistance to any displaced residents and businesses, as needed.

Construction will result in short-term, temporary conflicts with existing land uses, but Alternative E requires the fewest acres or miles of ROW of the action alternatives. However, the Bishop’s Lodge RKM pumping plant and storage tank will be within approximately 250 feet of residences. Emplacing and operating the pumping plants and tanks and managing the supporting property will result in short- and long-term vehicular traffic. This could conflict with future residential and, to a lesser extent, commercial and public uses in the vicinity.

Socioeconomic Resources

Indicators were the costs to individual regional water system users or changes in property values. Costs for connecting to the water system and paying Santa Fe County rates may increase, decrease, or stay the same for residents. Costs for Settlement Pueblo residents will depend on how much of the costs for connections will be passed along to the residents.

Changes to property values and related property taxes from connecting to the regional water system remain unclear, but there will be temporary and permanent easements required on private lands for constructing and operating the regional water system. Property owners will be compensated for any impacts to property values, in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or related state laws and requirements. Reimbursement will be based on appraisal and fair market value estimates.

Visual Resources

Indicators were contrasts between current and future features of the landscape from key observation points. The landscape will be changed in the short-term by construction activities and ground disturbance. In the long-term, the aboveground regional water system facilities will introduce human-made features that contrast with the form, line, color, and texture of the landscape.

Comments Received on the Final EIS

Two comment letters were received on the Final EIS. The Santa Fe Opera submitted a letter expressing thanks for the removal of the proposed Flea Market storage tank from Alternative E. The U.S. Environmental Protection Agency, Region 6, submitted a letter stating that the Final EIS addressed the agency's comments on the Draft EIS by including additional information and analysis.

Implementing the Decision and Environmental Commitments

The Secretary's decision is to implement Alternative E, as summarized above and described in the Final EIS, contingent on funding availability. The authorized ceiling is insufficient to pay the entire estimated cost of the selected alternative. Considering this funding shortfall, the Secretary has initiated negotiations with the parties to the Cost-Sharing and System Integration Agreement, as required by Section 611(g) of the Settlement Act, to seek an agreement regarding non-Federal contributions to ensure that the Regional Water System can be completed as required by Section 623(e).

Implementation of construction of the project will be completed in phases, contingent upon appropriations and non-Federal contributions, as mandated in the Settlement Act, Section 617. Construction of the project using this approach will provide the flexibility to modify the design over time, while complying with Section 611(b) of the Settlement Act, which requires a final project design for the regional water system to be completed within 90 days of signing this Record of Decision.

The Secretary also directs BIA, in consultation with the Settlement Pueblos, to issue right-of-way (ROW) easements and permits on Tribal lands for the construction, operation, and maintenance of the regional water system and connected actions. According to the Settlement Act (Section 611(c)(1)) and Cost Sharing and System Integration Agreement (Section 2.3), Pueblos will grant easements and ROWs as necessary for the construction of the regional water system at no cost. This includes the Rio Pojoaque irrigation improvement project and the Rio Tesuque channel modification project.

Further, as provided for in the Settlement Act, Section 615(d)(7)(A)(ii), the Secretary approves the use of funds by the Pueblo de San Ildefonso to implement the preferred alternative (Alternative RP-C) for the Rio Pojoaque Irrigation Improvement Project, and by the Pueblo of Tesuque to implement the preferred alternative (Alternative RT-D) for the Rio Tesuque Channel Modification Project.

The following is a summary of mitigation measures and monitoring commitments for the Pojoaque Basin regional water system and connected actions as described in the Final EIS. The mitigation measures and commitments are listed by environmental topic in the Final EIS.

Surface Water and Groundwater. The Regional Water Authority will manage its water rights portfolio commensurate with applicable permits and hence will ensure no impacts on the Rio Grande Compact (flows below Otowi gage). Pipelines will be buried to prevent potential exposure and be encased in controlled low-strength material where necessary. No other surface water mitigation measures are required to implement Alternative E.

Water Quality. Reclamation, the BIA, and Santa Fe County will ensure that construction and operation of the regional water system complies with the Clean Water Act and the Safe Drinking Water Act. During construction, Reclamation will ensure that its contractors design and implement a storm water pollution prevention plan (SWPPP) with best management practices to avoid or minimize impacts to water quality. During installation of pipeline crossings in arroyos, mitigation measures will be implemented to decrease long-term arroyo erosion. Project construction contractors will be required to implement measures to reduce the potential for inadvertent releases of drilling fluid.

Geology and Soils. Construction disturbance will be limited to the smallest and narrowest possible footprint and construction contractors will be required to implement best management practices to avoid or minimize environmental impacts to soils. Permanent facilities will be sited on stable soils and proper construction techniques will be implemented on expansive clays or other less stable or corrosive substrates. Where feasible, disturbed ground will be reclaimed or returned to pre-disturbance conditions, including revegetating, stabilizing exposed soils, and contouring the land to minimize potential short- and long-term erosion.

Air Quality and Traffic. Reclamation will ensure that its contractors implement standard construction and dust abatement best management practices to minimize air quality impacts from construction. The selected construction contractors will be required to submit a construction emissions mitigation plan to Reclamation, who will submit the plan to Santa Fe County and the Settlement Pueblos for concurrence. The plan will include fugitive dust source controls, mobile and stationary source controls, and administrative controls. Contractors will also be required to

develop and implement a construction traffic and parking management plan to maintain traffic flow, minimize vehicle trips, and ensure the safety of the public and project-related personnel.

Vegetation and Wildlife, Including Aquatic Resources. A revegetation program will be implemented to avoid and/or replace cottonwood trees, riparian plants, and other native vegetation removed by construction, as necessary. Best management practices will be implemented to reduce the spread of noxious weeds, such as reseeding disturbed areas with an appropriate native seed mix as soon as possible after construction, monitoring disturbed sites to help establish desirable species, and washing equipment before it is brought onsite, mapping or flagging special status plant species for protection, and minimizing impacts on riparian vegetation to the extent practicable. Reclamation and its contractors will design and implement a monitoring plan to avoid affecting nesting birds. Reclamation will coordinate with the Service to determine whether preconstruction nest surveys are required before construction and if a take permit is required in compliance with the Migratory Bird Treaty Act. Work areas will be restricted to the smallest and narrowest possible footprint, with 100-foot buffers of no construction around any active nest sites. During construction, fish salvage and silt fencing will be implemented as needed by Reclamation biologists or contractors. In-water work will be conducted during periods of no or low flow to minimize impacts to fish and other aquatic resources.

Wetlands, Floodplains. All work areas will be restricted to the smallest and narrowest possible footprint in wetlands and floodplains. Reclamation will continue to consult with the USACE to avoid or mitigate impacts to jurisdictional wetlands. Reclamation will continue to work with the USACE on Section 404/401 permitting and compliance. Impacts of construction in floodplains will be mitigated through scheduling construction during low-flow periods, when the historical chance of floods is reduced.

Federally Listed Threatened and Endangered Species. Reclamation, in consultation with the Service, will survey for the presence of southwestern willow flycatchers within the project area and minimize impacts to riparian vegetation used by these birds and other migratory birds. Mitigation will also include limiting work areas around willow flycatcher habitat to the smallest and narrowest footprint, with a 100-foot no-construction buffer around any active nests, replacing cottonwood trees and other native vegetation, and following best management practices to reduce the spread of noxious weeds.

Cultural Resources. Reclamation will complete the process of compliance with the National Historic Preservation Act of 1966 and 36 CFR, Part 800 by seeking agreement on ways to avoid, reduce, minimize, or mitigate the adverse effects of the undertaking on historic properties in a way that the consulting parties agree best serves the public and tribal interests.

Indian Trust Assets. No mitigation or compensation is required to implement the selected alternative.

Land Use and Access. Should persons or households be displaced because of implementing the selected alternative, Reclamation and the BIA will provide temporary relocation compensation if needed, in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Reclamation will acquire and pay market value for easements across private

property where needed to construct Pueblo water facilities. Where additional land interests must be obtained to provide water to county customers, Santa Fe County is expected to acquire the necessary interests in land for construction, operations, and maintenance.

Visual Resources. The visual landscape would be adversely affected by the presence of aboveground regional water system features. Reclamation avoided the most significant visual effect identified during the public comment period—the proposed placement of a water storage tank in the view-shed of The Santa Fe Opera. This tank was removed from Alternative E in the Final EIS. Additional siting decisions will be made to try to avoid visual impacts. Visual impacts caused by construction will be mitigated by surface restoration, including revegetation.

Noise. The noise from construction will be reduced by requiring use of mufflers and maintenance of equipment; however, sensitive noise receptors such as households will be adversely affected by construction noise.

Solid and Hazardous Materials. The greatest concern is the storage of sodium hypochlorite next to short-term storage tanks and at the water treatment plant. Reclamation will ensure that its contractors comply with the requirements of the Emergency Planning and Community Right to Know Act for this regulated substance. Prior to acquisition of commercial or industrial real estate, Reclamation or the BIA will ensure that all appropriate inquiries are conducted. Impacts on the health and safety of construction workers and the public at construction sites from the risks associated with fuel and chemical spills or hazardous materials used during construction will be avoided or minimized by implementing regulatory requirements and best management practices.

No other mitigation or monitoring measures have been identified.

APPENDIX E
SETTLEMENT AGREEMENT NAMBE PUEBLO

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

AGREEMENT

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

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

A. "Access Point" means the point identified on the County's survey conducted in cooperation with the Pueblo at which lawful ingress and egress to Private Land can occur. Access Points that serve two or more subdivided lots on Private Land are called "Common Access Points."

B. "Bureau of Indian Affairs" or "BIA" means the agency within the United States Department of the Interior that is responsible for carrying out, administering and overseeing the programs, functions, services and activities available to Federally-recognized Indian Tribes, including the Pueblo.

C. "BIA Road ROWs" means long-term rights-of-way for each and every BIA Road on Pueblo Lands.

D. "BIA Road" means an existing or proposed public road listed on the National Tribal Transportation Facility Inventory that is, or will be, owned by the BIA as a Public Authority and for which the BIA has or plans to obtain a legal right-of-way. 25 C.F.R. § 170.5.

E. "Construction" means any road work activities that are not considered Maintenance as defined below.

F. "Contributed Funds Agreement" or "CFA" means the funding agreement to be entered into between the Secretary and the County pursuant to Sec. 611(d)(1) of the Aamodt Litigation Settlement Act, Pub. L. 111-291. The CFA will provide for the County's contribution of the non-Federal share of the costs of constructing the Regional Water System in accordance with the August 27, 2009 Cost Sharing and System Integration Agreement.

G. "County-Maintained Roads" or "CMR" means the following already existing Public Roads, whether on Pueblo Land or Private Land, within the exterior boundaries of the Pueblo: CMR 84E, CMR 84F, CMR 84G, CMR 106, CMR 113, CMR 113 South, CMR 113A, CMR 113B, CMR 115, CMR 117 South, CMR 117 North, CMR 119 South, and CMR 119 North. The CMRs are depicted on Exhibit A to this Agreement.

H. "Effective Date" means the date of last signature.

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

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

K. “National Tribal Transportation Facility Inventory” or “NTTFI” means the comprehensive national inventory maintained by the Secretary of tribal transportation facilities that are eligible for assistance under the Tribal Transportation program. 25 U.S.C. § 202 (b)(1).

L. “Part 169” means 25 C.F.R. Part 169 – Rights-of-Way on Indian Land.

M. “Part 170” means 25 C.F.R. Part 170 – Tribal Transportation Program.

N. “Private Land” means the land located within the exterior boundaries of the Pueblo that the United States patented to private claimants or to which Indian Title has otherwise been duly extinguished. Discrete areas of Private Land may consist of one lot under common ownership or several lots under different ownership.

O. “Public Authority” means a Federal, State, county, town, or township, Indian Tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free transportation facilities. 23 U.S.C. § 101 (a)(21).

P. “Public Road” is a road open to public travel, and not subject to any type of tolls or fees collected by the Pueblo. 23 U.S.C. § 101 (a)(22).

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

R. “Regional Water System” means the Pojoaque Basin Regional Water System the Bureau of Reclamation will construct pursuant to the Aamodt Litigation Settlement Act, Title VI, Aamodt Litigation Settlement Act of the Claims Resolution Act of 2010, Public Law 111-291, 124 Stat. 3064, 3134-3156.

S. “Road Maintenance Agreement” or “RMA” means an agreement among the BIA, the Pueblo and the County authorizing the County to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the parties to the RMA from time-to-time.

T. “ROW” means right-of-way.

U. “Secretary” means the Secretary of the Interior or the Secretary’s authorized representative.

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

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

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

A. The County agrees to pay the Pueblo a one-time, lump sum of One Million dollars (\$1,000,000.00) ("Settlement Amount"), if and when the Secretary grants all of the ROWs to the BIA across Pueblo Land for each CMR. The purpose of the Settlement Amount is to: (1) provide compensation to the Pueblo for the Pueblo's consent to the grant of such ROWs to the BIA that is fair and reasonable under the circumstances; and (2) finally settle and resolve all Trespass Damages.

B. Within thirty (30) days after execution of this Agreement, the Parties shall select an Escrow Agent. Within 60 days after selection of the Escrow Agent, the County shall deposit the Settlement Amount with the Escrow Agent. The Escrow Agent shall hold the Settlement Amount until it receives notice from the Department that the Secretary will grant the Road ROWs to the BIA pursuant to Section 3(C)(5), or until the Escrow Agent receives notice of termination of this Agreement from the County or the Pueblo pursuant to Sections 13(B)(2) or 13(C)(2).

1. In the event that the Department gives the Escrow Agent notice that the Secretary will grant the ROWs, the Escrow Agent shall transfer the Settlement Amount directly to the Pueblo according to the instructions to be provided by the Pueblo's Governor.

2. In the event that the Escrow Agent receives notice of termination of this Agreement, the Escrow Agent shall transfer the Settlement Amount to the County according to the instructions provided by the County Manager.

C. As set forth by Tribal Resolutions attached hereto as Exhibit B, the Pueblo:

1. Agrees that the Settlement Amount is satisfactory to the Pueblo as compensation for the Road ROWs and any Trespass Damages relating to past use of the CMRs;

2. Waives valuation of the Road ROWs;

3. Represents that it has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest; and

4. Provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 19(E).

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

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

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

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

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

1. Upon the County's payment pursuant to Section 2(D) above, the Pueblo will provide to the County any and all Precision survey data related to the CMRs in the possession of the Pueblo or Precision.

2. As soon as practicable after the Effective Date, the Pueblo will provide to the County such environmental, archaeological, cultural or other information, data, and reports as may be pertinent under Part 169 and that is within the possession of the Pueblo or its agents.

3. Cooperate with and assist the County as may reasonably be necessary to facilitate the County's performance of its obligations under this Agreement.

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

5. Timely consider and provide written comment on the County's submission of draft ROW applications and related documents.

6. Timely submit proposed ROW applications approved by Pueblo staff to the Council for consideration.

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. *CMR ROWs--General.*

A. The County shall promptly complete the ROWs applications for the CMRs on Pueblo Lands and submit them to the Pueblo for review and comment. After the County and the Pueblo agree on the contents of the application(s) for a given CMR on Pueblo Land, the Parties shall follow the process set out in Section 3(A)(3) above.

B. Each CMR ROW that traverses Pueblo Land and that complies with Part 169 shall be for a proposed term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years, and the Pueblo shall consent to such initial and automatic renewal terms by resolution of its Council or in such other form as the Secretary may require. The width of the CMR ROWs on Pueblo Land shall be from the centerline of the CMR to the boundary of the Private Land, so long as the width does not exceed twenty five (25) feet on either side of the centerline of the CMR.

C. For those portions of a CMR that traverse Private Lands, the County, in consultation with the Pueblo and the BIA, shall convey its existing ROWs to the BIA under the laws of the State of New Mexico for a term of ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years. The County shall assign its existing ROWs over Private Lands to BIA no later than sixty (60) days after the Secretary grants all of the CMR ROWs across Pueblo Land for a given road. The effective date of the County-granted ROWs shall be the same as the Secretary-granted ROWs for a given CMR. In the event an existing County ROW is challenged in State or Federal court, the County shall defend the ROWs and its conveyance to BIA, and, if necessary condemn the necessary rights, subject to Section 3(F).

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

Section 5. *ROW Application and Approval.*

A. The Pueblo and the County agree that federal law, including 25 U.S.C. §§ 323-328 and Part 169, controls the application, granting and administration of ROWs on Pueblo Lands. Nothing in this Agreement shall be construed to restrict the authority of the Secretary, or the Pueblo under applicable laws or regulations, including but not limited to, laws and regulations applicable to the review and grant of ROWs by the Secretary. However, the Department represents that nothing in this Agreement is inconsistent with the applicable federal laws and regulations.

B. In order to expedite the ROW development, submission and review process, the Pueblo and the County agree to use ROW templates to be provided by the BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW applications. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW across Pueblo Land by the Secretary.

C. For each CMR ROW application, the County shall develop an accurate legal description of the ROW, including its boundaries, Access Points, and a map of definite location of the ROW. Additionally, the County shall place survey caps at agreed-upon locations five hundred (500) feet

along both sides of the ROWs. The County shall be responsible for conducting any surveys necessary to support application to the BIA for the ROWs including the costs of such surveys.

D. The Pueblo and the County shall cooperate with respect to the preparation and filing of documentation necessary for the Secretary to grant ROWs for the CMRs (across Pueblo Land). The Pueblo agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA in support of the County's application(s) subject to any limitations contained herein. The Pueblo shall pay no additional costs related to any surveys.

E. As soon as practicable after the Pueblo and County agree on the contents of the CMR ROW applications, the Pueblo shall submit the applications to the BIA Southwest Regional Road Engineer for initial review, execution and forwarding for the Secretary's review. The documentation shall comply with the requirements of Part 169, including but not limited to, identifying the Pueblo Lands affected by the ROWs, maps of definite location for each and every ROW, and the ownership of permanent improvements associated with the ROWs.

F. All CMR ROWs shall be for the primary purpose of maintaining a BIA Road, with Construction identified as a secondary purpose.

G. The Parties agree that the insurance provided by the County under Section 11(G) satisfies the requirement of 25 C.F.R. § 169.103. In addition, the Pueblo shall request and the BIA shall agree to a waiver of the requirement that a bond, insurance, or alternative form of security be submitted with the ROW application.

H. The Secretary shall accept the Pueblo's determinations as reflected in this Agreement and the Tribal Resolutions attached as Exhibit B, including: (1) that payment of the Settlement Amount constitutes adequate compensation to compensate it for Trespass Damages; (2) that valuation is waived; (3) that accepting such agreed-upon compensation and waiving valuation is in the Pueblo's best interest; and (4) that the Pueblo provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 19(E).

I. The Department shall cause the granted ROWs to be recorded with the BIA's Land Title and Records Office as expeditiously as possible.

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

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

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

Section 9. *Interim Access.*

A. The Pueblo agrees to provide legal access to all Private Land through a grant of temporary access from either an Access Point or Common Access Point off of a Public Road for a maximum term of one (1) year or until the ROWs are granted, whichever is first. This grant of temporary access does not, and shall not, authorize access over Pueblo Land from any unauthorized roads.

Section 10. *Gap and Other Access Issues.*

- A. Each lot on Private Land shall be paired with one surveyed Access Point; *provided*, however, that in some cases the same Common Access Point may be paired with multiple lots on Private Land; and *provided further* that nothing in this Agreement shall be construed as negating or affecting in any way access points, rights of access, or any other existing private property rights, including private property rights adjudicated under the procedures established by the Pueblo Lands Board Act.
- B. For any Gaps, if any, that extend beyond twenty-five (25) feet on either side of the centerline of the CMR, the Pueblo will provide a process for private residents to obtain a ROW pursuant to 25 CFR Part 169. The Pueblo agrees that such Gap ROWs shall be for a term of up to thirty five (35) years for a nominal fee.
- C. The County shall require access to be solely through legal Access Points for future development on non-Pueblo land.

Section 11. *Road Maintenance and Construction.*

A. The County shall maintain the CMRs at the County's expense pursuant to an RMA for the entire term of the ROWs granted in accordance with this Agreement. Between the Effective

Date and the date of the grant of the ROWs in accordance with this Agreement, the County shall continue to maintain the CMRs.

B. Within sixty (60) days of the granting of the ROWs by the Secretary, the Parties shall execute a Road Maintenance Agreement authorizing the County, in consultation with the Pueblo, to perform Maintenance and such other transportation-related activities on the BIA Roads as may be agreed in writing among the Parties from time-to-time. The RMA may also permit the County to transfer to the BIA an agreed-upon amount of funds to adequately maintain the BIA Roads. The Parties acknowledge, and the RMA shall reflect, that "Adequate Maintenance" means maintaining each and every one of the BIA Roads at the existing Level of Service or above for each road as agreed upon by the Parties on or before the date of execution of the RMA.

C. Nothing in the RMA or this Agreement shall be construed to restrict or otherwise interfere with the BIA's authority to carry out, oversee, inspect, enforce or approve Maintenance, other transportation-related activities, or any other lawful activity on the BIA Roads.

D. For any Maintenance or other activities carried out on the ROWs by County contractors, the County shall require its contractors to provide performance bonds and have insurance covering all aspects of the Maintenance or Construction activities to ensure that any such activities, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.

E. The County shall not assign the RMA without the consent of both the Pueblo and the BIA.

F. The County does not currently have plans to request any Construction activities to improve any of the BIA Roads. In the event the County plans to propose Construction within any ROW, including but not limited to replacing an earthen-driving surface with an asphalt surface, the provisions of the ROW grant and the RMA shall apply.

G. The County agrees to maintain throughout the term of the ROWs general liability insurance to cover its maintenance of the BIA Roads, which shall be subject to approval in amount of coverage and form by the Office of the Solicitor, Southwest Region. The United States, the BIA and the Pueblo shall be named as "additional insureds" under such policy

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

H. The Pueblo shall not tax any current or future road improvements within the ROWs; provided, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance

with applicable law on any contractors or subcontractors conducting the Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROWs, nor shall this Agreement affect the application of any other Pueblo laws and ordinances within the ROWs; provided, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the BIA.

I. In no event shall the County, BIA or Pueblo be responsible for maintaining the Gaps.

Section 12. *Utilities.*

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

B. The Parties acknowledge that any ROW granted pursuant to this Agreement shall not authorize the installation of utilities within the ROWs or any other uses, unless specifically otherwise provided in that ROW instrument.

C. The County will not issue road cut permits for installation of utilities or other purposes for any BIA Road.

Section 13. *Contingencies.*

A. No ROW applications shall be submitted to either the Southwest Regional Road Engineer for initial review and forwarding to the Secretary, or by the County to the Secretary, for review until the Contributed Funds Agreement for construction of the Regional Water System is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.

B. In the event that the County and the Bureau of Reclamation do not enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply:

1. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 20; provided, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting due execution by the Bureau of Reclamation.

2. The Pueblo shall have sixty (60) days from the date of such notice to terminate this Agreement by giving the County notice of such termination, which notice shall be given in accordance with Section 20. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.

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

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

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

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

Section 14. *Release of Claims.*

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

B. *Release of Claims Against the United States and the Department.* If the Secretary approves the ROWs for the CMRs, then on the day that the last such ROW is granted the Pueblo and the County agree to irrevocably and forever release and discharge the United States and the Department, former and current Department employees from any and all past surface trespass claims, known or unknown, at law or in equity related to the CMRs from the beginning of time

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

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

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

A. Upon the expiration or early termination of this Agreement, the Parties expressly reserve all rights and claims.

B. In the event a Party terminates this Agreement pursuant to Section 13 and there is subsequent litigation concerning the CMRs or the BIA Roads, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.

C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMRs.

Section 16. *Governing Law.*

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

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

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

This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by all Parties; (c) shall not be construed against any Party as the

drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' successors and assigns.

Section 18. *Representations.*

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

Section 19. *Dispute Resolution.*

A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one Party notifies the other of the dispute in writing.

B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the Department and the County shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.

C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 14, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 C.F.R. Part 2, 25 C.F.R. Part 169, the Administrative Procedure Act, or any other applicable Federal law.

D. If after the Pueblo and the County fail to resolve the dispute by mediation and there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be brought before a court of competent jurisdiction. In the absence of the Department or the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.

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

Section 20. *Notices.*

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

To The County:

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

With a Copy To:

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

To the Pueblo of Nambe:

Governor Phillip A. Perez
15A NP 102 West
Santa Fe, New Mexico 87506
Fax: 505.455.4457

With A Copy To:

Alice E. Walker
McElroy, Meyer, Walker & Condon, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Fax: (303) 444-3490

To the Department of the Interior:

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

With A Copy To:

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

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

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

Section 21. *No Third Party Beneficiary Rights.*

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

Section 22. *Private Claims Unaffected.*

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

Section 23. *Contingency of Federal Appropriations.*

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

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

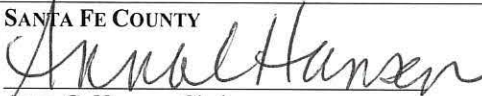
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PUEBLO OF NAMBE


Phillip A. Perez, Governor

2/26/2018
Date

SANTA FE COUNTY


Anna C. Hansen, Chair
Board of County Commissioners

2/15/2018
Date

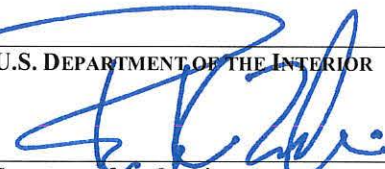
ATTEST:


Geraldine Salazar, County Clerk

Approved as to Form:

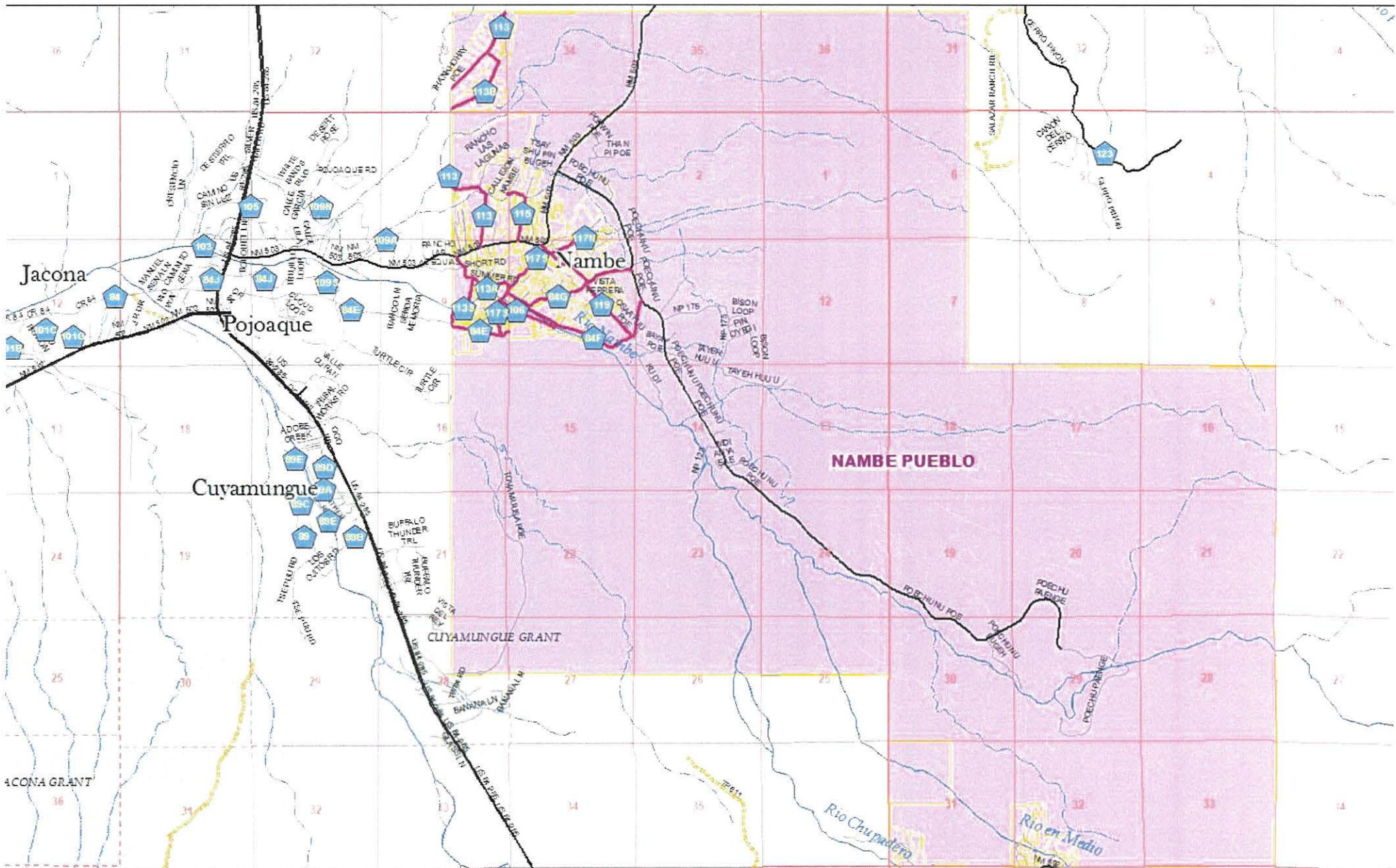

R. Bruce Frederick, County Attorney

U.S. DEPARTMENT OF THE INTERIOR


Secretary of the Interior

APR 12 2018

Date



- County Maintained Roads
- Major Roads
- Minor Roads
- Dirt 2-Track
- Township & Range Lines
- Township & Range Lines - Projected
- Section Lines
- Section Lines - Projected
- Non-PLSS Boundary Lines
- Major Streams and Arroyos
- Minor Streams and Arroyos
- Parcels
- Nambe Pueblo

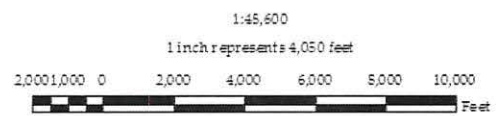


EXHIBIT A

North American Vertical Datum 1955

This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
Users are solely responsible for
confirming data accuracy.





15A NP102 WEST* SANTA FE* NEW MEXICO 87506*PHONE 505-455-2036* FAX: 505-455-2038

RESOLUTION NP2017-40

A RESOLUTION APPROVING THE NEGOTIATED SETTLEMENT WITH SANTA FE COUNTY CONCERNING COUNTY MAINTAINED ROADS WITHIN THE EXTERIOR BOUNDARIES OF NAMBE PUEBLO

- WHEREAS,** the Pueblo of Nambé (“Pueblo”) is a federally recognized Indian Tribe which accepted the Indian Reorganization Act of June 18, 1934 (25 U.S.C. §§ 461 *et seq.*) and remains organized without a written constitution; and
- WHEREAS,** the Nambé Pueblo Tribal Council (“Tribal Council”) is the legislative authority and in the exercise of its tribal sovereignty remains organized in accordance with Pueblo tradition for all its people; and
- WHEREAS,** the Tribal Council is vested with all powers, authority, and responsibility for the governmental activities of the Pueblo and under this capacity has full power and authority to act on behalf of the Tribe; and
- WHEREAS,** the County of Santa Fe (“County”) seeks a right-of-way across the following roads located within the Pueblo of Nambé which the County has maintained for public use but without Pueblo consent: CR 84E, CR 84F, CR 84G, CR 106, CR 113 South, CR 113A, CR 113B, CR 115, CR 117 South, CR 117 North, CR 119 South, and CR 119 North; and
- WHEREAS,** most of the roads at issue have been in existence since at least 1935; and
- WHEREAS,** the *Herrera* decree allows legal ingress and egress to individually named private claims from roads in existence since 1935; and
- WHEREAS,** all of the County-maintained roads have been included on the Bureau of Indian Affairs’ (“BIA”) Roads Inventory since at least 2007; and
- WHEREAS,** all roads included in the BIA Roads Inventory are required to have rights-of-way conveyed by the Pueblo to the United States; and
- WHEREAS,** since the roads at issue are already included in the BIA Roads Inventory, they are considered public roads upon which anyone can travel freely; and

WHEREAS, the Pueblo, the County and the United States have negotiated a settlement which resolves past trespass claims and provides for future access for continued County maintenance of the roads at issue; and

WHEREAS, judicial resolution of the issues regarding the County-maintained roads would be time-consuming, expensive, and divisive, and could adversely affect implementation of the *Aamodt* Settlement Agreement and Settlement Act;

WHEREAS, the road miles at issue total approximately 10 miles; and

WHEREAS, all of the roads will remain on the BIA Roads Inventory as BIA owned roads; and

WHEREAS, BIA and County will enter into an agreement for the maintenance of said roads under which the County will continue to maintain said roads; and

WHEREAS, the County will compensate the Pueblo for past trespass and to settle all issues concerning the roads at issue; and

WHEREAS, the Pueblo will continue to receive funds under TTIP; and

WHEREAS, the Tribal Council, via Resolution No. NP2012-29, has determined that full implementation of the *Aamodt* Settlement Agreement is in the best interest of the Pueblo and its members.

NOW, THEREFORE, BE IT RESOLVED THAT, the Nambé Pueblo Tribal Council finds it in the best interest of the Pueblo to resolve the long standing dispute regarding County-maintained roads within the exterior boundaries of the Pueblo of Nambé.

BE IT FURTHER RESOLVED THAT, the Governor has negotiated a settlement with Santa Fe County whereby:

- (1) the Pueblo of Nambe will grant to the United States Department of Interior, Bureau of Indian Affairs a right-of-way for the roads at issue for a period of ninety-nine (99) years with a right of renewal for another ninety-nine (99) years, and
- (2) The County agrees to pay the Pueblo of Nambé a one-time, lump sum of One Million Dollars (\$1,000,000.00) which constitutes compensation that is fair and reasonable under the circumstances for any claims for alleged past trespass relative solely to the County-maintained roads.

BE IF FURTHER RESOVLED THAT, the Nambé Pueblo Tribal Council hereby authorizes and approves the negotiated settlement with Santa Fe County concerning County-maintained roads.

BE IT FURHTER RESOLVED THAT, the Nambé Pueblo Tribal Council hereby provides a waiver of sovereign immunity limited to interpretation or enforcement of the executed Settlement Agreement brought in a court of competent jurisdiction.

BE IT FINALLY RESOVLED THAT, the Nambé Pueblo Tribal Council authorizes the Governor, or his designee, to take such actions as deemed necessary to carry out the intent and purpose of this resolution.

CERTIFICATION

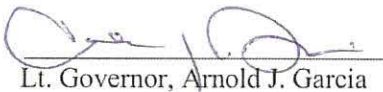
The foregoing resolution was considered and adopted at a duly called meeting of the Nambé Pueblo Tribal Council on October 30, 2017, at which time a quorum was present with 6 in favor and 1 opposed and 1 abstaining and 1 absent.

EXECUTIVE BRANCH

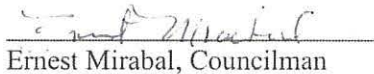
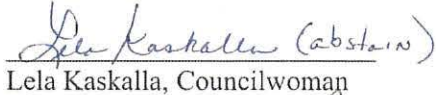

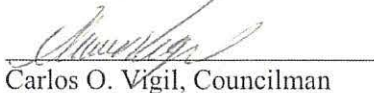
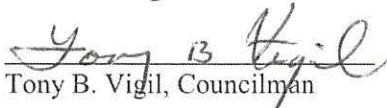
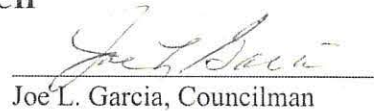
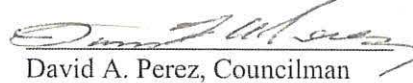
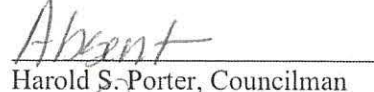
ATTEST:

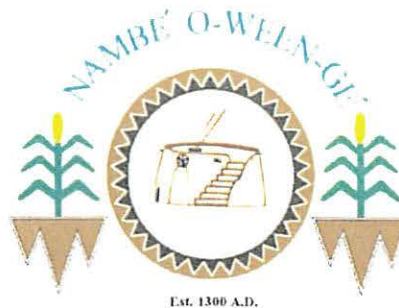


Secretary, Christine Brock


Governor, Phillip A. Perez
Lt. Governor, Arnold J. Garcia

TRIBAL COUNCIL LEGISLATIVE BRANCH


Ernest Mirabal, Councilman
Lela Kaskalla, Councilwoman
Edward M. Perez, Councilman
Carlos O. Vigil, Councilman
Tony B. Vigil, Councilman
Joe L. Garcia, Councilman
David A. Perez, Councilman
Harold S. Porter, Councilman *oppose*
Dennis F. Vigil, Councilman



OFFICE OF THE GOVERNOR

15A NP102 WEST* NAMBE PUEBLO* NEW MEXICO 87506*PHONE 505-455-2036* FAX: 505-455-2038

RESOLUTION NP2018-02

A RESOLUTION PROVIDING LEGAL INGRESS AND EGRESS ACCESS POINTS TO NON-TRIBAL RESIDENTS

- WHEREAS,** the Pueblo of Nambé ("Pueblo") is a federally recognized Indian Tribe which accepted the Indian Reorganization Act of June 18, 1934 (25 U.S.C. §§ 461 *et seq.*) and remains organized without a written constitution; and
- WHEREAS,** the Nambé Pueblo Tribal Council ("Tribal Council") is the legislative authority and in the exercise of its tribal sovereignty remains organized in accordance with Pueblo tradition for all its people; and
- WHEREAS,** the Tribal Council is vested with all powers, authority, and responsibility for the governmental activities of the Pueblo and under this capacity has full power and authority to act on behalf of the Pueblo; and
- WHEREAS,** the Pueblo and Santa Fe County (the "County") negotiated a settlement agreement (the "Agreement") concerning County Maintained Roads ("CMRs") within the exterior boundaries of the Pueblo on or about October 30, 2017; and
- WHEREAS,** the Tribal Council via Resolution NP2017-40 approved and accepted said Agreement; and
- WHEREAS,** the only outstanding issue concerns legal ingress and egress to private parcels off of the roads included on the Bureau of Indian Affairs ("BIA") Roads Inventory; and
- WHEREAS,** the Tribal Council finds it in the best interest to resolve the legal ingress and egress issue via the rights-of-way that the Pueblo will convey to the United States for all roads included on BIA Roads Inventory; and
- WHEREAS,** the BIA prefers a 50 foot right-of-way for incorporation of two twelve foot lanes and drainage area for bar ditches and water conveyance; and

WHEREAS, a fifty (50) foot right-of-way, where feasible, on the BIA Roads would resolve most if not all of the legal ingress and egress issues for private parcel owners within the exterior boundaries of the Pueblo; and

WHEREAS, legal points of ingress and egress will be identified in the survey to be conducted by Santa Fe County as part of its obligations under the Agreement; and

WHEREAS, private parcel owners will only be allowed to use the identified access points for ingress and egress to their respective parcels; and

WHEREAS, the Tribal Council realizes that the Santa Fe County survey will not be complete for at least one year after the date the Agreement becomes effective; and

WHEREAS, the Tribal Council will allow legal ingress and egress for a period not to exceed one year or until the Santa Fe County survey is complete, whichever is shorter, in the interim; and

WHEREAS, the Tribal Council finds it in the best interest of the Pueblo and local residents to finally resolve legal ingress and egress issues within the exterior boundaries of Nambe Pueblo.

NOW, THEREFORE, BE IT RESOLVED THAT, the Nambé Pueblo Tribal Council hereby agrees to provide a fifty (50) foot right-of-way, where feasible, to the United States for all roads included on the BIA Inventory and further identified in Resolution NP2017-40.

BE IT FURTHER RESOLVED THAT, the Nambe Pueblo Tribal Council hereby requires that Santa Fe County identify points of ingress and egress, with and upon consultation with the Pueblo, on said survey.

BE IT FURTHER RESOLVED THAT, any new points of ingress or egress by any private parcel owner shall need to be approved by the Bureau of Indian Affairs, with and upon consultation and consent of the Pueblo of Nambé.

BE IT FURTHER RESOLVED THAT, the Tribal Council is committed to working with individuals regarding gap issues via rights-of-way agreements for a term of thirty-five (35) years that are renewable and transferable for a nominal fee.

BE IT FURTHER RESOLVED THAT, the Tribal Council hereby grants to private parcel owners legal ingress and egress for a period not to exceed one year or until such time as the Santa Fe County survey is complete and has identified legal points of ingress or egress, whichever is shorter.

BE IT FINALLY RESOLVED THAT, the Tribal Council hereby authorizes and directs the Governor, or his designee, to take such actions as deemed necessary to carry out the intent and purpose of this resolution.

CERTIFICATION

The foregoing resolution was considered and adopted at a duly called meeting of the Nambé Pueblo Tribal Council on January 17, 2018, at which time a quorum was present with 5 in favor and 1 opposed and 1 abstaining and 2 absent.

EXECUTIVE BRANCH

ATTEST:

Absent
Secretary, Christine Brock

Phillip A. Perez
Governor, Phillip A. Perez

Absent
Lt. Governor, Arnold J. Garcia

TRIBAL COUNCIL LEGISLATIVE BRANCH

Ernest Mirabal
Ernest Mirabal, Councilman

Absent
Joe L. Garcia, Councilman

Lela Kaskalla (ABSTAIN)
Lela Kaskalla, Councilwoman

David A. Perez
David A. Perez, Councilman

Edward M. Perez
Edward M. Perez, Councilman

Harold S. Porter
Harold S. Porter, Councilman

Absent
Carlos O. Vigil, Councilman

Dennis F. Vigil OPPOSED
Dennis F. Vigil, Councilman

Tony B. Vigil
Tony B. Vigil, Councilman

APPENDIX F

SETTLEMENT AGREEMENT POJOAQUE PUEBLO

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Compensation.

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

ii. Additional Settlement Payments. The County shall make two additional payments of \$500,000.00 each directly to the Pueblo on or before the 25th and 50th anniversaries of this Agreement. The source of County revenue that the County will use to make the Additional Settlement Payments shall be the one-quarter of one percent capital outlay gross receipts tax imposed by the County under NMSA 1978, Section 7-20E-21, and the first one-eighth increment of the County hold harmless gross receipts tax under NMSA 1978, Section 7-20E-28 ("Special Fund"). If for any reason the Special Fund fails to generate sufficient revenue for the County to timely make either Additional Settlement Payment, the County may use other County funds then available to make the Payments, as may be approved and appropriated by the Board of County Commissioners in its discretion.

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

iv. Purpose of Settlement Payments; Compromise. The purposes of the Settlement Payments described in Section 2(B)(1), 2(B)(2), and 2(B)(3) of this Agreement are to: (a) provide fair and reasonable compensation to the Pueblo for the ROWs granted to the County by the Secretary; and (b) finally settle and resolve all claims relating to Trespass Damages. This Agreement represents a compromise by all Parties. The Pueblo is by this Agreement waiving any and all claims for Trespass Damages. Although the Parties agree that the Pueblo's waiver of its claims for Trespass Damages is supported by adequate consideration under the totality of this Agreement, the Parties do not intend the Settlement Payments to constitute compensation for the Trespass Damages.

C. Within thirty (30) days of the execution of this Agreement, Parties shall select a mutually acceptable Escrow Agent. Within thirty (30) days after the Pueblo amends its Law and Order Code to provide for land assignments to owners of Private Land in accordance with Section 3(B)(iv), the County shall deposit the Initial Settlement Payment with an Escrow Agent selected by the Parties. The Escrow Agent shall hold the Initial Settlement Payment until it receives notice from the BIA that the Secretary will grant the ROWs pursuant to Section 3(C)(iii), or until the Escrow Agent receives notice of termination of this Agreement from a Party pursuant to Sections 4(B)(ii) and 4(C)(ii).

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

ii. In the event the Escrow Agent receives notice of termination of this Agreement, the Escrow Agent shall transfer the Initial Settlement Payment to the County according to instructions provided by the County.

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

i. Agrees the Initial Settlement Payment, the Additional Settlement Payment, and the Adjusted FMV Settlement Payment (collectively, "Total Compensation") together constitute satisfactory compensation to the Pueblo for the ROWs and for waiver of any and all claims for Trespass Damages. Although the Parties agree that the Pueblo's waiver of its claims for Trespass Damages is supported by adequate consideration under the totality of this Agreement, the Parties do not intend the Settlement Payments to constitute compensation for the Trespass Damages.

ii. Waives valuation of the ROWs;

iii. Represents that it has determined that accepting Total Compensation and waiving valuation is in its best interest; and

iv. Provides a limited waiver of the Pueblo's sovereign immunity as further described in Section 10(E).

Section 3. *Obligations of the Parties.*

A. County Obligations:

i. Within one (1) year following the execution of this Agreement or the Contributed Funds Agreement, whichever comes last, the County shall at the County's expense submit to the BIA applications for ROWs for all of the CMRs. The ROW applications shall comply with 25 CFR Part 169, including but not limited to identifying the Pueblo Lands affected by the ROWs, maps of definite location for each and every ROW, and the ownership of any permanent improvements associated with the ROWs. The County agrees to prepare, execute, and submit to the BIA such further documents as may be required by the BIA to grant the ROWs under 25 CFR Part 169. The Pueblo and the County may agree in writing to extend the County's deadline for submitting the ROW applications to the BIA.

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

1. The ROWs shall be for a proposed term of ninety-nine (99) years, with a renewal term of ninety-nine (99) years, not subject to further BIA approval, but subject to the provisions of Section 2(B)(3) of this Agreement regarding the FMV Adjustment Payment; *provided*, however, that if a dispute arises regarding the FMV Adjustment Payment, the Parties shall commence dispute resolution and the ROWs shall be renewed and thereafter remain in effect until the expiration of their second ninety-nine (99) year term or this Agreement is duly terminated, whichever occurs first. .

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

3. The primary purpose of the ROWs shall be operating and maintaining Public Roads, which shall include the right of access to manage vegetation, inspect, maintain and repair equipment, and to conduct such other activities as may be necessary or

appropriate to operate and maintain a Public Road. Construction shall be the secondary purpose of the ROWs, which shall be subject to the provisions of Section 3(D)(vii) below.

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

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

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

B. Pueblo Obligations:

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

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

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

iv. For instances where a Gap exists, the Pueblo shall institute the following process to allow non-Pueblo individuals or entities to acquire legal access to Private Land:

a) Owners of private land claims within the exterior boundaries of the Pueblo who require ingress/egress to their parcels shall be eligible to apply for a land assignment from the Pueblo for their driveway ingress/egress.

b) The assignment provisions will be included in the Pueblo's Law and Order Code ("Code") within sixty (60) days.

c) The assignment term will be for up to thirty-five (35) years.

d) The assignment will be revocable only if the assignee violates the terms of the assignment.

e) The assignment shall be transferable to a new owner of the private land claim or to a foreclosing lender of the private land claim upon notice as provided in the Code.

f) The Code shall include a uniform means of assessing the cost of the land assignment, as may be appropriate to assist Private Land owners to obtain mortgage financing and insurable ingress and egress via a Public Road.

g) The Code shall also provide that any individual or entity may also apply to the BIA for a ROW for driveway ingress/egress pursuant to 25 CFR Part 169 and any future federal rules or regulations that govern grants of rights-of-way across Indian Land in lieu of acquiring a land assignment for such ingress/egress.

C. BIA Obligations:

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

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

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

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

D. ROW and Other Requirements:

i. The Pueblo and the County agree that Federal law, including 25 U.S.C. §§ 323-328 and 25 CFR Part 169, controls the application, granting and administration of ROWs on Pueblo Lands, including any ROWs applied for or granted pursuant to this Agreement.

ii. In order to expedite the ROW development, submission and review process, the Pueblo and County have agreed to use the ROW templates to be provided by BIA. The BIA has been and will continue providing technical assistance to the Pueblo and the County with respect to developing the ROW documents. The Pueblo and the County acknowledge, however, that such technical assistance shall not constitute a grant of, or promise to grant, any ROW.

iii. The Parties agree that the insurance required in Section 3(A)(v) will satisfy the requirements of 25 CFR § 169.103 and no additional bond, insurance, or other form of security will be required. In addition, the Pueblo shall request and the BIA shall defer to a waiver of the requirement that a bond, insurance, or alternative form of security be submitted with the ROW application.

iv. The BIA shall cause the granted ROWs to be recorded with the BIA's Land, Title and Records Office as expeditiously as possible.

v. For any Maintenance carried out on the ROWs by County contractors, the County shall require its contractors provide performance bonds and have insurance covering all aspects of the Construction or Maintenance activities to ensure that projects, including any remediation work, are completed and any damage to land within the exterior boundaries of the Pueblo, or real or personal property is remedied.

vi. The County shall not assign any of the ROWs to the State of New Mexico or any other party without the consent of the Pueblo and approval by the Secretary, both as required by Federal law and regulations. Any proposed assignment to the State of New Mexico shall not require additional compensation to the Pueblo, but the County or the State shall bear all costs involving preparation and submission of the ROW assignment application.

vii. The County does not currently have plans to carry out Construction within the ROWs. The County will not engage in any Construction, including but not limited to replacing an earthen-driving surface with an asphalt surface, within the ROW except pursuant to a written agreement among the County, the Pueblo, and the BIA.

viii. The Parties acknowledge that the ROW grant for a public road shall not include authority for any utilities or any other uses.

ix. The Pueblo shall not tax any current or future improvements within the ROWs; provided, however, that the Pueblo reserves the right to levy gross receipts taxes in accordance with applicable law on any contractors or subcontractors conducting Maintenance or Construction activities. In addition, nothing herein shall affect the applicability of the Pueblo's business license requirement to all contractors and subcontractors performing Maintenance or Construction activities within the ROWs, nor shall this Agreement affect the application of any

other Pueblo laws and ordinances within the ROWs; provided, however, that no such law or ordinance shall operate to terminate or change the terms of any ROW granted to the County.

Section 4. *Contingencies.*

A. No ROW applications shall be submitted for review by the Secretary until the Contributed Funds Agreement for construction of the RWS is executed by the County and the Bureau of Reclamation. The Contributed Funds Agreement shall identify a funding source for the County's contribution.

B. In the event the County and the Bureau of Reclamation do not enter into a Contributed Funds Agreement by April 2, 2018, the following provisions shall apply.

i. The County shall notify the Pueblo that the County and the Bureau of Reclamation have not entered into a Contributed Funds Agreement, which notice shall be given in accordance with Section 11; provided, however, that the County shall have no obligation to provide such notice if the County has executed the Contributed Funds Agreement and it is merely awaiting execution by the Bureau of Reclamation.

ii. The Pueblo shall have sixty (60) days from the date of such notice to terminate this Agreement by giving the County and the Escrow Agent notice of such termination, which notice shall be given in accordance with Section 11. Should the Pueblo not timely terminate this Agreement, all other provisions of this Agreement shall continue to be valid and binding.

iii. Notwithstanding Section 4(A)(ii), the Pueblo shall not give the Escrow Agent notice of termination, and this Agreement shall not terminate, if the Bureau of Reclamation provides written notice to the Escrow Agent, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that the delay in executing that Contributed Funds Agreement will not delay substantial completion of the RWS.

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

i. If the Secretary denies the grant of any of the ROWs pursuant to 25 CFR § 169.24, the Pueblo and the County agree to discuss whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROWs were denied. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.

ii. If the Secretary denies the grant of any of the ROWs because the Secretary requires any modifications to the application or any measures needed to meet applicable law in order to grant the ROW applications, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW applications required modification. The Party choosing to terminate this Agreement will give Notice to the Escrow Agent and to the Parties in accordance with Section 11.

Section 5. *Release of Claims.*

A. *Release of Claims Against the County.* If the Secretary grants the ROWs, then on the day that all ROWs are granted and upon the Escrow Agent's transfer of the Initial Settlement Payment to the Pueblo in accordance with Section 2(B)(i), the Department and the Pueblo shall irrevocably and forever release and discharge the County, former and current County employees, and former and current County elected officials from any and all claims of Trespass Damages. ; provided the County shall remain obligated to pay the Additional Settlement Amounts and failure to do so as specified in this Agreement shall constitute a breach of this Agreement and provide for a right of enforcement by the Pueblo pursuant to the terms of this Agreement. This release does not include any and all potential claims pursuant to Federal environmental law, including but not limited to liability for hazardous substances disposed on the land, or any other applicable law.

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

C. *Release of Claims Against the Pueblo.* If the Secretary grants the ROWs, then on the day that the Secretary grants the ROWs and upon the Escrow Agent's transfer of the Initial

Settlement Payment to the Pueblo in accordance with Section 2(B)(i), the County agrees to irrevocably and forever release and discharge the Pueblo, former and current Pueblo employees, and former and current Pueblo elected officials from any and all claims, known or unknown, at law or in equity related to the CMRs from the beginning of time to the date of the approval of each ROW for each CMR.

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

A. Upon termination or expiration of this Agreement, the Parties expressly reserve all of their respective rights, claims, and defenses.

B. In the event a Party terminates this Agreement pursuant to Section 4 and there is subsequent litigation concerning the CMRs, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.

C. This Agreement shall not constitute or be construed as an admission of liability by any Party or as an admission of violation of any law, rule, regulation or policy by any Party. This Agreement also shall not constitute or be construed as an admission or denial by any Party with respect to any factual or legal allegation or issue with respect to the CMRs.

Section 7. *Governing Law.*

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

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

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

Section 9. *Representations.*

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

Section 10. *Dispute Resolution.*

A. If any of the Parties disagree concerning the interpretation or implementation of any provision of this Agreement, or if any dispute arises out of or relates to this Agreement, or the

breach thereof, the disputing Parties shall commence direct good faith negotiations within thirty (30) calendar days concerning the dispute after one Party notifies the other of the dispute in writing.

B. If the Parties are unable to resolve a disagreement within sixty (60) calendar days of their first meeting on the subject, the Parties shall promptly refer the disagreement to a single mediator upon whom the Parties can agree. The Pueblo, the County and the Department shall share the costs of the mediator equally. If the Parties are unable to agree upon a mediator, or if they are unable to resolve the disagreement within sixty (60) calendar days of its referral to the mediator, or within any other time interval on which the Parties unanimously agree, the Pueblo and County may have recourse to any legal or equitable remedies available to them in Federal court.

C. The Pueblo and the County acknowledge that while the Department may participate as a Party in the mediation process described above, neither such participation in mediation nor anything else in this Agreement waives, or shall be construed as any waiver of, the sovereign immunity of the United States. Except as provided in Section 5, nothing in this Agreement shall limit any remedies available to the Pueblo or the County pursuant to 25 CFR Part 2, 25 CFR Part 169, the Administrative Procedure Act, or any other applicable Federal law.

D. If after the Pueblo and the County fail to resolve the dispute by mediation, there is still an unresolved controversy, claim, or dispute arising from or relating to this Agreement, or breach thereof, the Pueblo and the County agree that such dispute shall be brought before a court of competent jurisdiction. In the absence of the United States, the Pueblo and the County each agree not to raise F.R.C.P. Rule 19 as a defense to any such lawsuit.

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

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

Section 11. *Notices.*

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

To The County:

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

With a Copy To:

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

To the Pueblo of Pojoaque:

Chief General Counsel
Pueblo of Pojoaque
30 Buffalo Thunder Trail
Santa Fe, NM 87506
Fax: 505.819.2299

With A Copy To:

Governor
Pueblo of Pojoaque
78 Cities of Gold Road
Santa Fe, NM 87506

Fax: 505.455.3684

To the Department of the Interior:

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

With A Copy To:

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

Notice shall be deemed to have been given based upon the method of delivery, as follows:
notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as

evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three (3) business days after the notice is mailed with postage prepaid.

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

Section 12. *No Third Party Beneficiary Rights.*

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

Section 13. *Private Claims Unaffected.*

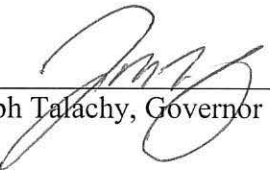
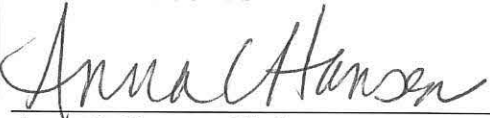
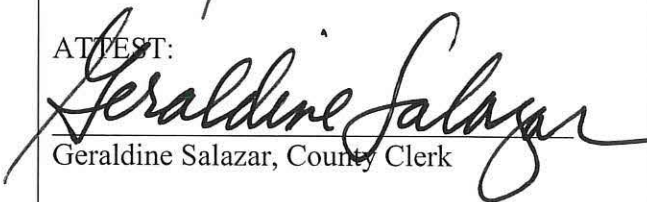
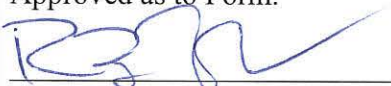

The Parties acknowledge and agree that this Agreement and the subsequent grant of any of the ROWs do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the United States related to the CMRs or access to Private Land.

Section 15. *Contingency of Federal Appropriations.*

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

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

PUEBLO OF POJOAQUE  _____ Joseph Talachy, Governor <u>2/23/18</u> _____ Date	SANTA FE COUNTY  _____ Anna C. Hansen, Chair Board of County Commissioners <u>2/15/2018</u> _____ Date ATTEST:  _____ Geraldine Salazar, County Clerk Approved as to Form:  _____ R. Bruce Frederick, County Attorney
U.S. DEPARTMENT OF THE INTERIOR  _____ Secretary of the Interior <u>APR 12 2018</u> _____ Date	

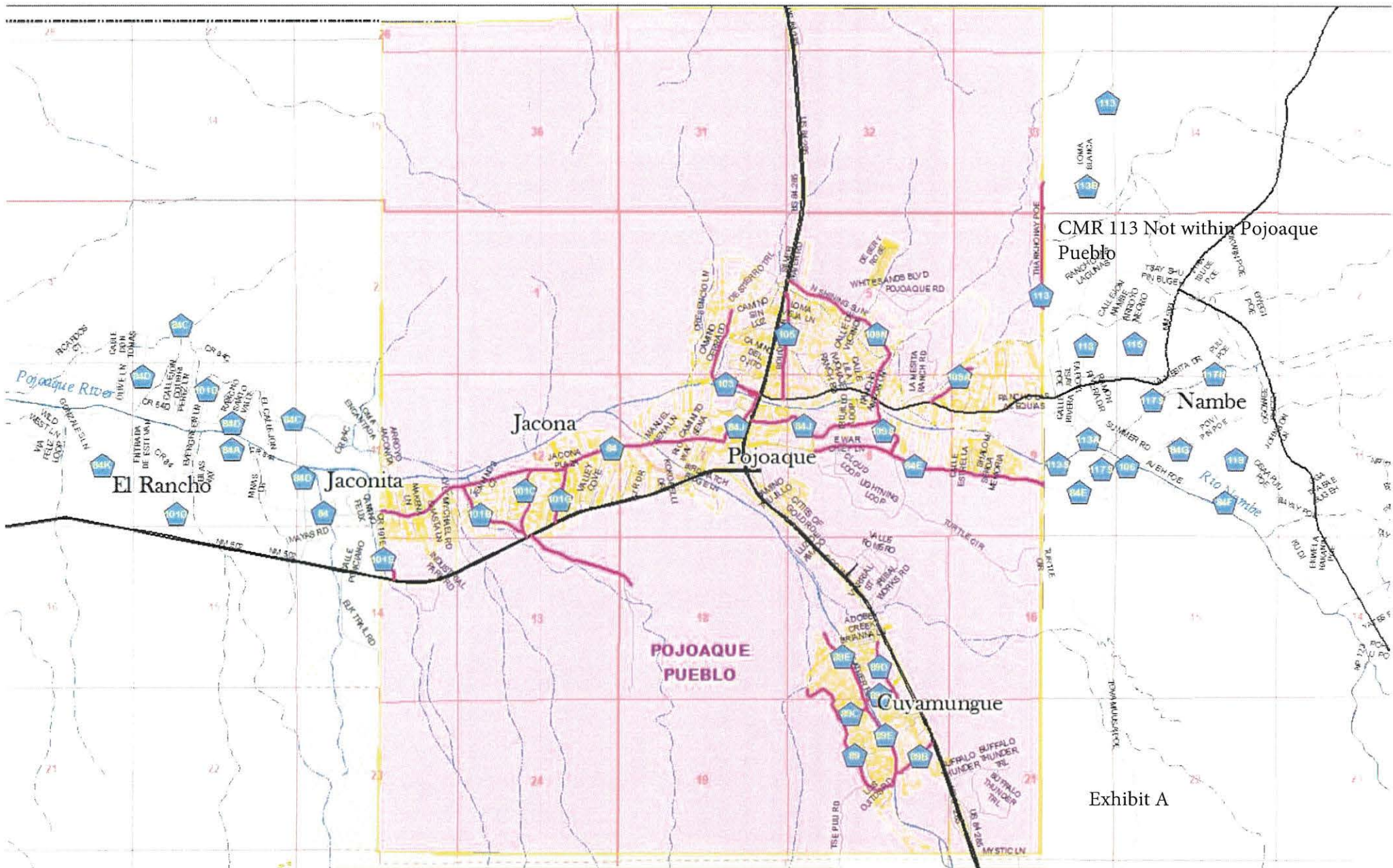
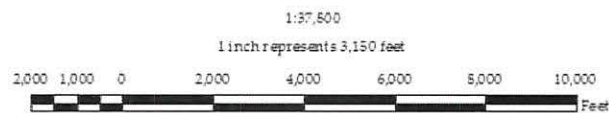


Exhibit A

- County Maintained Roads
- Major Roads
- Minor Roads
- Dirt 2-Track
- Township & Range Lines
- Township & Range Lines - Projected
- Section Lines
- Section Lines - Projected
- Non-PLSS Boundary Lines

- Major Streams and Arroyos
- Minor Streams and Arroyos
- Parcels
- Pojoaque Pueblo



North American Vertical Datum 1955

This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
Users are solely responsible for
confirming data accuracy.





PUEBLO OF POJOAQUE

GOVERNOR
Joseph Talachy
LIEUTENANT GOVERNOR
Jenelle Roybal
TRIBAL SECRETARY
Rafaela Sanchez
TRIBAL TREASURER
Mary Ann K. Fierro

OFFICE OF THE GOVERNOR
78 CITIES OF GOLD ROAD
SANTA FE, NEW MEXICO 87506
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PUEBLO OF POJOAQUE TRIBAL COUNCIL RESOLUTION 2018 - 001

AUTHORIZING THE PUEBLO OF POJOAQUE TO ENTER INTO A SETTLEMENT AGREEMENT WITH SANTA FE COUNTY AND THE UNITED STATES DEPARTMENT OF THE INTERIOR TO RESOLVE THE LONGSTANDING DISPUTE OF THE LEGAL STATUS OF COUNTY MAINTAINED ROADS WITHIN THE EXTERIOR BOUNDARIES OF THE PUEBLO AND AUTHORIZING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE PUEBLO OF POJOAQUE FOR THE PURPOSE OF ENTERING INTO THE SETTLEMENT AGREEMENT

WHEREAS, the Pueblo of Pojoaque ("Pueblo") is a sovereign, federally recognized tribe;

WHEREAS, the Pueblo of Pojoaque Tribal Council ("Council") is the governing body of the Pueblo of Pojoaque;

WHEREAS, the Council is vested with all the power, authority, and responsibility for the health, safety, and welfare of all tribal members and the community; for the exercise of all governmental functions of the Pueblo; and for the overall direction and policy of the Pueblo;

WHEREAS, the Pueblo of Pojoaque, the Pueblo of Nambe, the Pueblo de San Ildefonso, the Pueblo of Tesuque, (the "Pueblos") Santa Fe County ("County"), the State of New Mexico ("State"), and the City of Santa Fe ("City") are parties to that certain Settlement Agreement ("Aamodt Settlement Agreement") dated April 19, 2012, the purpose of which is to settle the Pueblos' claims to water in the matter of *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.) (the "Aamodt Litigation") and (ii) that certain Cost-Sharing and System Integration Agreement ("Cost-Sharing Agreement");

WHEREAS, the Aamodt Settlement Agreement and Cost-Sharing Agreement contemplate construction and operation of a Regional Water System to serve the water customers of the independent water systems of the Pueblos of Nambe, Pojoaque, San Ildefonso, Tesuque, and the County;

WHEREAS, the Cost-Sharing Agreement contemplates that the County will contribute at least \$7,400,000 toward the planning, design, and construction of the Regional Water System, including the acquisition of necessary rights-of-way and service connection costs ("construction costs");

WHEREAS, by County Resolution No. 2015-125, the County formally expressed its intention to not appropriate funds for the construction costs of the Regional Water System unless and until the legal status of County Roads running through the Pueblos has been resolved;

WHEREAS, the Pueblo and the United States Department of the Interior ("Department") have long contended that the County Maintained Roads running on Pueblo land within the exterior boundaries of the Pueblo are in trespass;

WHEREAS, the County disputes that the the County Maintained Roads running on Pueblo land within the exterior boundaries of the Pueblo are in trespass;

WHEREAS, to conclusively resolve the longstanding issue of the legal status of County Maintained Roads within the Pueblo and to ensure that the County contributes its required construction costs as stated in the Cost-Sharing Agreement, the Council desires to enter into a Settlement Agreement ("Settlement Agreement") with the County and the Department;

WHEREAS, under the Settlement Agreement, the County shall file right-of-way ("ROW") applications with the Bureau of Indian Affairs for all of the County Maintained Roads listed in the Settlement Agreement;

WHEREAS, under the Settlement Agreement, the ROWs for the County Maintained Roads shall be for a proposed term of ninety-nine (99) years, with a renewal term of ninety-nine (99) years, not subject to further BIA approval, but subject to the provisions of Section 2(B)(3) of the Settlement Agreement regarding the fair market value ("FMV") Adjustment Payment;

WHEREAS, as compensation for the first ninety-nine year term for the ROWs, the County shall pay the Pueblo \$1,750,000.00 ("Initial Settlement Payment"), and the County shall make two additional payments ("Additional Settlement Payments") of \$500,000.00 each directly to the Pueblo on or before the 25th and 50th anniversaries of the Settlement Agreement;

WHEREAS, as compensation for the renewal ninety-nine year term, the County shall pay the Pueblo the increase in FMV of the ROWs net of inflation ("Adjusted FMV Settlement Payment");

WHEREAS, the Council agrees the Initial Settlement Payment, the Additional Settlement Payment, and the Adjusted FMV Settlement Payment (collectively, "Total Compensation") together constitute satisfactory compensation to the Pueblo for the ROWs and for waiver of any and all Pueblo claims for trespass damages suffered by the Pueblo because of the County Maintained Roads presence, maintenance, and use from the beginning of time to the date of approval of each ROW for each County Maintained Road, except for damages, if any, relating to the release of regulated hazardous substances or other dangers on or below the surface of the earth, known or unknown ("Trespass Damages");

WHEREAS, although the Council agrees that the Pueblo's waiver of its claims for Trespass Damages is supported by adequate consideration under the totality of the Settlement Agreement, the Council does not intend the Settlement Payments to constitute compensation for the Trespass Damages;

WHEREAS, the Council agrees to waive valuation of the ROWs for the County Maintained Roads;

WHEREAS, the Council agrees that accepting Total Compensation and waiving valuation is in the best interest of the Pueblo;

WHEREAS, under the Settlement Agreement the Pueblo is required to waive its sovereign immunity;

WHEREAS, according to Subpart J-3 of the Pueblo's Law and Order Code, any waiver of the Pueblo's sovereign immunity must be approved by resolution of the Tribal Council;

WHEREAS, the Council agrees to authorize a limited waiver of sovereign immunity, only for the Settlement Agreement and only in accordance with the language contained in Section 10(E); and

WHEREAS, Section 10(E) states the following:

"E. The Pueblo waives its sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction."

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Pojoaque Tribal Council hereby approves the Settlement Agreement attached to this Resolution, including agreeing to a limited waiver of the Pueblo's sovereign

immunity as stated in Section 10(E) of the Settlement Agreement for the sole and limited purpose of entering into the Settlement Agreement.

CERTIFICATION

The foregoing Resolution was duly adopted by the Pueblo of Pojoaque Tribal Council, at a duly-called meeting on January 25, 2018, by the affirmative vote of 45 in favor, 0 opposed, and 1 abstained.

By: _____

JOSEPH M. TALACHY, Governor

ATTEST: _____

Rafaela Sanchez, Tribal Secretary

APPENDIX G

SETTLEMENT AGREEMENT SAN ILDEFONSO PUEBLO

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

d. Conduct such studies, assessments, and investigations and prepare such reports as may be required to support the ROW applications under Part 169 for the New Roads and Subject Roads.

e. Prepare complete ROW applications pursuant to Part 169 for the New Roads and Subject Roads (where located on Pueblo Land) in cooperation with the Pueblo and transmit the applications to the Pueblo for the Council's consideration and consent. Following the grant of ROWs for the New Roads and compliance with Section 2(A)(1)(a), the County will construct the New Roads in accordance with the Final Construction Design.

2. Submit draft ROW applications and related documents to the Pueblo and the BIA for review and comment.

3. Convey the County's existing ROWs to the BIA for the Subject Roads where located on Private Land. The forms of conveyance shall be prepared by the County Attorney and approved by the BIA, in consultation with the Office of the Solicitor, Southwest Region.

4. Cooperate with the Pueblo and the BIA in incorporating the New Roads and Subject Roads into the NTTFI.

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

1. As soon as practicable after the Effective Date, provide the Final Construction Design to the County along with such environmental, archaeological, cultural or other information, data, and reports as may be pertinent under Part 169 and that is within the possession of the Pueblo or its agents.

2. Cooperate with and assist the County as may reasonably be necessary to facilitate the County's performance of its obligations under this Agreement.

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

4. Timely consider and provide written comment on the County's submission of draft ROW applications and related documents.

5. Timely submit proposed ROW applications approved by Pueblo staff to the Council for consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. *Subject Road ROWs.*

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

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

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

Section 4. *New Roads.*

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

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

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

Section 5. *ROW Application and Approval.*

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

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

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

Section 6. *Automatic Renewal of ROWs.*

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

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

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

Section 8. *Renaming Roads.*

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

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

Section 9. *Interim Access.*

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

Section 10. *Gap and Other Access Issues.*

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

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

Section 11. *Road Maintenance and Construction.*

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

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

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

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

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

Section 12. Utilities.

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

Section 13. Contingencies.

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

3. Notwithstanding Sections 13(B)(1) and 13(B)(2), this Agreement shall not terminate, if the Bureau of Reclamation provides written notice, with copies to the County and the Pueblo, that the Bureau of Reclamation and the County require additional time to finalize and execute the Contributed Funds Agreement and that the delay in executing that Agreement will not delay substantial completion of the Regional Water System.
- C. Should the Secretary deny the grant of any of the ROWs, the following provisions shall apply:
1. If the Secretary issues a final decision denying the grant of any of the ROWs pursuant to 25 C.F.R. § 169.24, the Pueblo and the County agree to discuss whether to appeal the decision or modify this Agreement. If they choose to appeal and the appeal is unsuccessful, the Parties shall promptly meet to renegotiate this Agreement. If the Parties are unable to agree on amendments to this Agreement or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROWs were denied. The Party choosing to terminate this Agreement will give notice to the Parties in accordance with Section 20.
 2. If the Secretary denies the grant of any of the ROWs because the Secretary requires modifications to the application or any measures needed to meet applicable law in order to grant the ROW applications, the Parties shall promptly meet to discuss and revise this Agreement or applications, or both, as appropriate, unless the Parties agree otherwise. If the Parties are unable to agree on amendments to this Agreement, applications, or on some other mutually agreeable outcome, any Party shall have the option to terminate this Agreement within thirty (30) days from receiving notice from the BIA that the ROW applications required modification. The Party choosing to terminate this Agreement will give Notice to the Parties in accordance with Section 20.

Section 14. *Release of Claims.*

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

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

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

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

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

Section 16. *Governing Law.*

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

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

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

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

Section 18. *Representations.*

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

Section 19. *Dispute Resolution.*

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

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

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

Section 20. Notices.

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

To The County:

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

With a Copy To:

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

To the Pueblo de San Ildefonso:

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

With A Copy To:

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

To the Department of the Interior:

Regional Director, Southwest Region

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

With A Copy To:

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

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

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

Section 21. *No Third Party Beneficiary Rights.*

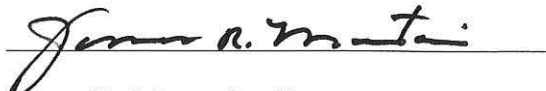
This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 22. *Private Claims Unaffected.*

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

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

PUEBLO DE SAN ILDEFONSO



James R. Mountain, Governor

January 02, 2018

Date

SANTA FE COUNTY



~~ANNA HANSEN~~

Henry P. Roybal, Chair

Board of County Commissioners

2/15/2018

Date

ATTEST:



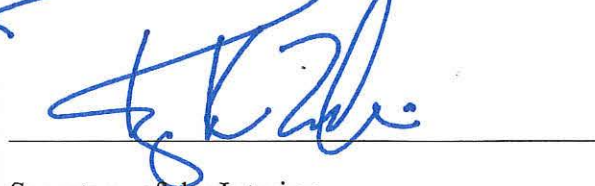
Geraldine Salazar, County Clerk

Approved as to Form:



R. Bruce Frederick, County Attorney

U.S. DEPARTMENT OF THE INTERIOR



Secretary of the Interior

APR 12 2018

Date

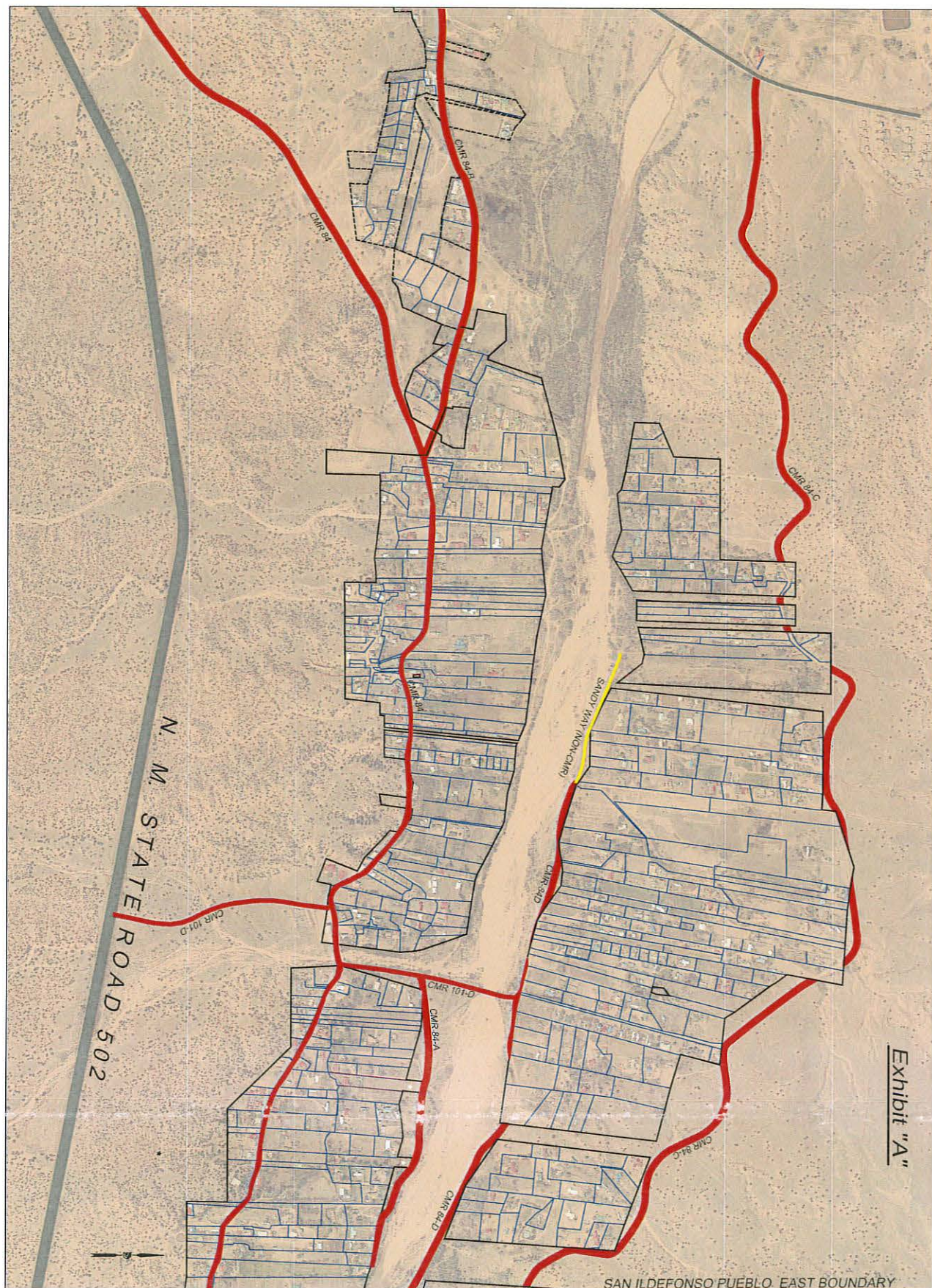


Exhibit "A"



Exhibit "B"

**PUEBLO DE SAN ILDEFONSO
COUNCIL RESOLUTION NO. SI-R17-048**

ACT AUTHORIZING SIGNATURE OF ROADS SETTLEMENT AGREEMENT

At a duly called meeting of the Council of San Ildefonso Pueblo on the
20th day of December, 2017, the following Resolution was adopted:

WHEREAS, the Pueblo de San Ildefonso ("Pueblo") is a sovereign and self-governing Tribe, recognized as such by the United States of America; and

WHEREAS, the Pueblo has been dealing with issues of roads trespass for decades and has attempted several times to negotiate with Santa Fe County (County) to address the issue of unauthorized roads within the Pueblo's lands; and,

WHEREAS, the Pueblo, the County and representatives of the Department of Interior, the Bureau of Indian Affairs (BIA) and the Bureau of Reclamation (BOR) engaged in extensive negotiations over several months to resolve the roads matter so that the County could sign a contributed funding agreement (CFA) with BOR for its share of the regional water system required under the Aamodt Litigation Settlement Act, Pub. L. 11-291 as the County stated in 2015 it would not sign the CFA until it knew the cost to resolve the roads trespass claims for all four Pueblos who are parties to the Aamodt water rights settlement; and

WHEREAS, the Pueblo, County and the Department of the Interior reached a comprehensive compromise solution that provides long-term public access, including access to private lots within the Pueblo's lands via lawful public roads at identified locations while correcting and limiting further unlawful access over the Pueblo's lands; and

WHEREAS, although the proposed Settlement Agreement contains more specific details, the key terms of the compromise solution are:

1. The County will construct two (2) new roads, Yellowbird Loop and Blue Dove, at the County's sole expense.
2. CMR 84, CMR 84A, CMR 84B, and CR 101D, and the new roads, will be placed on the BIA Tribal Transportation Program Inventory (TTPI) and a grant of road rights-of-way (ROW) will be issued to the BIA for two 99-year terms (198 years total).

3. The "gap" issues where there is a gap of Pueblo land between a road a private lot will be addressed by the construction of the new roads and any remaining gaps will be included in the BIA ROWs as designated access points provided the Pueblo will not maintain any gap or private drive to a road.
4. The County will survey the road ROWs and access points for private lots, and conduct required archeological and environmental assessments, at its expense.
5. The Pueblo will legislatively grant temporary access to private lands off of identified roads for a term of five (5) years or until the ROWs are granted for the current roads or the new roads are constructed.
6. The County will maintain the roads under a maintenance agreement with the BIA and the Pueblo for the term of the ROWs.
7. The County will not issue road cut permits for installation of utilities for any road in the TTPI and the Pueblo has the sole authority to grant utility easements along those roads. The Pueblo agrees to use a standard appraisal method for valuation of utility ROWs for the specific portion of CMR 84B and CMR 84.
8. The roads will be renamed by the Pueblo in a phased approach.
9. The Pueblo and County agree to cooperate to identify designated access points or common access points.
10. The County will require access solely through legal access points for future development on private land.
11. The Pueblo agrees to grant a limited waiver of sovereign immunity for sole purposes of interpretation and enforcement of the Settlement Agreement.

WHEREAS, the Council finds the need to finally resolve the long-standing roads dispute with Santa Fe County and approve a Settlement Agreement that will provide a long-term solution to the roads issue within San Ildefonso Pueblo lands.

NOW THEREFORE BE IT RESOLVED, that the Council hereby enacts the attached law entitled, "ACT AUTHORIZING SIGNATURE OF ROADS SETTLEMENT AGREEMENT."

NOW THEREFORE BE IT FURTHER RESOLVED THAT:

1. The Council hereby grants a limited waiver of the Pueblo's sovereign immunity for suits limited only to interpretation or enforcement of the Settlement Agreement.
2. The Council hereby authorizes the Governor to sign the Settlement Agreement.
3. The Council hereby authorizes the Governor to make such non-substantive or editorial changes to the Settlement Agreement as may be necessary, provided that the Governor shall provide the Council with a copy of the final executed Settlement Agreement.
4. The Pueblo de San Ildefonso Council hereby approves and adopts this resolution in accordance with the requirements of the Agreement, according to Council procedures, and authorizes and directs the Governor, or his designee, to take such actions as deemed necessary to carry out the intent of this resolution.

CERTIFICATION

The foregoing resolution was duly voted upon by the Council on December 20, 2017, at a meeting with a vote of 6 in favor, 0 opposed, 0 abstaining and 4 absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

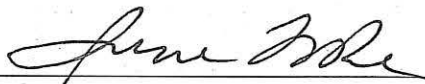

Irene Tse-Pe, Council Secretary

COUNCIL REPRESENTATIVE SPONSOR(S): Council Representatives

COUNCIL REPRESENTATIVE	YES	NO	ABSTAIN	ABSENT
Glenda Fred-Weahkee	X			
Terrence K. Garcia	X			
Thomas Gonzales	X			
Darryl Martinez				X
M. Wayne Martinez	X			
Perry Martinez	X			
Tim Martinez				X
Christopher Moquino				X
Donald Pena				X
Irene Tse-Pe	X			

DELIVERY OF THE RESOLUTION TO THE GOVERNOR:

Resolution No. SI-R17-048 was presented to the Governor of the Pueblo de San Ildefonso on the 20th day of December, 2017, pursuant to the Governing document of the Pueblo de San Ildefonso ("Agreement"), GOVERNOR, Sec. 4 (c), and will become effective after signature by the Governor or veto override by the Council.

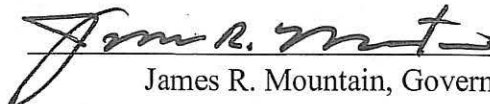

Irene Tse-Pe, Council Secretary

GOVERNOR'S ACTION:

{X} APPROVED

{ } VETO - RETURNED TO COUNCIL WITH EXPLANATION:

On this 27 day of DECEMBER, 2017.


James R. Mountain, Governor

COUNCIL RESOLUTION NO. SI-R17-048

Presented by the Governor to the Council on the ____ day of _____, 2017.

COUNCIL'S ACTION:

Override of Governor's veto:

{ } YES

{ } NO

COUNCIL REPRESENTATIVE	YES	NO	ABSTAIN	ABSENT
Glenda Fred-Weahkee				
Terrence K. Garcia				
Thomas Gonzales				
Darryl Martinez				
M. Wayne Martinez				
Perry Martinez				
Tim Martinez				
Christopher Moquino				
Donald Pena				
Irene Tse-Pe				

CERTIFICATION

The foregoing resolution was duly voted upon by the Council on _____, 2017, at a meeting with a vote of _____ in favor, _____ opposed, _____ abstaining and _____ absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

Irene Tse-Pe, Council Secretary



PUEBLO DE SAN ILDEFONSO

ACT AUTHORIZING SIGNATURE OF ROADS SETTLEMENT AGREEMENT

Section 1.1 Short Title

This enactment shall be known as the “ACT AUTHORIZING SIGNATURE OF ROADS SETTLEMENT AGREEMENT.”

Section 1.2 Purpose

The purpose of this Act is to approve the proposed Settlement Agreement with Santa Fe County and the Department of the Interior on the roads trespass claims and to authorize Governor to sign the Settlement Agreement.

Section 1.3 Findings

The Council hereby finds and declares that:

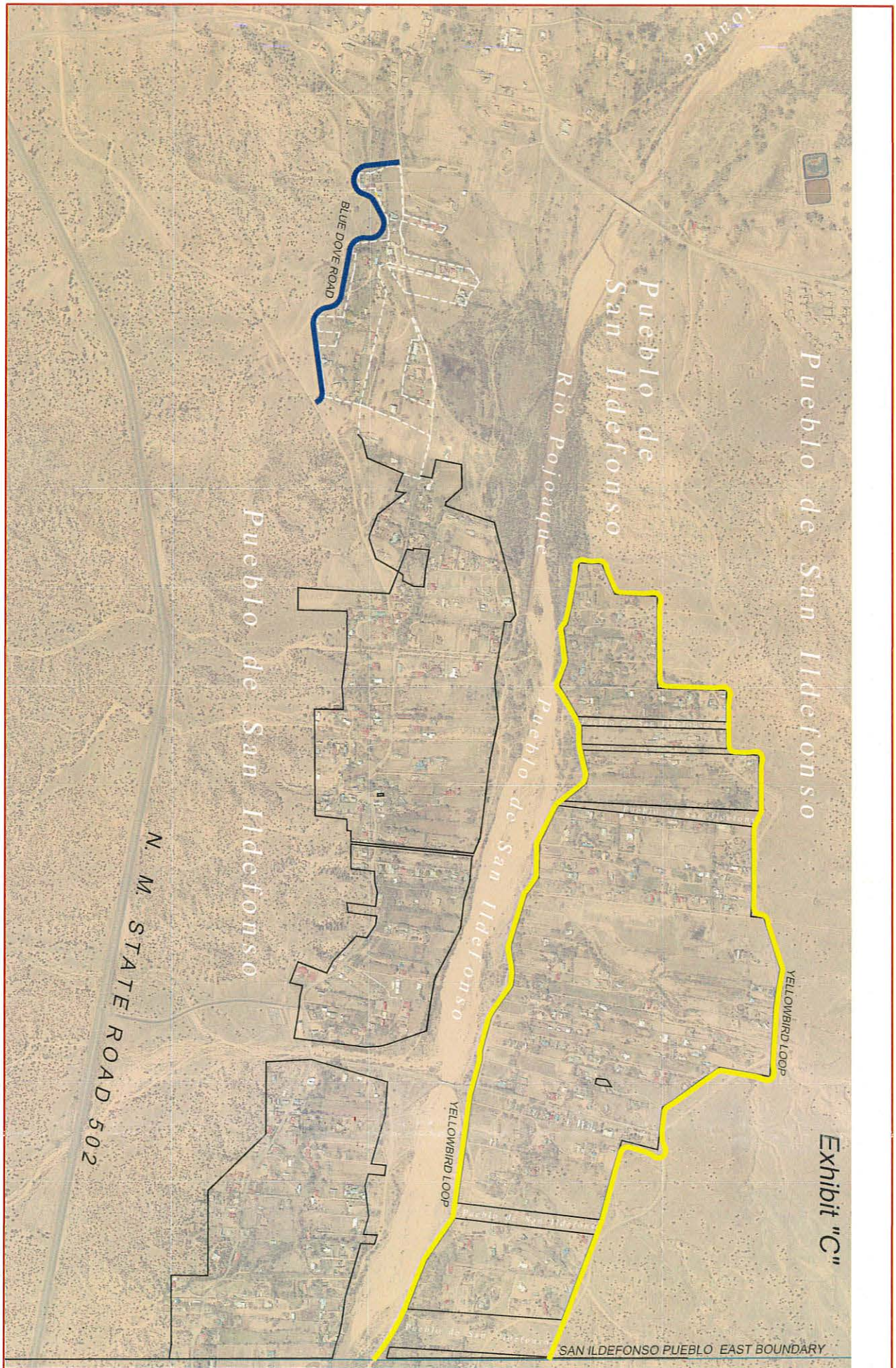
- (a) The Pueblo has been dealing with issues of roads trespass for decades and the number of unauthorized roads and the amount of unauthorized access over the Pueblo's lands has reached an unacceptable level.
- (b) The Pueblo has attempted several times to negotiate with Santa Fe County (County) to address the issue of unauthorized roads within the Pueblo's lands.
- (c) In 2015, the County issued a resolution stating that it would not sign a contributed funding agreement (CFA) for its share of the costs for the regional water system required under the Aamodt Litigation Settlement Act, P.L. 111-291, until it knew the cost to resolve the roads trespass claims of all four of the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque who are parties to the Aamodt water rights settlement.
- (d) In June of 2017, the Pueblo, along with the three other Pueblos and the County, were brought together to attempt to resolve the roads matter so that the County could sign a CFA with the Bureau of Reclamation (BOR) for its share of funding for the regional water system.
- (e) The Pueblo, the County and representatives of the Department of the Interior, the Bureau of Indian Affairs (BIA) and BOR engaged in extensive negotiations over several months on the roads issues within San Ildefonso Pueblo.
- (f) The Pueblo, County and the Department of the Interior reached a compromise solution that addresses the Pueblo's concern about unlawful roads and unlawful access over the Pueblo's lands while providing long-term public access to private land within the Pueblo's lands at specific locations on identified roads.

- (g) The proposed settlement will also allow the Pueblo to identify its boundaries and prevent future unauthorized encroachment onto Pueblo lands with the construction of two new roads.
- (h) The Council has been apprised of the proposed settlement terms and agrees with the following negotiated key terms:
 - 1. The County shall construct two (2) new roads, Yellow Bird Loop and Blue Dove, at the County's sole expense.
 - 2. The placement CMR 84, CMR 84A, CMR 84B, and CR 101D, and the new roads, on the BIA Tribal Transportation Program Inventory (TTPI) and the grant of road rights-of-way (ROW) to the BIA for an initial 99-year term with an automatic renewal of a second 99-year term (198 years total).
 - 3. The "gap" issue where there is a gap of Pueblo land between a road a private lot will be addressed by the construction of the new roads and any remaining gaps will be included in the BIA ROWs as designated access points, provided the Pueblo will not maintain any gap or private drive to a road.
 - 4. The County will survey the road ROWs and access points for private lots, and conduct required archeological and environmental assessments, at its expense.
 - 5. The Pueblo will legislatively grant temporary access to private lands off of identified roads for a term of five (5) years or until the ROWs are granted for the current roads or the new roads are constructed; provided, this does not grant authorized access off of roads of convenience.
 - 6. The County will maintain the roads under a maintenance agreement with the BIA and the Pueblo for the duration of the road ROWs.
 - 7. The County will not issue road cut permits for installation of utilities for any road in the TTPI and the Pueblo has the sole authority to grant utility easements along those roads. The Pueblo agrees to use a standard appraisal method for valuation of utility ROWs for the specific portion of CMR 84B and CMR 84 starting at the end of the pavement on 84B (Latitude = 35°53'34.4633" North, Longitude = 106°06'49.7068" West) running approximately 2.44 miles to eastern Pueblo grant boundary (Latitude = 35°53'13.58" North, Longitude = 106°04'24.09" West).
 - 8. The roads will be renamed by the Pueblo in a phased approach.
 - 9. The Pueblo and County agree to cooperate to identify designated access points or common access points.

10. The County will require access solely through legal access points for future development on private land.
- (i) Litigation on the roads matter would be very costly and would further divide the community and by negotiating a compromise settlement, the Pueblo avoids the uncertainty and great expense of litigation to resolve the roads dispute.
- (j) The Council finds that it is in best interest of the Pueblo to finally resolve the long-standing roads dispute with the County and approve a Settlement Agreement that will provide a long-term solution to the roads issues within San Ildefonso Pueblo lands.

Section 1.4 Authorizations - Approval of Roads Settlement Agreement

1. The Council hereby approves the Settlement Agreement in substantially the same form as attached hereto.
2. The Council hereby grants a limited waiver of the Pueblo's sovereign immunity for suits limited only to interpretation or enforcement of the Settlement Agreement by a court of competent jurisdiction.
3. The Council hereby authorizes the Governor to sign the Settlement Agreement.
4. The Council hereby authorizes the Governor to make such non-substantive or editorial changes to the Settlement Agreement as may be necessary, provided that the Governor shall provide the Council with a copy of the final executed Settlement Agreement.
5. The Pueblo de San Ildefonso Council hereby approves and adopts this resolution in accordance with the requirements of the Agreement, according to Council procedures, and authorizes and directs the Governor, or his designee, to take such actions as deemed necessary to carry out the intent of this resolution.



APPENDIX H
SETTLEMENT AGREEMENT TESUQUE PUEBLO

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

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

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

AGREEMENT

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

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

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

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

Section 2. *Settlement Amount and Escrow.*

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

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

Section 3. *Obligations of the Parties.*

A. County Obligations:

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

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

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

B. Pueblo Obligations:

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

C. Department Obligations:

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

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

D. ROW and Other Requirements:

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

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

Section 4. *Contingencies.*

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

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

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

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

Section 5. *Release of Claims.*

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

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

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

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

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

Section 7. *Governing Law.*

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

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

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

Section 9. *Representations.*

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

Section 10. *Dispute Resolution.*

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

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

Section 11. Notices.

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

To The County:

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

With a Copy To:

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

To the Pueblo of Tesuque:

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

To the Department of the Interior:

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

With A Copy To:

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

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

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

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

Section 12. *No Third Party Beneficiary Rights.*

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

Section 13. *Private Claims Unaffected.*

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

Section 14. *Contingency of Federal Appropriations.*

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

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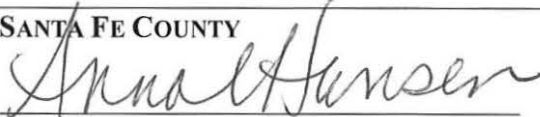
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PUEBLO OF TESUQUE


Frederick Vigil, Governor

Date 2/22/18

SANTA FE COUNTY


Anna C. Hansen, Chair
Board of County Commissioners

Date 2/15/2018

ATTEST:


Geraldine Salazar, County Clerk

Approved as to Form:


R. Bruce Frederick, County Attorney

U.S. DEPARTMENT OF THE INTERIOR


Secretary of the Interior

APR 12 2018

Date

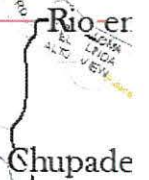


EXHIBIT A



Office of the Governor
Pueblo of Tesuque
Route 42 Box 360-T
Santa Fe, New Mexico 87506

Resolution No. 02-0112-2018

A Resolution to Approve the Settlement Agreement with Santa Fe County for a Right-of-Way for Santa Fe County for County Maintained Road 72-I

At a duly called meeting of the Pueblo of Tesuque Tribal Council ("Tribal Council") the following Resolution was adopted:

WHEREAS, the Pueblo of Tesuque is a federally recognized sovereign Indian Tribe governed by a traditional form of government, consisting of a Governor and Tribal Council, and possessing all the inherent powers of self-government; and

WHEREAS, the Pueblo of Tesuque and the County of Santa Fe are parties to the Aamodt Litigation Settlement Agreement that was approved in Title V of the 2010 Claims Resolution Act Pub.L. 111-291, H.R. 4783 that resolved the long-standing New Mexico ex rel. State Engineer v. Aamodt litigation commenced in the United States District Court of New Mexico in 1966, No. 66cv6639 (D.N.M.); and

WHEREAS, the Aamodt Litigation Settlement Agreement and 2010 Claims Resolution Act require the County of Santa Fe to execute the Contributive Funds Agreement that mandates the County to financially contribute to the Pojoaque Basin Regional Water System; and

WHEREAS, the County of Santa Fe has been unwilling to execute the Contributive Funds Agreement until resolution of the conflicts with the Pueblo's over a lack of valid easements and Rights-of-Way (ROW) over County maintained roads across Pueblo lands; and

WHEREAS, Santa Fe County Road 72-I, is situated on Pueblo of Tesuque owned trust lands within the exterior boundary of the Pueblo of Tesuque Reservation; and

WHEREAS, no valid easement or ROW exists for County Road 72-I despite existence of the road since approximately 1926; and

WHEREAS, the Pueblo of Tesuque and the County of Santa Fe have reached an agreement that the County of Santa Fe will compensate the Pueblo of Tesuque \$150,000 for the Pueblo's consent to a ROW for 72-I and for past damages for the County's use of the road without a valid easement or ROW; and

WHEREAS, the parties have agreed to execute a Settlement Agreement that requires the County to submit an application for a ROW for 72-I to the United States that will comply with the application requirements at 25 CFR 169; and

WHEREAS, the Pueblo of Tesuque, upon execution of the Settlement Agreement with the County of Santa Fe, grants consent for the United States to grant a ROW to the County of Santa Fe for County Road 72-1; and

WHEREAS, the County of Santa Fe has further agreed to compensate the Pueblo of Tesuque an additional amount of \$35,000 as a contribution to the survey costs for County Roads 73 and 74, both of which have perfected ROWs, for the purpose of specifically identifying the legal land descriptions of both County Roads; and

WHEREAS, the Pueblo of Tesuque participated in negotiations with the County of Santa Fe and the United States and agrees that the Settlement Agreement is satisfactory to resolve the issue of no valid ROW or easement for County Road 72-I; and

WHEREAS, the Pueblo of Tesuque agrees that compensation to the Pueblo from the County of Santa Fe for a ROW for County Road 72-I and damages for use of County Road 72-I without a valid easement is sufficient and waives formal valuation; and

WHEREAS, the Pueblo of Tesuque finds that a waiver of the valuation for the land encumbered by County Road 72-I and the compensation from the County of Santa Fe of \$150,000 for a new ROW for a term of 99 years with renewal for another 99 years, and for past damages is in the best interest of the Pueblo;

WHEREAS, the Pueblo of Tesuque agrees to accept a total amount of \$185,000 from the County of Santa Fe to consent to a new ROW for County Road 72-I; for past damages for the lack of a ROW for County Road 72-I and to contribute to survey costs for County Roads 73 and 74; now

THEREFORE, BE IT RESOLVED, that the Pueblo of Tesuque hereby approves the Settlement Agreement with Santa Fe County to address the lack of a valid ROW for County Road 72-I and authorizes the Governor to execute the Settlement Agreement; and

THEREFORE, BE IT FURTHER RESOLVED, that the Pueblo of Tesuque hereby finds that the Settlement Agreement with the identified compensation is satisfactory, agrees that waiver of formal valuation of County Road 72-I serves the best interests of the Pueblos; and

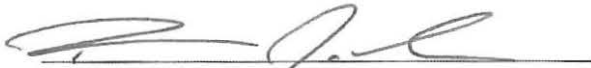
THEREFORE, BE IT FINALLY RESOLVED, that upon execution of the Settlement Agreement, the Pueblo of Tesuque will release and forever discharge the County of Santa Fe for any and all claims related to trespass of County of Santa Fe Maintained Roads across Pueblo lands and to release all claims against the United States for alleged harms or violations, including a breach of trust responsibility related to surface trespass claims for County of Santa Fe maintained roads, pursuant to Section 5 of the Settlement Agreement.

CERTIFICATION

We, the undersigned, respectively as the Pueblo of Tesuque Tribal Council, certify the foregoing Resolution No. 02-0112-2018 was adopted at a duly called meeting of the Pueblo of Tesuque Tribal Council at which a quorum was present and held on the 12th day of JANUARY, 2018, with a vote of 9 in favor, 0 in opposition, 0 abstained, and 0 absent.



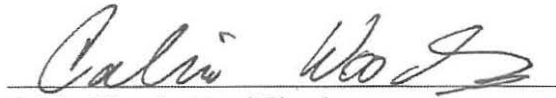
Frederick Vigil, Governor



Roman Duran, Lt. Governor



Floyd Samuel, Tribal Sheriff



Calvin Woods, Head Fiscale



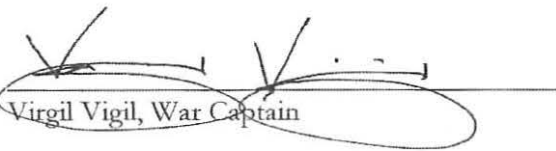
Norbert Leno, Fiscale



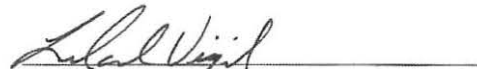
Floyd R. Moquino, War Chief



Michael Vigil, War Captain



Virgil Vigil, War Captain



Leland Vigil, War Captain

APPENDIX I
SAMPLE AGREEMENT

SAMPLE
PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
[NAME OF CONTRACTOR OR VENDOR]
FOR [GOODS OR SERVICES]

THIS AGREEMENT is made and entered into this _____ day of _____ 20__, by and between **SANTA FE COUNTY**, hereinafter referred to as the “County” and **[CONTRACTOR’S NAME]**, whose principal address is **[CONTRACTOR’S ADDRESS]** hereinafter referred to as the “Contractor”.

WHEREAS, pursuant to **[PROCUREMENT DELIVERY METHOD USED PURSUANT TO PROCUREMENT CODE, COUNTY PURCHASING REGULATIONS/POLICIES]**; and

WHEREAS, the **[BACKGROUND OR DESCRIPTION OF THE COUNTY’S NEEDS AND REQUIREMENTS]**; and

WHEREAS, the **[BACKGROUND/BRIEF DESCRIPTION OF THE CONTRACTOR’S ABILITIES/QUALIFICATIONS]**; and

WHEREAS, **[GENERAL PURPOSE OF THIS AGREEMENT]**; and

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 provide, without limitation, the following services.

[DESCRIPTION OF THE SERVICES REQUIRED FROM THE CONTRACTOR. SHOULD MIRROR THE DESCRIPTION OF THE SCOPE OF WORK IN THE SOLICITATION, THE CONTRACTOR’S PROPOSAL OR OFFER AND ANY PARTICULAR SERVICES AGREED TO BY THE COUNTY AND CONTRACTOR]

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

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.

3. 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 to the Contractor in full payment for services satisfactorily performed.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed **[WRITTEN WORD]** dollars **(\$XX,XXX.XX) inclusive or exclusive** of New Mexico gross receipts tax.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

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 deliverables for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **[USER AGENCY NAME/INDIVIDUAL, ADDRESS AND PHONE NUMBER]**, or such other individual as may be designated in the absence of the County representative.
- 2) 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 services or deliverables.
- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 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.

4. 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 _____ later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement in _____ increments not to exceed four years in total

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 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 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 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 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.

6. 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.

7. 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.

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. 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.

11. 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.

12. 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 the prior written approval of the County.

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

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.

14. 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.

15. 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.

16. 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.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 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.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment 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.

19. 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. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. 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 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 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.

21. INDEMNIFICATION

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 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.

22. 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.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Attn: Santa Fe County Manager
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

To the Contractor: **[CONTRACTOR'S NAME AND ADDRESS]**

24. 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 New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

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

26. NO THIRD-PARTY BENEFICIARIES

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

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 \$1,000,000.00 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. Santa Fe County shall be a named additional insured on the policy.

C. 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.

28. 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.

29. 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, Section 41-4-1, et seq.

30. 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.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints [NAME AND ADDRESS OF AGENT], as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY

Katherine Miller
County Manager

Date

Approved as to form

Gregory S. Shaffer
County Attorney

Date

Finance Department

Yvonne S. Herrera
Finance Director

Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)