

**DRAFT PUEBLO OF NAMBE ROAD SETTLEMENT AGREEMENT
JANUARY 19, 2018, DISCUSSION DRAFT**

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.

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- 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).

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- 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

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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 Resolution 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).

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- 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.

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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.

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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 _____ "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

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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,

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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 Resolution 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).

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- 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.
- B. When it surveys the CMRs, the County shall survey the Gaps that exist within twenty-five (25) on either side of the centerline of the CMR, and shall include such surveys in the ROW applications described herein.
- C. 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.

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- D. 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

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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:

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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

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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

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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

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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 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.

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

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Fax: 505.986.6362

To the Pueblo of Nambe:
Governor

With A Copy To:

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.*

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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.

<p>PUEBLO OF NAMBE</p> <p>_____</p> <p>Phillip A. Perez, Governor</p> <p>_____</p> <p>Date</p>	<p>SANTA FE COUNTY</p> <p>_____</p> <p>Henry P. Roybal, Chair</p> <p>Board of County Commissioners</p> <p>_____</p> <p>Date</p> <p>ATTEST:</p> <p>_____</p> <p>Geraldine Salazar, County Clerk</p> <p>Approved as to Form:</p> <p>_____</p> <p>R. Bruce Frederick, County Attorney</p>
<p>U.S. DEPARTMENT OF THE INTERIOR</p> <p>_____</p> <p>Secretary of the Interior</p> <p>_____</p> <p>Date</p>	

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EXHIBIT A

MAP

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EXHIBIT B

TRIBAL RESOLUTION

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