

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY
RESOLUTION NO. 2018 - 13**

**A RESOLUTION APPROVING THE ROAD SETTLEMENT AGREEMENTS
WITH THE PUEBLO DE SAN ILDEFONSO, THE PUEBLO OF TESUQUE, THE
PUEBLO OF NAMBE AND THE PUEBLO OF POJOAQUE; DIRECTING
STAFF TO WORK WITH PRIVATE PROPERTY OWNERS, TITLE
COMPANIES, AND PUEBLOS TO ASSURE SUCCESSFUL
IMPLEMENTATION OF SETTLEMENTS**

WHEREAS, to resolve amicably claims that County-maintained roads (“CMRs”) within the Pueblo de San Ildefonso, the Pueblo of Nambé, the Pueblo of Pojoaque, and the Pueblo of Tesuque (collectively, “Pueblos”) may be in trespass, Santa Fe County (“County”) Commissioners and staff have engaged in months of intense good faith negotiations with representatives from the United States Department of the Interior (“DOI”), and each Pueblo; and

WHEREAS, the County posted the draft settlement agreements for public review and comment, and staff from the DOI, the Pueblos, and the County attended numerous evening meetings to answer questions from the public and take their comments; and

WHEREAS, in negotiating with the other parties, County staff constantly strived to insure that the public’s valid concerns were addressed in the settlement agreements to the extent feasible; and

WHEREAS, although each settlement agreement includes certain unique provisions, each agreement resolves the CMR trespass issue for 198 years and provides a reasonable means by which private property owners may obtain agreed-upon legal ingress and egress via a public road; and

WHEREAS, representatives from the title insurance industry and the New Mexico Office of the Superintendent of Insurance have lauded the settlement agreements and strongly supported them in written statements and at public meetings, expressing the opinion that homeowners will now be able to obtain insurable ingress and egress; and

WHEREAS, Commissioner Mikkelsen of the United State Bureau of Reclamation has stated that the Notice to Show Cause that the Bureau of Indian Affairs (“BIA”) issued to the County in 2013 will be rescinded upon execution of the settlement agreements; and

WHEREAS, the settlement agreements strike a fair balance between the private property owners’ desire for certainty and the sovereignty of each Pueblo; and

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WHEREAS, successful implementation of the settlement agreements will require the Pueblos, the County, and the BIA to consistently demonstrate mutual good will, trust, and respect in resolving access and other issues as they arise; and

WHEREAS, the Board recognizes that successful implementation of the settlement agreements will require sustained effort and cooperation among the County, Pueblos, and the BIA; and

WHEREAS, although the processes established by the settlement agreements should, if followed, resolve the vast majority of private landowners' access issues, the Board further recognizes that unique issues may arise that require special attention; and

WHEREAS, the Board acknowledges residents' concerns regarding unique access problems, future development, emergency access, temporary road closures, flooding, and other issues; and

WHEREAS, the Board recognizes that successful implementation of the settlement agreements will require the County Manager and other appropriate staff to work with residents, the Pueblos, and BIA on an ongoing basis to address and resolve residents' issues, and, if necessary, propose reasonable amendments to the settlement agreements.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. The Settlement Agreement attached hereto among the County, the Pueblo de San Ildefonso, and the DOI is APPROVED.
2. The Settlement Agreement attached hereto among the County, the Pueblo of Tesuque, and the DOI is APPROVED.
3. The Settlement Agreement attached hereto among the County, the Pueblo of Nambe, and the DOI is APPROVED.
4. The Settlement Agreement attached hereto among the County, the Pueblo of Pojoaque, and the DOI is APPROVED.
5. The County Manager is directed to:
 - a. Begin implementing the Settlement Agreements immediately in the good faith assumption that the Secretary of the DOI will timely execute the Agreements as written.
 - b. Designate key staff to receive complaints and to work with private property owners, the Pueblos, and BIA to assist owners in obtaining access under the Settlement Agreements and identify and help resolve unique access and other issues that may arise.

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c. Work with lenders, title companies, and others in the home financing industry to assure they are apprised of the County's compliance with the Settlement Agreements, including execution of the funding agreement with the BOR, submission of right-of-way ("ROW") applications, and the grant of ROWs; and, upon request, provide reasonable assurances of such compliance in writing.

d. For three years after the date of this Resolution, brief the Board approximately every three months on how the settlement agreements are being implemented and any problems.

6. Prior to execution of the Settlement Agreements by the Chair, the County Manager is authorized to make non-substantive changes, as necessary, to correct errors or better express the Parties' intent.

PASSED, APPROVED, AND ADOPTED THIS 30th DAY OF JANUARY, 2018.

BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By: *Anna C. Hansen*
Anna C. Hansen, Chair
District 2 Commissioner

By: *Anna T. Hamilton*
Anna T. Hamilton, Vice Chair
District 4 Commissioner

Date: 1/30/18

By: *Henry P. Roybal*
Henry P. Roybal
District 1 Commissioner

By: *Robert A. Anaya*
Robert A. Anaya
District 3 Commissioner

By: *Edward H. Moreno*
Edward H. Moreno
District 5 Commissioner

Katherine Miller
Katherine Miller
County Manager

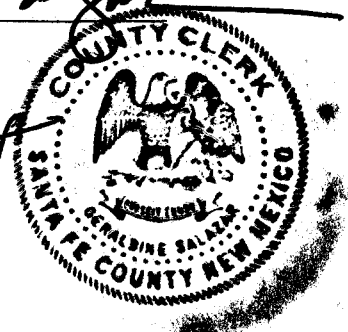
Approved as to form:

R. Bruce Frederick
R. Bruce Frederick
County Attorney

ATTEST:

Geraldine Salazar
Geraldine Salazar
County Clerk

Date: 1/30/2018



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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 4

I Hereby Certify That This Instrument Was Filed for
Record On The 31ST Day Of January, 2018 at 11:21:13 AM
And Was Duly Recorded as Instrument # **1848954**
Of The Records Of Santa Fe County

Deputy *Geraldine Salazar* Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 99

I Hereby Certify That This Instrument Was Filed for
Record On The 1ST Day Of February, 2018 at 02:11:47 PM
And Was Duly Recorded as Instrument # **1849111**
Of The Records Of Santa Fe County

Deputy *Geraldine Salazar* Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM



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.

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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, 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.

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- 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.

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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

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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

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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.

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- 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.

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- 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.

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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

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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 _____ Date	SANTA FE COUNTY _____ Henry P. Roybal, Chair Board of County Commissioners _____ 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 _____ Date	

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SAN ILDEFONSO PUEBLO EAST BOUNDARY



EXHIBIT A



**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).

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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

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COUNCIL RESOLUTION NO. SI-R17-048

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:

APPROVED

VETO - RETURNED TO COUNCIL WITH EXPLANATION:

On this _____ day of _____, 2017.


James R. Mountain, Governor

COUNCIL RESOLUTION NO. SI-R17-048



PUEBLO DE SAN ILDEFONSO

ACT AUTHORIZING SIGNATURE OF ROADS SETTLEMENT AGREEMENT

SFC CLERK RECORDED 02/01/2018
SEC CLERK RECORDED 02/01/2018

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

COUNCIL RESOLUTION NO. SI-R17-048

- (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.

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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:

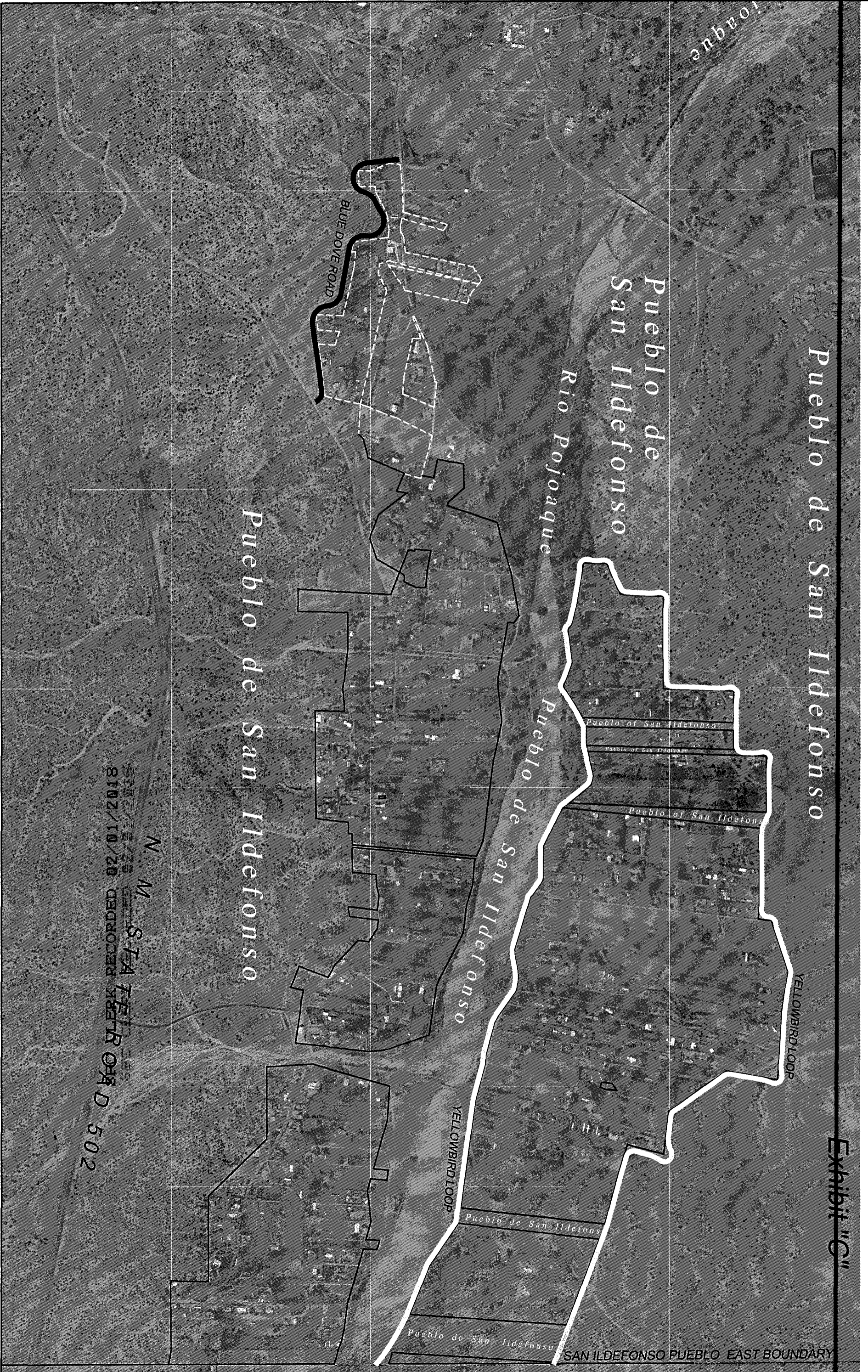
- (a) The Pueblo has been dealing with issues of roads trespass for decades and the number of unauthorized roads and the amount of unauthorized access over the Pueblo's lands has reached an unacceptable level.
- (b) The Pueblo has attempted several times to negotiate with Santa Fe County (County) to 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.

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.

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Pueblo de San Ildefonso

Pueblo de San Ildefonso

Rio Pojoaque

BLUE DOVE ROAD

Pueblo de San Ildefonso

Pueblo de San Ildefonso

YELLOWBIRD LOOP

N M STA TEL R O A D 502

Exhibit "C"

SAN ILDEFONSO PUEBLO EAST BOUNDARY

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.

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- 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

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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

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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.*

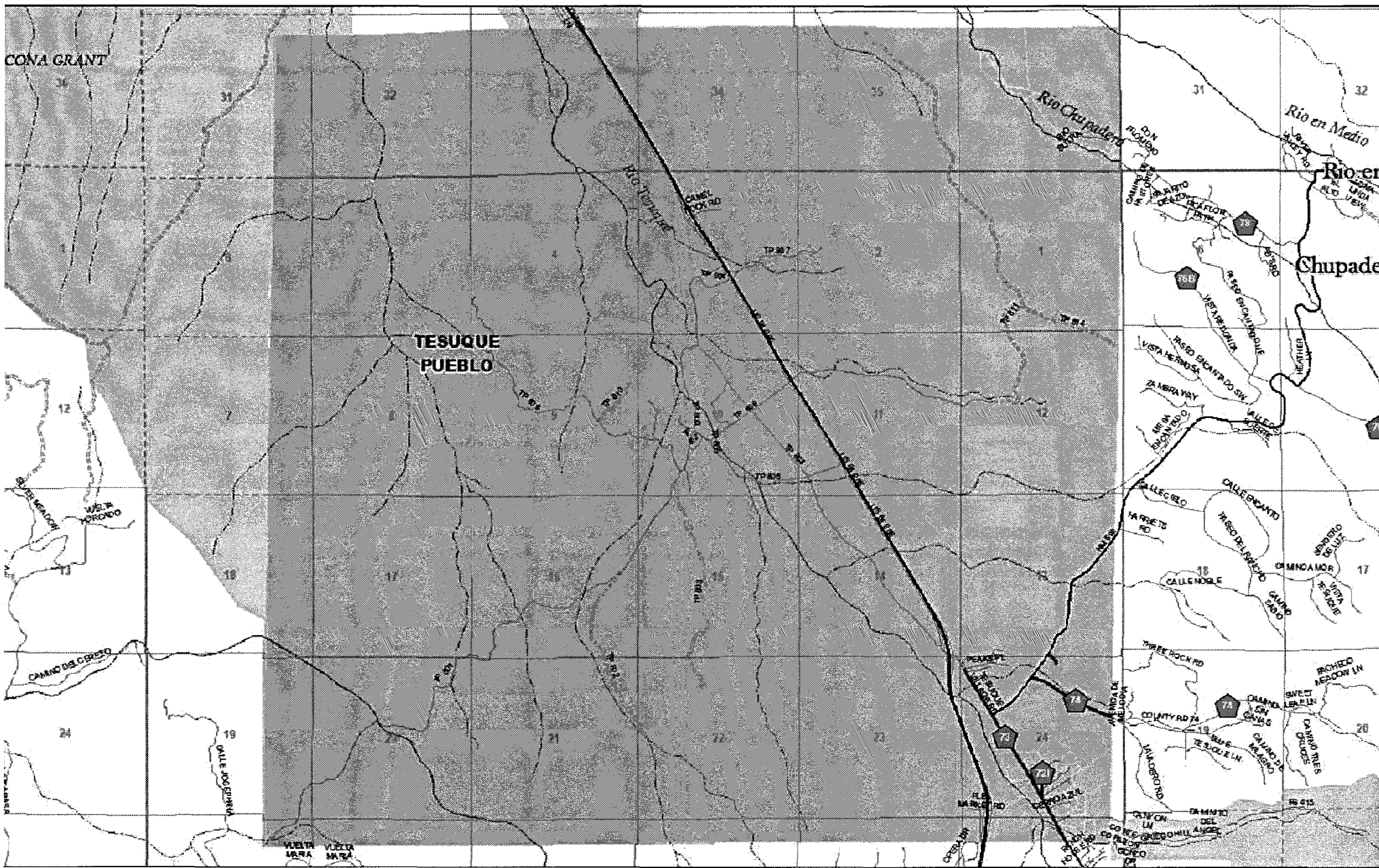
The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

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

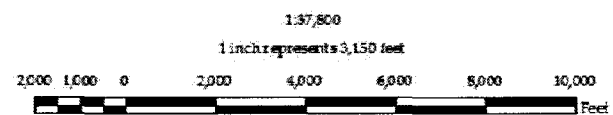
<p>PUEBLO OF TESUQUE</p> <p>_____</p> <p>Frederick Vigil, Governor</p> <p>_____</p> <p>Date</p>	<p>SANTA FE COUNTY</p> <p>_____</p> <p>Anna C. Hansen, Chair Board of County Commissioners</p> <p>_____</p> <p>Date</p> <p>ATTEST:</p> <p>_____</p> <p>Geraldine Salazar, County Clerk</p> <p>Approved as to 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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- 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
- Tesuque Pueblo

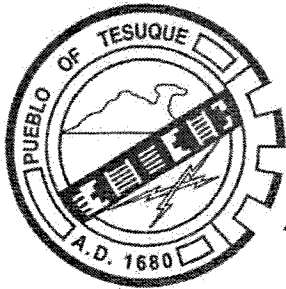


North American Vertical Datum 1985

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.

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

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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.



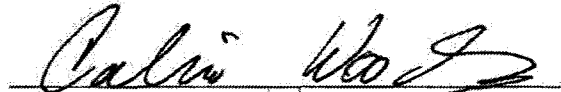
Frederick Vigil, Governor



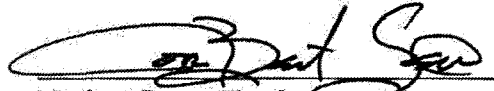
Roman Duran, Lt. Governor



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

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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:

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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.

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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

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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.

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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.

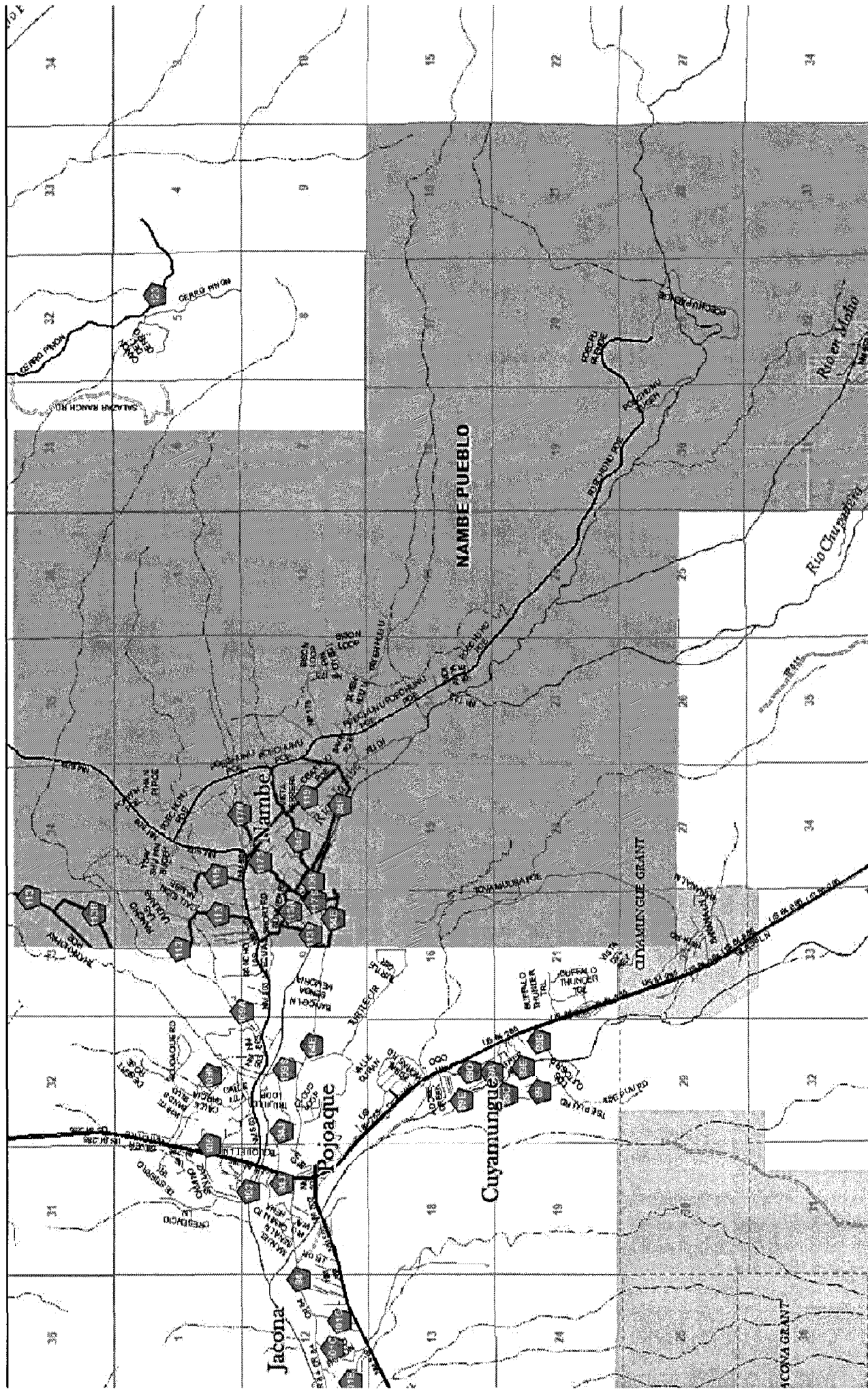
Section 23. *Contingency of Federal Appropriations.*

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.

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



- County Maintained Roads
 - Major Roads
 - Minor Roads
 - Dr. 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

1:48,600
 1 inch represents 4,050 feet

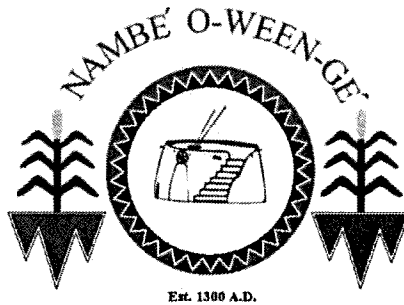
20,000,000 0 2,000 4,000 6,000 8,000 10,000 Feet

North American Vertical Datum 1985

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.

EXHIBIT A

SFC CLERK RECORDED 02/01/2018



OFFICE OF THE GOVERNOR

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

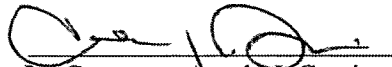
The foregoing resolution was considered and adopted at a duly called meeting of the Nambé Pueblo Tribal Council on October 30, 2017, at which time a quorum was present with 6 in favor and 1 opposed and 1 abstaining and 1 absent.

EXECUTIVE BRANCH


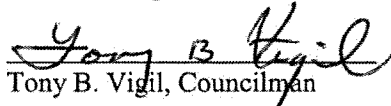

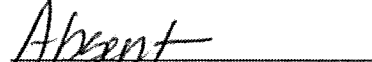
ATTEST:

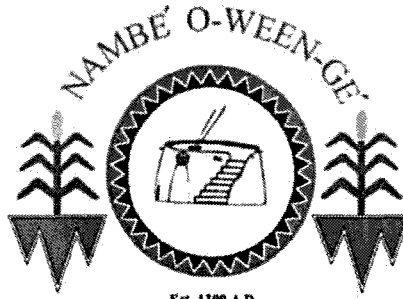


Secretary, Christine Brock


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
Dennis F. Vigil, Councilman



OFFICE OF THE GOVERNOR

15A NP102 WEST* NAMBÉ 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

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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

SFC CLERK RECORDED 02/01/2018

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.

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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.

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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

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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

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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.*

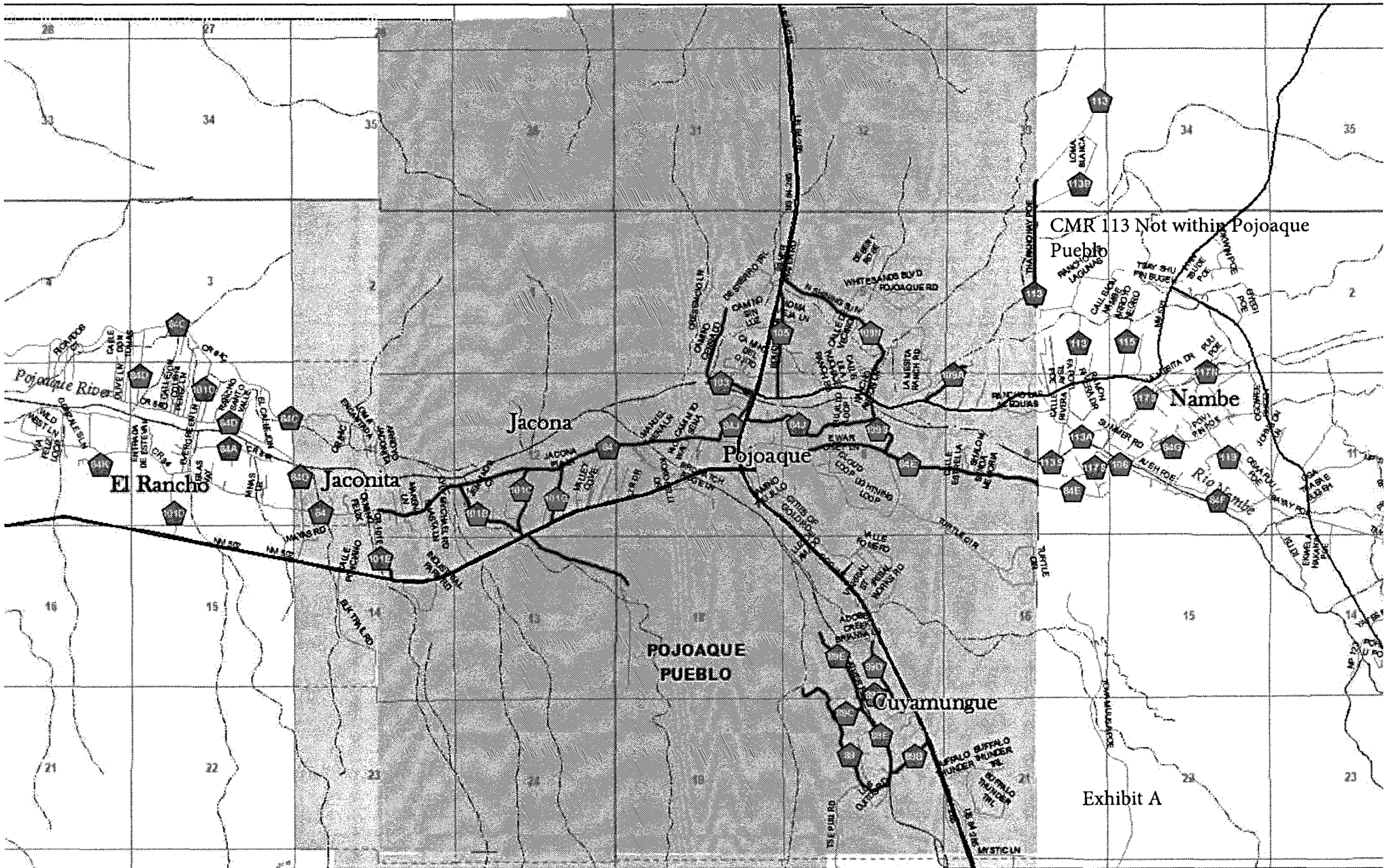
The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

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

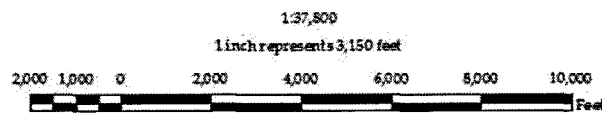
<p>PUEBLO OF POJOAQUE</p> <hr/> <p>Joseph Talachy, Governor</p> <hr/> <p>Date</p>	<p>SANTA FE COUNTY</p> <hr/> <p>Anna C. Hansen, Chair Board of County Commissioners</p> <hr/> <p>Date</p> <p>ATTEST:</p> <hr/> <p>Geraldine Salazar, County Clerk</p> <p>Approved as to Form:</p> <hr/> <p>R. Bruce Frederick,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

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- 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



CMR 113 Not within Pojoaque Pueblo

Exhibit A

North American Vertical Datum 1988

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
(505) 455-3334 FAX (505) 455-3684

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");

Exhibit B

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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

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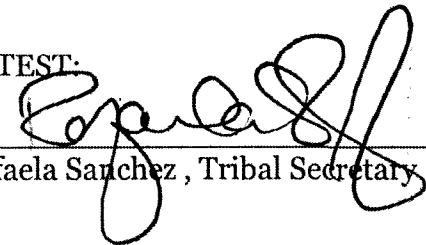
immunity as stated in Section 10(E) of the Settlement Agreement for the sole and limited purpose of entering into the Settlement Agreement.

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