

## **SETTLEMENT AGREEMENT**

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

### **RECITALS**

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

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

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

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

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

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

### **AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 3.     *Subject Road ROWs.***

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

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

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

**Section 4. *New Roads.***

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

4. Any litigation costs related to the cost of obtaining court orders to gain or maintain access to construct the New Roads, adjudicating title to the underlying land for the New Roads, or defending or bringing any claims or appeals regarding the New Roads. Because the New Roads will be constructed entirely on Pueblo land, the County will not be required to file or prosecute any legal action to obtain access or remove obstructions to access, *provided*, the County may be required to acquire temporary construction easements on Private Lands during the construction. The BIA and the Pueblo will assure that the County has clear legal and physical access to Pueblo Land before construction commences and throughout construction. Delays necessary to obtain such access will not count against the five (5) year construction period.

5. Costs of installing or relocating any utilities, including fiber optic cable. The County will not commence construction of the New Roads until after utilities have been installed unless otherwise agreed to by the Parties.

- E. The Pueblo shall as soon as practicable after the Effective Date provide the County with the Final Construction Design for the New Roads. The County, the Pueblo, and BIA must agree on the Final Construction Design. The County, the Pueblo and the BIA shall further agree upon appropriate milestone inspections points for New Roads construction project. Additionally, none of the New Roads shall be opened to the public before the BIA has carried out a final inspection, the BIA has formally accepted the New Roads as BIA Roads, and the Southwest Regional Road Engineer has authorized the New Roads to be opened to public travel. If all of the necessary road access points to Private Land are not included in the Final Construction Design for Blue Dove Road on the Effective Date of this Agreement, the Parties shall meet to agree on a revised Final Construction Design and the County shall design, construct and maintain such additional roadway and such roadway will be included in the New Road ROW.
- F. The County will bear the cost of surveying the New Roads and for conducting environmental and archeological assessments in accordance with applicable federal law.
- G. For each New Road ROW that complies with Part 169, the proposed term shall be ninety-nine (99) years with an automatic renewal for another ninety-nine (99) years, and the Pueblo shall consent to such initial and automatic renewal terms by resolution of its Council or in such other form as the Secretary may require.
- H. Upon opening Yellowbird Loop to public travel, the County will cease maintaining the portions of CMR 84C, CMR 84D and Sandy Way where those Roads cross Pueblo Land, will close the same by posting notices and, in consultation with the Pueblo, place appropriate barriers or take other actions to decommission the Roads, will promptly notify the State of New Mexico that said roads are no longer public roads, cause them to

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

**Section 5. *ROW Application and Approval.***

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

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

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

**Section 6. *Automatic Renewal of ROWs.***

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

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

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

**Section 8. *Renaming Roads.***

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

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

**Section 9. *Interim Access.***

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

**Section 10. *Gap and Other Access Issues.***

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

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

**Section 11. *Road Maintenance and Construction.***

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

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

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

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

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

**Section 12. Utilities.**

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

**Section 13. Contingencies.**

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

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

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

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

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

#### **Section 14. *Release of Claims.***

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

B. **Release of Claims Against the United States and the Department.** If the Secretary approves the ROWs for the Subject Roads and the New Roads, then on the day that the last such ROW is granted the Pueblo and the County agree to irrevocably and forever

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

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

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

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

**Section 16. *Governing Law.***

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

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

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

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

**Section 18. *Representations.***

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

**Section 19. *Dispute Resolution.***

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

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

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

**Section 20. Notices.**

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

To The County:

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

With a Copy To:

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

To the Pueblo de San Ildefonso:

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

With A Copy To:

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

To the Department of the Interior:

Regional Director, Southwest Region

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

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

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

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

**Section 21. *No Third Party Beneficiary Rights.***

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

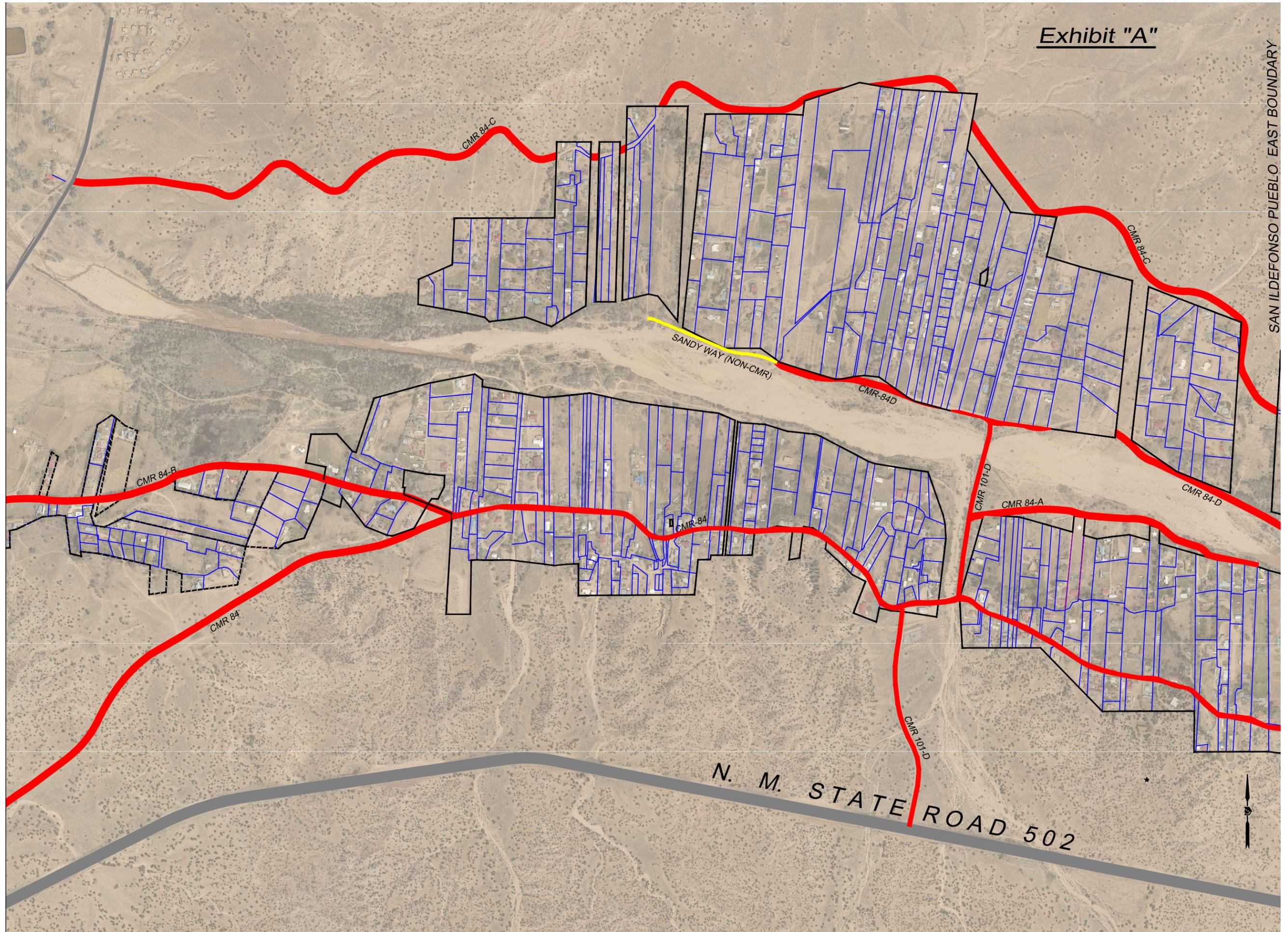
**Section 22. *Private Claims Unaffected.***

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

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

<p><b>PUEBLO DE SAN ILDEFONSO</b></p> <hr/> <p>James R. Mountain, Governor</p> <hr/> <p>Date</p>	<p><b>SANTA FE COUNTY</b></p> <hr/> <p>Henry P. Roybal, 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><b>U.S. DEPARTMENT OF THE INTERIOR</b></p> <hr/> <p>Secretary of the Interior</p> <hr/> <p>Date</p>	

Exhibit "A"



SAN ILDEFONSO PUEBLO EAST BOUNDARY

N. M. STATE ROAD 502

CMR 84-C

CMR 84-C

SANDY WAY (NON-CMR)

CMR 84-D

CMR 84-B

CMR 84-D

CMR 84

CMR 84

CMR 84-A

CMR 101-D

CMR 101-D



**EXHIBIT B**

**(PUEBLO DE SAN ILDEFONSO COUNCIL RESOLUTION)**

Exhibit "C"

Pueblo de San Ildefonso

Pueblo de San Ildefonso

Rio Pojoaque

Pueblo de San Ildefonso

Pueblo de San Ildefonso

N. M. STATE ROAD 502

BLUE DOVE ROAD

YELLOWBIRD LOOP

YELLOWBIRD LOOP

SAN ILDEFONSO PUEBLO EAST BOUNDARY