

SETTLEMENT AGREEMENT

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

RECITALS

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Compensation.

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

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

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

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

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

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

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

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

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

ii. Waives valuation of the ROWs;

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

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

Section 3. *Obligations of the Parties.*

A. County Obligations:

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

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

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

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

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

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

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

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

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

B. Pueblo Obligations:

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

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

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

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

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

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

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

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

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

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

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

C. BIA Obligations:

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

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

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

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

D. ROW and Other Requirements:

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

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

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

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

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

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

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

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

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

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

Section 4. *Contingencies.*

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

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

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

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

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

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

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

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

Section 5. *Release of Claims.*

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

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

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

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

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

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

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

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

Section 7. *Governing Law.*

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

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

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

Section 9. *Representations.*

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

Section 10. *Dispute Resolution.*

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

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

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

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

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

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

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

Section 11. *Notices.*

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

To The County:

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

With a Copy To:

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

To the Pueblo of Pojoaque:

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

With A Copy To:

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

Fax: 505.455.3684

To the Department of the Interior:

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

With A Copy To:

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

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

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

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

Section 12. *No Third Party Beneficiary Rights.*

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

Section 13. *Private Claims Unaffected.*

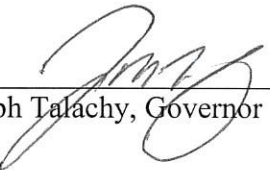
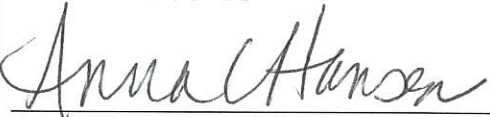
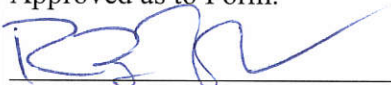
The Parties acknowledge and agree that this Agreement and the subsequent grant of any of the ROWs do not waive, satisfy, or discharge claims (if any) at law or in equity that Third-parties may have against the County, the Pueblo, or the United States related to the CMRs or access to Private Land.

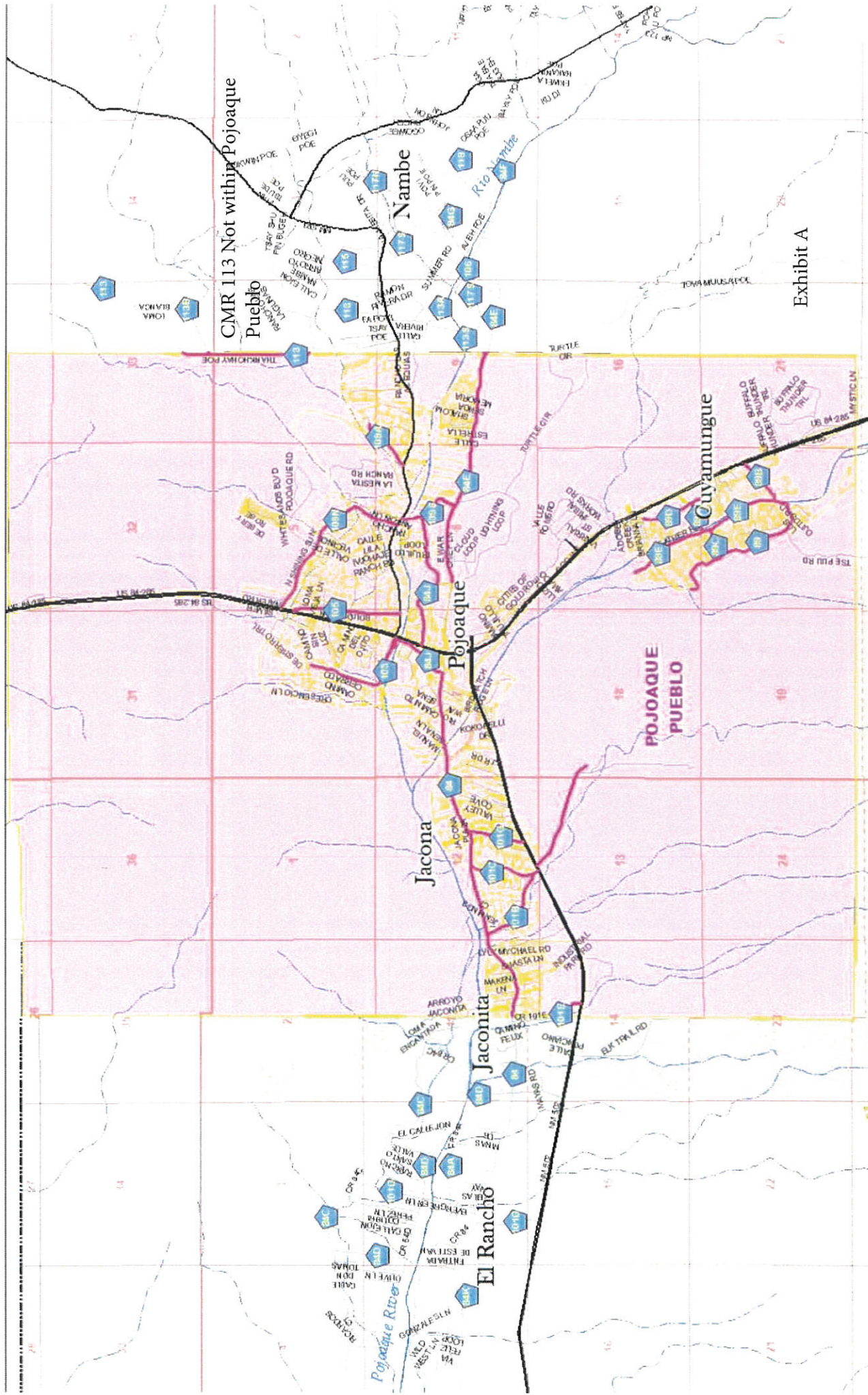
Section 15. *Contingency of Federal Appropriations.*

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

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

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



North American Vertical Datum 1955

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, Section 10(E) states the following:

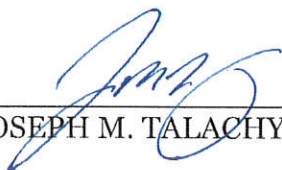
"E. The Pueblo waives its sovereign immunity only as to suits limited to interpretation or enforcement of this Agreement brought in a court of competent jurisdiction."

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

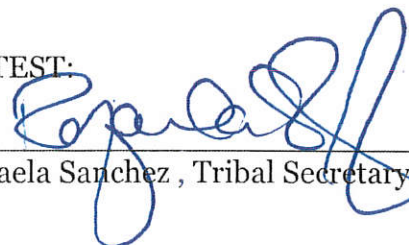
immunity as stated in Section 10(E) of the Settlement Agreement for the sole and limited purpose of entering into the Settlement Agreement.

CERTIFICATION

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

By: 
JOSEPH M. TALACHY, Governor

ATTEST:


Rafaela Sanchez, Tribal Secretary