



Memorandum

To: Santa Fe Board of County Commissioners

From: Donna Morris, Fire Department

Thru: Katherine Miller, County Manager

Date: July 12, 2011

Re: *Requesting BCC Approval to Authorize an Indefinite Price Agreement with Dealers Electrical Supply.*

CAPTION:

The Santa Fe County Fire Department is requesting BCC approval to authorize an indefinite Price Agreement with Dealers Electrical Supply for 25kw and 30kw generators. Bid award 2011-0276-FD/TRV. (CSD/Fire)

BACKGROUND:

The Santa Fe County Fire Department has received an Assistance to Firefighters grant #EMW-2009-FO-06361 to purchase four fixed station generators to be installed at the Pojoaque, Agua Fria, Hondo and Eldorado fire stations. There was a facility needs analysis done and it was concluded that the large heavy bay doors present a delay in response and potential firefighter injury when they must be lifted manually due to a power outage. This purchase was put out to bid and the bid award 2011-0276-FD/TRV was given to Dealers Electrical Supply as the lowest responsive bidder.

SUMMARY:

Please approve the request to enter into an indefinite price agreement with Dealers Electrical Supply for the purchase of fixed station generators for the Pojoaque, Agua Fria, Hondo and Eldorado fire stations.

**PRICE AGREEMENT
BETWEEN SANTA FE COUNTY
AND DEALERS ELECTRICAL SUPPLY
FOR GENERATORS**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter “**County**”) and Dealers Electrical Supply, authorized to do business in the State of New Mexico, (hereinafter “**Contractor**”).

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. “**County**” shall mean the County of Santa Fe, New Mexico
- B. “**Using Department or Department**” shall mean department, office or division of Santa Fe County.
- C. “**Purchase Order**” shall mean a fully executed Purchase Document issued by the County that specifies the items to be provided by the Contractor at the prices stated in this Price Agreement.
- D. “**Agreement**” means this Agreement which requires the Contractor to provide and deliver generators to a using department identified in a Purchase Order.
- E. “**Prices**” means the prices paid by the County for the supply and delivery of the generators that are the subject of this Agreement and as specifically described in Attachment A.

2. GOODS TO BE PROVIDED

- A. **Purchase.** The prices listed on Attachment A of this Agreement are the prices for the supply and delivery of generators. Attachment A also indicates all specifications included in the prices for each the generators.
- B. **Items Listed on Attachment A.** The County will issue Purchase Orders to the Contractor for the supply and delivery of the items listed on Attachment A. Any item ordered by the County must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Purchase Agreement (#2011-0276-FD/TRV).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County or Using Department may purchase any quantity of the items listed on Attachment A, on an as needed basis. The Contractor is required to accept the Purchase Orders and furnish and deliver the item(s).
- D. **Specifications.** The items furnished under this Agreement shall be new and meet or exceed the specifications provided in the IFB# 2011-0276-FD/TRV and all Addendums. Orders issued pursuant to this Agreement must show this Agreement number, a description of the item(s) ordered and prices.
- E. **Delivery Instructions; Late Delivery; Acceptance and Return of Items.**
 - 1. The Contractor shall provide with each item delivered an invoice listing the order number and the number of this agreement. Unless otherwise designated by the County, the Contractor shall ship all items F.O.B. destination. Except for loss or damage directly attributable to the negligence of the Department, the Contractor shall bear all risk of loss or damage until products have been accepted by the Department. Destination charges shall be included in the product price.

2. The Contractor shall provide and deliver items ordered by the County no later than thirty (30) calendar days of the date of the Contractor's receipt of a Purchase Order(s). Unless otherwise agreed to or waived by the parties, any item not delivered within the time stated herein will be considered late delivery.
3. Whenever the Department does not accept any item and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
4. A Using Department will inform the Contractor within five (5) business days that a delivered item(s) is unacceptable by the Department.
5. Prices listed in Attachment A, for each item, shall be the fixed prices for supply and delivery of the items.

F. Warranties and Operating Manuals

1. Contractor warrants that the items provided under this Agreement are covered by the most favored commercial warranties the Contractor gives to any customer for such items. The Contractor shall not disclaim any warranties of fitness for a particular purpose or warranty of merchantability.
2. For all items provided and delivered by Contractor, Contractor shall furnish a written warranty for workmanship and parts and service for a minimum period of one (1) year from the date of delivery.
3. For all items provided and delivered by Contractor, upon delivery the Contractor shall furnish the Using Department with a set of all operating manuals, warranty information, maintenance instructions and the names and phone numbers of contacts for all service and maintenance information.

3. INSURANCE

- A. General Conditions.** The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile.** The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.
- C. Workers' Compensation Insurance.** If applicable, Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Increased Limits.** If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

- 4. PAYMENT.** All payments under this Agreement are subject to the following provisions:

- A. **Inspection.** Final inspection and acceptance of delivered items shall be made by the Using Department.
- B. **Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet the specifications and will accept the items if they meet specifications and are as ordered by the Department. No payment shall be made for any item until the item has been accepted in writing by the Using Department. Unless otherwise agreed upon, between the Department and the Contractor within thirty (30) days from the delivery and receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of any item(s) or service. Unless the Using Department gives notice of partial acceptance or rejection within five (5) days from the date of delivery by Contractor, the items will be deemed to have been accepted.
- C. **Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Agreement.
- D. **Payment.** County shall pay Contractor on an invoice received from Contractor within thirty (30) days from the date the County approves the invoice. Full payment for all accepted items will be issued by the County. No payment under this Agreement shall be conclusive evidence of the Contractor's performance of this Agreement, either wholly or in part. No payment made by the County shall be construed as an acceptance of defective or unacceptable items or service and shall not relieve the Contractor from correcting any defects or curing any unacceptable items. Should any such circumstances become evident, the County shall have the right, notwithstanding acceptance and payment, to cause the properly working new items to be delivered by the Contractor at the Contractor's expense.
- E. **Contractor to Replace Defective items** Any item delivered by Contractor that is deemed defective in that the item does not meet the specifications shall be timely replaced by the Contractor at no cost to the County.
- F. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item on each invoice. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Contractor written evidence of such exemption(s).

5. TERM OF THIS AGREEMENT. This Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below (the Effective Date). The term of this Agreement shall be two (2) years, unless terminated earlier pursuant to Paragraph 7.

6. CANCELLATION.

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Agreement if the items fail to meet the requirements of this Agreement.
- B. The failure of the Contractor to perform its obligations under this Agreement shall constitute a default of this Agreement.
- C. The Contractor may be excused from performance if the Contractor's failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor,

unless the County shall determine that the item, to be furnished by a sub-contractor, is obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Contractor fails to meet material provisions of the order and the Contractor shall be liable for any excess costs incurred by the County that is associated with such default.
- F. It shall not be considered a cancellation or breach of this Agreement if the County determines that due to emergency circumstances, the County must order items from another source.

7. TERMINATION.

- A. **For Convenience.** Consistent with applicable New Mexico laws, this Agreement may be terminated by the County, without penalty, at any time prior to the Termination date of this Agreement. County will provide at least thirty (30) days prior written notice to the Contractor of the date of termination. Notice of Termination of this Agreement shall not affect any outstanding order(s) issued under this Agreement prior to the effective date of termination for convenience by the County.
- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

8. **AMENDMENT.** Except for amendment of prices, this Agreement may be amended by mutual agreement of the County and the Contractor upon written notice of either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

9. **ASSIGNMENT.** Contractor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Agreement.

10. **NON-COLLUSION.** In signing this Agreement, the Contractor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. RECORDS. During the term of this Agreement and for three (3) years thereafter, the Contractor shall maintain detailed records pertaining to the items supplied and delivered under this Agreement. These records shall be subject to inspection by the Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County or Using Department to recover excessive or illegal payments.

12. APPROPRIATIONS. The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

13. CONFLICT OF INTEREST. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

14. APPROVAL OF CONTRACTOR'S REPRESENTATIVES. The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

15. SCOPE OF AGREEMENT, MERGER. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

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

17. INDEMNIFICATION. The Contractor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or sub-contractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the County, its Departments, and County officers or employees.

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

19. NEW MEXICO TORT CLAIMS ACT. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its “public employees” at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

20. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

21. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

22. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

23. ENFORCEMENT OF AGREEMENT. A party’s failure to require strict performance of any provision of this Agreement shall not waive or diminish that party’s right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

24. SURVIVAL. The Provisions of the following listed paragraphs shall survive termination of this Agreement: Delivery & Billing Instructions; Records and Audit; Indemnification; Applicable Law; and Survival.

25. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

To the Contractor:

Dealers Electrical Supply
ATTN: Ron Delgado
2815 Industrial Road
Santa Fe, NM 87507

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SANTA FE COUNTY

Virginia Vigil, Board of County Commissioners
Santa Fe County

Date

ATTEST:

Valerie Espinoza, Santa Fe County Clerk

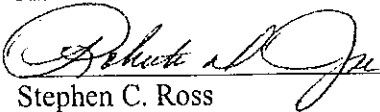
Date

FINANCE DEPARTMENT APPROVAL

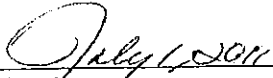
Teresa C. Martinez
Santa Fe County Finance Director

Date

APPROVED AS TO FORM



Stephen C. Ross
Santa Fe County Attorney



Date

CONTRACTOR

Signature

Date

Print Name and Title

Tax Identification Number:

74-1972120

ATTACHMENT A

IFB #2011-0276-FD/TRV

IFB #2011-0276-FD/TRV

Please offer your best price, for each item as outline below. Bidders shall complete the following bid sheet in full, for Bid No. 2011-0276-FD/TRV, including signature at the bottom as stated. Be advised that award may be made without discussion with bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Description/Requirements
1	New 25 kw generator with Automatic Transfer Switch (ATS) that is powered by liquefied petroleum gas (LPG) with appropriate battery back-up.
	Make/Model: <i>GENERAC QT02516 ANSX / ATS-RTSD20043 / BATTERY # 5819</i>
	Price per Unit (Base Bid): <i>8680⁰⁰ + 315⁰⁰ FOR FREIGHT BASED ON QTY of 1</i> Each
	Written in Words (Base Bid): <i>EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS Each</i>
	Estimated Delivery Date: <i>2-3 WEEKS ARO</i>

OR *FOUR OR MORE GENERATORS WOULD QUALIFY FOR FREE FREIGHT*

Item	Description/Requirements
1	New 30 kw generator with Automatic Transfer Switch (ATS) that is powered by liquefied petroleum gas (LPG) with appropriate battery back-up.
	Make/Model: <i>GENERAC QT03016 ANSX / RTS D200A2-ATS / BATTERY # 5819</i>
	Price per Unit (Base Bid): <i>9725⁰⁰ + 315⁰⁰ FOR FREIGHT BASED ON QTY OF 1</i> Each
	Written in Words (Base Bid): <i>NINE THOUSAND SEVEN HUNDRED TWENTY FIVE DOLLARS Each</i>
	Estimated Delivery Date: <i>2-3 WKS ARO</i>

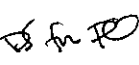
Bidder's Name: *DEALERS Electric Supply*

Bidder's Phone: *505-471-2131* Fax #: *505-471-2192*

Signature of Authorized Bidder's Agent: *[Signature]*

Title: *OPERATIONS MANAGER*

SANTA FE COUNTY INTEROFFICE MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS
FROM: DUNCAN SILL, PAUL OLAFSON 
SUBJECT: Request Approval of Easement on Santa Fe County Property for Telecommunication Utilities Right of Way in Support of Santa Fe Studios Local Economic Development Act Project
DATE: 7/1/2011
CC: JACK KOLKMEYER, GROWTH MANAGEMENT, RACHEL BROWN, DEPUTY COUNTY ATTORNEY, SF STUDIOS FILES

Background:

Pursuant to the Project Participation Agreement ("PPA") for the Santa Fe Studios LEDA project, Santa Fe County is obligated to provide certain offsite infrastructure improvements including telecommunications broadband access.

Issue:

In order to meet the timelines of completing construction for the Santa Fe Studios LEDA project and to support its telecommunications needs, the County has worked with Qwest to address the most effective and timely manner to deploy the infrastructure improvement. Qwest engineering has determined that a 10' telecommunications utility easement through a small portion along the northwestern edge of County property (Section 1 Township 15 North Range 8 East) at the Public Safety Complex site is necessary to serve this purpose (see attached documents).

The proposed creation of easement and Right of Way document has been reviewed and prepared by our legal department.

Action Requested:

- Approval of Easement on Santa Fe County Property for Telecommunication Utilities Right of Way in Support of Santa Fe Studios Local Economic Development Act Project

Thanks for your favorable consideration and please contact us if you have questions or need additional information.

EASEMENT

The County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico, by its Board of County Commissioners (hereinafter "Grantor") does hereby grant and convey to Qwest Corporation, a foreign corporation registered to do business in New Mexico, its successors and assigns (hereinafter "Grantee") a 10-foot wide telecommunications utility easement in Section 1, Township 15 North, Range 8 East, Santa Fe County ("Easement"), as described on Exhibit A, attached hereto and incorporated herein.

The Easement herein is subject to the following terms and conditions:

- a) This Easement shall be interpreted under the laws of the State of New Mexico.
- b) This Easement may be modified only by a written document signed and notarized and recorded in the official records of Santa Fe County, New Mexico.
- c) This Easement is solely for the purpose of installing, operating, maintaining and replacing underground telecommunications infrastructure.

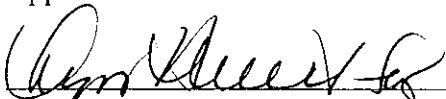
SANTA FE COUNTY, GRANTOR

VIRGINIA VIGIL, Chair
Board of County Commissioners

ATTEST

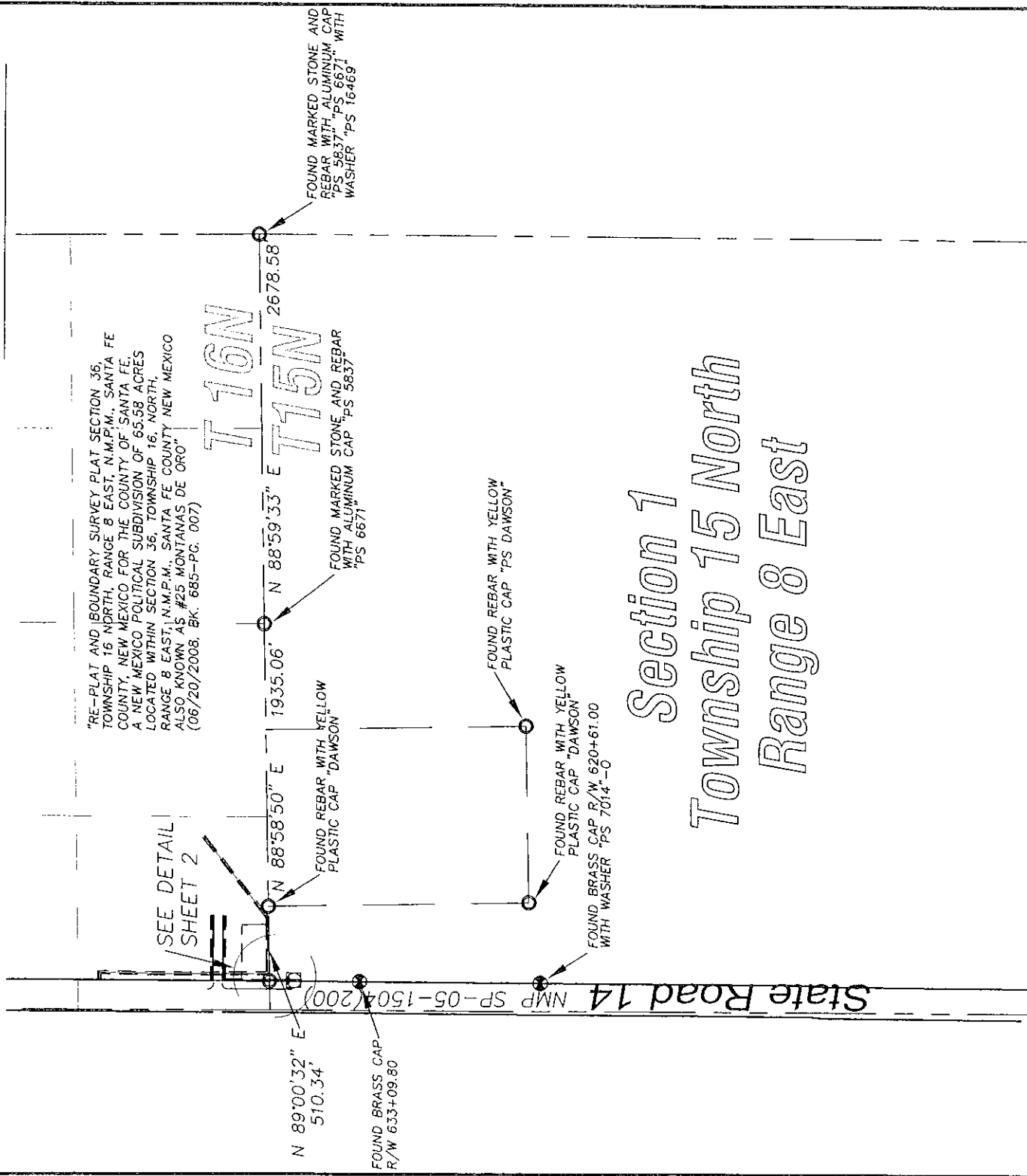
VALERIE ESPINOZA
Santa Fe County Clerk

Approved as to form:

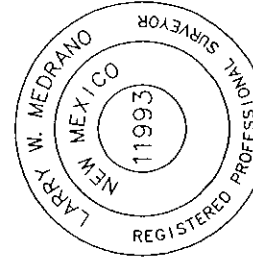


Stephen C. Ross
Santa Fe County Attorney

EXHIBIT A



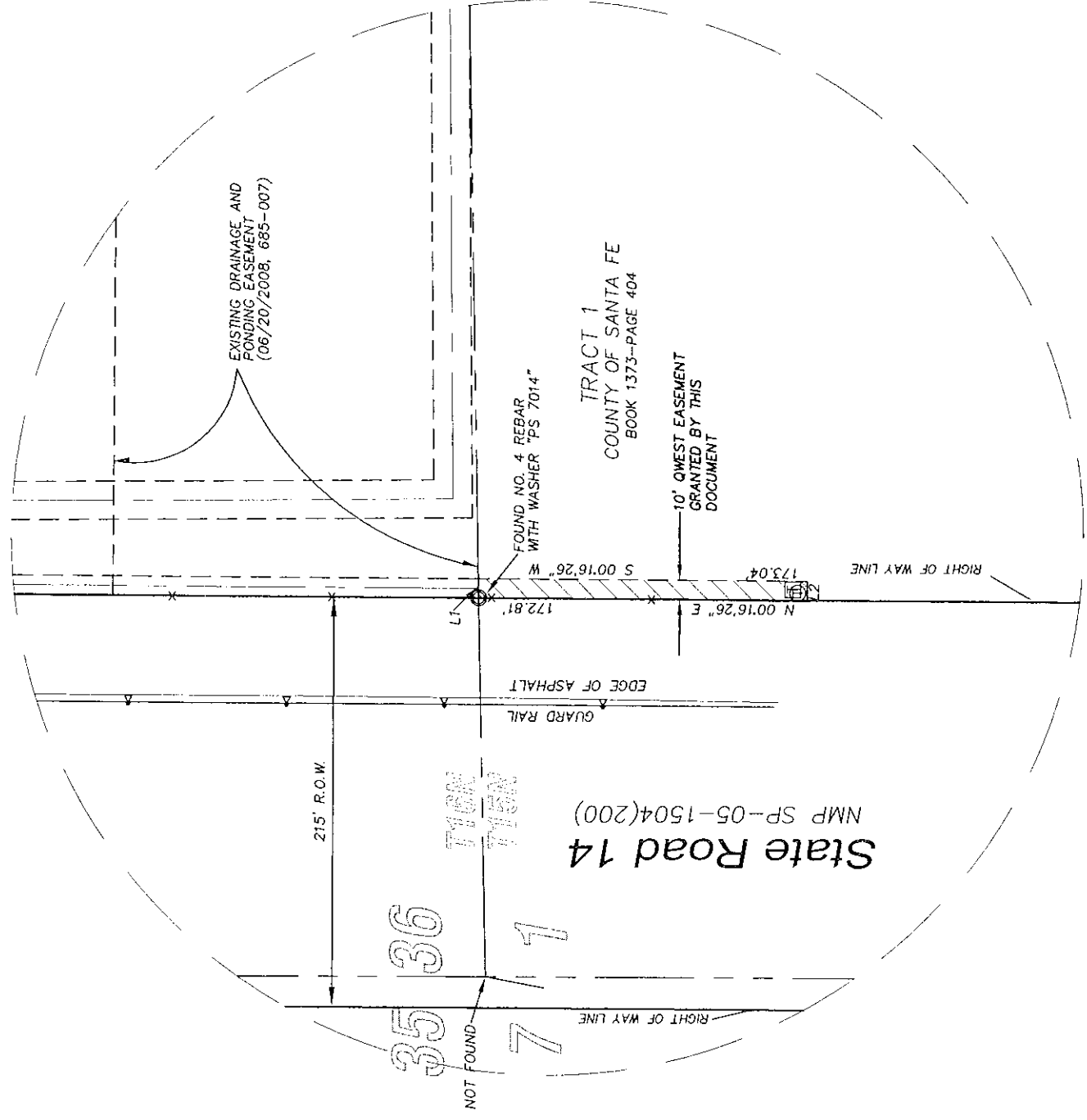
SCALE: 1" = 100'



Surveyor's Certificate

I, LARRY W. MEDRANO, A REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, HEREBY CERTIFY THAT THIS EASEMENT SURVEY WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MEETING THE MINIMUM REQUIREMENTS FOR THIS CLASSIFICATION OF SURVEY AS PER THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO AS ADOPTED BY THE N.M. BOARD OF LAND SURVEYING AND ENGINEERING.

EXHIBIT A



Detail