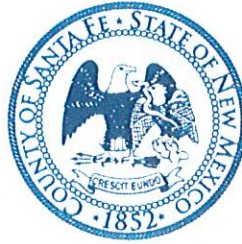


Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Kathleen Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: 26 April, 2011

To: Santa Fe Board of County Commissioners

From: Beth Mills, Community Planner, Open Space and Trails Program, CSD *BEM*

CC: Joseph Gutierrez, Director, Community Services Department
Paul Olafson, Division Director, Community Projects Division
Agnes Lopez, Project specialist, Community Projects Division
Colleen Baker, Director, Open Space and Trails Program

Re: Request Approval of a Purchase Agreement with Campbell Farming Corporation for Acquisition of Approximately 160 Acres at the Intersection of State Road 14 (Turquoise Trail Scenic By-Way) and State Road 344, On Recommendation from the County Open Lands, Trails, and Parks Advisory Committee (COLTPAC) to be used as a Regional Trailhead.

Background:

Since 2004 the Open Space and Trails Program has been seeking an opportunity to purchase land in the foothills of the San Pedro Mountains and close to the Turquoise Trail (SR 14) as the residential development at Campbell Ranch began to expand. The purpose of the purchase would be to enable the development of a trailhead that would provide a hub for trails connecting public lands in southern Santa Fe County. This location would also allow for eventual access to lands owned and managed by the Bureau of Land Management's Taos District Office in the San Pedro area. And the location would provide an opportunity to interpret the historic significance of the Turquoise Trail for the public.

Discussion:

On April 1, 2010, the **Turquoise Trail Preservation Trust**, acting as an **agent for the Campbell Farming Corporation** of Sandia Park, NM, submitted an application for the acquisition of approximately 160 acres on State Road 344, near its intersection with State Road 14 (the Turquoise Trail Scenic By-Way), and adjacent to land owned by the Bureau of Land Management. (see attached Map 1). This property is just south of the village of Golden, N.M. The Turquoise Trail Preservation Trust is concerned with protecting the views from the National Scenic By-way (State Road 14) and with providing visitors an opportunity to learn about the history of the lands adjacent to the Turquoise Trail. The application also had the support of the **East Mountain Regional Trails Coalition**. Their mission is to work on the development and connection of a trail network in southern Santa Fe County, and adjacent counties.

The County Open Lands, Trails, and Parks Advisory Committee (COLTPAC) accepted the application for consideration. At the August 19, 2010 COLTPAC meeting the committee scored applications to set priorities. This project ranked #3 out of seven (7) applications. On **October 7, 2010, COLTPAC unanimously requested that staff proceed with negotiations with the land owner for acquisition of the property.** After several months of negotiations an agreement was reached with Campbell Farming Corporation on March 2, 2011. The agreed **purchase price is \$350,000.00** (appraisal price), to be taken out of the Open Space General Obligation Bond for acquisition of real property. **The seller has agreed to donate 5% of the purchase price back to the Open Space Program** to support maintenance of open

space properties. In addition, he agreed to a **100' wide access easement through the adjacent property** in order to facilitate access to the parcel being purchased.

The proposed use for the property is open space, public recreation, hiking, mountain bike and equestrian trails and a regional trailhead for south Santa Fe County. The acquisition would create an open space gateway at the southern end of the County along the Turquoise Trail and would eventually provide access to the adjacent 2200 acres of public BLM lands. The proposed acquisition includes much of the historic mining town site of San Pedro (LA 139793).

An Environmental Site Assessment was done for the property in March 2011. The investigator found no evidence of any recognized environmental condition associated with the site.

Open Space and Trails staff has received approximately 45 letters of support for this acquisition in recent weeks from people in the neighboring communities.

Action Requested:

Staff requests approval of the acquisition of ~160 acres from Campbell Farming Corporation for \$350,000 (to come from the General Obligation Bond for Open Space and Trails), for the purpose of a regional trailhead, recreational trails, and for the value the land provides to the Turquoise Trail Scenic By-Way.

MAP #1

Proposed San Pedro Acquisition



Golden

Bureau of Land Management

Proposed Acquisition
~160 Acres

STATE RD 344

VIA AGUA DULCE

VIA CASA COLORADA

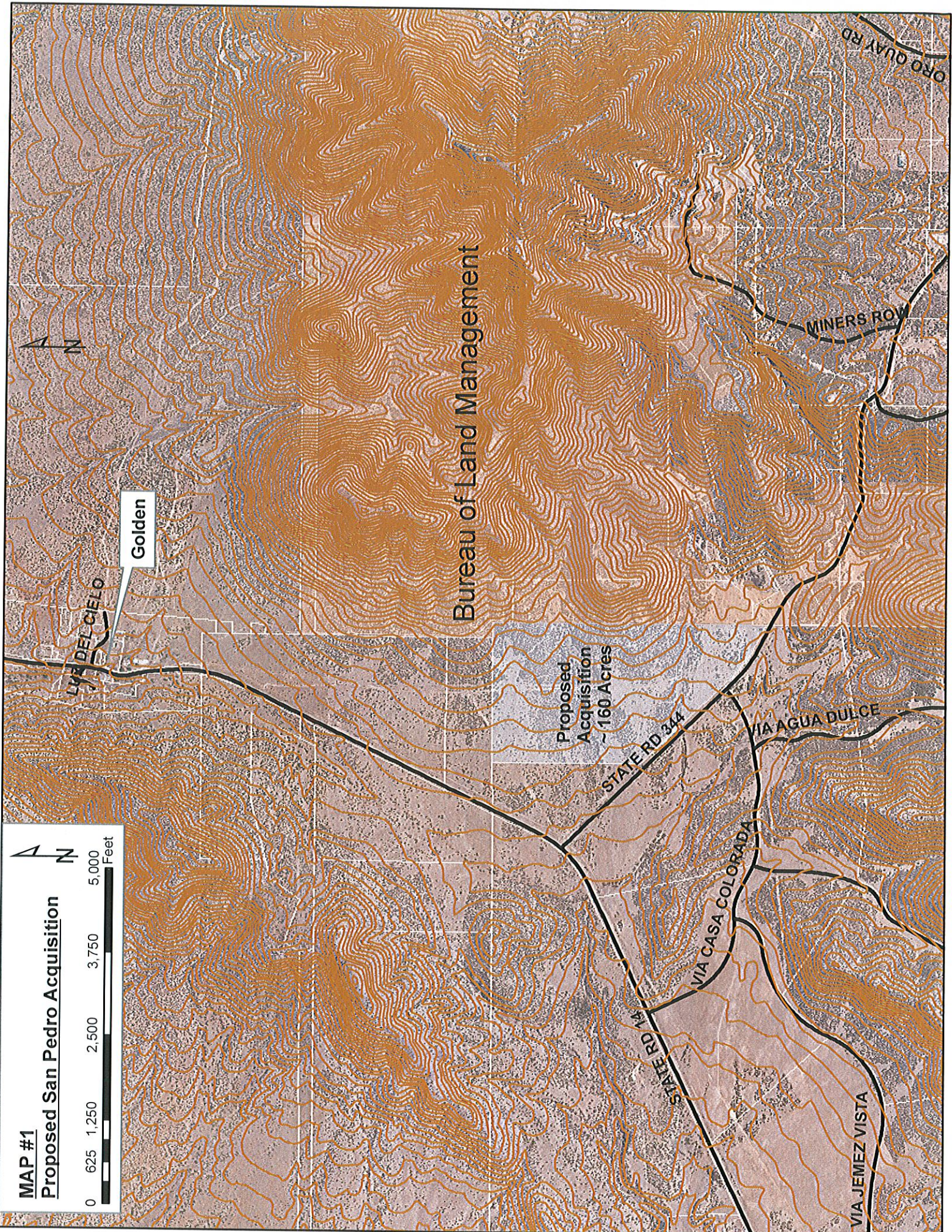
STATE RD 14

VIA JEMEZ VISTA

MINERS ROW

ORO QUAY RD

LA DEL CIELO



**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (the "Agreement"), dated this ____ day of _____, 2011, is made and entered into by and between, Campbell Farming Corporation of Sandia Park, New Mexico, whose address is 1 Turquoise Drive, Sandia Park, NM, 87047 (hereinafter the "Seller") and the Board of County Commissioners of Santa Fe County, on behalf of the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico (hereinafter the "Buyer").

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, Buyer and Seller now agree as follows:

1. DEFINITIONS. As used in this Agreement and any exhibits annexed hereto, unless the context otherwise requires or is otherwise herein expressly provided, the following terms shall have the following meanings.

1.1. Cash: Cash shall mean legal tender of the United States, or a cashier's check or wire transfer of current funds into a bank account designated by Seller.

1.2. Closing Date: Unless otherwise extended by written agreement of the parties, the Closing Date shall be no more than thirty (30) days following the completion of the Inspection Period provided all conditions precedent have been fulfilled.

1.3. Day. The term "day" as used herein means a calendar day and the term "business day" means any day other than a Saturday, Sunday or legal holiday under the laws of the State of New Mexico.

1.4. Deed. A Warranty Deed.

1.5. Effective Date: The last date that this Agreement is signed by the Seller or Buyer.

1.6. Escrow Agent: Southwestern Title and Escrow, 236 Montezuma Avenue, Santa Fe, 87501 or such other title company that Buyer and Seller mutually agree is acceptable.

1.7. Hazardous Materials: Hazardous Materials are defined in Paragraph 6.1.7.

1.8. Inspection Period: The period commencing on the Effective Date and terminating on the sixtieth (60th) day after the Effective Date of this Agreement, during which time Buyer may conduct the Review described in Section 4, below, subject to Buyer's right to extend the Inspection Period by thirty (30) days as provided herein.

1.9 Materials: All documents and reports concerning the Property to be provided by Seller to Buyer as provided in Paragraph 4.1.

1.10 Property: The Property under this Purchase Agreement includes Tract 1 and an access easement as are more fully described as follows: Tract 1-- is described as a tract of land lying and being situate within sections 20 and 29, township 12 North, Range 7 East, New Mexico Principal Meridian, Santa Fe County, New Mexico, containing 159.9529 acres, more or less, a survey plat prepared Larry Medrando, to be recorded in Santa Fe County in accordance with this Agreement, with all of Seller's right, title and interest in and to all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to the land, including, without limitation, any land to the midpoint of any bed or any roadway, street, highway, alley or right-of-way in front of, abutting or adjoining such land, any and all infrastructure, structures and other improvements located upon or affixed thereto. The legal description and boundary survey plat of Tract 1 are attached hereto as Exhibits "A" and "B" and are incorporated into this Agreement.

The Property under this Agreement also includes an easement benefiting the Property. Buyer and Seller are in further agreement that Seller shall also grant and convey to Buyer, in addition to Tract 1 described herein and in Exhibits "A" and "B" of this Agreement, and as part and parcel of the purchase of the Property pursuant to this Agreement, an easement along the western boundary of Tract 1 for the benefit of Tract 1. The easement shall provide access from State Road 344 to Tract 1 from Seller's property identified as Tract "A" in Exhibit "B" to this Agreement with a distance of approximately 100.01 feet and containing 0.8708 acres (37,931 Square Feet) more or less and as is set forth and delineated in Exhibits "B," "C" and "D" to this Agreement. The legal description and boundary survey plat of the easement Seller shall grant and convey to Buyer for the benefit of Tract 1 pursuant to this Agreement, is attached hereto as Exhibit "C" and "D" and are incorporated into this agreement.

1.11 Purchase Price: The amount set forth in Section 2.2 of this Agreement.

1.12 Review: Buyer's inspection of the Property including the review of studies, investigations, reports, lot configuration and all other evaluative investigations or studies deemed advisable by Buyer and to be conducted by Buyer during the Inspection Period.

1.13: Seller: Seller's Address

Attn: Robert Gately, President
Campbell Farming Corporation
1 Turquoise Drive
Sandia Park, NM 87047

1.14: Buyer: The Board of County Commissioners of Santa Fe County

Notice shall be sent to the following individuals.

Colleen Baker,

Open Space and Trails Program Manager
P.O. 276
Santa Fe, NM 87504

And

Attn: Stephen Ross, County Attorney
102 Grant Ave.
P. O. Box 276
Santa Fe, NM 87504-0276

1.15: Title Policy: An Owner's Policy of Title Insurance with endorsements and exceptions acceptable to Buyer.

2. PURCHASE AND SALE OF THE PROPERTY.

2.1 Purchase and Sale. Seller agrees to sell, convey, assign, transfer and deliver to Buyer free and clear of all claims, encumbrances, leases, debts, liabilities, obligations and the like, and Buyer agrees to purchase from Seller the Property, for the price and upon all the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The Purchase Price for the Property is three hundred and fifty thousand dollars (\$350,000.00), less any proration, closing costs and as otherwise provided in this Agreement.

3. TITLE AND SURVEY.

3.1. Procedure for Approval of Title. Within ten (10) business days after the Effective Date of this Agreement, Seller shall deliver to Buyer a commitment for an Owner's Title Insurance Policy showing title to the Property in Seller and proposing to insure the Buyer in the amount of the Purchase Price and issued by the Escrow Agent along with legible copies of all underlying documents referred to therein. The commitment and all matters affecting title to, or use of, the Property shall be subject to Buyer's approval or disapproval in writing on or before the conclusion of the Inspection Period, as follows: If Buyer shall fail to approve the commitment, any exceptions, the survey (as hereinafter defined) and any of the other title matters with respect to the Property by written notice given to Seller on or before the conclusion of the Inspection Period, the condition of title to the Property shall be deemed disapproved by Buyer. If, before the conclusion of the Inspection Period, Buyer shall disapprove by written notice any particular matter affecting title to the Property or the condition of the property, Seller may, at Seller's discretion, agree to use its best efforts to eliminate promptly (but in no event later than ten (10) days after such notice) such disapproved matter. If Seller does not agree to eliminate such disapproved matter by written notice thereof to Buyer within ten (10) days, Buyer shall have the right to waive its prior disapproval, in which event such previously disapproved matter shall be deemed approved. If Buyer shall fail to waive its prior disapproval before the conclusion of the Inspection Period or the date ten (10) days after the Buyer's notice of

disapproval if after the conclusion of the Inspection Period, then (a) such disapproval shall remain in effect; (b) this Agreement and the escrow shall thereupon be terminated; (c) the Escrow Agent shall immediately return all documents to the parties; and (d) the parties shall be relieved of any further obligation to each other with respect to this Agreement and the Property. Both parties agree to execute promptly those documents reasonably requested by Escrow Agent to evidence termination of this Agreement.

3.2. Buyer's Title Policy. Buyer's title to the Property shall be evidenced by an Owner's Policy of Title Insurance, paid for by Seller and reasonably acceptable to Buyer and such other endorsements as are available in New Mexico and as Buyer reasonably requires, for the purchase of the Property insuring Buyer, as owner of fee title to the Property free and clear of all liens, encumbrances, leases, debts, liabilities, obligations and the like, subject only to any matters approved or waived by Buyer.

3.3. Survey. Within thirty (30) days after the Effective Date, Seller shall pay for a survey procured by Buyer, sufficient to cause the Title Company to remove Survey Title Exceptions from the title policy.

4. INSPECTION AND REVIEW.

4.1. Review. Immediately upon the Effective Date, Seller shall make available to Buyer all documents ("the Materials"), presently available to Seller or within their control concerning the Property, including without limitation:

- (a) any leases, easements, reservations, conditions, covenants, restrictions, rights-of-way and other documents, whether recorded or unrecorded and surveys;
- (b) any engineering and architectural plans currently available to Seller, and any other improvement plans, whether or not such plans have been filed with, approved by or signed by any governmental agency or entity with jurisdiction over them, including those relating to installments of public utility facilities and services;
- (c) reports, including soils and hazardous waste reports, any Phase I environmental survey on the property, studies, maps, permits, architectural drawings, engineering studies, and deposits known, provide to or prepared by Seller;
- (d) Maintenance records for the period of time during which Seller owned the property, as well as any records of prior maintenance;
- (e) any other documents prepared for or obtained by Seller in connection with the Property.

Seller shall also disclose any known or should have known defects or environmental or potential environmental conditions on the Property prior to the termination of the Inspection Period and within thirty days of the date of execution of this Agreement. Buyer has commenced and may continue, at its cost and expense, its own investigation of the Property and the suitability of the Property for Buyer's purposes ("the Review"). Such investigation may include, without limitation a review of "the Materials," a study of the feasibility of Buyer's development or improvement of the Property, and other matters affecting use of the Property, including, without limitation, soil and geological conditions, the presence of toxic or hazardous materials, a Phase I environmental survey, the presence of sewer and utility connections, improvement costs, and any other investigations Buyer may deem necessary or appropriate under the circumstances, in Buyer's sole and absolute discretion. Buyer, in its sole discretion, may terminate the contract during the inspection and all documents belonging to Buyer and in Seller's possession shall be returned to Buyer. If this Agreement is terminated without any material breach of this Agreement by Seller, Buyer shall return the Materials to the Seller.

4.2. License to Enter. Seller hereby grants to Buyer, its employees and agents, a non-exclusive license to enter onto the Property during the pendency of this Agreement to conduct, at Buyer's expense, the Review during the Inspection Period. Buyer shall not interfere with any tenant's uses of the Property and will enter any leased premises only with the Seller's and any tenant's permission.

4.3. Approval of Review. This purchase shall be subject to Buyer's approval or disapproval, in Buyer's sole and absolute discretion, until 5:00 p.m. (MST) on the date of the termination of the Inspection Period. Buyer shall provide written notice of disapproval to Seller and Escrow Agent on or before the termination of the Inspection Period. In the event Buyer provides written notice of disapproval to Seller and Escrow Agent, then: (a) the Materials shall be returned to Seller; (b) this Agreement shall be deemed terminated and the escrow canceled; and (c) the parties shall be relieved of any further obligations to each other with respect to the purchase and sale of the Property. Buyer's failure to provide written notice of disapproval shall be deemed an approval of the Review. Both parties shall execute promptly those documents reasonably requested by Escrow Agent or the other party to evidence termination of this Agreement.

4.4. Inspection Period, Extension. The day Inspection Period shall begin on the date this Agreement is executed and shall extend sixty (60) days. The Inspection Period may be extended by Buyer upon written notice to Seller at any time prior to the conclusion of the sixty (60) day period for an additional thirty (30) days, in Buyer's sole and absolute discretion, to continue the Review.

5. CONDITIONS TO PERFORMANCE OF AGREEMENT; REMEDIES

5.1. Conditions to Buyer's Obligations. Buyer's obligation to purchase the Property is conditioned upon satisfaction (or waiver in writing by Buyer) of each of the following conditions, even if the failure of any condition occurs after the Inspection Period:

5.1.1. All representations and warranties made by Seller in this Agreement shall be complete and accurate at and as of the Closing Date;

5.1.2. Buyer shall have approved the purchase on or before the termination of the Inspection Period (or the extension thereof);

5.1.3. Seller's delivery of a Deed of the Property and such other documents as are sufficient to convey title to the Property to Buyer. The Deed shall be in a form that is reviewed by and acceptable to Buyer prior to closing;

5.1.4. The Escrow Agent has irrevocably committed in writing to issue the Title Policy in form and content required under the commitment approved by Buyer;

5.1.5. The conditions set forth in Paragraph 6.1 below shall have been satisfied;

5.1.6. Seller shall have delivered possession of the Property by Deed in a form and description acceptable to Buyer;

5.1.7. Seller shall have removed all personal property, trash, debris and materials from the Property to the satisfaction of the Buyer prior to the Closing Date;

5.1.8. Seller shall have filed and recorded the survey plat of the Property with Santa Fe County in a form approved and reviewed by Buyer prior to or at the time of closing; and

5.1.9. Seller shall comply with Santa Fe County Resolution No. 2000-57, as a participating landowner and donate five percent (5%) of the purchase price for funding of the Wildlife, Mountains, Trails and Historic Place Programs that benefits the residents of Santa Fe County. The donated funds will allow for the care and maintenance of the Property that is being acquired under the above referenced Program. The 5% funding shall be paid at the time of closing.

5.2. Conditions to Seller's Obligations. Seller's obligation to sell the Property to Buyer is conditioned upon satisfaction (or waiver in writing by Seller) of each of the following conditions:

5.2.1. All representations and warranties made by Buyer in this Agreement shall be complete and accurate at and as of the Closing Date;

5.2.2. Buyer's delivery of the Purchase Price for the Property and all other funds and documents required of Buyer to comply with its obligations hereunder; and

5.2.3. The conditions set forth in Paragraph 6.2 below.

5.3. Material Breach – Remedies.

5.3.1. Seller's Breach. In the event Seller commits any material breach of this Agreement and fails to cure such material breach within ten (10) days following Buyer's written notice to Seller describing such breach and what cure is deemed necessary, then Buyer, at its option, upon ten (10) days written notice to Seller and Escrow Agent, may elect to: (a) terminate this Agreement in which case Seller shall be obligated to reimburse Buyer for its reasonable and necessary out-of-pocket costs and expenses incurred pursuant to this Agreement, or (b) waive such material breach and proceed to close; provided, however, that if Seller refuses (or is unable due to Seller's deliberate act or omission) to sign and deliver the Deed or to sign and deliver any other document which Seller is required to sign and deliver, then Buyer, in addition to its option to terminate this Agreement or to waive Seller's breach as provided above, shall also have the option to seek specific performance (if the remedy of specific performance is available) of Seller's agreement to sign and deliver the Deed and other documents required to be signed and delivered by Seller at closing; or (c) pursue an action for damages.

If Buyer elects to terminate this Agreement, (a) the escrow shall be cancelled; and (b) all documents shall be returned to the parties which deposited them in escrow.

5.3.2. Buyer's Breach. In the event Buyer commits any other material breach of this Agreement, and in each case fails to cure such material breach within ten (10) days following Seller's written notice to Buyer describing such breach and what cure is deemed necessary, then Seller, at its option and as its sole remedy, upon ten (10) days written notice to Buyer and Escrow Agent, may elect either to terminate this Agreement or to waive the material breach and proceed to closing. If Seller elects to terminate this Agreement:

- (a) the escrow shall be canceled;
- (b) the Buyer shall return the Materials to the Seller; and
- (c) all other documents shall be returned to the parties who prepared or deposited them.

6. REPRESENTATIONS, WARRANTIES AND MUTUAL COVENANTS.

6.1. Representations and Warranties of Seller.

Seller hereby represents and warrants to Buyer that the following statements are true and correct as of the date hereof and shall be as of the Closing Date, and the truth and accuracy of such statements shall constitute a condition to all of Buyer's obligations under this Agreement:

6.1.1. Seller has full right, power and authority to enter into this Agreement for the sale of the Property and all documents contemplated hereby or delivered or to be delivered in connection herewith and to perform its obligations hereunder;

6.1.2. The sale of the Property has been authorized by all necessary action on the part of Seller, and the persons who have executed and delivered this Agreement and all other

instruments required under this Agreement on behalf of Seller have been duly authorized to execute the same on behalf of Seller;

6.1.3. Seller is not in breach or violation of, and the execution, delivery and performance of this Agreement will not result in a breach or violation of, any of the provisions of Seller's operating agreement, as amended to the date of this Agreement, or other governing documents or any agreement to which it is a party or otherwise bound, or constitute a violation of any law, rule, regulation or any court order or decree applicable to Seller or result in acceleration of any lien or encumbrance upon the Property or any part thereof, except for such rights of acceleration that may arise under a mortgage upon a conveyance of the Property;

6.1.4. This Agreement for the sale of the Property is the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except in each case as such enforceability may be limited by general principles of equity, bankruptcy, insolvency, moratorium and similar laws relating to creditors' rights generally;

6.1.5. There is no action, claim, litigation, proceeding or governmental investigation pending against Seller or the Property or, to Seller's best knowledge, threatened, against Seller which might directly or indirectly, have a material adverse effect upon the use, title, operation or development of the Property;

6.1.6. Seller has received no written notice or, to Seller's best knowledge, oral notice of any proposed or contemplated condemnation of the Property, or any part thereof, and Seller has received no written notice or, to Seller's best knowledge, oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the Property, or any part thereof;

6.1.7. Neither Seller nor, to Seller's best knowledge, any other person has used, generated, manufactured, stored or disposed of, on or under the Property or any part thereof, or in the immediate vicinity thereof, or transferred to or from the Property or any part thereof, any "Hazardous Materials" or materials associated with any previous mining operations. For purposes of this Agreement, "Hazardous Materials" are defined as any radioactive materials, hazardous waste, toxic substances, petroleum products or by-products, or any other materials or substances which under federal, state or local statute, law, ordinance, governmental regulation or rule would require Buyer's removal, remediation or clean up, including, without limitation, substances defined as "extremely hazardous substances," "hazardous substances," "hazardous materials," "hazardous waste," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resources Conservation and Recover Act, 42 U.S.C. §6901, *et seq.*; and in the regulations adopted and publications promulgated pursuant to said laws; together with any substance, product, waste or other material of any kind or nature whatsoever which may give rise to liability under any federal, state or local law, ordinance, rule or regulation relating thereto, or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability, or under any reported decision of any federal or state court;

6.1.8. There are no leases, oral or written, or claims to occupy the Property; and

6.1.9 Seller shall deliver a Deed of the Property sufficient to convey good marketable title to the Property in fee simple, free and clear of any and all liens and encumbrances and as otherwise provided in this Agreement.

6.2. Representations and Warranties by Buyer. Buyer hereby represents and warrants to Seller that the following statements are true and correct as of the date hereof and shall be as of the Closing Date, and the truth and accuracy of all such statements shall constitute a condition to all of Seller's obligations under this Agreement.

6.2.1. Buyer is a political subdivision of the State of New Mexico and its Board of County Commissioners has authorized its entry into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder;

6.2.2. Buyer has full right, power and authority to enter into this Agreement and all documents contemplated hereby or delivered or to be delivered in connection herewith, and to perform its obligations hereunder; and

6.2.3. The execution and delivery of this Agreement and consummation of the sale contemplated hereby will not conflict with any agreement to which Buyer is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to Buyer.

6.3. Mutual Covenants. Following the mutual execution of this Agreement:

6.3.1. Seller and Buyer shall deliver to each other and Escrow Agent any documents reasonably requested by Escrow Agent evidencing that each has the authority to enter into this Agreement and to consummate the transactions contemplated hereby.

6.3.2. Seller shall:

6.3.2.1. Maintain the Property and all portions thereof in its current condition, and condition after inspection by Buyer under the terms of this Agreement.

6.3.2.2. Enter into no new leases, contracts, agreements, encumbrances, or instruments or make any material modifications to any existing leases, contracts, agreements, encumbrances or instruments which, in either case may: (a) encumber, affect the ownership, use or development of the Property, or (b) by its terms would not be fully performed before the Closing Date, without the prior written consent of Buyer;

6.3.2.3. Not use, generate, manufacture, store or dispose of, on or under the Property or any part thereof, or transfer to or from the Property or any part thereof, any Hazardous Materials; and

6.3.2.4. Disclose any and all known uses on the Property that may relate to past mining activities within 10 days of the execution of this Agreement and not later than 30 days prior to the termination of the Inspection Period.

6.4. Survival of Representations and Warranties. The representations and warranties of the Seller set forth in the Paragraphs of 6.1 and 6.3 and the representations and warranties of the Buyer set forth in Paragraph 6.2 shall survive the Closing Date for the full period of the applicable statute of limitations.

7. ESCROW.

7.1. Agreement Constitutes Escrow Instructions. This Agreement shall constitute escrow instructions with respect to the Property and a copy hereof shall be deposited with the Escrow Agent for that purpose as provided in Paragraph 7.2 below.

7.2. Escrow Agent. The escrow for the purchase and sale of the Property hereunder shall be opened by depositing an executed copy or executed counterparts of this Agreement with the Escrow Agent, and shall occur not later than five (5) business days following the execution of this Agreement by both parties. This Agreement shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Agent requires in order to clarify the duties and responsibilities of Escrow Agent. In the event of a conflict between the provisions of this Agreement and the provisions of such general conditions, the provisions of this Agreement shall control.

7.3. Closing Date. The Closing Date shall be within forty-five (45) days following the Inspection Period providing all conditions precedent have been satisfied and unless the parties otherwise mutually agree.

7.4. Costs of Escrow.

7.4.1. Seller shall pay:

- (a) one-half (1/2) of the escrow fees,
- (b) one-half (1/2) the cost of all recording fees,
- (c) the cost of the Survey,
- (d) the cost of a standard owner's title policy, and
- (e) the cost of any other obligations of Seller hereunder, including all property taxes due and owing at the time of closing and as otherwise set forth below.

7.4.2. Buyer shall pay:

- (a) one-half (1/2) of the escrow fees,
- (b) one-half (1/2) the cost of all recording fees, and
- (c) additional title insurance premium for deletion of standard exceptions 1-4 and 6-7, and
- (d) the cost of any other obligations of Buyer hereunder.

7.5 Prorations. Seller shall pay the real property transfer tax and special additional mortgage recording tax associated with the Property. The following, as applicable, will be prorated and adjusted between Seller and Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis.

8. INDEMNIFICATION.

8.1. Brokers: Indemnification. Seller shall be solely responsible for satisfying every kind of fee, commission, compensation and remuneration, whether related or unrelated to brokerage, to any party claiming by, through or under Seller, as may apply. Seller shall indemnify, defend and hold harmless Buyer from any party claiming by, through or under Seller relating to the purchase and sale of the Property.

8.2. Other Indemnity. Seller hereby agrees to indemnify, defend and hold Buyer harmless from any obligation, cost, expense, liability and/or claim by third parties which Buyer may suffer arising out of Seller's acts or omissions before the Closing Date regarding the Property or any part thereof.

9. INCORPORATION OF EXHIBITS.

All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

10. NOTICES.

All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given as follows: (a) By personal delivery with a receipted copy of such delivery; (b) by certified or registered United States mail, return receipt requested, postage prepaid; or (c) by facsimile transmission with an original mailed by first class mail, postage prepaid, to the following addresses:

If to Seller:

Attn: Robert Gately
Campbell Farming Corporation
1 Turquoise Drive

Sandia Park, NM 87047

If to Buyer:

Colleen Baker,
Open Space and Trails Program Manager
P.O. 276
Santa Fe, NM 87504

And

Board of County Commissioners
Attn: Stephen Ross, County Attorney
102 Grant Ave.
P. O. Box 276
Santa Fe, NM 87504-0276
Telephone: 505-986-6279
Facsimile: 505-986-6362

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon delivery to the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice may not be sent by facsimile. Any party may change its address for purposes of this paragraph by giving notice to the other party and to Escrow Holder as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

11. ASSIGNMENT.

This Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided, however, that this Agreement may not be assigned by either party without the prior express written consent of the other party.

12. ENTIRE AGREEMENT.

This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose.

13. WAIVER.

Failure of either party at any time or times to require performance of any of the provisions of this Agreement shall in no way affect its right to enforce the same, and a waiver by either party of any breach of any of the provisions of this Agreement shall not be construed to be a waiver by such party of any prior or succeeding breach of such provision or a waiver by such party of any breach of any other provision.

14. HEADINGS AND CONSTRUCTION.

The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with herein. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities contained herein against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this document.

15. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the parties only when a copy or a counterpart has been signed by each party and delivered to each other party. Signatures, copies and counterparts may be transmitted by mail, facsimile or overnight courier service and when so transmitted are as effective as if a manually-signed, original document had been delivered.

16. APPLICABLE LAW, JURISDICTION AND VENUE.

This Agreement shall, in all respects, be governed by and construed according to the laws of the State of New Mexico applicable to agreements executed and to be wholly performed therein.

17. FURTHER DOCUMENTS.

Each of the parties hereto shall, on and after the Closing Date, execute and deliver any and all additional papers, documents, instructions, assignments and other instruments, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the parties hereto.

18. SEVERABILITY.

Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision hereof which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and all other provisions hereof shall remain in full force and effect.

19. NO OBLIGATION TO THIRD PARTIES; NO FIDUCIARY RELATIONSHIP OR DUTIES.

The negotiation, execution, delivery and performance of this Agreement shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, to obligate either of the parties hereto to any person or entity other than each other, or to create any agency, partnership, joint venture, trustee or other fiduciary relationship or fiduciary duties between Buyer and Seller.

20. CONSTRUCTION.

For all purposes of interpretation or construction of this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter shall include the masculine and feminine. As used in this Agreement, the term "and/or" means one or the other or both, or any one or all, or any combination of the things or persons in connection with which the words are used; the term "person" includes individuals, partnerships, limited liability companies, corporations and other entities of any kind or nature; the terms "herein," "hereof" and "hereunder" refer to this Agreement in its entirety and are not limited to any specific provisions; and the term "including" means including, without any implied limitation.

21. DATES OF PERFORMANCE.

If under this Agreement the date upon which an event is scheduled to occur or the last date on which a party's performance of any obligation is required falls on a nonbusiness day, then such date shall be deemed to be the immediately following business day.

22. TIME OF ESSENCE.

Time is of the essence hereof and of all the terms, provisions, covenants and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth herein.

BUYER:

SANTA FE BOARD OF COUNTY COMMISSIONERS

Date: _____

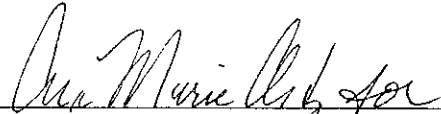
Virginia Vigil, Chair

ATTEST:

Date: _____

Valerie Espinoza, County Clerk

APPROVED AS TO FORM:



Stephen Ross, County Attorney

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Santa Fe County Finance Director

SELLER:

By: Robert Gately,
Title: President, Campbell Farming Corporation
Date: _____

Acknowledgement

This instrument was acknowledged before me this ____ day of _____, 2011,

by _____ of _____ County, New Mexico

My Commission Expires:

Legal Description

A TRACT OF LAND LYING AND SITUATE WITHIN THE SAN PEDRO GRANT, PROJECTED SECTIONS 20 AND 29, TOWNSHIP 12 NORTH, RANGE 7 EAST, NEW MEXICO PRINCIPAL MERIDIAN, SANTA FE COUNTY, NEW MEXICO, COMPRISING OF TRACT NUMBERED ONE (1) OF CAMPBELL CORP'S SOUTH MOUNTAIN RANCH AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANTA FE COUNTY, NEW MEXICO ON AUGUST 28, 2003, IN BOOK 541, PAGES 001-003, DOCUMENT NUMBER 1286685, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF DESCRIBED TRACT, MARKED BY A SET NO. 4 REBAR WITH YELLOW PLASTIC CAP "PS 11993", FROM WHENCE A TIE TO A FOUND U.S.G.L.O. BRASS CAP BEING THE 25 MILE MARKER ON THE SAN PEDRO GRANT LINE "25M S.P.G." BEARS N 89°50'36" W, A DISTANCE OF 220.28 FEET;

THENCE FROM SAID POINT OF BEGINNING, S 89°50'36" E, A DISTANCE OF 1887.73 FEET TO AN ANGLE POINT OF DESCRIBED TRACT MARKED BY A FOUND U.S.G.L.O. BRASS CAP "CC CORNER S20 S.P.G.;

THENCE S 89°55'04" E, A DISTANCE OF 228.26 FEET TO THE NORTHEAST CORNER OF DESCRIBED TRACT MARKED BY A FOUND U.S.G.L.O. BRASS CAP "T. 12 N. R. 7E. S. 20 S.P.G.";

THENCE S 00°05'16" W, A DISTANCE OF 2,941.94 FEET TO AN ANGLE POINT MARKED BY A FOUND U.S.G.L.O. BRASS CAP "24 M /S29 S.P.G.";

THENCE S 00°04'14" W, A DISTANCE OF 1,182.17 FEET TO THE SOUTHEAST CORNER OF DESCRIBED TRACT LYING ON THE NORTH EASEMENT LINE OF STATE ROAD 344 MARKED BY A SET NO. 4 REBAR WITH YELLOW PLASTIC CAP "PS 11993";

THENCE ALONG SAID STATE ROAD FOUR THE N 63°21'30" W, A DISTANCE OF 306.67 FEET TO A POINT OF CURVATURE MARKED BY A FOUND NEW MEXICO STATE HIGHWAY RIGHT OF WAY T-RAIL;

THENCE ALONG A NON TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1834.86 FEET, AN ARC LENGTH OF 611.40 FEET, A DELTA ANGLE OF 19°05'30", A CHORD BEARING OF N 53°51'40" W, AND A CHORD LENGTH OF 608.57 FEET TO AN ANGLE POINT MARKED BY A FOUND NEW MEXICO STATE HIGHWAY RIGHT OF WAY T-RAIL;

THENCE N 44°20'58" W, A DISTANCE OF 645.35 FEET TO AN ANGLE POINT MARKED BY A FOUND NEW MEXICO STATE HIGHWAY RIGHT OF WAY T-RAIL;

THENCE N 44°21'33" W, A DISTANCE OF 999.64 FEET TO AN ANGLE POINT MARKED BY A FOUND NEW MEXICO STATE HIGHWAY RIGHT OF WAY T-RAIL;

THENCE N 44°23'28" W, A DISTANCE OF 283.42 FEET TO THE SOUTHWEST CORNER OF DESCRIBED TRACT MARKED BY A SET NO. 4 REBAR WITH YELLOW PLASTIC CAP "PS 11993";

THENCE N 00°05'53" E, A DISTANCE OF 2254.46 FEET TO THE POINT OF BEGINNING, CONTAINING 159.9529 ACRES (6,967,547 SQUARE FEET), MORE OR LESS.

Surveyor's Certificate

I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION, EXHIBIT AND EASEMENT SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION FROM NOTES OF AN ACTUAL FIELD SURVEY, AND THE SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.



Legal Description

A PUBLIC ACCESS EASEMENT LYING AND SITUATE WITHIN THE SAN PEDRO GRANT, PROJECTED SECTIONS 20 AND 29, TOWNSHIP 12 NORTH, RANGE 7 EAST, NEW MEXICO PRINCIPAL MERIDIAN, SANTA FE COUNTY, NEW MEXICO, COMPRISING A PORTION OF TRACT NUMBERED TWO (2) OF CAMPBELL CORP'S SOUTH MOUNTAIN RANCH AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANTA FE COUNTY, NEW MEXICO ON AUGUST 28, 2003, IN BOOK 541, PAGES 001-003, DOCUMENT NUMBER 1286685, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF DESCRIBED EASEMENT, LYING ON THE NORTH LINE OF STATE ROAD 344, FROM WHEN A TIE TO A FOUND T-RAIL RIGHT OF WAY MARKER ON SAID NORTH LINE BEARS N 44°23'28" W, A DISTANCE OF 190.83 FEET;

THENCE FROM SAID POINT OF BEGINNING, N 44°41'37" E, A DISTANCE OF 80.22 FEET TO A POINT OF CURVATURE OF DESCRIBED EASEMENT;

THENCE ALONG A NON TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 186.78 FEET, AN ARC LENGTH OF 231.85 FEET, A DELTA ANGLE OF 71°07'09", A CHORD BEARING OF N 82°09'15" E, AND A CHORD LENGTH OF 217.25 FEET TO A POINT OF DESCRIBED EASEMENT;

THENCE S 67°12'21" E, A DISTANCE OF 105.02 FEET TO THE NORTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE S 00°05'16" W, A DISTANCE OF 108.40 FEET TO THE SOUTHEAST CORNER OF DESCRIBED EASEMENT;

THENCE N 67°12'21" W, A DISTANCE OF 151.97 FEET TO A POINT OF CURVATURE OF DESCRIBED EASEMENT;

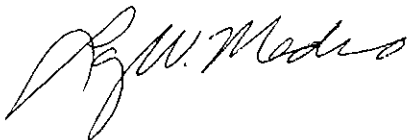
THENCE ALONG A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 86.78 FEET, AN ARC LENGTH OF 109.86 FEET, A DELTA ANGLE OF 72°31'53", A CHORD BEARING OF S 83°44'55" W, AND A CHORD LENGTH OF 102.67 FEET TO A POINT OF DESCRIBED EASEMENT;

THENCE S 44°41'37" W, A DISTANCE OF 79.70 FEET TO THE SOUTHWEST CORNER OF DESCRIBED EASEMENT;

THENCE N 44°28'33" W, A DISTANCE OF 100.01 FEET TO THE POINT OF BEGINNING, CONTAINING 0.8708 ACRES (37,931 SQUARE FEET), MORE OR LESS, ALL AS SHOWN ON THE ATTACHED EXHIBIT A.

Surveyor's Certificate

I, LARRY W. MEDRANO LICENSED UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION, EXHIBIT AND EASEMENT SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION FROM NOTES OF AN ACTUAL FIELD SURVEY, AND THE SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

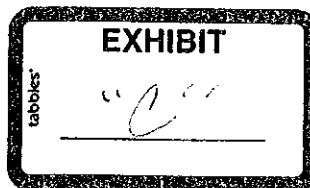


April 15, 2011

LARRY W. MEDRANO
N.M.P.S. NO. 11993

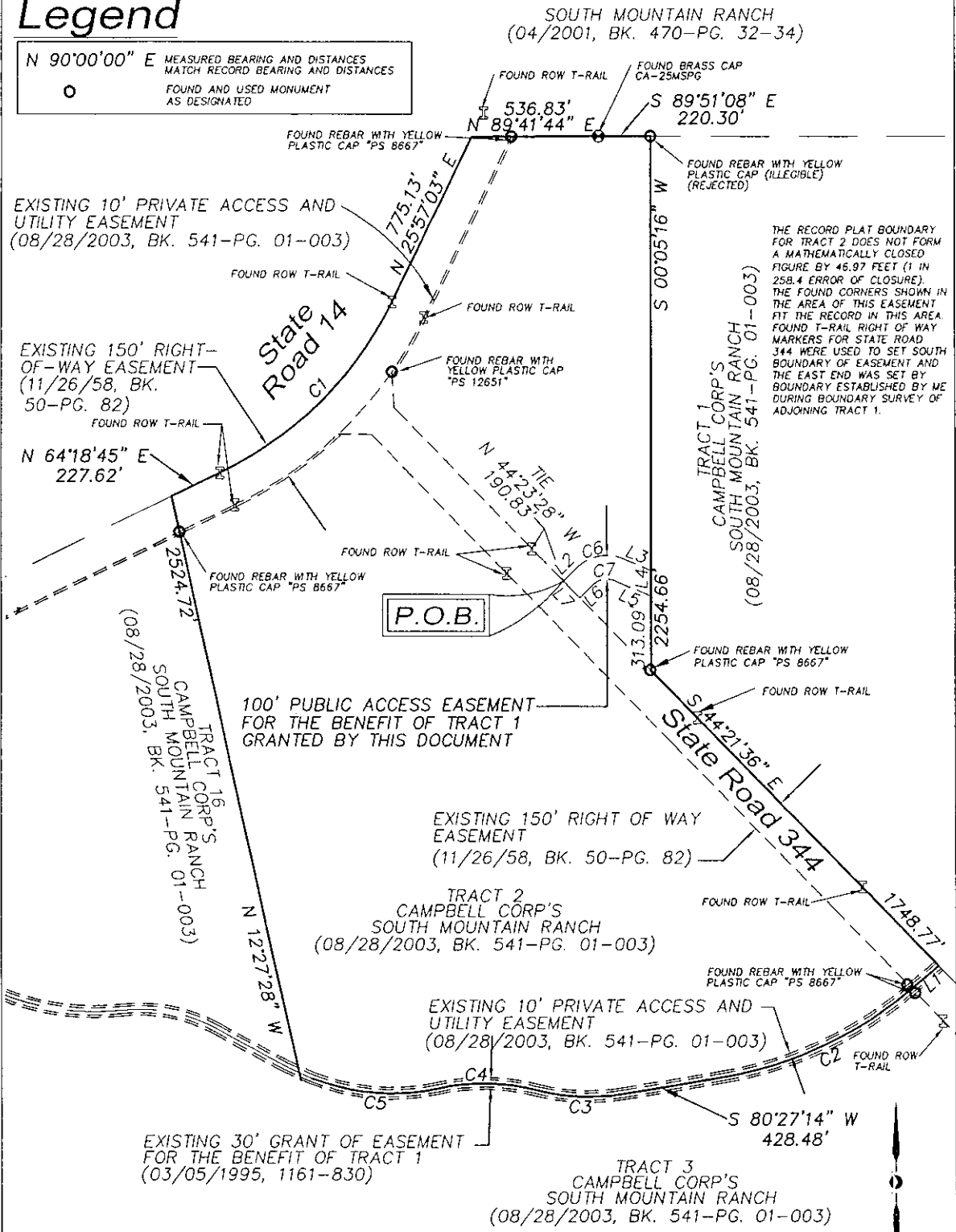
DATE

Sheet 1 of 3



Legend

N 90°00'00" E
 ○ MEASURED BEARING AND DISTANCES
 MATCH RECORD BEARING AND DISTANCES
 FOUND AND USED MONUMENT
 AS DESIGNATED



THE RECORD PLAT BOUNDARY FOR TRACT 2 DOES NOT FORM A MATHEMATICALLY CLOSED FIGURE BY 46.97 FEET (1 IN 258.4 ERROR OF CLOSURE). THE FOUND CORNERS SHOWN IN THE AREA OF THIS EASEMENT FIT THE RECORD IN THIS AREA. FOUND T-RAIL RIGHT OF WAY MARKERS FOR STATE ROAD 344 WERE USED TO SET SOUTH BOUNDARY OF EASEMENT AND THE EAST END WAS SET BY BOUNDARY ESTABLISHED BY ME DURING BOUNDARY SURVEY OF ADJOINING TRACT 1.

P.O.B.

Surveyor's Certificate

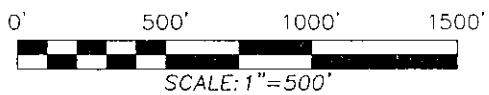
I, LARRY W. MEDRANO, A REGISTERED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, HEREBY CERTIFY THAT THIS EXHIBIT (UN-CLASSIFIED SURVEYING SURVEY) WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MEETING THE MINIMUM REQUIREMENTS FOR THIS CLASSIFICATION OF SURVEY AS PER THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO AS ADOPTED BY THE N.M. BOARD OF LICENSURE FOR ENGINEERS AND SURVEYORS, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Larry W. Medrano

April 15, 2011

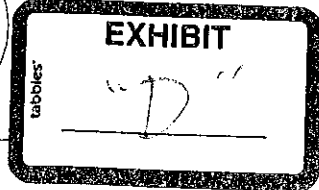
LARRY W. MEDRANO
 N.M.P.S. No. 11993

DATE



PRECISION SURVEYS, INC.

OFFICE LOCATION:
 5571 Midway Park Place, NE
 Albuquerque, NM 87109
 MAILING ADDRESS:
 PO Box 92636
 Albuquerque, NM 87199
 866.442.8011 TOLL FREE
 505.856.5700 PHONE
 505.856.7900 FAX



Daniel Mayfield
Commissioner, District 1

Virgina Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: April 26, 2011

To: Santa Fe County Board of County Commissioners

From: Beth Mills, Community Planner, Open Space and Trails Program, CSD *BAM*

CC: Colleen Baker, Open Space and Trails Program Manager, CSD
Joseph Gutierrez, Director, Community Services Department

Re: **Request Approval of a Resolution Authorizing the County Manager to Execute Closing Documents with the Campbell Farming Corporation for the Purchase of Real Property. (Community Services Department)**

Background:

A purchase agreement between Santa Fe County and the Campbell Farming Corporation to purchase approximately 160 acres in the San Pedro Mountains along the Turquoise Trail is on the Agenda together with this resolution for consideration by the Board of County Commissioners. The resolution will allow for the timely execution of the closing documents to complete the purchase of this property.

Action Requested:

Staff recommends approval of a Resolution Authorizing the County Manager to Execute Closing Documents with the Campbell Farming Corporation for the Purchase of Real Property.

THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

RESOLUTION NO. 2011-____

A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE
CLOSING DOCUMENTS WITH THE CAMPBELL FARMING CORPORATION FOR
THE PURCHASE OF REAL PROPERTY

WHEREAS, The Campbell Farming Corporation is the owner of real property (hereinafter referred to as "the Property"), located at 1686 NM 344 in Santa Fe County, New Mexico; and

WHEREAS, The Campbell Farming Corporation has agreed to sell approximately 160 acres of the Property to the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County") for the sum of \$350,000; and

WHEREAS, acquisition of the Property by the County provides a critical connection in adjacent federal lands in the San Pedro Mountains for the public and an important opportunity to create a regional trailhead and trail network for recreation in the southern part of Santa Fe County; and

WHEREAS, the Board of County Commissioners approved the purchase of the Property at its April 26, 2011 meeting; and

WHEREAS, the Board of County Commissioners desire to authorize the County Manager to execute any and all documents necessary to effectuate the closing of the transaction to purchase the Property.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS: The County Manager is authorized to execute all documents necessary to effectuate the closing of the transaction with the Campbell Farming Corporation for the purchase of approximately 160 acres of property.

APPROVED and ADOPTED this 26th DAY OF APRIL 2011.

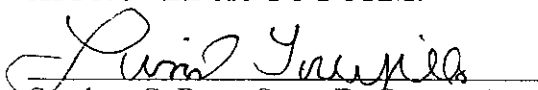
THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

By: _____
Virginia Vigil, Chair

ATTEST:

Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:



Stephen C. Ross, Santa Fe County Attorney

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Elizabeth Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Memorandum

To: Santa Fe Board of County Commissioners

From: David Sperling, Acting Fire Chief, Community Services Department

Date: April 26, 2011

Re: *Requesting Approval of An Award of Agreement #2011-0189-FD/PL to the lowest responsible bidder, R and M Construction for the Construction Remodel of the Pojoaque Fire Station*

ISSUE:

The Santa Fe County Community Services Department requests authorization to award an Agreement to R and M Construction in response to IFB #2011-0189-FD/PL for the construction remodel of the Pojoaque Fire Station in the amount of \$729,910.00 exclusive of NMGRT

BACKGROUND:

The intent of the solicitation was to procure construction services for the remodel of the Pojoaque Fire Station project. The Santa Fe County Purchasing Division solicited an Invitation for Bid (IFB) pursuant to 13-1-102 NMSA 1978.

The Santa Fe County Purchasing Division solicited an Invitation for Bid (IFB). Advertisements were run in the Santa Fe New Mexican and the Albuquerque Journal. A total of five (5) construction firms submitted bids. Bids were received from the following firms:

Duran Enterprises
Lockwood Construction
Unified Contractor, Inc.

RVC, Inc.
R & M Construction

RECOMMENDATION:

The Santa Fe County Community Services Department and the Purchasing Division requests authorization and approval to enter into contract #2011-0189-FD/PL with R and M Construction, the lowest responsible bidder, for \$729,910.00, exclusive if NMGRT.

AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Eleven .
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, legal status, address and other information)

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

and the Contractor:
(Name, legal status, address and other information)

R and M Construction, a Limited Liability Company
P.O. Box 1026
Alcalde, New Mexico 87511
Attn: Robert Sanchez
(505) 927-2027

for the following Project:
(Name, location and detailed description)

Remodel of the Pojoaque Fire Station
Pojoaque Fire Station is located in the community of Pojoaque in Santa Fe, NM. The Pojoaque Fire Station remodel includes: an addition of living quarters consisting of approximately 3,200 square feet to the existing Fire Station. The addition shall include new construction of sleeping quarters, watch room, kitchen, dining room, and a conference/meeting room.

The Architect:
(Name, legal status, address and other information)

Atkin Olshin Shade Architects
1807 Second Street
Santa Fe, NM 87505
Phone: 505-982-2133

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Paragraph deleted)

Work to be performed under this Contract shall commence no later a date fixed in a Notice to Proceed issued by the Owner.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred and eighty (180) weather working calendar days from the date of commencement.

Portion of Work

Substantial Completion Date

Init.

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User Notes:

(1886613613)

(Paragraphs deleted)

Liquidated damages in the amount of \$300.00, per weather working calendar day shall be assessed after the date set for substantial completion as adjusted by any Change Orders until issuance of a certificate of substantial completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Twenty-Nine Thousand and Nine Hundred Ten (\$ 729,910.00) dollars, subject to additions and deductions as provided in the Contract Documents, not including applicable gross receipts tax, sales, consumer, use or similar taxes.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(Paragraph deleted)

Not applicable – no alternates.

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$ 0.00)
------	-----------------------	--------------------------

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the twenty first (21st) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-one (21) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum

allocated to that portion of the Work in the schedule of values, less retainage of zero percent (0%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of zero (0%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Intentionally Omitted

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

(Paragraph deleted)
Intentionally Omitted

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Paragraph deleted)

[] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other (*Specify*)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

One and one-half percent (1.5%) per month

§ 8.3 The Owner's representative:
(*Name, address and other information*)

Ron Sandoval, Project Representative
Community Projects Division
109 W. Alameda, Suite 20-C
Santa Fe, New Mexico 87501
(505) 992-6759

§ 8.4 The Contractor's representative:
(*Name, address and other information*)

Robert Sanchez
R and M Construction
P.O. Box 1026
Alcalde, NM 87511
(505) 927-2027

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

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(1886613613)

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

DIVISION 01-GENERAL REQUIREMENTS

011000	Summary
012200	Unit Prices
012500	Substitution Procedures
012600	Contract Modification Procedures
012900	Payment Procedures
013100	Project Management and Coordination
013300	Submittal Procedures
014000	Quality Requirements
014200	References
015000	Temporary Facilities and Controls
016000	Product Requirements
017300	Execution
017700	Closeout Procedures
017823	Operation and Maintenance Data
017839	Project Record Documents
017900	Demonstration and Training

DIVISION 02-EXISTING CONDITIONS

020100	Landscape Summary of Work
021110	Tree Preservation
025160	Stabilized Crushed Stone
028100	Irrigation
029000	Trees Shrubs and Groundcovers
029450	Native Grass and Wild Flower Seeding

DIVISION 03-CONCRETE

031000	Concrete Forming and Accessories
032000	Concrete Reinforcement
033000	Cast-In-Place Concrete

DIVISION 04- MASONRY

NOT USED

DIVISION 05-METALS

NOT USED

DIVISION 06- WOOD, PLASTICS, AND COMPOSITES

061000	Rough Carpentry
064023	Interior Architectural Woodwork

DIVISION 07- THERMAL AND MOISTURE PROTECTION

071113	Bituminous Damp-proofing
071900	Water Repellents
072100	Thermal Insulation
072600	Under Slab Vapor Retarder
072700	Air Barriers
075423	TPO Roofing

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076200 Sheet Metal Flashing and Trim
077200 Roof Accessories
079200 Joint Sealants

DIVISION 08-OPENINGS

081113 Hollow Metal Doors and Frames
081416 Flush Wood Doors
081423 Aluminum Clad Wood Commercial Doors
083113 Access Doors and Frames
085223 Fiberglass Clad Wood Windows
086200 Unit Skylights
087100 Door Hardware
088000 Glazing
088300 Mirrors
089000 Louvers and Vents

DIVISION 09- FINISHES

092400 Portland Cement Plastering
092900 Gypsum Board
093000 Tiling
095113 Acoustical Panel Ceilings
096513 Resilient Base and Accessories
096519 Resilient Tile Flooring
096816 Sheet Carpeting
099100 Painting
099300 Staining and Transparent Finishing

DIVISION 10- SPECIALTIES

101100 Visual Display Surfaces
101400 Signage
102800 Toilet, Bath, and Laundry Accessories
104413 Fire Extinguisher Cabinets
104416 Fire Extinguishers
108200 Shower Doors

DIVISION 11-EQUIPMENT

113100 Residential Appliances

DIVISION 12-FURNISHINGS

122113 Horizontal Louver Blinds

DIVISION 13-SPECIAL CONSTRUCTION

DIVISION 14- CONVEYING EQUIPMENT

DIVISION 21- FIRE SUPPRESSION

211313 Wet Pipe Fire Suppression Sprinklers

DIVISION 22- PLUMBING

220500 Common Work Requirements for Plumbing
220504 Pipe and Pipe Fittings
220505 Piping Specialties
220523 Valves for Plumbing
220548 Vibration and Seismic Controls for Plumbing
220549 Plumbing and Electrical Installation Coordination
220700 Plumbing Insulation
221100 Facility Water Distribution

221300 Facility Sanitary Sewage
 224000 Plumbing Fixtures and Trim

DIVISION 23- HEATING, VENTILATION AND AIR CONDITIONING

230500 Common Work Requirements
 230513 Motors
 230529 Hangers and Support for Piping and Tubing
 230548 Mechanical Vibration and Seismic Controls
 230553 Mechanical Identification
 230593 Testing, Adjusting and Balancing
 230700 Mechanical Insulation
 231123 Natural Gas Piping
 233223 Ducts
 233300 Ducts Accessories and Specialties
 233416 Fans
 233713 Air Outlet and Inlets
 237413 Package Air Conditioners
 238239 Terminal Heating Units
 Guardian 3 Specifications

DIVISION 26-ELECTRICAL

260500 Common Work Results for Electrical
 260526 Grounding and bonding for Electrical Systems
 260529 Hangers and Supports for Electrical Systems
 260533 Raceways and boxes for Electrical Systems
 260543 Underground Ducts and Raceways for Electrical Systems
 260553 Identification for Electrical Systems
 260923 Lighting Control Devices
 262416 Panelboards
 262713 Electricity Metering
 262726 Wiring Devices
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 265100 Interior Lighting
 265600 Exterior Lighting
 270500 Common Work Requirements for Communications
 271300 Communications Backbone Cabling
 271500 Communications Horizontal Cabling
 280500 Common Work Results for Electronic Safety and Security
 280513 Connectors and Cables for Electronic Safety and Security
 283111 Digital, Addressable Fire-Alarm System

DIVISION 31-EARTHWORK

031230 Earthwork for Building Construction

DIVISION 32-EXTERIOR IMPROVEMENTS

DIVISION 33-UTILITIES

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

ARCHITECTURAL

A0.0	Legend, Abbreviations, & Symbols
D0.1	Demolition Site Plan
A0.1	Site Plan

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A0.2	Life Safety & Code Summary
CIVIL	
C1.0	Grading and Drainage
LANDSCAPE	
L0.1	General Notes
L1.1	Planting Plan
L2.1	Irrigation Plan
L3.1	Planting Details
L4.1	Irrigation Details
ARCHITECTURAL	
A1.0	Demo & Floor Plan
A1.1	Reflected Ceiling Plan
A1.2	Roof Plan
A1.3	Finish Floor Plan
A2.0	Elevations
A2.1	Elevations
A3.0	Building Sections
A3.1	Building Sections
A4.0	Wall Sections
A5.0	Details
A5.1	Details
A5.2	Details
A6.0	Window, Door & Finish Schedules, Legends and Details
A6.1	Window Details
A7.0	Interior Elevations
STRUCTURAL	
S0.01	Symbols & Abbreviations
S0.02	General Structural Notes
S0.03	Special Inspections Tables
S1.01	Foundation Plan
S1.02	Roof Framing Plan
S3.01	Foundation Sections
S3.02	Foundation Sections & Details
S3.11	Framing Sections
S6.01	Schedules
MECHANICAL	
M0.1	Mechanical Legend
M1.1	Mechanical Floor Plan
M1.2	Mechanical Roof Plan
M5.1	Details
M7.1	Schedules
PLUMBING	
P0.1	Plumbing Legend
P1.1	Plumbing Floor Plan
P1.2	Plumbing Roof Plan
P5.1	Plumbing Details
P7.1	Plumbing Fixture Schedule
ELECTRICAL	
E001	Mechanical Symbol Legend
E501	Mechanical Details

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E502	Mechanical Details
E601	Electrical One Line Diagram
E602	Electrical Grounding Diagram
E701	Electrical Schedules
ES101	Electrical Siteplan
EK101	Electrical Grounding Plan
EK102	Electrical Grounding Plan-EXG
EL101	Electrical Lighting Plan
EP101	Electrical Power Plan
EP102	Electrical Power Plan-EXG
EP103	Electrical Roof Power Plan
ET101	Electrical Telecommunications Plan
ET102	Electrical Telecommunications Plan-EXG

FIRE PROTECTION

F1.1	Fire Protection Plan
FA101	Fire Alarm Plan
FA102	Fire Alarm Plan-EXG

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum No. 1	February 18, 2011	5 (including attendance sheets)
Addendum No. 2	February 22, 2011	4
Addendum No. 3	February 22, 2011	1
Addendum No. 4	February 23, 2011	1
Addendum No. 5	February 25, 2011	5

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit attached hereto.
- .2 Other documents, if any, listed below:
 - a. Contractor’s non-collusion affidavit
 - b. Subcontractor(s) non-collusion affidavit
 - c. Contactor’s certificate regarding Equal Employment Opportunity
 - d. Subcontractor(s) certificate regarding Equal Employment Opportunity

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007. Contractor shall provide payment and performance bonds for 100% of the Contract Sum. Certificates of such bonding shall be provided to Owner in no less than three (3) days following the date of commencement indicated in the Notice to Proceed.

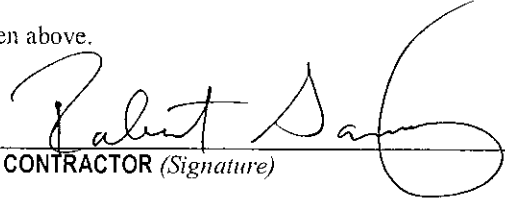
This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Virginia Vigil, Chair,
Santa Fe County Board of County Commissioners
(Printed name and title)

CONTRACTOR (Signature)

Robert Sanchez, Owner
(Printed name and title)

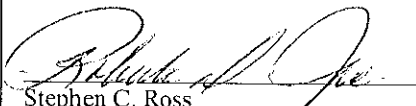


ATTEST TO:

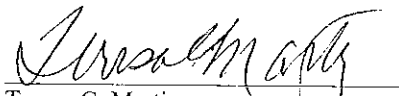
Valerie Espinoza
Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

 4/8/11
Stephen C. Ross
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL:


Teresa C. Martinez
Santa Fe County Finance Director

Init.



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Pojoaque Fire Station Addition
Pojoaque Fire Station is located in the community of Pojoaque, NM.

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

Atkin Olshin Shade Architects
1807 Second Street
Santa Fe, NM 87505
Phone: 505-982-2133

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4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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9	PAYMENTS AND COMPLETION
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11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

(Paragraphs deleted)

§ 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.2.3 The intent of the contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.5 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.6 In the event of conflicts within the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply. Other rules for conflicts within the Contract Documents are:

1. Addenda shall govern over all other contract documents and subsequent addenda shall govern over earlier addenda;
2. Between drawings and specifications, the specifications shall govern;
3. Within the drawings, a schedule, when identified as such shall govern over notes or other directions, specific notes shall govern over general notes, dimensions shall prevail over scaled measurements and large scale drawings shall govern over smaller scale drawings.
4. General Conditions shall govern over conflicting portion(s) of the other Contract Documents, except as modified by Supplementary General Conditions or Addenda.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications, and other documents prepared by the Architect and all rights to such documents, including copyright, are property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the Scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications, and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

(Paragraph deleted)

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§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

| § 2.1.2 Intentionally Omitted

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

| § 2.2.1 Intentionally Omitted

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In exercising the Owner's right to carry out the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of costs incurred.

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ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of

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changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 After the Contract has been executed, the Owner, construction Manager and Architect will consider a request for the substitution of products for those specified or permitted by the Contract Documents only under the Conditions set forth in APPENDIX B- TECHNICAL SPECIFICATIONS, of the Specifications. In making a request for substitution the Contractor:

- .1 represents that the Contractor has personally investigated proposed substitute produce and has determined that it is equal to or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substituted product that was required for the specified product;
- .3 certifies that the cost data represented is complete and includes all related costs under the contract, including any costs associated with delays in performance of the work occasioned by the substitution, except any review and redesign costs of the Construction Manager and the Architect and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, including making all adjustments in the Work necessitated by the substitution.

§ 3.4.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance occurring after any specialized training, improper operation occurring after any specialized training, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

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§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

(Paragraph deleted)

§ 3.18.2 This section shall be construed so that the indemnity obligations of the Contractor and those for whom the Contractor may be liable conform to NMSA 1978, Section 56-7-1.

§ 3.18.3 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

| § 4.2.11 Intentionally Omitted

| § 4.2.12 Intentionally Omitted

| § 4.2.13 Intentionally Omitted

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. For the purposes of this Agreement the term Subcontractor also includes those supplying specially fabricated materials or equipment to the Contractor under purchase orders in excess of the Subcontractor listing threshold set forth in the Instructions for Bidders.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. Contractor shall not substitute a Subcontractor if doing so would violate the Subcontractors Fair Practices Act, NMSA 1978, Section 13-4-31 et. seq.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules

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shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

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.4 The allowance for the combined overhead (general administration, overhead, supervision, project insurance, submittal preparation and processing) and profit include in the total cost of Change Orders and Change Directives to the Owner shall be based on the following schedule:

Entity Performing Work	Subtotal before applying the percentage shown	
	\$0-\$5,000	\$5,000 and above
Contractor for work performed by his own forces	15%	12%
Contractor for work performed by Subcontractor	5%	3%
Subcontractor for work performed by his own forces	10 %	7%
Subcontractor for work performed by Sub-subcontractor	5%	3 %

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the

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Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty one (21) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by

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the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall defend and indemnify the Owner against any claims of the Subcontractor.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. The written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be

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submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless.

§ 10.3.3 Intentionally Omitted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally Omitted.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and

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- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 The Limits for Worker's Compensation and Employer's Liability insurance shall be as follows:

- A. Workers Compensation:
 - 1. State; Statutory
 - 2. Applicable Federal (e.g. Longshoremen's); Statutory
- B. Employer's Liability:
 - 1. \$500,000 per Accident
 - 2. \$500,000 Disease, Policy Limit
 - 3. \$500,000 Disease, Each Employee

§ 11.1.4 The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractor's Protective, Produces-Completed Operations, Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for explosion, collapse and underground hazards) shall be as follows;

- \$1,050,000 Each Occurrence
- \$2,100,000 General Aggregate
- \$2,100,000 Personal and Advertising Injury
- \$2,100,000 Products-Completed Operations Aggregate
- .1 The Policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 The Contractual Liability Insurance shall include coverage sufficient to meet the obligations in Section 3.18.
- .3 Products and completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

§ 11.1.5 Automobile Liability insurance (owned, non-owned, and hired vehicles) for bodily injury and property damage shall be as follows: \$2,000,000 Each Accident

Contractor shall carry insurance to protect itself and Santa Fe County from and against all claims, demands, actions judgments, costs, expenses and liabilities which may arise or result direct or indirectly from or by reasons of loss, injury or damage related to the Project. Santa Fe County shall be named as an additional insured to this policy. The Contractor shall file with Santa Fe County current certificates evidencing public liability insurance with limits not less than as provided in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 through 41-4-29, and as that section or successors section may be amended from time to time. The Contractor shall also carry such insurance as it deems necessary to protect it from all claims under any Workmen's Compensation Law in effect that may be applicable to the Contractor. All insurance required by this Agreement shall be kept and remain in full force and effect for the entire life of this Agreement.

The insurance coverage shall include Worker's Compensation, employer liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property damage, contractual liability, explosion and collapse hazard, underground hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.

All insurance coverage must be maintained for the entire life of the Project. Products and completed operations coverage shall be maintained for a minimum period of one (1) year after final payment, a valid certificate of insurance must be submitted to the Owner prior to issuance of a Notice-to-Proceed.

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§ 11.1.6 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.7 The Contractor shall cause the commercial liability coverage required by the contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Intentionally Omitted

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance in an amount acceptable to the Owner or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

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§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Owner and Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall, with approval of the Owner have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

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§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located. The exclusive forum for any action arising out of or relating to the Agreement shall be the First Judicial District Court located in Santa Fe, New Mexico.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 APPROPRIATIONS AND AUTHORIZATIONS

§13.8.1 This Contract is contingent upon sufficient appropriations and authorizations being made for performance of this Contract by the Board of County Commissioners of the County of Santa Fe and/or, if state funds are involved the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Contract shall terminate upon written notice by Owner to Contractor. Such termination shall be without penalty to Owner, and Owner shall have no duty to reimburse Contractor for expenditures made in the performance of this Contract. Owner is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by Owner. Owner's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Contract shall be final and not subject to challenge by Contractor in any way or forum, including a lawsuit.

§ 13.9 WAGE RATES

§ 13.9.1 The Contractor shall fully comply with the Public Works Minimum Wage Act, NMSA, Section 13-4-11 through Section 13-4-42, the substantive provision of which are incorporated by this reference as if set forth fully herein.

§ 13.10 SUBCONTRACTORS FAIR PRACTICES ACT

§ 13.10.1 The Contractor shall fully comply with the Subcontractor Fair Practices Act, NMSA, Section 13-4-11 through 13-4-42, the substantive provisions of which are incorporated by this reference as if set forth fully herein.

§ 13.11 RECORDS AND INSPECTIONS

§ 13.11.1 To the extent its books and records relate to (i) its performance of this Contract or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Contract or that was required to be submitted to Owner, as part of the procurement process. Contractor agrees to (i) maintain such books and records during the term

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of this Contract and for a period of six (6) years from the date of final payment under this Contract; (ii) allow Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

§ 13.11.2 To the extent its books and records relate to (i) its performance of this Contract or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this contract or that was required to be submitted to County as part of the procurement process. Contractor also agrees to require any Subcontractor it may hire to perform its obligations under this Contract to (i) maintain such books and records during the term of this Contract and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

§ 13.12 EQUAL OPPORTUNITY COMPLIANCE

§ 13.12.1 Contractor agrees to abide by all Federal, State and local laws, ordinance, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

§ 13.13 NEW MEXICO TORT CLAIMS

§ 13.13.1 No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et. seq.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Init.

§ 15.4 DISPUTE RESOLUTION

§ 15.4.1 If a claim has not been resolved by the Contractor's decision, the parties shall engage in mediation as a condition precedent to the institution of litigation. Mediation under this provision shall be carried out in accordance with the New Mexico Public Works Mediation Act (NMSA 1978, Section 13-4C-1 et seq.).

§ 15.4.1.1 in the event that a Claim is not resolved by mediation a party may commence litigation. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District located in Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004 (E)(3) NMRA.

§ 15.4.2 Contract Performance During Dispute Resolution. During mediation or litigation proceedings, the Owner and Contractor shall comply with Section 4.7.4.

§ 15.4.3 Intentionally Omitted

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Intentionally Omitted

§ 15.4.4.2 Intentionally Omitted

§ 15.4.4.3 Intentionally Omitted



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Digital Data Protocol Exhibit

This Exhibit is incorporated into the accompanying agreement (the "Agreement") dated the day of _____ in the year Two Thousand Eleven
(In words, indicate day, month and year)

BETWEEN:

(Name, address and contact information, including electronic addresses)

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

AND:

(Name, address and contact information, including electronic addresses)

R and M Construction TBD
P.O. Box 1026
Alcalde, New Mexico 87511
Attn: Robert Sanchez
(505) 927-2027

For the following Project:
(Name and location or address)

Remodel of Pojoaque Fire Station.
Pojoaque Fire Station is located in the community of Pojoaque, NM.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 TRANSMISSION OF DIGITAL DATA
- 3 PROJECT PROTOCOL TABLE

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the procedures the parties agree to follow with respect to the transmission or exchange of Digital Data for this Project. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

§ 1.1.2 Signatures may be made by electronic methods to the fullest extent permitted by applicable law.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

§ 1.2 DEFINITIONS

§ 1.2.1 **Digital Data.** Digital Data is defined as information, communications, drawings, or designs created or stored for the Project in digital form.

§ 1.2.2 **Confidential Information.** Confidential Information is defined as Digital Data that the transmitting party has designated as confidential and clearly marked with an indication such as "Confidential" or "Business Proprietary."

§ 1.2.3 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, "written" or "in writing" shall mean any communication, including without limitation a notice, consent or interpretation, prepared and sent to an address provided in this Exhibit using a transmission method set forth in this Exhibit that permits the recipient to print or store the communication. Communications transmitted electronically are presumed received if sent in conformance with this Section 1.2.3.

ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the transmitting party to the receiving party that the transmitting party (1) is the copyright owner of the Digital Data, (2) has permission from the copyright owner to transmit the Digital Data for its use on the Project, or (3) is authorized to transmit Confidential Information.

§ 2.2 The receiving party agrees to keep Confidential Information strictly confidential and not to disclose it to any other person except to (1) its employees, (2) those who need to know the content of the Confidential Information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information.

§ 2.3 The transmitting party does not convey any right in the Digital Data or in the software used to generate the data. The receiving party may not use the Digital Data unless permission to do so is provided in the Agreement, in other documents incorporated by reference into the Agreement, such as the general conditions of the contract for construction, or in a separate license.

§ 2.4 Unless otherwise granted in a separate license, the receiving party's use, modification, or further transmission of the Digital Data, as provided in the Agreement, is specifically limited to the design and construction of the Project in accordance with the Project Protocols set forth in Article 3, and nothing contained in this Exhibit conveys any other right to use the Digital Data for another purpose.

§ 2.5 To the fullest extent permitted by law, the receiving party shall indemnify and defend the transmitting party from and against all claims arising from or related to the receiving party's modification to, or unlicensed use of, the Digital Data.

ARTICLE 3 PROJECT PROTOCOL TABLE

§ 3.1 The parties agree to comply with the data formats, transmission methods and permitted uses set forth in the Project Protocol Table below when transmitting or using Digital Data on the Project.
(Complete the Project Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting or modifying the listed Digital Data as necessary. Use Section 3.2 Project Protocol Table Definitions to define abbreviations placed, and to record notes indicated, in the Project Protocol Table.)

Digital Data	Data Format	Transmitting Party	Transmission Method	Receiving Party	Permitted Uses	Notes (Enter #)
§ 3.1.1 Project Agreements and Modifications	PDF	O	EMA	OAC	S	
§ 3.1.2 Project communications						
General communications	DOC	OAC	EMA	OAC	I	
Meeting notices	DOC	OAC	EM	OAC	R	
Agendas	DOC	OA	EMA	OAC	R	
Minutes	DOC	OA		OAC	I	
Requests for information	DOC		EM	OAC	I	
Other:						
§ 3.1.3 Architect's pre-construction submittals						
Schematic Design Documents	DWF	A	EMA	O	R	
Design Development Documents	DWF	A	EMA	O	R	

Construction Documents	DWF	A	EMA	O	R	
§ 3.1.4 Architect's Drawings and Specifications						
Contract Documents						
Drawings	DWF	A	EMA	OC	R	
Specifications	DWF	A	EMA	OC	R	
Other:						
§ 3.1.5 Contractor's submittals						
Product data						
Submitted by Contractor	PDF	C	EMA	OA	I	
Returned by Architect	PDF	A	EMA	OA	R	
Shop drawings						
Submitted by Contractor	PDF	C	EMA	OA	I	
Returned by Architect	PDF	A	EMA	OA	R	
Other submittals:						
§ 3.1.6 Subcontractor's submittals						
Product data						
Submitted by Subcontractor	PDF	C	EMA	OA	I	
Returned by Contractor	PDF	C	EMA	OA	R	
Shop drawings						
Submitted by Subcontractor	PDF	C	EMA	OA	I	
Returned by Contractor	PDF	C	EMA	OA	R	
Other Submittals:						
§ 3.1.7 Modifications						
Architect's Supplemental Instructions	DOC	A	EMA	OC	R	
Requests for proposal	DOC	OA	EMA	OC	I	
Proposal	DOC	C	EMA	OC	I	
Modification communications	DOC	OAC	EMA	OAC	I	
§ 3.1.8 Project payment documents	XLS	C	EMA	OAC	R	
§ 3.1.9 Notices and Claims	DOC	OAC	EMA	OAC	R	
Other:						
§ 3.1.10 Closeout documents	PDF	C	EMA	OA	R	
Record documents	PDF	C	EMA	OA	R	

§ 3.2 PROJECT PROTOCOL TABLE DEFINITIONS

(Below are suggested abbreviations and definitions. Delete, modify or add as necessary.)

Data Format:

(Provide required data format, including software version.)

W .doc, Microsoft® Word 2002

Transmitting Party:

O Owner
A Architect
C Contractor

Transmission Method:

EM Via e-mail
EMA As an attachment to an e-mail transmission
CD Delivered via Compact Disk
PS Posted to Project Web site

Init.

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User Notes:

(1631924302)

FTP FTP transfer to receiving FTP server

Receiving Party:

O Owner
A Architect
C Contractor

Permitted Uses:

(Receiving Party's permitted use(s) of Digital Data)

S Store and view only
R Reproduce and distribute
I Integrate (incorporate additional digital data without modifying data received)
M Modify as required to fulfill obligations for the Project

Notes:

(List by number shown on table.)

Init.

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User Notes:

(1631924302)

**SANTA FE COUNTY
MEMORANDUM**

To: The Board of County Commissioners
Katherine Miller, County Manager

From: Steve Shepherd, Health and Human Services Division
Stephen C. Ross, County Attorney

Date: April 20, 2011

Re: Consideration of Approval of the Memorandum of Understanding Concerning the Advancement of Sole Community Provider Funds by and between the Board of County Commissioners of Santa Fe County, New Mexico and the Regents of the University of New Mexico for the UNM Hospitals

Paul Gutierrez, Executive Director of the New Mexico Association of Counties, forwarded a copy of a proposed Memorandum of Understanding concerning an advance by the University of New Mexico Hospital (UNMH) of funds on behalf of thirteen New Mexico counties to match federal funds supporting the Sole Community Provider program of the State Medicaid Plan. The proposed MOU between the thirteen counties and the Regents of the University of New Mexico provides a mechanism for these so-called "Super Supplemental" payments to be recognized for each county by the Human Services Department.

In Fall of 2010, HSD recognized that supplemental payments for counties under the Upper Payment Methodology (UPL)¹ was \$27,217,732 yet the thirteen counties in which a Sole Community Provider (SCP) hospital is located only provided \$15,359,856, leaving \$11,857,876 remaining. UNMH agreed to make up the shortfall. Due to time constraints, the affected counties were not contacted and informed about the UNMH decision until recently.

UNMH's contribution on behalf of Santa Fe County/St. Vincent's Medical Center was \$1,104,303, and St. Vincent received a total of \$5,660,191 from the super supplemental. If the MOU is not executed, St. Vincent's will be required to return the latter amount.

In the months since the decision was made by UNMH to fund the supplemental on behalf of the thirteen counties, HSD, the Association of Counties, and the New Mexico Hospital Association have been working with the Medical Assistance Bureau to determine how best to document the transaction with the thirteen counties. The decision was to develop a Memorandum of Understanding between each affected county and UNMH. A copy of the proposed MOU is attached. In the agreement, UNMH requires each county to require that the affected private hospital (in this case, St. Vincent's Regional Medical Center) execute a Transfer Agreement with UNMH whereby the private hospital agrees that all transfers of patients to UNMH will be

¹ The UPL is determined by the difference between what Medicaid and Medicare pay hospitals. The difference is used as the basis for supplemental Medicaid payments after all the counties' contributions are tabulated.

consistent with the Emergency Medical Treatment and Labor Act of 1986 and to timely provide for a retransfer of the patient back to the private hospital once the patient's medical condition has stabilized. St. Vincent's has agreed to execute the proposed Transfer Agreement.

A number of questions have arisen from the thirteen counties about the propriety of the payment by UNMH on behalf of the counties. Analyzing these concerns requires an understanding of what constitutes an impermissible provider-related donation under the Social Security Act and regulations of the Centers for Medicaid Services (CMS). The Social Security Act prohibits a State from using "provider donations" as the nonfederal share of Medicaid payments. The theory is that if a provider-related donation were used to make the payment, it would really be federal Medicaid funds that are used to make the match instead of local or state funds. The Act defines a provider-related donation as "any donation or other voluntary payment (whether in cash or in kind) made (directly or indirectly) to a state or unit of local government by a health care provider." But the Act also permits state and local tax funds to be transferred to the state through an intergovernmental transfer like the one contemplated here:

"(A) Notwithstanding the provisions of this subsection [that prohibit provider-related donations], the Secretary may not restrict States' use of funds *where such funds are derived from State or local taxes . . . transferred from or certified by units of government within a State* as the non-Federal share of expenditures under this title, regardless of whether the unit of government is also a health care provider . . . unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section."

"(B) For purposes of this subsection, funds the use of which the Secretary may not restrict under subparagraph (A) shall not be considered to be a provider-related donation or a health care related tax."

CMS regulations also expressly permit use of "public funds" as the state share of Medicaid including funds "transferred from other public agencies . . . to the State or local agency and under its administrative control . . ."

Concerns have been raised about the propriety of transfers between private hospitals and counties in the State; concerns have even been raised about transfers and other arrangements between local hospitals and the relevant units of local government that are *unrelated* to the sole community provider hospital program. CMS, in a recent audit, questioned whether relationships between the counties and the Sole Community Provider hospitals run afoul of CMS rules. The proposed transfer is unlike the transactions complained of by CMS. It is wholly an intergovernmental transfer between the Regents of the University of New Mexico and thirteen counties. The origin of the funds transferred is state or local tax revenue and therefore appears to meet the requirements of the Act and Regulations.



New Mexico
Hospital Association

To: Paul Gutierrez, Executive Director
New Mexico Association of Counties

From: Jeff Dye, President and CEO

Date: March 15, 2011

Your assistance is requested to complete a process to allow Private Sole Community Provider (SCP) Hospitals to retain a State payment they received in September 2010. Please transmit the attached material to the following counties: Chaves, Curry, Eddy, Doña Ana, Lea, Los Alamos, Luna, McKinley, Otero, Rio Arriba, San Miguel, Santa Fe and Socorro.

1. Arrangements have been finalized by the Human Services Department (HSD) and University of New Mexico Hospitals (UNMH) in support of the "Super Supplemental" payments that were made to Private hospitals in their respective counties.
2. To complete the process, the following steps are requested of each county:
 - A, Complete and return the attached Memorandum of Understanding (MOU) to UNMH. The MOU will require Commission action in similar fashion as other SCP approvals.

Return to: Ms. Ella Watt
Chief Financial Officer
University of NM Hospital
2211 Lomas Blvd. NE
Albuquerque, NM 87106

B. Adopt and return to UNMH a resolution authorizing and directing the funding and transfer of the Contribution Amount into the Sole Community Provider Fund, once the County receives the Transfer from UNMH.

C. Encourage your local Private hospital to complete the attached Transfer Agreement between their facility and UNMH. (The New Mexico Hospital Association has also forwarded the Transfer Agreements to each hospital.)

D. Upon receipt of the completed county MOUs, resolution and hospital Transfer Agreements, UNMH will disburse a check to each county.

E. In accordance with the MOU, each county will be expected to make a Contribution in the same Amount into the Sole Community Provider Fund. This intergovernmental transfer is handled in the same manner as all other transfers to the SCP Fund and is supported by the same state statute.

Remit to: Medical Assistance Division /
Program Administration Bureau
Attn: Anna Bransford, Financial Manager
P.O. Box 2348
Santa Fe, NM 87504-2348

F. There is no additional funding request being asked of the counties. If a county fails to complete these steps, the previous payment to their local hospital will be recouped by HSD.

Thank you for your support of this important effort. We urge quick completion of these technical details which will allow the local hospitals to retain the much needed Sole Community Provider Super Supplemental payment.

Attachments:

Overview of SCP Super Supplemental prepared by NMHA
(for your reference)

County Memorandum of Understanding
(to be completed by County)

Transfer Agreement Cover Letter
(for your reference)

Transfer Agreement
(to be completed by Hospital)
2 signed originals needed
One retained by Hospital
One returned to UNMH

UNMH Funded Redistribution List
(for your reference)

**The FY 2011 “Super-Supplemental” Payments
To
Private Sole Community Provider Hospitals**

Background

What: in 1993-94, the SCP program was implemented as a means to maximize indigent funding to hospitals. County indigent funds and other sources of public funding can be sent via “intergovernmental transfers” (IGTs) from counties to the State to satisfy the non-federal share of matched funding that comes back to hospitals as part of their Medicaid remittance. SCP is a layer on top of the pre-existing county indigent fund statutes. Indigent claim payments (on a direct dollar for dollar basis) have become less important over time. Now claims serve as a means to document and certify indigent needs. With the help of the county, SCP payments now come to hospitals from Medicaid with the federal share added in (currently on a 2.3 to 1 basis – the rate was higher last year). Each year in January, counties budget for their share of the program. That budget is then processed on a quarterly basis.

Why: The SCP program maximizes local funding to meet the indigent care needs of local hospitals.

SCP vs. UPL

What: Several years ago, an Upper Payment Level (UPL) component was added as a one time, once a year, supplemental payment. The payment is determined by a complex formula managed by the HSD Medical Assistance Division. It’s based on the difference between what Medicaid pays hospitals vs. what Medicare pays hospitals. By the calculation, Medicaid pays less than Medicare so the supplemental payment takes hospital payments “up to” the Medicare level, hence the UPL. The supplemental payment needs to be budgeted and paid by the counties in September as HSD must process the payments to the feds prior to the end of the federal fiscal year.

Why: This is another mechanism to maximize the effectiveness of local funding for hospital indigent funding.

Public vs. Private

What: The SCP program is based on funding streams through 3 different “pools” – Public, Private and Teaching (UNMH). Each pool is operated separately, meaning that any payment adjustments must be made within the respective pools.

Why: The feds define the pool categories and it’s particularly important because public hospitals can assist the county with the IGT.

FY 2011 Regular Supplemental

What: Last fall, HSD calculated that the supplemental amount for the Private hospitals would be \$27,217,732. The County share would have been about one-fourth of that. However, counties only funded \$15,359,856 of that, leaving \$11,857,876 unfunded. The non-federal share of that would be \$2,313,472. This funding affects 14 hospitals in 13 counties.

Why: As the SCP program has grown at the same time county tax receipts have slowed, some counties have had a harder time funding their share of the SCP payments.

“Super-Supplemental”

What: After the Private pool under-funding was quantified, HSD approached UNMH to assist in funding the shortfall.

Why: HSD is motivated to maximize the utilization of federal funding.

Payments to Hospitals

What: HSD made super-supplemental payments to Private hospitals on September 29.

Why: HSD is required to draw down federal payments for the UPL supplemental and make payments to hospitals prior to the end of the federal fiscal year.

The County Processing of the Super-Supplemental

What: Unfortunately, due to time constraints, the super-supplemental payment was made prior to county action. HSD, UNMH, New Mexico Hospital Association and NMAOC are working together to create the action steps for counties to follow to support the payments. Counties will be required to pass-through the local share of funds via payments from UNMH and back to HSD. A Memorandum of Agreement will be provided to document the mechanics of the transfers. If these steps are not followed, HSD will ultimately recoup the payments from the hospitals. Finalization of all these details has been complicated by the administration change and final negotiations between HSD and UNMH.

Why: The processing of all payments through the SCP program require county action.

FY 12 SCP Budgeting Implications

What: Meanwhile, all hospitals are approaching their counties with budget requests for the FY 12 cycle. In the case of Private hospitals this year, there are 2 UPL payments built into those requests – the first supplemental and the super-supplemental.

Why: As normally occurs, those budget requests can include the prior years regular SCP payments and the UPL supplemental payments and an inflation factor.

Next Steps

- As usual, to access the fullest possible federal matching funds for indigent care, counties are urged to make their best effort to budget and fund the non-federal share of the FY 12 SCP requests.
- For those counties which have Private hospitals, they are urged to recognize the Super-Supplemental as part of the request.
- Counties will be informed of the mechanical details of county processing of the Super-Supplemental as they become available.

MEMORANDUM OF UNDERSTANDING
RE
ADVANCEMENT OF SOLE COMMUNITY PROVIDER FUNDS
by and between
THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, NEW MEXICO
and
THE REGENTS OF THE UNIVERSITY
OF NEW MEXICO, FOR THE UNM HOSPITALS

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") is made this __ day of February, 2011, by and between the Board of County Commissioners of Santa Fe County, New Mexico (the "**County**") and the Regents of the University of New Mexico, a state educational institution named in Article 11, Section 12 of the New Mexico Constitution, for its public operation known as the UNM Health Sciences Center, specifically the UNM Hospitals ("**UNM Hospital**").

I. RECITALS

- A.** From its "County Indigent Hospital Claims Fund" established pursuant to N.M. STAT. ANN. § 27-5-7 (1978), the County contributes funds into the "Sole Community Provider Fund" established pursuant to N.M. STAT. ANN. § 27-5-6.1 (1978), in order to permit the State of New Mexico to receive federal matching funds under Title XIX of the Social Security Act and thereby enable the sole community provider hospital (as defined in 42 C.F.R. § 412.92) within the County to receive an adjustment to its Medicaid reimbursement pursuant to N.M. ADMIN. CODE § 8.311.3.12.F(6) (the "**Sole Community Provider Adjustment**");
- B.** Due to the current economic conditions in the State and nationally, the County is unable for Fiscal Year 2011 to make the necessary contribution of \$1,104,303.32 (the "**Contribution Amount**") into the Sole Community Provider Fund, thereby jeopardizing the financial viability of the Sole Community Provider Adjustment;
- C.** The loss of the Sole Community Provider Adjustment will have a severely deleterious financial effect on the sole community provider hospital in the County and thereby threaten the ability of such sole community provider hospital to provide medical care to the residents of the County;
- D.** UNM Hospitals has and is able to transfer funds which are public funds (and are not Federal funds) and which may be used to fund the non-federal share of Medicaid payments pursuant to federal Medicaid regulations at 42 C.F.R. § 433.51 (the "**Eligible Operating Funds**"); and
- E.** Subject to and on the conditions set forth in this MOU, the UNM Hospitals is willing for Fiscal Year 2011 only to make a one time intergovernmental transfer

to the County to fund the Contribution Amount and thereby enable the County to pay the Contribution Amount into the Sole Community Provider Fund as contemplated in N.M. STAT. ANN. § 27-5-6.1 (1978).

II. MUTUAL COVENANTS

- A. Subject to the County's performance of its obligations under this MOU, the UNM Hospital will make an intergovernmental transfer (the "**Transfer**") to the County of an amount equal to the Contribution Amount from the Eligible Operating Funds. In this connection, the UNM Hospital will make the Transfer to the following address:

- B. On or before the time of the Transfer, the County shall have adopted a resolution authorizing and directing the funding and transfer of the Contribution Amount into the Sole Community Provider Fund, once the County receives the Transfer from the UNM Hospital. The County shall provide UNM Hospital with evidence of such authorization and direction on or before the time of the Transfer.
- C. For purposes of this MOU, the "time of the Transfer" shall mean ten (10) business days following the date this MOU is executed by all of the parties hereto.
- D. In the event that the funds within the Sole Community Provider Fund for Fiscal Year 2011 are remitted back to the County pursuant to N.M. STAT. ANN. § 27-5-6.1C (1978) (due to the fact that federal Medicaid matching funds are not received for Medicaid sole community provider hospital payments), the County agrees that it will forthwith remit to the UNM Hospital an amount equal to the amount remitted back to the County.
- E. As a part of the transactions contemplated under this MOU, the County for Fiscal Year 2011 shall cause each hospital receiving funds under the Sole Community Provider Adjustment to enter into a mutual transfer agreement with UNM Hospital which sets forth the terms and conditions for transfer of patients between such hospital and UNM Hospital and, more particularly, commits such hospitals to accept a transfer back to such hospitals of patients no longer needing care at UNM Hospital. As a part of any such mutual transfer agreement, the parties will agree that nothing contained in such mutual transfer agreement shall constitute an inducement or an attempt to induce referrals as between UNM Hospital and such hospital.
- F. This Transfer contemplated in this MOU is for Fiscal Year 2011 and nothing contained herein shall be construed to mean or intend that UNM Hospital is willing or

is in any way obligated to make an intergovernmental transfer for any year other than Fiscal Year 2011.

III. MISCELLANEOUS

- A. Amendments or modifications to this MOU will be effective only if any such amendment or modification is in writing and signed by an authorized representative of each of the parties hereto.
- B. This MOU may be executed in counterparts, each of which will be deemed an original and which together will constitute one and the same agreement.

**BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY, NEW MEXICO**

Harry B. Montoya, District 1, Chair

Virginia Vigil, District 2

Mike D. Anaya, District 3

Kathy Holian, District 4

Liz Stefanics, District 5

Approved:

County Attorney

Date

Attest:

County Clerk

Date

**REGENTS OF THE UNIVERSITY OF NEW MEXICO,
For the UNM Health Sciences Center, specifically
the UNM Hospitals**

By: _____
Printed Name: _____
Its: _____

Approved as to form:

Scot Sauder, Esq., Senior Associate University
Counsel and Health Law Section Lead Attorney



UNM HOSPITALS

February 18, 2011

Mr. Alex Valdez
Chief Executive Officer
CHRISTUS St. Vincent Regional Medical Center
455 St. Michaels Dr.
Santa Fe, NM 87504-2107

Dear Mr. Valdez:

Enclosed you will find two Transfer Agreement attachments for your review and signature. University of New Mexico Hospitals recently has had several neurosurgical patients transferred to our facility. The purpose of the Transfer Agreement is to ensure that all transfers from your facility to the University of New Mexico Hospital are made consistent with EMTALA.

Please sign each Transfer Agreement attachment and return one signed original to the following address:

Crystal Frantz
Executive Director, Care Management
UNM Hospital
2211 Lomas NE
Albuquerque, New Mexico 87105

Please call me if you have any questions (505)272-2121.

Stephen McKernan
Chief Executive Officer
Associate Vice President for Clinical Operations

cc: Crystal Frantz
Executive Director, Care Management

TRANSFER AGREEMENT

This Transfer Agreement is entered into effective _____, 2011, by and between the Regents of the University of New Mexico, for its public operation known as the Health Sciences Center (“UNMHSC”), specifically for University of New Mexico Hospital (“UNMH”), and CHRISTUS St. Vincent Regional Medical Center, a New Mexico nonprofit corporation, in Santa Fe, New Mexico.

UNMHSC and Facility agree as follows:

I. RECITALS

A. Facility is duly licensed by the New Mexico Department of Health (“DOH”) or Texas Department of Health, and certified to participate in Medicare and Medicaid.

B. UNMH is a general acute care hospital, duly licensed by the DOH, and certified to participate in Medicare and Medicaid.

C. Patients or residents of Facility (“Patients”) may require transfer to a general acute care hospital for medical care that is not within the capability and/or capacity of Facility. The purpose of this Agreement is to provide for timely transfer of such Patients by Facility to UNMH when such transfer is medically necessary and “appropriate” as defined in the Emergency Medical Treatment and Labor Act of 1986 (“EMTALA”), and to provide for the timely transfer of Patient from UNMH to Facility or to another facility once Patient’s medical condition is stable.

II. OBLIGATIONS OF FACILITY

Facility shall comply with all of the follow terms, conditions and requirements, including the specific EMTALA regulations contained therein:

A. Transfer Patients of Facility to UNMH pursuant to a written order by Facility’s medical staff member, or, in emergencies, a written order of other authorized Facility personnel, to the care of a UNMHSC medical staff member (including UNMHSC physicians specializing in emergency medicine) who has agreed to accept the Patient for admission.

1. A transfer of Patient will be initiated by a telephone call from a Facility medical staff member or other authorized Facility personnel to a UNMHSC medical staff member.

2. After the initial communication regarding the transfer of Patient, a Facility staff member will communicate by telephone with a UNMH staff member to provide the following information:

a. The name of the Facility staff member making the call;

- b. Patient's name and other identifying information (medical record number, address, social security number, etc., if known);
- c. Type of injury or illness;
- d. Patient's medical condition;
- e. Name of treating and referring physician(s);
- f. Anticipated time and date of departure from Facility;
- g. Method of transfer (ground or air ambulance);
- h. Anticipated time of arrival at UNMH; and
- i. Patient's third party payer, if information is available.

3. With regard to "appropriate" transfers of Patient of Facility under EMTALA, Facility shall comply with the following requirements:

a. Facility has provided treatment of Patient's "emergency medical condition" (as defined in EMTALA) within its capability and capacity that minimizes the risks to the Patient's health, and, in the case of a woman in labor, the health of the unborn child;

b. Facility shall confirm that UNMH has the capability (i.e. qualified personnel) and capacity (i.e. available space) for the treatment of Patient and that a UNMHSC medical staff member has agreed to accept transfer of Patient from Facility and to provide appropriate medical treatment to stabilize Patient's condition;

c. Facility shall send to UNMH all medical records (or copies) related to Patient's emergency medical condition that are available at the time of transfer, including:

i. Records related to Patient's available history, signs or symptoms, preliminary diagnosis, results of diagnostic studies, test results and treatment provided;

ii. Informed consent of Patient or Patient's representative to transfer Patient to UNMH, or certification of Facility medical staff member that, based upon information available at the time of transfer, the medical benefits reasonably expected from transfer of Patient to UNMH outweigh the increased risks to Patient or, in the case of a woman in labor, to the woman or unborn child, from the transfer, including a summary of the risks and benefits upon which the certification is based;

iii. The name and address of any on-call physician(s) of Facility who has refused or failed to appear at Facility within a reasonable period of time to provide necessary stabilizing treatment of Patient; and

iv. Other records that are not available at the time of transfer must be sent as soon as practicable after transfer;

v. The transfer of Patient is affected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.

B. As required, coordinate with the appropriate air ambulance transport, such as Lifeguard dispatch for provision of LIFEGUARD Air Emergency Services ("LAES"), for air ambulance transport, if medically necessary and appropriate for continuity of care.

C. Accept transfer of a transferred Patient back to Facility, or shall make arrangements for transfer of Patient to another facility, after UNMH has rendered stabilizing

treatment to Patient and Patient's medical condition is "stable" in the opinion of UNMHSC medical staff members; provided, however, that nothing contained in this Agreement shall be construed to mean or shall constitute an inducement or an attempt to induce referrals as between UNMH and Facility.

D. Either (1) provide necessary outpatient care to the transferred Patient if the transferred Patient is discharged by UNMH after the medical necessity for an acute level of hospitalization at UNMH has ended, or (2) make arrangements for other outpatient care for Patient if such continuing outpatient care is required in order to effectuate a medically appropriate discharge of the Patient from UNMH.

III. OBLIGATIONS OF UNMH

UNMH will accept Patients of Facility without regard to race, color, religion, age, sex, sexual orientation, ancestry, physical or mental disability, or national origin, in accordance with federal and state laws and regulations, provided it has the capability and capacity to render the necessary medical care and treatment to Patients, and further provided that Facility meets all transfer and transfer-back requirements as set forth above as to any or all such transfers of Patients.

IV. MUTUAL RIGHTS AND OBLIGATIONS

A. Neither party will base a decision to transfer or accept Facility Patients on a Patient's financial status.

B. Neither party, by virtue of this Agreement, assumes any liability for any debts or obligations of either a financial or legal nature incurred by the other party to this Agreement.

C. The party rendering services shall be solely responsible for collecting payment for services rendered from third-party payers or other sources in accordance with applicable law and regulations.

V. QUALITY ASSURANCE

A. Licensure and Certification. The parties will comply with all laws and regulations relating to performance of their obligations under this Agreement, and will maintain in effect all permits, licenses and governmental approvals that may be necessary for that purpose. The parties will promptly notify each other of any material change in such permits, licenses, or governmental approvals that would adversely affect performance under this Agreement.

B. Quality Management Compliance. The parties will comply with any quality management programs required by external accrediting bodies or the federal Centers for Medicare and Medicaid, as well as their respective internal quality assurance programs. Upon reasonable notice, each party will provide to the other copies of all applicable licenses and certifications and will comply with any facility audits mutually agreed upon or required by external accrediting bodies or other regulatory or accreditation organizations.

VI. LIABILITY AND INSURANCE

A. As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. The liability of UNMHSC will be subject in all cases to the immunities, privileges, and limitations of the New Mexico Constitution and the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended, and to the privileges and immunities of the State of New Mexico under the Eleventh Amendment to the United States Constitution.

B. The parties will maintain professional and general liability coverage adequate to provide coverage for the actions contemplated by this Agreement. The liability coverage for UNMHSC will be as provided under and pursuant to the New Mexico Tort Claims Act. The parties will provide each other with evidence of coverage upon request. Each party will immediately notify the other in writing if its insurance coverage is suspended or canceled or otherwise materially modified in a manner that has an adverse effect upon the party's ability to perform its obligations under this Agreement.

VII. TERM AND TERMINATION

A. Term. This Agreement will become effective as of the date first set forth above and shall continue in effect until terminated.

B. Termination.

1. Termination without Cause. Either party may terminate this Agreement by delivering written notice to the other party at least 30 days in advance of the proposed date of termination.

2. Termination with Cause. Either party may terminate this Agreement for cause based upon a material breach by giving written notice to the other party at least 15 days in advance of the proposed date of termination.

3. Automatic Termination. This Agreement will automatically terminate on the date that either party's license or eligibility to participate in Medicare or Medicaid is suspended, revoked or otherwise terminated.

4. Immediate Termination for Lack of Adequate Insurance Coverage. Upon receipt of notice of suspension, cancellation or material reduction of insurance coverage, as provided in Section VI-B of this Agreement, the party receiving such notice may elect to immediately terminate this Agreement by written notice of termination to the other party.

5. Immediate Termination for Failure of Facility to Comply with Return Transfer or Discharge Requirements. Upon the failure of Facility to comply with the

provisions of Sections II-C and D of this Agreement, UNMHSC may elect to immediately terminate this Agreement by written notice of termination to Facility.

VIII. MISCELLANEOUS

A. Entire Agreement. This Agreement represents the entire understanding between the parties, supersedes any prior agreements or understandings with respect to the subject matter of this Agreement, and shall not be modified or amended except in writing signed by both UNMHSC and Facility.

B. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach of this Agreement.

C. Non-Assignability. This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party. This Agreement is binding upon, and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

D. Governing Law. This Agreement will be construed, interpreted, governed and enforced in accordance with New Mexico law.

E. Confidentiality. The confidentiality of Patients' medical records will be maintained by the parties in accordance with applicable federal and state laws and regulations.

F. Retention of Records. The parties will maintain all necessary books, documents, and records for a period of at least five years after termination of this Agreement, and will allow access by the Secretary for Health and Human Services, the Comptroller General and the Inspector General to this Agreement and to any and all books, documents and records for the purpose of verifying costs associated with performance under this Agreement.

G. Relationship of Parties. The parties and their respective employees are at all times acting as independent contractors. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.

H. Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.

I. Eligibility for Participation in Government Programs. Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in

federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

J. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, as follows:

To UNMH at: University of New Mexico Hospital
2211 Lomas Boulevard, N.E.
Albuquerque, New Mexico 87106
Attn: Chief Executive Officer

with a copy to: Crystal Frantz, RN, MSN
Executive Director
Care Management Services
2211 Lomas NE
Albuquerque, NM 87106

To Facility at: CHRISTUS St. Vincent Regional Medical Center
455 St. Michaels Dr.
Santa Fe, New Mexico 87504-2107
Attn: Mr. Alex Valdez, CEO

FACILITY:

CHRISTUS St. Vincent Regional Medical Center

By _____ Dated: _____
Printed Name:
Title:

**REGENTS OF THE UNIVERSITY OF NEW MEXICO,
For University of New Mexico Hospital**

By _____ Dated: _____
Stephen McKernan, its Chief Executive
Officer and Vice President for Hospital Operations

*Approved as to form
by Scot Sauder
Senior Associate University Counsel
10/05/2010*

UPL SFY 2011

Privately Owned and Operated Facilities		County	Amount Per County	Total Per Hospital
Provider #	Hospital			
B-3186	Carlsbad Med Ctr.	Eddy	\$ 68,879.83	\$ 353,048.83
8-2978	Eastern NM Med. Ctr.	Chaves	\$ 362,926.56	\$ 1,860,207.91
265	Espanola	Rio Arriba	\$ 151,195.39	\$ 774,963.55
18	Gerald Champion	Otero	\$ 97,119.91	\$ 497,795.53
B-3139	Lea Regional Hospital	Lea	\$ 82,124.70	\$ 420,936.47
4924258	Los Alamos Med. Ctr.	Los Alamos	\$ 15,663.13	\$ 80,282.55
B-2113	Mimbres Memorial Hospital	Luna	\$ 45,834.25	\$ 234,926.94
95804528	Mountain View Regional Medical Ctr.	Dona Ana	\$ 24,661.61	\$ 126,404.96
76546	Alta Vista Regional Medical Center	San Miguel	\$ 62,599.61	\$ 320,859.08
224	Plains Regional Med Ctr. - Clovis	Curry	\$ 49,923.84	\$ 255,888.48
331	Rehoboth McKinley Christian Hospital	McKinley	\$ 153,098.25	\$ 784,716.81
	Roswell Regional Hospital	Chaves	\$ 24,661.61	\$ 126,404.96
695	Socorro General Hospital	Socorro	\$ 70,479.68	\$ 361,249.02
547	St. Vincent Hospital	Santa Fe	\$ 1,104,303.32	\$ 5,660,191.27
			\$ 2,313,471.68	\$ 11,857,876.35
				\$ 11,857,876.35

**NO PACKET MATERIAL
FOR THIS ITEM**

**NO PACKET MATERIAL
FOR THIS ITEM**

**NO PACKET MATERIAL
FOR THIS ITEM**

EXECUTIVE SESSION