



**May 23, 2012**

Agenda  
9:30 A.M. Business Meeting  
Los Lunas School Board Room  
119 Luna Avenue  
Los Lunas, NM 87031

Board of County Commissioners

Donald E Holliday, Chair District V  
Georgia Otero-Kirkham, Vice-Chair District II  
Mary Andersen District I  
Lawrence R. Romero District III  
Ron Gentry District IV

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda
- 4) Approval of Minutes: May 2, 2012 Business Meeting; May 9, 2012 Public Hearing

**PRESENTATION(S)**

- 5) Quilt Presentation – Valencia Valley Quilters Group

**DISCUSSION (Non-Action) ITEM(S)**

- 6) Department Update – Rural Addressing Project: Ruben Chavez
- 7) Reports from Commissions, Boards & Committees

**ACTION ITEM(S)**

- 8) Consideration of Ordinance restricting through truck traffic on North Rio del Oro, East of Manzano Expressway to Valencia High School in Valencia County: **Commissioner Don Holliday**
- 9) Quasi Judicial Zone Change RR-2 to RR-1, Consideration to hear a quasi judicial zone change from an RR-2 to an RR-1 to allow a family lot split: **Jacobo Martinez**
- 10) Consideration of 2008 Legislative funding Amendment 1 to extend duration to 2014 for Valencia County and Belen Quiet Zone: **Jacobo Martinez**
- 11) Consideration to Approve the Contract Award to SWCA Environmental Consultants in the amount of \$37,772 plus GRT (\$40,416.06) – Wildland Risk Reduction Grant: **Glenda Chavez / Rob Barr**
- 12) Consideration of 90 Day Contract Extension for Nance, Pato & Stout, Valencia County Legal: **Christina Card / Michael Vinyard**

**FINANCIAL MATTERS:**

- 13) Consideration of Resolution 2012-\_\_\_\_, Approving the Preliminary Budget for Fiscal Year 2013: **Christina Card**
- 14) Consideration of Budget Resolution 2012-\_\_\_\_: Increase Revenue and Expenditures due to grant funds for Older American Program: **Christina Card**
- 15) Consideration of Approval: Payroll / Warrants: **Christina Card**

**PUBLIC COMMENT:**

Please sign up on the sheet located just outside the Commission chambers. The Board will allow each member of the public wishing to address the Board a full and complete opportunity to address the Commission

**EXECUTIVE SESSION:**

Pursuant to Section 10-15 1 (H) (2) (7) & (8), the following matters may be discussed in closed session: a. personnel: b. pending or threatened litigation **EEOC Charge Number 543-2012-00434; San Davie Road**: c. real property: d. other specific limited topics that are allowed or authorized under the stated statute.

- ◆ Motion and roll call vote to go into Executive Session for the stated reasons
- ◆ Board meets in closed session
- ◆ Motion and vote to go back into regular session
- ◆ Summary of items discussed in closed session
- ◆ Motion and roll call vote that matters discussed in closed session were limited to those specified in motion for closure, and that no final action was taken, pursuant to the authority in §10-15-1 NMSA 1978.

**ACTION ITEMS FROM EXECUTIVE SESSION:**

- a) EEOC Charge Number 543-2012-00434
- b) San Davie Road

**NEXT COMMISSION MEETING:**

- ◆ **June 6, 2012 – Business Meeting @ 9:30 A.M.**  
Valencia County Commission Board Room 444 Luna Ave. LL, NM

**ADJOURN:**

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*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Courthouse, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office at the old Valencia County Courthouse if a summary or other type of accessible format is needed.*

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**VALENCIA COUNTY BOARD OF COMMISSIONERS**

**BUSINESS MEETING**

**May 2, 2012**

|   |  |
|---|--|
| <b>PRESENT</b>                            |  |
| Donald E. Holliday, Chairman              |  |
| Georgia Otero-Kirkham, Vice-Chair         |  |
| Lawrence R. Romero, Member                |  |
| Ron Gentry, Member                        |  |
| Mary J. Andersen, Member                  |  |
| Bruce Swingle, County Manager             |  |
| Adren Nance & Dave Pato, County Attorneys |  |
| Sally Perea, County Clerk                 |  |
| Press and Public                          |  |

1) The meeting was called to order by Chairman Donald Holliday at 9:30 A.M.

2) Chairman Holliday led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Andersen moved for approval of the agenda. Seconded by Commissioner Otero-Kirkham.

4) Approval of Minutes: April 11, 2012 Public Hearing Meeting  
April 18, 2012 Business Meeting

Commissioner Andersen moved for approval of the minutes of April 11, 2012 Public Hearing Meeting and April 18, 2012 Business Meeting. Seconded by Commissioner Romero. Motion carried unanimously.

**PRESENTATION(S)**

5) Jim Glover – Community Branding Phase II

Jim Glover with Community Branding gave a presentation on phase II of their program. Their new branding approach for Los Lunas is "Los Lunas My Village." Phase II has been completed. They have created a unified community brand that's owned by no one and can be shared by all and the goal is to create a compelling messaging and strategic direction for the community use to strengthen the regions identity. The vision for the branding for Los Lunas My Village is a place for the vision to create a sustainable community that offers a quality living experience unsurpassed in rural New Mexico. Mr. Glover displayed the banner they've produced that will be used in their role in promoting the Village of Los Lunas.

**DISCUSSION (Non-Action) ITEM(S)**

6) Reports from Commissions, Boards & Committees

None.

**ACTION ITEM(S)**

7) Consideration of a Proclamation Declaring the Month of May Older American Month – Ruben Chavez / Jose Campos.

Older American Director Jose Campos said in 1963 President John F. Kennedy acknowledged the importance of recognizing the older American population by declaring the month of May as Older American Month. The county's Older American Program has planned a series of activities to commemorate this event by holding several activities at each of the county's senior centers. Mr. Campos introduced Mrs. Lillie McNabb Valencia County Older American Advisory Council Chair who read and presented the Proclamation to the Commission.

Nan Ziegler representing the Business Women of Valencia County and Linda Shaver and her students, from the School of Dreams, participates in the Comfort Keepers Program that focuses on senior citizens nutrition, more specifically malnutrition. A startling number of senior citizens risk going hungry due to the inability to obtain sufficient food for their household or having to choose between food and medical care. During the month of May National Older Americans Month Comfort Keepers in Valencia County has partnered with the Valencia County Older Americans Programs, the Business Women of Valencia

County and several other businesses in Valencia County to run a food drive that will benefit the home bound senior citizens.

Commissioner Gentry moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

8) Consideration of an Amendment to the Grant Agreement for the Purpose of Increasing the Funding Contribution b AAA to the Older American Program: Contract #2011.

Commissioner Gentry moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

9) Consideration of an Amendment to the Vendor Agreement for the Purpose of Increasing the State Portion of the Program Funding Contribution by AAA to the Older American Program: Contract #2011-126028 – Ruben Chavez / Jose Campos.

Commissioner Gentry moved for approval. Seconded by Chairman Holliday. Motion carried unanimously.

10) Consideration of Approval of Amendment Number 4 Agreement No. 11-690-13020-4 Cynthia Ferrari

Commissioner Gentry moved for approval. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously.

11) Consideration of Approval of Satellite Lease Agreement #VCL-FY12-503 – Cynthia Ferrari

Commissioner Andersen moved for approval. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously.

12) Accept Approval to be Fiscal Manager for Juvenile Adjudication Grant Fund- Tasa Stromei.

Commissioner Andersen moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.

13) Consideration of Resolution 2012-18, Delegation of Authority to the County Manager to enter into Certain Contracts and Settlement Agreements – County Commission.

Commissioner Andersen suggested increasing the amount from \$5,000.00 to \$10,000.00 and moved for approval.

County Attorney Adren Nance stated that before final approval this item be moved beyond Executive Session and the reason is it's contingent currently on having a finance director to sign in concurrence with the county manager and as yet the county has no finance director. Item (4) says to be effective any contractor or settlement agreement entered into pursuant to this resolution shall be signed by Bruce Swingle Valencia County Manager and (blank) Valencia County Finance Director. This is consistent with the previous delegation of authority approved by the commission which required approval by both the former county manager and former business manager in order to be valid. The county won't have a finance manager until the vote is taken in Executive Session.

Commissioner Andersen asked if it was necessary to place the individuals name on the agreement or leave the designation to be signed by the finance director.

You can remove the requirement that the name be listed was Attorney Dave Pato's response.

Commissioner Andersen restated her motion to approve the resolution raising the limit to \$10,000.00 and removing the necessity for a name of the director of finance.

Seconded by Chairman Holliday. Motion carried unanimously.

County Clerk Sally Perea announced Resolution 2012-18.

14) Accept Findings of Facts and Conclusions of Law

1) Consideration to Adopt the Findings of Facts and Conclusions of Law Concerning a Verification of a Non-Conforming Use for the Storage and Sale of Fill Dirt and Gravel Products on the Property Described as T5N, R1E, Section 1 NMPM, Map 96 being a Portion of Tracts 67, 68 and Tract 46-C-2 Zoned RR-2, Filed in Book 300 Page 1093 of the Office of the Valencia County Clerk, also known as 1Eddie Lane, Belen, NM 87002 – Jacobo Martinez.

Commissioner Gentry moved for approval. Seconded by Commissioner Romero. Motion carried 3-2. Commissioner's Andersen voted no. Commissioner Otero-Kirkham voted no.

15) Approval of Contract of Audit for Valencia County FY 2012-2013 – Christina Card

Minutes of May 2, 2012 Regular Business Meeting

Commissioner Gentry moved to table this item until the finance director is in place and brings it back to the commission. Seconded by Commissioner Andersen. Motion carried unanimously.

16) Request approval of Memorandum of Understanding to Provide Financial Support for the Summer Recreation Program in the City of Belen – Christina Card  
Commissioner Gentry moved for approval. Seconded by Chairman Holliday. Motion carried unanimously.

17) Request Approval of Memorandum of Understanding to Provide Financial Support for the Summer Recreation Program in the Village of Bosque Farms – Christina Card  
Chairman Holliday motioned to match the funds of \$3,000.00 as was given to the other municipalities. Seconded by Commissioner Otero-Kirkham. Motion carried 4-1. Commissioner Andersen voted no.

**FINANCIAL MATTERS:**

18) Consideration of Approval of Payroll / Warrants –Christina Card  
Commissioner Gentry moved for approval. Seconded by Chairman Holliday. Motion carried unanimously.

**PUBLIC COMMENTS:**

Those members of the audience making comments at today's Business Meeting were Valencia County residents Darla Gleason, Earl Gleason and Joan Oreolt.

**EXECUTIVE SESSION-** Pursuant to Section 10-15-1 (H) (2) (7) & (8), the following Matters may be Discussed in Closed Session: a.) Personnel: Finance Director, b.) Pending or Threatened Litigation: EEOC Charge Number 543-2012-00434; San Davie Road, c.) Real Property d.) Other Specific Limited Topics that are Allowed or Authorized under the Stated Statute.

Commissioner Otero-Kirkham motioned to go into Executive Session. Seconded by Commissioner Romero. Roll call vote. Commissioner Andersen voted yes. Commissioner Gentry voted yes. Commissioner Romero voted yes. Commissioner Otero-Kirkham voted yes. Chairman Holliday voted yes. Motion carried 5-0.

Commissioner Otero-Kirkham moved to go back into Regular Session. Seconded by Chairman Holliday. Motion carried unanimously.

County Attorney Adren Nance stated the matters that were discussed in Executive Session were limited to those in the motion for closure which were EEOC Charge Number 543-2012-00434, San Davie Road and finance director contract and no final action was taken.

Commissioner Andersen moved to approve the summary as stated by counsel. Seconded by Commissioner Otero-Kirkham. Commissioner Romero voted yes. Commissioner Otero-Kirkham voted yes. Commissioner Gentry voted yes. Commissioner Andersen voted yes. Chairman Holliday voted yes. Motion carried 5-0.

**ACTION ITEMS FROM EXECUTIVE SESSION:**

a) Approval of Finance Director Employment Contract  
Commissioner Andersen moved to authorize the County Manager to issue a contract to Mr. Larry Augsbury as finance director. Seconded by Commissioner Gentry. Motion carried unanimously.

b) EEOC Charge Number 543-2012-00434  
No action was taken.

**NEXT COMMISSION MEETING:**

The next Public Hearing Meeting of the Valencia County Board of County Commission will be held on May 9, 2012 at 5:00 P.M. in the County Commission Room at the Valencia County Courthouse.

**11) Adjournment**

Commissioner Otero-Kirkham moved for adjournment. Seconded by Commissioner Romero. Motion carried unanimously. TIME: 11:52 A.M.

**NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the May 2, 2012 Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.**

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**DONALD E. HOLLIDAY, CHAIRMAN**

\_\_\_\_\_  
**GEORGIA OTERO-KIRKHAM, VICE-CHAIR**

\_\_\_\_\_  
**LAWRENCE R. ROMERO, MEMBER**

\_\_\_\_\_  
**RON GENTRY, MEMBER**

\_\_\_\_\_  
**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

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**SALLY PEREA, COUNTY CLERK**

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**DATE**

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**VALENCIA COUNTY BOARD OF COMMISSIONERS**

**PUBLIC HEARING**

**May 9, 2012**

| <b>PRESENT</b>                            | <b>ABSENT</b>     |
|---|-------------------|
| Donald E. Holliday, Chairman              |                   |
| Georgia Otero-Kirkham, Vice-Chair         |                   |
| Lawrence R. Romero, Member                |                   |
|   | Ron Gentry Member |
| Mary J. Andersen, Member                  |                   |
| Bruce Swingle, County Manager             |                   |
| Adren Nance & Dave Pato, County Attorneys |                   |
| Sally Perea, County Clerk                 |                   |
| Press and Public                          |                   |

1) The meeting was called to order by Chairman Holliday at 5:00 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Otero-Kirkham moved for approval of the agenda. Seconded by Commissioner Andersen. Motion carried unanimously.

**SWEARING IN OF PARTICIPANTS**

County Clerk Sally Perea administrated the oath to those individuals wishing to give testimony on the Public Hearing items.

**PUBLIC HEARING ITEMS:**

4) Consideration of Ordinance Restricting Through Truck Traffic on North Rio Del Oro, East of Manzano Expressway to Valencia High School in Valencia County – Commissioner Donald Holliday.

Commissioner Holliday said the reason he has been pushing for this is because he believes this is a safety issue they are facing, with the kids and the heavy trucks on the road. When it was heard for the first time counsel was asked to come back with a permitting process which is before the commission today.

Valley Improvement Association President and CEO Paul Baca represents the ownership interest which is a forty-seven thousand acre subdivision on the east mesa. It's not only property that VIA owns itself but it's also property that is owned by members of the Valley Improvement Association, tax paying residents and non-residents of Valencia County. Mr. Baca feels that the permitting process has some merit but how well is it going to be enforced. There is a limited amount of resources when it comes to law and code enforcement in Valencia County. The ordinance is a temporary fix and believes that it will open up and set precedent for other roads like Meadow Lake Road, there is a gravel and mining operation east of there and Meadow Lake Road goes right in front of Ann Parish Elementary. So if the North Rio Del Oro Loop is shut down or access for heavy truck traffic, does that then open up Meadow Lake Road area because those trucks go right in front of Ann Parish Elementary. Mr. Baca asked the commission to consider those things before they take action on adopting this.

Commissioner Andersen asked Mr. Baca how active is VIA's operation today? Mr. Baca said the mining operation that VIA owns is not operational. They have inventory that was left by the previous owner and occasionally a truck goes out once a week and pulls inventory from that mine down to the Belen Sand and Gravel site which is another subsidiary of theirs.

Chairman Holliday asked Mr. Baca why this restriction would shut his business down. Mr. Baca said it makes it pretty much worthless because in business you have to be competitive in pricing. If the product is hauled out to any of the northern areas, the truckers charge them per ton mile to haul the product out. They don't own the trucks, they contract that out. If they'd have to use an alternative which would be a south route, it would add approximately 3.5 miles to the route. So that adds to the cost of the product. Chairman Holliday said he's willing to work with him to find an alternative route and doesn't see how their company is going to go broke having to go three miles on another route. His concern is the safety of the children at the intersection of North Rio Del Oro and Manzano Expressway. It's a safety issue and he is willing to work with them to a point

but feels that VIA should take a little stewardship and be concerned with the safety of the children also.

Mr. Jacobo Martinez said Public Works did some research and they have identified six different easements that can go up north to Monterey Boulevard and a couple of easements that may go down south to south Rio Del Oro Boulevard. These are easements that exist that can be improved and can be utilized as roads.

Attorney Dave Pato said for the purpose of the record he would like to introduce the letter from Valley Improvement Association dated November 20, 2007 stating that it owns and is in support of petitions submitted by Southwest Rock Development Corporation to rezone the property from pre-platted to natural resources.

Chairman Holliday asked if anyone wanted to speak on this issue.

Valencia County resident Mike Wood said this all started when Commissioner Gentry was here to represent his constituents on the South Del Oro Loop and when he entered that issue Chairman Holliday stepped in with the North side which was never really understood why. If you go ahead with what you're trying to do, are you going to route everything on the South Del Oro Loop, on the dirt road along side fifty houses of which the people have complained because the stucco is falling off their walls and shingles are falling off their roofs. I don't get where you're coming from and if you could explain it, Mr Wood asked.

Chairman Holliday said he would be glad to explain it and that's exactly what he was afraid of, if you put restrictions on South Rio Del Oro that was going to put all the traffic on North Rio Del Oro where the school is at. That's why he's opposed to the restriction on North Rio Del Oro. As far as the traffic going behind the houses, he doesn't know that it will. We just said there are six other routes they can go, they don't necessarily have to go back there. As Mr. Baca just stated that the trucks are going to find the shortest route and supposedly according to Mr. Baca the next shortest route is 3.2 miles further. You can't compare a ton of gravel for a life of a child and yes, you're absolutely right, that's why I did it. The roads have been there; the South Rio Del Oro was a main thoroughfare and was there before North Rio Del Oro was there. The developer chose to place the houses there.

Valencia County resident Mary Wood asked if the traffic is restricted on the North Rio Del Oro Loop does that also restrict it on the South Rio Del Oro Loop because when previously discussed and the reason a decision was not made at that time was that Commissioner Otero-Kirkham stated she would not vote on anything that didn't combine both the North and the South Loop at the same.

Commissioner Otero-Kirkham said she believes that was Commissioner Gentry's decision to bring it forward, to restrict it on the south loop as well, but it's not being combined at today's meeting. Mrs. Wood suggested it be tabled until the commissioners can come to an agreement on both the north and south loop.

Los Lunas School Board Member Chris Martinez represents District III which is Valencia High School. Mr. Martinez is afraid of the restriction mainly because of some near misses along that road. They have expressed their concerns on several safety issues which includes more lighting that is much needed in that area. Although he is not opposed to business he believes when the school was built the school district contributed money into the infrastructure of getting to that site. An eighty thousand pound truck full of dirt and gravel running two feet away from a forty thousand pound school bus full of kids is not a good recipe for safety. There's a lot of activity during a regular school day and he feels there could be a better route that would avoid a lot of that traffic out of that school community. He asks that the commission take that into consideration for the safety of the students and the residents of that community. Mr. Martinez believes that business is important and trying to bring in industry is important for the eastside now that there's a school out there. Building a town around the school and getting the support of the community and understanding that safety is a factor is vital to students. A truck route that goes all the way around needs to be created because the industry for the future is going to require heavy vehicles traveling on those roads. So why not plan for it today and find a route that they can work on and if it's needed that the people band together and go up to Santa Fe and fight for some paving dollars, let's do that.

Commissioner Andersen agrees with Mr. Martinez. They need to look at a four lane Manzano Expressway, roads that would serve the schools and mining sites and plan for that even if it's only paper so that when something comes up we can say what we want done in that area.

Minutes of May 9, 2012 Public Hearing Meeting

5) **Quasi Judicial Zone Change RR-2 to RR-1, Consideration to Hear a Quasi Judicial Zone Change from an RR-2 to an RR-1 to Allow a Family Lot Split; T6N, R2E, Section 28, Map 89, Tract 82-B-1, Zoned RR-2 Filed in Book 294 Page 2743 of the Office of the Valencia County Clerk; Also Known as 2779 Highway 47 Los Lunas, NM – Jacobo Martinez.**

Public Works Director Jacobo Martinez stated this request is to provide a zone change from a Rural Residential-2 (RR-2) to a Rural Residential-1 (RR-1) zoning district. According to the applicant, a zone change is needed in order to provide one acre to each of his children. Specifically, the applicant would like to rezone 82B1 into 82B1A and 82B1B. The subject property is 2.69 acres and the applicant would like to split up his land into two one acre parcels. In assessing the surrounding lands of the subject property, there are a number of properties that are one acre or less making the zone change appropriate with the surrounding land uses and density patterns.

The Planning and Zoning Board heard the case on March 20, 2012. The Commission found that currently, the applicant has applied for a zone change comprising of 2.69 acres. The RR-1 Zone allows for one dwelling unit per parcel. There is more than one dwelling units on the subject property as exist today and the dwelling units have existed on the parcel before 2000 and are subject to a non-conforming use, although they do not have a non-conforming use for them. If the zone change is passed, the applicant will bring the use into compliance, which means that the applicant would provide a one dwelling unit per parcel.

The Planning and Zoning Board voted 5-0 to recommend approval of the zone change from RR-2 to RR-1.

Chairman Holliday asked if any members of the audience would like to speak in favor or against the zone change request. No one spoke for or against the zone change.

**PUBLIC COMMENTS:**

Those members of the audience making public comments at tonight's Public Hearing were Valencia County residents Clarke Metcalf, Margo Ward, Mike Wood and Ginger Brown.

**NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commission will be held on May 23, 2012 at 9:30 A.M. in the Los Lunas School Board Room, 119 Luna Ave., Los Lunas, NM 87031.

**ADJOURNMENT:**

Commissioner Andersen moved for adjournment. Seconded by Chairman Holliday. Motion carried unanimously. Time 5:52 P.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the May 9, 2012 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
DONALD E. HOLLIDAY, CHAIRMAN

\_\_\_\_\_  
GEORGIA OTERO-KIRKHAM, VICE-CHAIR

\_\_\_\_\_  
LAWRENCE R. ROMERO, MEMBER

\_\_\_\_\_  
RON GENTRY, MEMBER

\_\_\_\_\_  
MARY J. ANDERSEN, MEMBER

**ATTEST:**

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SALLY PEREA, COUNTY CLERK

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DATE

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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Presenter:** Jacobo Martinez

**Individual Making Request:** Commissioner Donald Holliday

**Presentation at Meeting on:** May 23, 2012

**Date Submitted:** May 14, 2012

**Title of Request:** Consideration of Ordinance 2012-\_\_\_\_; Restricting Through Truck Traffic on North Rio del Oro Road, East of Manzano Expressway to Valencia High School.

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#### **Action Requested of Commission:**

Consideration Ordinance 2012-\_\_\_\_; Restricting through truck traffic on North Rio del Oro Road, East of Manzano Expressway to Valencia High School.

#### **Information Background and Rationale:**

This request was initiated by community members of Valencia High School to address safety concerns associated with heavy truck traffic accessing the gravel pit east of the school. Board of County Commissioners of Valencia County has proposed an Ordinance to address the safety concerns.

The ordinance was presented at the Valencia County Commission Public Hearing on May 9, 2012. The public hearing allowed community members to voice their opinions regarding the proposed ordinance.

#### **What is the Financial Impact of this Request?**

N/A

#### **Staff Comments**

##### **Legal:**

It was requested that we prepare an Ordinance restricting truck traffic across a certain stretch of North Rio Del Oro road that runs in front of Valencia High School. During the public hearing at which the Ordinance was first discussed, the Commission requested that we incorporate a permitting process into the draft Ordinance, which draft is before the Commission today. We have had an opportunity to review the Findings of Fact and Conclusions of Law from the zone change of the VIA property from Planned Development to Mineral Resource to determine whether this Ordinance is necessary to preclude the VIA from utilizing Rio del Oro Loop for the transport of aggregate from its mining operations located at Unit 22. While the findings recognize that the applicant revised the application prior to the Board's public hearing on Jan. 9, 2008, which revisions included the elimination of Patricio Road from the property trucking route and dispersing truck traffic to a number of roads instead of concentrating it on any one road, the County has been unable to locate the revised application that would detail the particular route of the trucks. Additionally, while digging through the submissions in relation to this matter, I discovered a performance agreement, by which SCRDC was to "limit its hauling activities to South Rio Del Oro Loop and to divert at the first intersection east of Valencia High School south to a road that proceeds west to Manzano Expressway." However, the County has been unable to

locate a copy of that executed performance agreement. Consequently, if the County is inclined to limit or restrict truck traffic along North Rio del Oro road, it may do so by Ordinance.

The VIA, through its attorney, has sent a letter contending that the South Valley Development Corporation will no longer be able to operate its business if it is no longer able to haul or have aggregate hauled by North Rio Del Oro road, and contended that there is no alternative route enabling those trucks to access Manzano Expressway. Consequently, VIA contends that the closure would result in a takings under the U.S. and N.M. Constitutions. It further contends that it will be unable to develop or sell for development other large tracts of land it owns in the affected area, resulting in a taking of that property.

The New Mexico Takings Clause states that “[p]rivate property shall not be taken or damaged for public use without just compensation.” N.M. Const. art. II, § 20. The only difference between our Takings Clause and the federal Takings Clause is the inclusion of the words “or damaged” in the New Mexico Constitution. The general rule is that a regulation which imposes a reasonable restriction on the use of private property will not constitute a “taking” of that property if the regulation is (1) reasonably related to a proper purpose and (2) does not unreasonably deprive the property owner of all, or substantially all, of the beneficial use of his property. Upon my request to identify any available alternate routes, Jacobo Martinez identified six alternate routes that may be utilized by SVDC to access the Manzano Expressway, which was provided to the Commission at the public hearing. Consequently, provided there are alternate means of ingress and egress such as would enable the SVDC trucks to access Manzano Expressway, the VIA arguably would not be unreasonably deprived of all, or substantially all, of the beneficial use of its property.

Moreover, with respect to VIA's second contention that it will be unable to develop or sell for development other large tracts of land it owns in the affected area, resulting in a taking of that property, there is a permitting process in the draft Ordinance as would allow any person to apply to the County Planning and Zoning Department for a permit providing for an appropriate exemption for the above-prohibited trucks and trailers, which permit would designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary by the Department. To obtain the permit, the applicant must only submit a permit application to the Department along with a permit fee of not less than \$50, which will include all information required by the Department, and not limited to vehicle identification and owner/operators, vehicle weights, local weights, materials carried, route to be followed to the site, duration of activity (beginning date and end date), frequency of trips and times of operation. Consequently, the Ordinance should not prohibit VIA from developing or selling for developments the other tracts of land it owns in the affected area. D.P.

**Finance:**

No financial impact to the County. CC

**VALENCIA COUNTY, NEW MEXICO**

**POST OFFICE BOX 1119**

**444 LUNA AVENUE**

**LOS LUNAS, NEW MEXICO 87031**



**VALENCIA COUNTY ORDINANCE**

**ORDINANCE 2012-\_\_\_\_**

**An Ordinance**

**Restricting Through Truck Traffic on North Rio del Oro Road, East  
of Manzano Expressway to Valencia High School**

**in Valencia County**

**Adopted by the Board of County Commissioners**

On \_\_\_\_\_

Effective on \_\_\_\_\_

**ORDINANCE No. 2012-\_\_\_\_\_**

**ORDINANCE RESTRICTING THROUGH TRUCK TRAFFIC ON  
NORTH RIO DEL ORO ROAD, EAST OF MANZANO EXPRESSWAY  
TO VALENCIA HIGH SCHOOL IN VALENCIA COUNTY**

**PREAMBLE**

**WHEREAS**, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

**WHEREAS**, Section 4-37-1 et seq. NMSA 1978 provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

**WHEREAS**, the Board of County Commissioners of the County of Valencia has determined that the health, safety and general welfare of the residents of Valencia County would best be served by the adoption of an Ordinance restricting through truck traffic on North Rio Del Oro Road, east of Manzano Expressway to Valencia High School in Valencia County.

**NOW THEREFORE, BE IT ORDAINED** that the Board of County Commissioners of the County of Valencia adopts an Ordinance restricting through truck traffic on North Rio Del Oro Road, east of Manzano Expressway to Valencia High School in Valencia County, as follows:

**ARTICLE I. FINDINGS AND INTENT.**

The Board of County Commissioners of Valencia County finds that truck traffic on North Rio Del Oro Road, east of Manzano Expressway to Valencia High School in Valencia County poses a significant risk to the health and safety of inhabitants of Valencia County. The Board of County Commissioners of Valencia County further finds that the truck traffic along this road constitutes a nuisance, producing vibrations, dust, and inflicts substantial damage upon the road. The Board of County Commissioners of Valencia County further finds that this Ordinance is remedial in nature, and designed to protect occupants of Valencia County. The Board of County Commissioners of Valencia County further finds this Ordinance to be the most narrowly tailored means of furthering compelling governmental interests. This Ordinance conforms to the Opinion entered by the New Mexico Court of Appeals on May 18, 2006, in *American Civil Liberties Union of New Mexico and John Does 1-4 v. City of Albuquerque*, 2006-NMCA-078, 139 N.M. 761, 137 P.3d 1215.



## ARTICLE II. SHORT TITLE.

This Ordinance shall be referred to as the "North Rio Del Oro Road Truck Traffic Restriction Ordinance."

## ARTICLE III. DEFINITIONS.

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AUTHORIZED EMERGENCY VEHICLE** means any fire department vehicle, police vehicle, ambulance and any emergency vehicles operated by the State of New Mexico, a municipality or County or operated by a public utility.

**GROSS VEHICLE WEIGHT** means the weight of a vehicle inclusive of any load.

**SCHOOL BUS** means any motor vehicle operating under the authority of a Board of Education or private or parochial school interests that is used to transport children, students or teachers to or from schools or to and from any school activity, but not including any vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of pupils;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of pupils; or

(3) operated as a per capita feeder as defined in NMSA 1978, Section 22-16-6.

**TRUCK** means every motor vehicle designed, used or maintained primarily for the transportation of property.

**TRAILER** means any vehicle, without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle.

**SOLID WASTE TRUCK** means any vehicle specifically designed to collect and transport solid waste or recyclables.

## ARTICLE IV. GENERAL PROVISION AND OFFENSE.

### *Restricted Traffic.*

A. Trucks and Truck Trailers, with a gross vehicle weight of five (5) tons or more, are prohibited from using North Rio Del Oro Road, east of Manzano Expressway to Valencia High School without a permit.

B. This Ordinance shall not apply to travel of a solid waste truck or truck trailer which is delivering to a local resident.

C. This Ordinance shall not apply to authorized emergency vehicles, government or utility vehicles, service and transportation vehicles, and school buses.

#### **ARTICLE V. PERMITTING PROCESS.**

A. Any person may apply to the County Planning and Zoning Department ("the Department") for a permit providing for an appropriate exemption for the above-prohibited trucks and trailers, subject to the Type A application procedure set forth in § 154.075. Any such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary by the Department. The permit shall be carried on all permitted vehicles, and shall be open to inspection by any code enforcement officer or duly authorized and commissioned law enforcement officer.

B. To obtain a permit, an applicant must submit a permit application to the Department, which shall include all information required by the Department, and not limited to vehicle identification and owner/operators, vehicle weights, local weights, materials carried, route to be followed to the site, duration of activity (beginning date and end date), frequency of trips and times of operation. The applicant shall pay a permit fee to be established by the Board of County Commissioners, but in no event shall the fee be less than \$50.

C. The Department may require the applicant to submit documentation (including, but not limited to photographs and videos of the condition of the roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic as a condition of the permit so that the Department may make a determination as to any restrictions that may reasonably need to be imposed.

D. If, upon review by the Department, a violation of any condition imposed in granting the permit is found, the Department shall inform the applicant by registered letter and first class mail of the violation and require compliance within 30 days. If the permittee does not achieve compliance within 30 days of the mailing of the letter, the permit may be revoked at the discretion of the Department.

#### **ARTICLE VI. OBLIGATIONS OF VALENCIA COUNTY.**

A. The Valencia County Public Works Department shall forward a copy of this Ordinance to the New Mexico State Motor Transportation Division of the Department of Public Safety.

B. The Valencia County Public Works Department shall install weight limitation signs appropriately and conspicuously on the affected portion of North Rio Del Oro Road.

#### **ARTICLE VII. ENFORCEMENT.**

*Enforcing Entity.* The Valencia County Sheriff's Department (hereafter, "Sheriff's Department") or any duly authorized and commissioned law enforcement officer shall enforce the provisions of this Ordinance.

#### **ARTICLE VIII. IMMUNITY.**

Nothing in this Ordinance creates a cause of action against the Board of County Commissioners of the County of Valencia not already authorized under existing law. Without limitation, the Board of County Commissioners of the County of Valencia is not liable to any person harmed who claims that enforcement of this Ordinance may have prevented the harm.

#### **ARTICLE IX. PENALTY.**

Any person who operates a truck and/or truck trailer, with a gross vehicle weight of five (5) tons or more, over North Rio Del Oro Road, east of Manzano Expressway to Valencia High School without a permit in violation of this Ordinance shall, upon conviction, be subject to a fine not exceeding \$300 or by imprisonment not exceeding 90 days or both. The Board of County Commissioners of the County of Valencia is also entitled to injunctive relief to enforce the provisions of this Ordinance.

#### **ARTICLE X. SAVINGS CLAUSE.**

If any article, section paragraph, clause, word or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

**PASSED, APPROVED AND ADOPTED** on this \_\_\_\_ day of \_\_\_\_\_, 2012.

**BOARD OF COMMISSIONERS OF VALENCIA COUNTY**

\_\_\_\_\_  
Donald E Holliday,  
Chair, District V

\_\_\_\_\_  
Georgia Otero-Kirkham  
Vice-Chair, District II

\_\_\_\_\_  
Mary J. Andersen  
Commissioner, District I

\_\_\_\_\_  
Lawrence R. Romero  
Commissioner, District III

\_\_\_\_\_  
Ron Gentry  
Commissioner, District IV

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Adren R. Nance, County Attorney

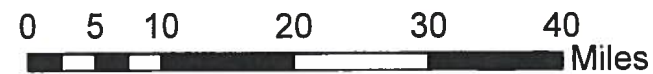
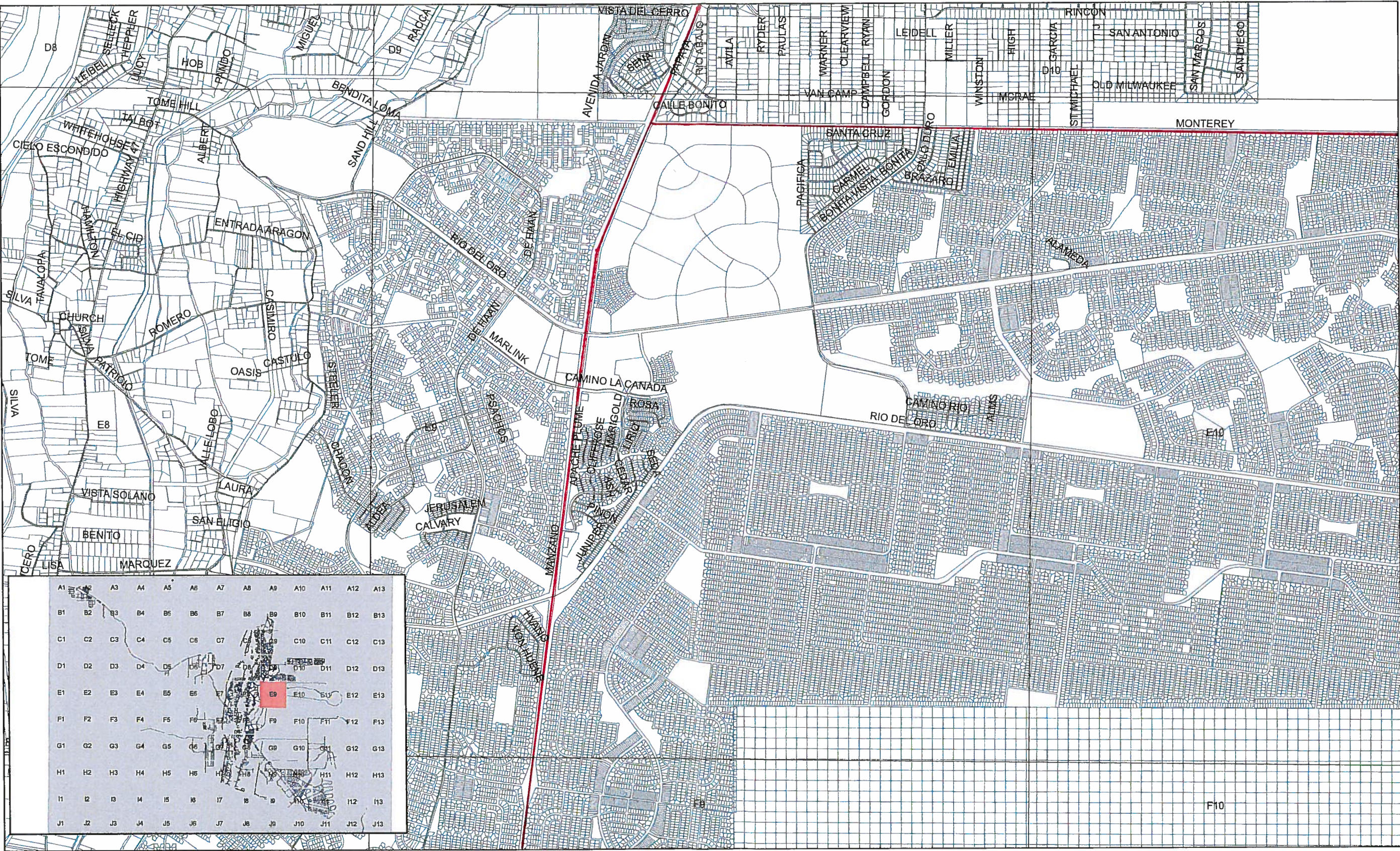
**ATTEST BY:**

\_\_\_\_\_  
Sally Perea, County Clerk



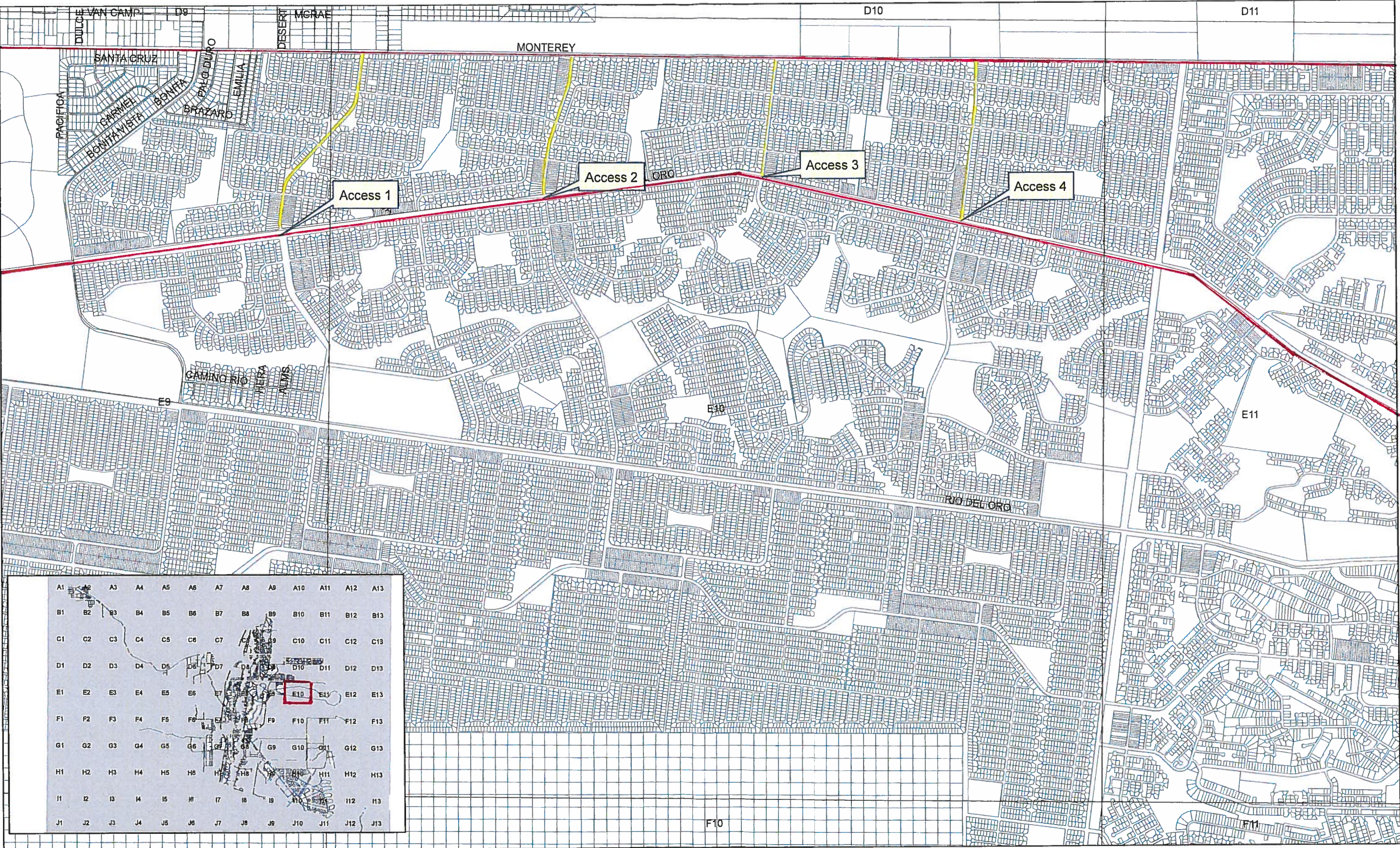
North Rio Del Oro Loop

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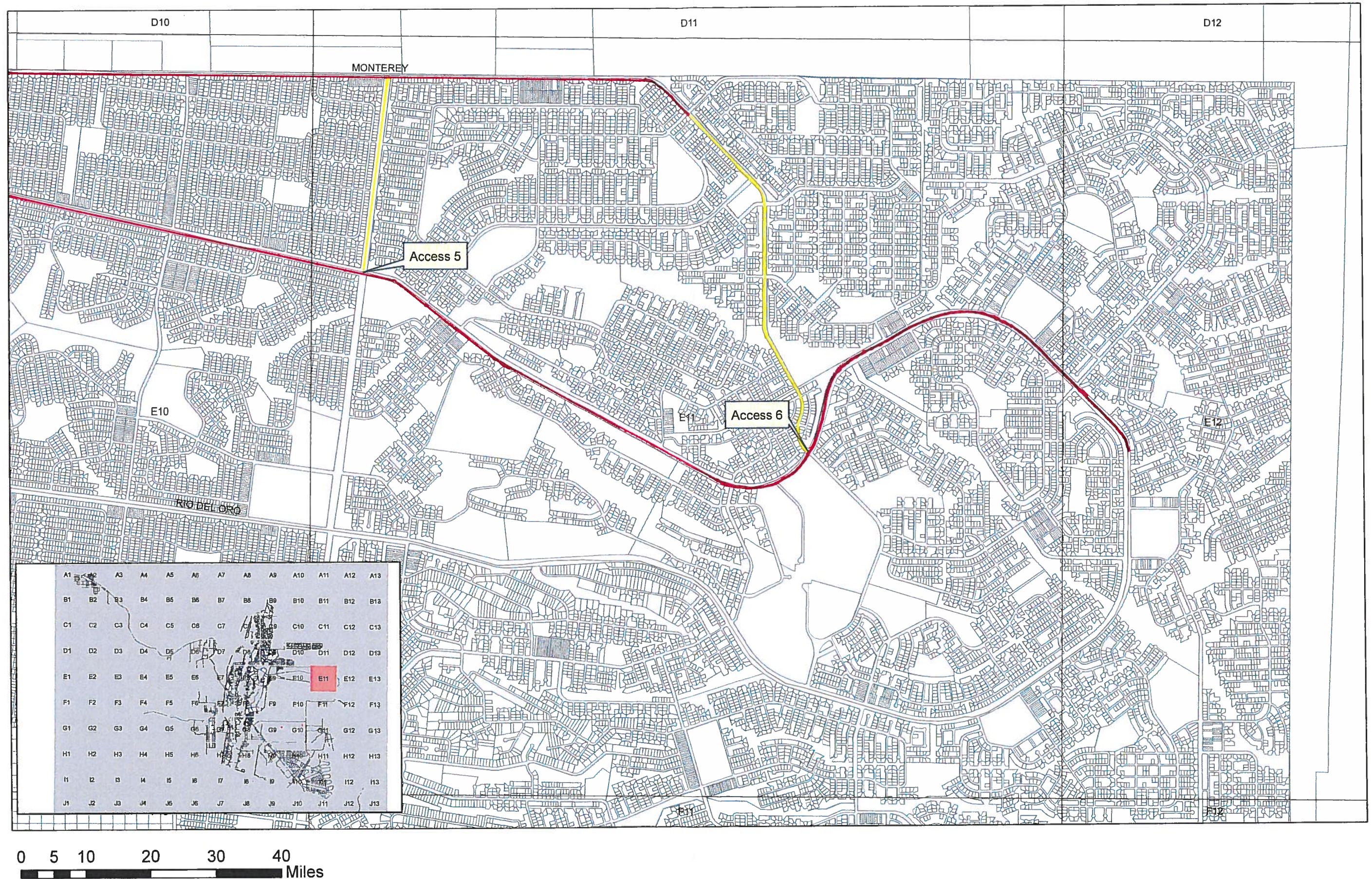
North Rio Del Oro Loop





# North Rio Del Oro Loop

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**VALENCIA COUNTY**  
**Board of County Commissioners**

**AGENDA REQUEST FORM**

**Presenter: Jacobo Martinez**

**Individual Making Request: Arley and Leroy Sanchez**

**Presentation at Meeting on: May 23, 2012**

**Date Submitted: May 14, 2012**

**Title of Request: Quasi Judicial Zone Change RR-2 to RR-1**

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**Request:**

Consideration of a quasi judicial zone change from an RR-2 to an RR-1 zone to allow a family lot split.

**Legal Description:**

T6N, R2E, Section 28, Map 89; Tract 82-B-1; Zoned RR-2; Filed in Book 294, Page 2743, of the office of the Valencia County Clerk; Also known as 2779 Highway 47 Los Lunas, NM.

**Information Background and Rationale**

Packets were handed out for department reviews on March 1, 2012. Code enforcement had issue with junk and debris and dilapidated homes. Fire Department had no issues.

This request is to provide a zone change from a Rural Residential-2 (RR-2) to a Rural Residential-1 (RR-1) zoning district. According to the applicant, a zone change is needed in order to provide 1 acre to each of his children. Specifically, the applicant would like to rezone 82B1 into 82B1A and 82B1B. The subject property is 2.69 acres and the applicant would like to split up his land into two parcels of 1 acre. Assessing the surrounding lands of the subject property, there are a number of properties that are one acre or less making the zone change appropriate with surrounding land uses and density patterns.

The Planning and Zoning Board heard the case on March 20, 2012. The Commission found that currently;

- The applicant has applied for a zone change for tract 82-B-1 comprising of 2.69 acres.
- The subject property is on an RR-2 Zone.
- The RR-2 zone allows for one dwelling unit per parcel.
- There are more than one dwelling units on the subject property.
- The dwelling units have existed on the parcel before 2000 and are subject to a non-conforming use.
- If the zone change is passed, the applicant will bring the use into compliance. One dwelling unit per parcel.

The Planning and Zoning Board voted 5-0 to recommend approval of the zone change from RR-2 to RR-1.

The County Commission heard the application on May 9, 2012 for a scheduled public hearing. There was no opposition to the application.

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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head: Jacobo Martinez**

**Individual Making Request: Jacobo Martinez**

**Presentation at Meeting on: May 16, 2012**

**Date Submitted: May 7, 2012**

**Title of Request: Consideration of 2008 Legislative funding Amendment 1 to extend duration of legislative funding for Valencia County & Belen Quiet Zone**

**Action Requested of Commission:**

Consideration of 2008 Legislative funding Amendment 1 to extend duration to 2014 for Valencia County and Belen Quiet Zone

**Information Background and Rationale:**

In 2008 Legislation funded the County \$115,000 to plan, design and construct Railroad Quiet Zones in Valencia County and Belen. The County had originally planned on using the funding to improve Molina and Valetine Rd in Belen. Since then Mid Regional Council of Governments and NMDOT used other funding to complete Molina and Valetin. Since then the County had used the funding for engineering services for Mesa Rd, Lopez and Don Felipe, which were paid through NMDOT funding as well. The County has a total of \$98,813 remaining in this fund which expires on June 30, 2012, this amendment will extend the duration of the funding until June 30, 2014.

Currently the County does not have any planned projects for quiet zones in Valencia County or Belen, but will look into crossing that may need a quiet zone and/ or existing quiet zones that need improvement.

**What is the Financial Impact of this Request?**

There is no financial impact to county.

**Staff Comments:**

**Legal:** The draft amendment extends the time within which the appropriation may be expended until June 30, 2014. D.P.

**Finance:**

No negative financial impact to the county. CC

Contract No. D13015/Amendment 1  
Vendor No. 0000054407  
Project No. SP-GA-7561(258)  
Control No. C8G699

**FIRST AMENDMENT TO  
CAPITAL COOPERATIVE AGREEMENT  
BETWEEN THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION  
AND THE  
COUNTY OF VALENCIA  
FOR  
RAILROAD CROSSING PROJECTS IN VALENCIA COUNTY**

**THIS FIRST AMENDMENT**, hereinafter referred to as "**First Amendment**", is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, **2012** by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**DEPARTMENT**", and the **COUNTY OF VALENCIA** hereinafter referred to as the "**COUNTY**", and hereinafter referred to collectively as the "**PARTIES**".

**RECITALS**

**WHEREAS**, each Party is a public agency and authorized to enter into this Agreement, and,

**WHEREAS**, on January 6, 2010, the Parties entered into a Capital Cooperative Agreement, Contract No. D13015, specifying and delineating the rights and duties of the parties for **RAILROAD CROSSING PROJECTS IN VALENCIA COUNTY** and authorize the use of 2008 General Funds authorized in Subsections 151 and 152 of Section 61 of Chapter 92 of Laws 2008; and,

**WHEREAS**, Section Sixteen, "Amendment", allows the Parties to alter the Agreement by an instrument in writing executed by both Parties; and,

**WHEREAS**, the New Mexico Legislature during the 2012 Regular Session extended in Section 190 of House Bill 190 the time that funds authorized in Subsection 152 of Section 61 of Chapter 92 of Laws 2008 may be expended to June 30, 2014; and

**WHEREAS**, the Parties wish to amend the Capital Cooperative Agreement to extend the term of the Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND REPRESENTATIONS OF IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:**

**SECTION TWO- PROJECT FUNDING, PARAGRAPH 3** is deleted and replaced with the following:

3. Any unexpended funds shall revert to the originating fund within six months of completion of the Project but no later than June 30, 2014.

**SECTION FOURTEEN- TERMINATION, PARAGRAPH 1** is deleted and replaced with the following:

1. This Agreement shall terminate on June 30, 2014. Neither party shall have obligation under this Agreement after said date except as stated in Section Five of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates specified below.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Secretary

Approved as to form and legal sufficiency by the NMDOT's Office of General Counsel

By: Cynthia A. Christ Date: 4-17-12  
Assistant General Counsel

**COUNTY OF VALENCIA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman of County Commission

**ATTEST**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Clerk

May 23, 2012

Amendment 1 to Contract D13015 Capital Cooperative Agreement

**APPROVED, ADOPTED AND PASSED ON THIS 23<sup>RD</sup> DAY OF MAY  
2012.**

**BOARD OF COUNTY COMMISSION**

\_\_\_\_\_  
Donald E. Holliday, Chair  
District V

\_\_\_\_\_  
Georgia Otero-Kirkham, Vice Chair  
District II

\_\_\_\_\_  
Mary J. Andersen, Commissioner  
District I

\_\_\_\_\_  
Lawrence Romero, Commissioner  
District III

\_\_\_\_\_  
Ron Gentry, Commissioner  
District VI

ATTEST:

\_\_\_\_\_  
Sally Perea, County Clerk

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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Glenda Chavez

**Individual Making Request:** Rob Barr/Wildland Coordinator

**Presentation at Meeting on:** May 23, 2012

**Date Submitted:** April 25, 2012

**Title of Request:** Approval of Contract with SWCA

**Action Requested of Commission:**

Consideration to approve the contract award to SWCA Environmental Consultants in the amount of \$37,772.00 plus GRT (40,416.06).

**Information Background and Rationale:**

Funds were received from the Wildland Risk Reduction Grant through the NM Association of Counties/BLM. The funds will be used to produce a Community Wildfire Protection Plan for Valencia County. The purpose of the plan is to identify areas most at risk for wildfire and the communities at risk. The plan will also identify evacuation areas, first responders, equipment required, and resources needed for an event.

A grant extension has been requested by Chief Eaton from the NM Association of Counties, Wildland Risk Reduction Grant to ensure the funds are extended through another cycle. The RFP was properly initiated by Michael Vinyard and pursuant to Valencia County Procurement Policy, SWCA was most qualified consultant. Four bids were received.

**What is the Financial Impact of this Request?**

There is a 25% cost share to this grant and will be met through in-kind cost share.

**Staff Comments**

**Legal:**

"This Contract has been properly procured and is drafted on the County's standard form of contract." A.N.

**Finance:**

No negative financial impact. CC



CONTRACT BETWEEN THE COUNTY OF VALENCIA  
AND SWCA ENVIRONMENTAL CONSULTANTS FOR THE PRODUCTION OF A  
COMMUNITY WILDFIRE PROTECTION PLAN

CONTRACT #VCR-FY12-501

THIS AGREEMENT is made and entered into by and between the **Board of County Commissioners of Valencia County**, State of New Mexico, hereinafter referred to as the "County" and SWCA Environmental Consultants, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent, the Valencia County Manager and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the work outlined in the Scope of Work attached hereto as **Attachment "1"** and incorporated herein by reference.

**2. Compensation.**

A. The County shall pay to the Contractor in full payment for services satisfactorily performed, BASED UPON DELIVERABLES AND MILESTONES as detailed in **Attachment "2"** such compensation not to exceed **\$40,416.04** inclusive of gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement not to exceed **\$2,644.04** shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed **\$40,416.04**, including GRT. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and

outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. **Term.**

This Agreement shall terminate on April 30, 2013 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of the County of Valencia. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Valencia as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the County of Valencia unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Valencia from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Valencia and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at

any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Thirteenth Judicial District Court in Valencia County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments

**20. Disclaimer and Hold Harmless.**

The Valencia County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the Valencia County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Valencia County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Valencia from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County of Valencia and the New Mexico Association of Counties by certified mail.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

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

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**26. Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

**27. Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**28. Succession.**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

**29. Force Majeure.**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**30. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting or unless it is executed by the Valencia County Manager, if the amount of the contract is \$5,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

Request for Proposals No. VCR-FY12-501 and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then



4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the contractor's proposal; then
6. the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the County of Valencia against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Valencia based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the County of Valencia for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Valencia shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

**36. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County:        Bruce Swingle, County Manager  
                              PO Box 1119  
                              Los Lunas, NM 87031

To the Contractor: SWCA Environmental Consultants  
Attn. Joseph J. Fluder III, Regional Manager  
5647 Jefferson Street NE  
Albuquerque, NM 87109

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Board of County Commissioners below.

By: Joseph J. Fluder III Date: 05/04/2012  
Contractor

Printed Name: Joseph J. Fluder III  
Address: 5647 JEFFERSON ST. NE, ALBUQUERQUE, NM 87109

By: Bruce Swingle Date: 05/10/12  
Valencia County Manager

Printed Name: Bruce Swingle  
Address: 444 Luna Ave., Los Lunas, NM 87031

By: Michael Vinyard Date: 5/8/12  
Valencia County Purchasing Agent  
MICHAEL VINYARD

**BOARD OF COUNTY COMMISSIONERS**

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Donald E. Holliday  
Chair, District V

\_\_\_\_\_  
Georgia Otero-Kirkham  
Vice-Chair, District II

\_\_\_\_\_  
Mary J. Andersen  
Commissioner, District I

\_\_\_\_\_  
Lawrence R. Romero  
Commissioner, District III

\_\_\_\_\_  
Ron Gentry  
Commissioner, District IV

Attest:

\_\_\_\_\_  
Sally Perea  
Valencia County Clerk

## **Attachment 1**

### **Scope of Work**

The CONTRACTOR shall be required to plan, coordinate, implement and administer the activities that may include, but are not necessarily limited to, the following.

#### **SCOPE OF WORK AND DELIVERABLES**

The contractor, under the direction of the VES, will facilitate the project. It is essential that all major agencies have input in the planning process to ensure that their needs and capabilities are included in the CWPP. Therefore, the contractor will ensure that the CWPP:

- Is developed collaboratively by local and state government representatives in consultation with federal agencies and interested parties.
- Identifies the specific communities within the County at a moderate to high risk of wildfire and designate them as “Communities at Risk”, as well as identify critical infrastructure at risk from wildfire.
- Identifies and prioritizes areas for hazardous fuel reduction treatments and recommend the types and methods of treatment that will protect the “Communities at Risk” and essential infrastructure(s) throughout the area addressed by the plan, from wildfire.
- Must recommend measures that homeowners and communities can take to reduce the ignitability of structures throughout the County as a whole, and more specific such measures for the “Communities at Risk”

The contractor, in the development of the CWPP will be tasked with the following steps to ensure a complete and thorough CWPP:

**Step One – Convene Decision-Makers:** The contractor shall assist in the formation of an operating group with representation from local governments, local fire authorities, and the State Forestry Division of the New Mexico Energy, Minerals, and Natural Resources Department. Together, these entities will form the core decision making team responsible for developing the CWPP. These core team members must mutually agree on the CWPP’s final contents. In communities where several local governments and fire departments are within the planning area, each level of government/authority may need to convene ahead of time and identify a single representative to participate, on its behalf, as a core team member.

**Step Two – Involve Federal Agencies:** Once convened, members of the core team and the contractor shall engage local representatives of the Federal agencies in the area encompassed by the CWPP. This will encourage sharing of perspectives, priorities, and other information relevant to the planning process. Due to their experience, knowledge and capabilities these local land

management professionals will be key partners for the core team. In some landscapes, they will also be largely responsible for implementing the priorities established in the resulting CWPP.

**Step Three – Engage Interested Parties:** The success of the CWPP also hinges on the ability of the core team and the contractor to effectively involve a broad range of local stakeholders, particularly when the landscape includes active and organized neighborhood associations, and other stakeholder groups that display a commitment to fire protection and fuels management. Substantive input from a diversity of interests will ensure that the final document reflects the highest priorities of the communities. It will also help to facilitate timely implementation of recommended projects. In some circumstances, the core team and contractor may wish to invite local community leaders or stakeholder representatives to work with them in final decision-making. As early as possible, core team members and the contractor shall seek active involvement from key stakeholders and constituencies. For example:

- Existing collaborative resource management/use groups.
- City Council/County Commission members
- Resource Advisory Committees
- Homeowners Associations
- New Mexico Game and Fish
- New Mexico Department of Transportation
- New Mexico Department of Homeland Security and Emergency Management
- Water Boards or Districts
- Utility Companies
- Environmental Organizations
- Local Chamber of Commerce

In addition to directly contacting key individuals, organizations, and core team members, the contractor shall use a public notice or public meeting process to acquire additional input as the plan is developed and shall schedule at a minimum, three (3) public meetings to provide reasonable attendance opportunities to residents in all areas of the county.

**Step Four – Identify “Communities at Risk”:** Using input from the agencies, interested parties, and public meetings mentioned above, the core team and the contractor shall determine specific communities with moderate to high risk of wildfire encroachment, prioritize them according to degree of risk, and designate “Communities at Risk” for more detailed risk assessment and identification of hazard reduction measures.

**Step Five – Establish County and “Communities at Risk” Base Maps:** Using available technology and local expertise, the core team and the contractor shall develop base maps of the county, communities at risk, and adjacent landscapes of interest. These maps shall provide a visual information baseline from which the communities’ members can assess and make recommendations regarding protection and risk reduction priorities. The maps shall identify:

- Inhabited areas with potential risk to wildland fires
- Areas containing critical human infrastructure – Such as escape routes, municipal water supply structures, high volume gas pipelines, and major power or communications lines that are vulnerable to fire related events
- A preliminary designation of the county and communities' Wildland Urban Interface (hereinafter WUI) zones

Step Six – Develop Risk Assessment for each “Community at Risk”: The development of a community risk assessment will help the core team, contractor and the communities' members more effectively prioritize areas for treatment and identify the highest priority uses for available financial and human resources. A meaningful community assessment can be developed by considering the risk factors identified below. Choose an appropriate adjective rating (such as high, medium, and low) that best represents the risk to the community posed by each factor. Display the results on the base map to develop a useful tool for the final decision-making process. State and federal land managers will be a valuable resource in helping communities locate the best available data and in producing quality maps that display and aid in assessment of that data. Engaging key stakeholders in the rating process will be essential to a successful outcome.

#### Risk Factors:

1. **Fuel Hazards:** To the extent practicable, evaluate the vegetative fuels on federal and nonfederal land within or near the community. Identify specific areas where the condition of vegetative fuel is such that, if ignited, it would pose a significant threat to the community or essential community infrastructure. Consider how local topography (such as slope, aspect and elevation) may affect potential fire behavior. Identify areas where fuels treatment would reduce wildfire risks to communities and/or their essential infrastructure. State and federal resource planning documents can be a valuable source of information on local rangeland conditions. Rate each area of identified hazardous fuels and show each on the base map as a high, medium or low threat to the communities.
2. **Risk of Wildfire Occurrence:** Using historical data and local knowledge, determine the common causes and relative frequency of wildfires in the vicinity of the community. Consider the complete range of factors, including critical weather patterns, which may contribute to the probability of fire ignitions and/or extreme fire behavior. Use relative ratings such as high, medium and low to show areas of concern for fire startups on the base map.
3. **Homes, Businesses, and Essential Infrastructure at Risk:** Assess the vulnerability of structures within the community to ignition from firebrands, radiation and convection. Document areas of concern. Identify specific human improvements within or adjacent to the community, such as homes, businesses, and essential infrastructure (e.g., escape routes, municipal water supply structures, gas lines, and major power and communication lines) that would be adversely impacted by wildfire. Categorize all identified areas needing protection using ratings of high, medium or low and indicate them on the base map.

4. **Other Community Values at Risk:** At the community's option, the risk assessment may also consider other areas of community importance, such as critical wildlife habitat, significant recreation and scenic areas and landscapes of historical, economic, or cultural value that would benefit from treatment to reduce wildfire risks. Additional recommendations from local stakeholders shall be incorporated as appropriate. Categorize all identified areas that warrant protection using the ratings of high, medium, or low, and show them on the base map.

5. **Local Preparedness and Firefighting Capability:** Assess the level of the community's emergency preparedness, including evacuation planning, safety zones, and fire assistance agreements, as well as the response capability of community and cooperating fire protection forces. Consider the insurance industry ISO rating, if available and applicable. Use the knowledge and experience of local officials to identify areas in need of improvement. Incorporate local preparedness information into the base map as appropriate.

**Step Seven – Establish Community Hazard Reduction Priorities and Recommendations to Reduce Structural Ignitability:** Once each community assessment and base map are completed, the core team and contractor shall convene all interested parties to discuss the results and their implications for local protection and hazard mitigation needs. A key objective of these discussions is to develop the community's prioritized recommendations for fuel treatment projects on federal and nonfederal lands in the WUI, along with the preferred treatment methods for those projects. The contractor shall also develop recommendations regarding actions that individuals and the community can take to reduce the ignitability of homes and other structures in the community's WUI zone. While local interests are gathered, the core team shall encourage communities to take this opportunity to identify and develop strategies to improve their emergency preparedness and fire response capability, some of which may be included in the Action Plan identified in Step Eight. The discussion and identification of community priorities shall be as open and collaborative as possible. Diverse community involvement at this stage is critical to the ultimate success of the CWPP. Recommendations included in the final CWPP shall clearly indicate whether priority projects directly relate to protection of the community and its essential infrastructure or are geared toward reducing risks to other community values. Under the provisions of the HFRA, only projects that directly protect communities and essential infrastructure are eligible for the minimum 50 percent WUI funding specified in the legislation.

**Step Eight - Develop an Action Plan and Assessment Strategy:** Before finalizing the CWPP, core team members, contractor and key community partners shall develop an action plan for the county and each "Community at Risk" that identifies roles and responsibilities, funding needs and timetables for carrying out the highest priority projects. The contractor shall include an assessment strategy in the final CWPP to ensure that the document maintains its relevance and effectiveness over the long term.

**Step Nine – Finalize the Community Wildfire Protection Plan** The final step in developing a CWPP is for the core team and contractor to reconvene and mutually agree on the fuels treatment priorities, preferred methods for fuels treatment projects, location of the wildland-urban interface, structural ignitability recommendations, and other information and actions to be contained in the final document. The core team and contractor shall identify a strategy for

communicating the results of the planning process to community members and key land management partners in a timely manner.

The contractor will also be responsible for:

- Ensuring the CWPP seamlessly integrates into the Valencia County All Hazards Emergency Operations Plan (AHEOP)
- Ensuring the CWPP incorporates evacuation planning and identifies evacuation routes for WUI areas
- Submitting to the VES a monthly activity report as well as a quarterly progress report. The said reports shall contain a description of the work accomplished to date, the methods and procedures used, a statement of the impact of the project, and other such information that may be of assistance to the VES. If performance is not started within thirty (30) days of the original starting date of the award, the vendor shall respond, by letter, to the VES the steps taken to initiate the performance, the reason for delay, and the expected starting date.
- Submitting to the VES ten (10) full color copies of the Final CWPP. The Final CWPP must be submitted to the VES by January 1, 2013. The Final CWPP should be essentially complete, but not yet adopted. The CWPP shall include all of the information called for in the Scope of Work and Deliverables section above for the entire term of the agreement. The CWPP should follow the following format:
  - o Microsoft Word document format, 2007 or later, and include table of contents; Glossary of terms; Index; Maps printed and on jump drive media
  - o One tabbed PDF format document on CD or jump drive media
  - o Paper size printable at 8 ½" x 11" (except for maps, when appropriate)
  - o Final CWPP must be placed in appropriate 3-ring binders (standard 3-hole format)
- Ensuring the CWPP is consistent with the State of New Mexico Energy, Minerals, and Natural Resources Department, Division of State Forestry Fire

Planning Task Force guidelines and recommendations; New Mexico Department of Homeland Security and Emergency Management recommendations, and where appropriate, be consistent with the National Incident Management System (NIMS); and any other Federal, State, or local regulations and planning guidelines.

- Providing all developed maps in both PDF format and ESRI Geodatabase or Shapefile format, to include a CD/DVD or portable Hard Disk Drive of all map data files.
- Printing a total of five (5) full color sets of all final approved maps, no smaller than 24" x 36" in size.



### Copyright Issues

The Final CWPP shall become sole property of the VES upon completion. The contractor shall have no copyrights to the developed CWPP.

**Attachment 2**

Contract #VCR-FY-12-501

**Payment Schedule**

The Scope of Work on Attachment 1 of the RFP has identified nine (9) steps. The payment request is to follow the Scope of Work but is not intended to be a complete list of duties to perform, is inclusive of travel and tax. The outline listed below:

| <u>Milestones completed</u>   | <u>Pay Request</u>        |
|---|---------------------------|
| Step 1:   |                           |
| <ul style="list-style-type: none"> <li>• Convene Decision Makers</li> <li>• Assist in the formation of an operating group</li> </ul>  |                           |
| Step 2:   |                           |
| <ul style="list-style-type: none"> <li>• Involve Federal agencies</li> </ul>  |                           |
| Step 3:   |                           |
| <ul style="list-style-type: none"> <li>• Engage interested parties</li> <li>• Hold public meeting (minimum of 3)</li> </ul>   |                           |
| Step 4:   |                           |
| <ul style="list-style-type: none"> <li>• Identify the “Communities at Risk”</li> <li>• Establish with core team the communities</li> <li>• Prioritize the communities and designate the “Communities At Risk” to begin the risk assessment and identification</li> </ul>  | \$8,981.31                |
| Step 5:   |                           |
| <ul style="list-style-type: none"> <li>• Establish County and “Communities at Risk” base Maps. Maps shall at a minimum identify the inhabited Areas with potential risk to wildland fires, designate areas Containing human infrastructure, escape routes, evacuation routes, Municipal water supply structures, high volume gas pipelines, and Major power and communication lines that are vulnerable.</li> </ul> | \$4,490.67                |
| Step 6: Develop risk assessments for each “Community at Risk”   | \$4,490.67                |
| Step 7: Prepare recommendations for the milestones completed through Step 6. Additionally the action items for this step will include Fuel treatments projects, treatment methods, identification of community Priorities, and strategies to improve.   | \$4,490.67                |
| Step 8: Development of an Action Plan and Assessment Strategy for Each community. Hold public meetings.   | \$4,490.67                |
| Step 9: Finalize the Community Wildfire Protection Plan. Identify with the Core team the priorities, preferred methods, locations of the WUI, incorporates Evacuation planning, and physical deliverables.  | \$13,472.05               |
| <b><u>TOTAL</u></b>   | <b><u>\$40,416.04</u></b> |

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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Christina Card  
**Individual Making Request:** Michael Vinyard  
**Presentation at Meeting on:** Wednesday, May 23, 2012  
**Date Submitted:** Friday, May 11, 2012  
**Title of Request:** Short term contract for County Legal Services (90 day)

#### **Action Requested of Commission:**

Consideration of approval of 90-day contract for legal services for Valencia County.

#### **Information Background and Rationale:**

It has only come to our attention within the past few weeks that the existing four (4) year professional services contract for the provision of legal services for the County of Valencia expires on June 17, 2012. This does not allow enough time to conduct a Request for Proposals (RFP) based procurement as required by the New Mexico Procurement Code (NMPC) and Valencia County Procurement Policy (VCP) for a professional services contract of the dollar value anticipated. The RFP process typically takes about 90 days to complete.

Our current contractor is Nance, Pato and Stout, LLC. The proposed short term contract with Nance, Pato and Stout, LLC will be a new contract, secured as a small purchase as allowed by the NMPC and VCP. The proposed contract will allow sufficient time to conduct an RFP based procurement and award a contract to the company proposing the best value to the County of Valencia and its taxpayers.

#### **What is the Financial Impact of this Request?**

This is a budgeted item. Continuous legal service is planned for and expected. The monthly cost proposed in the short term contract is the same as we are paying under the exiting contract. Unless the amount within the approved budget for FY13 includes a reduction in the funding allocated to legal services, there will be no unplanned budget impact.

#### **Staff Comments**

#### **Legal:**

Unable to obtain due to potential conflict of interest. However the proposed contract mirrors the previous (and previously approved) contract with the substantive changes of effective date,

duration (term), maximum payment amount and the change of names and titles of the County Manager and certain members of the Board of County Commissioners.

**Finance:**

No unanticipated financial impact noted unless the budgeted amount for legal services in FY 13 is reduced below the level provided for in the current operating budget. Recommend approval.

PROFESSIONAL LEGAL SERVICES CONTRACT  
BETWEEN VALENCIA COUNTY AND  
NANCE, PATO & STOUT, LLC

Contract #VCP-FY12-506

THIS AGREEMENT is made and entered into by and between the Board of County Commissioners of Valencia County, hereinafter referred to as the "County" and Nance, Pato & Stout, LLC, hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall provide Professional Legal Services to the County in the scope and in the manner requested by the County.

2. Compensation.

A. The County shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the fixed monthly rate of \$8,333.00 per month, plus gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor. In no case shall the compensation payable under this Agreement exceed thirty thousand dollars (\$30,000.00) exclusive of gross receipts tax.

B. The County shall pay the Contractor upon receipt of a detailed statement of accounting for services performed, on a quarter-hour basis, and expenses incurred hereunder.

3. Term.

This Agreement is for ninety (90) days, unless terminated pursuant to paragraph 4, infra. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

B. Termination Management

Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County and 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement.

5. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of Valencia County or the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of Valencia County or the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

6. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

7. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the County, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the County of Valencia or the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

9. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County and shall be delivered to the County no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

10. Amendment.  
This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.
11. Merger.  
This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
12. Penalties.  
The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
13. Equal Opportunity Compliance.  
The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
14. Applicable Law.  
The laws of the State of New Mexico shall govern this Agreement.
15. Records and Financial Audit.  
The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.
16. Professional Liability Insurance.  
The Contractor shall procure and maintain in full force throughout the duration of the Agreement a lawyers professional liability insurance policy with a minimum coverage of \$1,000,000.00 per occurrence/ \$2,000,000.00 aggregate.



17. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Bruce Swingle, Valencia County Manager, P.O. Box 1119/444 Luna Ave., Los Lunas, NM 87031

To the Contractor: Nance, Pato & Stout, LLC, P.O. Box 772, Socorro, NM 87801-0772

18. Appropriations.

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the governing body for the performance of this Contract. If sufficient appropriations are not made by the governing body, this Contract shall terminate upon written notice being given by the County to the Contractor. The County's determination as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

19. Conflict of Interest.

The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, regarding contracting with a public officer have been followed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below.

Board of County Commissioners  
Valencia County, New Mexico

Nance, Pato & Stout, LLC

\_\_\_\_\_  
Donald E. Holliday, Chairman

\_\_\_\_\_  
Adren R. Nance

\_\_\_\_\_  
Georgia Otero-Kirkham, Vice-Chair

\_\_\_\_\_  
David M. Pato

\_\_\_\_\_  
Mary Anderson, Member, District I

\_\_\_\_\_  
Lawrence R. Romero, Member, District III

\_\_\_\_\_  
Ron Gentry, Member, District IV

Attest:

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Sally Perea, County Clerk

May 23, 2012

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# **VALENCIA COUNTY**

## **Board of County Commissioners**

### **Agenda Request Form**

**Department Head:** Larry Augsbury  
**Individual Making Request:** Christina Card  
**Presentation at Meeting on:** May 23, 2012  
**Date Submitted:** May 7, 2012  
**Title of Request:** FY 13 Budget

**Action Requested of Commission:**

Consideration and approval of preliminary budget for Fiscal Year 2013.

**Information Background and Rationale:**

Preliminary budget is due annually to DFA by June 1<sup>st</sup>

**What is the Financial Impact of this Request?**

This will determine Valencia County's preliminary operating budget for the upcoming fiscal year.

**Staff Comments:**

**Legal:**

This action is required pursuant to NMSA 1978, Section 6-6-2 (2012). AN

**Finance:**

Adoption and approval is necessary. CC

VALENCIA COUNTY  
BOARD OF COUNTY COMMISSIONERS  
RESOLUTION № 2012-\_\_\_\_

ADOPTION OF THE VALENCIA COUNTY BUDGET FOR FISCAL YEAR 2012-13

**WHEREAS**, the Board of County Commissioners of Valencia County met in a regularly scheduled meeting on May 23, 2012 at the Valencia County Administration 444 Luna Ave., Los Lunas, New Mexico; and,

**WHEREAS**, the Board of County Commissioners in and for the County of Valencia, State of New Mexico has developed a budget for fiscal year 2012-13; and,

**WHEREAS**, said budget was developed on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and,

**WHEREAS**, the official meetings for the review of said documents were duly advertised pursuant to the County of Valencia's Open Meetings Act Resolution 2012-02, and is in compliance with the State Open Meetings Act; and

**WHEREAS**, it is the majority opinion of this Board that the proposed budget meets the requirements as currently determined for fiscal year 2012-13,

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of County Commissioners of Valencia County of hereby adopts the budget hereinabove described and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

**APPROVED, ADOPTED, AND PASSED** on this 23<sup>rd</sup> day of May, 2012.

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF VALENCIA**

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Donald E. Holliday,  
Chairman, District V

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Georgia Otero-Kirkham,  
Vice-Chair, District II

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Mary J. Andersen  
Commissioner, District I

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Ron Gentry  
Commissioner, District IV

---

Lawrence R. Romero  
Commissioner, District III

Attest:

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Sally Perea, County Clerk

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**For Local Government Use only.**

[illegible]

ATTEST: \_\_\_\_\_  
 Title \_\_\_\_\_ (Date) \_\_\_\_\_

**Mayor/Board Chairman**

(Date)



# End of Agenda