

**VILLAGE OF RUIDOSO/CITY OF RUIDOSO DOWNS
RWWTP - JOINT USE BOARD**

**AGENDA INDEX
REGULAR MEETING
FEBRUARY 17, 2016 AT 10:00 A.M.**

**VILLAGE HALL
313 CREE MEADOWS DRIVE
RUIDOSO, NM 88345**

CALL TO ORDER.

ROLL CALL.

APPROVAL OF AGENDA.

PUBLIC INPUT.

REGULAR ITEMS.

PAGE

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|----|--|---|
| 1. | Discussion and Possible Action on Approval of January 13, 2016 Regular Meeting Minutes. | 1 |
| 2. | Presentation by Clayton Teneyck, with Molzen-Corbin & Associates, on Affordability of a Wastewater Treatment Plant Upgrade for Total Nitrogen Removal. | 5 |
| 3. | Report on Status of the Sewer Line Relocation Project. | 7 |

REPORTS FROM BOARD MEMBERS.

CLOSED SESSION.

- Discussion subject to the attorney-client privilege pertaining to threatened or pending litigation in which the Regional Wastewater Treatment Plant Joint Use Board is or may become a participant. §10-15-1.H.7, NMSA 1978.
 - ▶ Nutrient Effluent Limits in the NPDES Permit for the Wastewater Treatment Plant.

Any action taken as a result of closed session will be brought back into open session.

ADJOURNMENT.

I certify that notice has been given in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 2016-01. 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 Village Clerk 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 Village Clerk if a summary or other type of accessible format is needed.



AGENDA MEMORANDUM

RWWTP – JOINT USE BOARD

To: Joint Use Board Members

Presenter: Bertha De Los Santos,
Joint Use Board Secretary

Meeting Date: February 17, 2016

Re: Approval of Minutes:
January 13, 2016, Regular Meeting

<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Public Hearing
<input checked="" type="checkbox"/>	Regular Item
<input type="checkbox"/>	Board and Commission Appointments
<input type="checkbox"/>	Informational
<input type="checkbox"/>	Workshop Item

1

Item Summary:

Approval of Minutes:
January 13, 2016, Regular Meeting

<u>Fund:</u>	n/a	<u>Line Item:</u>	n/a	<u>Budgeted Amount:</u>	n/a	<u>Available Balance:</u>	n/a
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Item Discussion:

See Above.

Recommendations:

Approve Minutes as presented above.

Required Approvals of Agenda Memorandum and Back-Up Documentation:

Bertha De Los Santos, CMC
Deputy Clerk

(received on: 2/11/16)
Date Time

**REGIONAL WASTEWATER TREATMENT PLANT JOINT USE BOARD
REGULAR MEETING
313 CREE MEADOWS DRIVE
RUIDOSO, NM 88345
JANUARY 13, 2016**

Chair Lynn Crawford, Mayor Pro Tem (Alternate) called the regular meeting of the Regional Wastewater Treatment Plant Joint Use Board to order at 10:00 a.m. Members John Cornelius, Village of Ruidoso Councilor, Gary Williams, City of Ruidoso Downs Mayor and Dale Graham, City of Ruidoso Downs Interim Public Works Director were recorded present. Village of Ruidoso employees present were Debra Lynne Lee, Village Manager, Ronald L. Sena, Deputy Manager; Irma Devine, Village Clerk; Bertha De Los Santos, Deputy Clerk; and Judi Starkovich, Finance Director. City of Ruidoso Downs employee present was Carol Virden, City of Ruidoso Downs Clerk/Treasurer. There was no Village of Ruidoso legal counsel present. City of Ruidoso Downs Legal Counsel present was H. John Underwood. Regional Wastewater Treatment Plant Joint Use Board legal counsel present (via telephone) was Edmund (Ned) Kendrick. There were 3 visitors present.

APPROVAL OF AGENDA:

Mayor Williams moved to approve the agenda as presented. Councilor Cornelius seconded and the motion carried with a roll call vote of all ayes.

PUBLIC INPUT:

There was no Public Input.

REGULAR ITEMS:

Discussion and Possible Action on Approval of August 19, 2015 Regular Meeting Minutes. Councilor Cornelius moved to approve August 19, 2015 regular meeting minutes. Dale Graham seconded and the motion carried with a roll call vote of all ayes.

Discussion and Possible Action on Adoption of Resolution 2016-01, a Resolution Declaring Reasonable Notice of Public Meetings for the Regional Wastewater Treatment Plant Joint Use Board. Mayor Williams moved to Adopt Resolution 2016-01, a Resolution Declaring Reasonable Notice of Public Meetings for the Regional Wastewater Treatment Plant Joint Use Board. Dale Graham seconded and the motion carried with all ayes.

Discussion and Possible Action on First Renewal Agreement with Montgomery & Andrews, P.E. for Legal Services Related to the Regional Wastewater Treatment Plant. Councilor Cornelius stated the agreement should be reviewed, but recommended adding to the agreement language that the Regional Wastewater Treatment Plant Joint Use Board should be notified prior to any meetings with the New Mexico Environment Department and/or be notified of anything pertaining to the Joint Use Board, especially if it was going to incur legal costs; and he felt that the meeting in Santa Fe attended by the attorneys with the New Mexico Environment Department, that occurred without the knowledge of the staff and Joint Use Board members, was not money well spent by the Village of Ruidoso.

H. John Underwood stated the following: there was certainly no harm in requesting that the Joint Use Board be kept informed; he, Daniel A. Bryant and Erika E. Anderson were present at the meeting that occurred in Santa Fe; he understood that the information received would be relayed to both Governing Bodies and the Joint Use Board; he relayed the information to the City of Ruidoso Downs Governing Body; and, if this did not occur in the Village of Ruidoso, it should have. Councilor Cornelius stated he, Ms. Lee, and Mayor Battin had spoken with Dr. Hogan and understood that it really didn't matter if the study was done and inquired if the meeting, since it incurred costs, should have been approved by the Joint Use Board or the Governing Bodies.

Mr. Underwood stated the following: the legal consultant for the City of Ruidoso Downs, Village of Ruidoso, and the Joint Use Board were all present at the meeting and should have reported back to the Governing Bodies and Joint Use Board members.

Chair Crawford stated the opinion of experts was not always the general consensus of the Governing Body or the Joint Use Board and they wanted to be informed of everything in order to avoid further costs that were not warranted.

Mr. Underwood stated the only concern was that sometimes only a two-day notice was provided for meetings with the New Mexico Environment Department and the process should not impede the progress.

Mayor Williams moved to approve First Renewal Agreement with Montgomery & Andrews, P.E. for Legal Services Related to the Regional Wastewater Treatment Plant. Councilor Cornelius seconded and the motion carried with all ayes.

REPORTS FROM BOARD MEMBERS:

There were no Reports from Board Members.

CLOSED SESSION:

Councilor Cornelius moved to recess into closed session for:

- Discussion subject to the attorney-client privilege pertaining to threatened or pending litigation in which the Regional Wastewater Treatment Plant Joint Use Board is or may become a participant. §10-15-1.H.7, NMSA 1978.
 - ▶ Nutrient Effluent Limits in the NPDES Permit for the Wastewater Treatment Plant.

Any action taken as a result of closed session will be brought back into open session. Mayor Williams seconded and the motion carried with a roll call vote of all ayes.

Chair Crawford recessed the regular session and convened the closed session at 10:19 a.m.

Present in closed session were members of the Governing Body. Others present included, Debi Lee, Irma Devine, Bertha De Los Santos, Ronald L. Sena, H. John Underwood, Carol Virden, Scott Verhines, and Edmund (Ned) Kendrick via telephone.

Bertha De Los Santos was excused from the closed session at 11:10 a.m.

Irma Devine joined the closed session at 11:10 a.m.

Chair Crawford adjourned the closed session and reconvened the regular session at 11:28 a.m.

Mayor Williams moved to certify that matters discussed in the closed session were limited only to those specified in the motion for closure. Councilor Cornelius seconded and the motion carried with a roll call vote of all ayes.

Councilor Cornelius moved to approve Task Order No. 1 with GEI Consultants, Inc. for Professional Services between the Regional Wastewater Treatment Plant Joint Use Board and GEI Consultants, Inc., in an Amount not to Exceed \$5,292.00, Excluding Gross Receipts Tax, subject to meeting in Santa Fe with the New Mexico Environment Department. Mayor Williams seconded and the motion carried with a roll call vote of all ayes.

ADJOURNMENT:

There being no further business to come before the Regional Wastewater Treatment Plant Joint Use Board, Chair Crawford adjourned the regular meeting at 11:30 a.m.

MINUTES ARE DRAFT UNTIL APPROVED ON:

Passed and approved this __ day of ____, 2016.

APPROVED: _____
Tom Battin, Chairman

ATTEST: _____
Bertha De Los Santos, CMC
RWWTP Joint Use Board Clerk



AGENDA MEMORANDUM

RWWTP – JOINT USE BOARD

To: Joint Use Board Members

Presenter: Bobby Snowden,
RWWTP Director

Meeting Date: February 17, 2016

—	Consent Item
—	Public Hearing
—	Regular Item
—	Board and Commission Appointments
<u>X</u>	Informational
—	Workshop Item

2

Re: Presentation by Clayton Teneyck, With Molzen-Corbin & Associates, on Affordability of a Wastewater Treatment Plant Upgrade for Total Nitrogen Removal.

Item Summary:

Presentation Provided by Molzen-Corbin & Associates on Affordability of a Wastewater Treatment Plant Upgrade for Total Nitrogen Removal.

<u>Fund:</u>	N/A	<u>Line Item:</u>	N/A	<u>Budgeted Amount:</u>	N/A	<u>Available Balance:</u>	N/A
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Item Discussion:

Presentation on additional treatment required to meet the 1.0 mg/L Total Nitrogen limit in the NPDES Permit.

Recommendations:

For your information.

Required Approvals of Agenda Memorandum and Back-Up Documentation:

Bertha De Los Santos, CMC
Deputy Clerk

(received on: 2/11/16 10:00am
Date Time



AGENDA MEMORANDUM

RWWTP – JOINT USE BOARD

To: Joint Use Board Members

Presenter: Debi Lee,
Village Manager

Meeting Date: February 17, 2016

<input type="checkbox"/>	Consent Item	3
<input type="checkbox"/>	Public Hearing	
<input checked="" type="checkbox"/>	Regular Item	
<input type="checkbox"/>	Board and Commission Appointments	
<input type="checkbox"/>	Informational	
<input type="checkbox"/>	Workshop Item	

Re: Report on the Status of the Sewer Line Relocation Project.

Item Summary:

Report on the Status of the Sewer Line Relocation Project.

<u>Fund:</u>	510-410	<u>Line Item:</u>	52006	<u>Budgeted Amount:</u>		<u>Available Balance:</u>	
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Item Discussion:

We are finally moving forward with the Sewer Line Relocation Project. In June 2008, the Sewer Line was severely damaged during the flood. FEMA approved two project worksheets in 2008 for replacement and hazard mitigation of disaster-damaged elements of the sewer line with the Village of Ruidoso as the primary entity for the project; however, this project is under the oversight of the Joint Use Board.

You will recall that the Village contracted with CH2M Hill Engineers, Inc. to design this project and has completed and presented 30% design to the Village and JUB. All plans and documentation for the 30% design were submitted to the New Mexico Department of Homeland Security and FEMA Recovery Division for their review, approval and appropriation of funds. FEMA Recovery Division assigned an engineer to conduct a complete review and evaluated the 30% design for essential elements regarding the replacement and hazard mitigation of disaster-damaged elements of the Ruidoso Sewer Line Relocation Project. In January 2016, the Village was contacted by Gregory Eaton, Director, Recovery Division for FEMA informing the Village that they had completed their review with cost estimates. Mr. Eaton presented us with an opportunity to participate in a Public Assistance Alternative Procedures Pilot Program for Permanent Work in accordance with the Sandy Recovery Improvement Act of 2013; however we had a deadline of January 30, 2016 to agree to participate. On January 26, 2016 in a special meeting, the Council approved and authorized the Mayor's signature on the Public Assistance Alternative Procedures Pilot Program for Permanent Work Acknowledgement Form. The Village Council also approved the Letter of Understanding reached between the Village of Ruidoso, FEMA and NMHSEM where the essential elements of the undertaking are outlined. FEMA agrees that the damage sustained as a result of the declared emergency event in June 2008 is eligible for replacement, pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act. The letter also provides for a fixed, capped public assistance sub-award of \$36,945,264.00 reflecting 100% of the project costs where 75% will be funded by FEMA, 18% is funded by NMDHSEM and 7% by local match (Village of Ruidoso and City of Ruidoso Downs). As a result of this confirmation and the essential elements listed in the Letter of Understanding, FEMA will now generate a project worksheet resulting in a capped Public Assistance sub-award which will allow this project to proceed. Participating in this program allows the FEMA funding to be available with construction rather than on a reimbursement basis. Our next step will be to finalize design and proceed with construction in three phases; Upper Canyon, Mid-town and Ruidoso Downs. A special meeting is being planned with the Village of Ruidoso and City of Ruidoso Downs Governing Bodies to finalize the Joint Powers Agreement for the Joint Use Board and to discuss the local match.

Recommendations:

Report on the Status of the Sewer Line Relocation Project.

Required Approvals of Agenda Memorandum and Back-Up Documentation:



Bertha De Los Santos, CMC

Deputy Clerk

(received on: 2/11/12 10:00 AM)
Date Time



FEMA

January 27, 2016

Jay Mitchell, Cabinet Secretary
Department of Homeland Security and Emergency Management
PO Box 27111
Santa Fe, NM 87502

Tom Battin, Mayor
Village of Ruidoso
313 Cree Meadows Dr.
Ruidoso, NM 88345

RE: Ruidoso Sewer Line Project

Dear Secretary Mitchell:

This letter confirms the understanding that was reached on January 9, 2016, between the Federal Emergency Management Agency (FEMA), the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM) (the "Recipient"), and the Village of Ruidoso (the "sub-recipient"), regarding the replacement, including hazard mitigation of disaster-damaged elements, of the Ruidoso Sewer Line Relocation Project. The facility sustained damage as a result of flooding (FEMA-1783-DR-NM). This project would be funded under the Public Assistance Grant Program authorized for the major disaster declaration FEMA-1783-DR-NM declared on August 14, 2008. The sub-recipient is legally responsible for the repair/replacement of those damages.

We would appreciate your signed confirmation of the essential elements of the undertaking below no later than January 31, 2016. After I receive your signed confirmation, FEMA will work with the recipient and the sub-recipient to develop and execute a Public Assistance alternative procedure pilot project for permanent work and supporting Project Worksheets ("PWs") in accordance with 42 U.S.C. § 5189f and the terms of this letter of undertaking.

Essential Elements of Alternative Procedure Pilot Project for Repair/Restoration and Hazard Mitigation of the Disaster-Damaged Elements of the Facility under (FEMA-1783-DR-NM)

¹ The terms "recipient," "sub-recipient," "award," and "sub-award" are used in place of the terminology of the "grantee," "sub-grantee," "grant," and "sub-grant," respectively. This language has been changed in order to comport with the definitions provided in 2 CFR Part 200.² See also *Public Assistance Alternative Procedures Pilot Program – Permanent Work Frequently Asked Questions* dated June 26, 2015.

1. FEMA agrees that due to damage sustained as a result of the declared event, the following elements of the damaged facility/facilities are eligible for replacement pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, codified in 42 U.S.C. § 5172:

Facility/Facilities Element	Damage Description
Ruidoso Sewer System	During the incident period, flooding from the Rio Ruidoso caused damages to the main sewer service that is buried beneath the river. There are three sections that are associated with this system: the Upper Canyon 15,366 LF, Midtown 28,825 LF, and the Lower Canyon 12,145 LF. The consolidated PW will address the Upper, middle, and Lower Canyon sections. The damage assessment is based on the Wilson Report. The damages are as follows: to repair and replace 27,178 LF. of damaged sewer lines, 59 manholes and 676 home connections

2. FEMA, the recipient, and the sub-recipient (collectively, the “Parties”) have agreed upon the damage caused as a direct result of the declared event, the associated dimensions, a detailed description of the damage, and an eligible scope of work to replace the facilities, all of which will be captured in the PW that FEMA will generate. A summary of the agreed-upon damages for the applicable facility and/or applicable contents below:
3. The Parties have agreed that the sub-recipient will accept a fixed, capped Public Assistance sub-award for the agreed-upon disaster damage and eligible scope of work for restoration of the disaster-damaged facilities under the alternative procedures authorized under Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5189f, and implemented as a pilot program. The Parties acknowledge that the terms of this project will be governed by and subject to Section 428 of the Stafford Act; the Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (Version 2), dated December 19, 2013; and, except where specifically waived or modified by Section 428 of the Stafford Act, all other laws, regulation and policies, and guidance applicable to FEMA’s Public Assistance Program.²
4. In accordance with 42 U.S.C. § 5189f (e), FEMA, working collaboratively with representatives from the recipient and the sub-recipient, has validated and accepted the

² See also *Public Assistance Alternative Procedures Pilot Program – Permanent Work Frequently Asked Questions* dated June 26, 2015.

total fixed cost estimate for eligible work to replace the damaged facility/facilities in the amount of \$36,945,264.³ This cost estimate includes architectural and engineering design, project management, NM Gross Receipts Tax, and direct administrative costs (DAC).

5. FEMA has also accepted the sub-recipient's cost estimates and engineering specifications for its proposed Section 406 hazard mitigation proposal (HMP) for the disaster-damaged facilities in the amount of \$18,350,500. This amount includes design and project management costs, and any costs resulting from the environmental and historic preservation ("EHP") compliance review, discussed below. The approved HMP for the applicable facilities includes the following measures, consistent with FEMA Public Assistance Section 406 hazard mitigation and other compliance requirements:

Damaged Element	Mitigation Measure
Ruidoso Sewer System	The HMP is to mitigate the flood damage to the Ruidoso Sewer System in the upper, middle, and lower Canyon by encasing the replaced lines with concrete and armoring manholes.

6. The sub-recipient agrees that any Section 406 hazard mitigation measures will be designed and constructed to protect the facility/facilities against future similar damage. Specifically, the mitigation measures are intended to:

Prevent future damage from flooding by encasement of main and connector sewer lines.

7. In agreeing to the fixed, capped Public Assistance sub-award:
 - a. The Parties agree that the fixed, capped grant will be based upon a fixed cost estimate and capped at \$36,945,264, which includes the replacement costs of the facility/facilities, Section 406 hazard mitigation costs, and direct administrative costs ("DAC").
 - b. The Parties acknowledge that the fixed amount of \$36,945,264 reflects 100 percent of the total agreed-upon project costs for the repair/restoration work, section 406 hazard mitigation, and DAC for the damaged facility/facilities, which includes the 75 percent federal cost-share and the 25 percent non-federal cost-share.

³ The total fixed estimate is \$36, 945,264, which is the combination of 33,459,928 (PW 155) and \$3,485,336 (PW 181).

- c. The Parties acknowledge that if the sub-recipient wishes to execute a different scope of work which rises to the level of not restoring a facility or function used during the cost capture, it must submit to FEMA its request for that alternate project scope of work prior to initiating that work which restores a similar function and/or capacity in a different configuration that the damaged facility or function used during the cost capture [example: scope of work is similar in function or capacity, but different in design]. The Parties acknowledge that FEMA must review and approve the alternate project(s) scope of work in accordance with PA program requirements, including with limitation the compliance. The Parties further acknowledge that if the sub-recipient wishes to use the funds approved under this fixed, capped grant for an improved scope(s) of the work (as defined by 44 C.F.R. § 206.203(d)(1)), it must notify FEMA prior to initiating any of that work so that FEMA can determine whether additional EHP compliance review is required. If during the design or implementation of the approved mitigation proposal, an alternative mitigation measure is identified outside the approved Section 406 HMP scope of work, the sub-recipient must demonstrate that any alternative mitigation measure that is not included in the approved HMP scope of work must, at a minimum, be designed to achieve a risk reduction benefit that is equal to or greater than that of the approved HMP scope of work (outlined in paragraph 5).⁴
- d. The Parties acknowledge that the environmental and historic preservation (EHP) compliance review required under 44 C.F.R. § 10 will be performed based on the sub-recipient-selected repair/restoration and Section 406 HMP scope of work. Accordingly, the sub-recipient must inform both the recipient and FEMA of any proposed changes to the current scope of work that involve a historic property listed on or eligible for listing on the Nation Register of Historic Places and/or do not substantially conform to the design and function of the damaged facility/facilities so that FEMA can determine whether additional EHP review must be conducted to ensure compliance.
- e. In accordance with 42 U.S.C. § 5189f (f), FEMA has the authority to carry out alternative procedures as a pilot program. FEMA acknowledges that due to the magnitude and complexity of the work, as well as the phasing required to construct the improvements, the sub-recipient will require an extension to the period of performance set forth in § 206.204(c). Accordingly, FEMA will establish a period of performance of three years from the date the PW is issued and will be approved in annual increments beginning on August 14, 2016. If the sub-recipient requires any further extension(s) of the period of performance, then it shall submit its request for an extension to the FEMA Region 6 Regional Administrator through the recipient. The recipient and sub-recipient acknowledge that failure to comply with the terms of the period of performance set forth in this letter may cause the approved funding, included in the fixed, capped sub-award referenced in this letter of undertaking, to be deemed ineligible and may result in de-obligation of those funds.

⁴ See *Public Assistance Alternative Procedure Pilot Program Guide for Permanent Work, Part II (D) & (E)*, (December 19, 2013).

- f. The recipient and the sub-recipient acknowledge that, in accordance with Section 428 of the Stafford Act, 42 U.S.C. §5189f, the sub-recipient accepts this fixed, capped Public Assistance sub-award for permanent work with full knowledge and understanding that it will not receive any additional Public Assistance funding for disaster-related damage to any feature(s) of the facility/facilities and/or site(s) replaced and mitigated as part of the scope of work that is funded under this fixed, capped sub-award.
- g. With respect to insurance:
- i. Pursuant to Section 312 of the Stafford Act and 44 C.F.R. Part 206, Subpart I, the applicant may not receive disaster assistance for losses covered by insurance. The recipient and the sub-recipient acknowledge that the receipt of insurance proceeds may result in a duplication of benefits prohibited by Section 312 of the Stafford Act, and may require the de-obligation of certain funding. Accordingly, the Parties agree that FEMA will evaluate the applicant's insurance coverage applicable to the Ruidoso Sewer System to determine insurance proceeds and reduce funding from the agreed-upon fixed, capped sub-award by the amount of actual insurance proceeds or anticipated insurance proceeds for eligible work based upon coverages available at the time of the event, as explained in subparagraph (b), below. Any actual insurance recoveries must be apportioned and deducted from this fixed, capped sub-award at such time of insurance payment or project closeout, whichever occurs first, to avoid any duplication of benefits from insurance. The applicant agrees that it will inform FEMA of its receipt of any insurance proceeds and provide all necessary documentation to help FEMA determine the appropriate apportionment of eligible versus ineligible proceeds, and the allocation of those proceeds. In order to demonstrate that it performed the due diligence required in pursuing all available insurance proceeds, the applicant agrees that it will pursue all available insurance coverage through litigation and/or negotiation, if necessary.
- ii. The Parties acknowledge that the above-referenced reduction from the fixed, capped sub-award will be based on either the actual insurance proceeds or the anticipated insurance proceeds, if the actual proceeds are not known. The Parties agree that this reduction will be subtracted from the fixed, capped sub-award even if the applicant does not perform the agreed-upon scope of work in the PW, whether the applicant performs the original scope of work or a revised scope of work. The Parties further agree that the amount of the fixed, capped award less the reduction will be adjusted only if the original reduction was based on the anticipated insurance proceeds and the amount of the actual insurance proceeds the applicant receives differs from the amount of the anticipated proceeds used to calculate the reduction from the fixed, capped sub-award. Specifically, if the applicant's actual insurance proceeds exceed the amount of the reduction based on anticipated insurance proceeds, the applicant will have to return to FEMA the difference between those amounts in order to avoid a duplication of benefits.

Conversely, if the applicant's actual insurance proceeds are less than the amount of the anticipated insurance proceeds used to calculate the reduction and the applicant demonstrates that it performed the due diligence required in pursuing all available insurance proceeds, FEMA agrees to return to the applicant the difference between those amounts. When analyzing the applicant's insurance coverage and actual or anticipated insurance proceeds to determine the reduction as required by law, regulation, and policy, FEMA will calculate the reduction as accurately as possible based upon information available at the time of review.

- iii. The Parties acknowledge that in accordance with Section 406 of the Stafford Act and 44 C.F.R. §§ 206.250(d) and 206.252(a), in the absence of a standard flood insurance policy on building and contents in a special flood hazard area, FEMA will reduce the agreed-upon fixed, capped sub-award by the maximum amount of insurance proceeds the applicant would have received had the building and contents been fully covered by a standard flood insurance policy per Section 406(d) of the Stafford Act) or by insurance proceeds (per Section 312 of the Stafford Act), whichever is greater.
- iv. The Parties acknowledge that under Section 311(b) of the Stafford Act and 44 C.F.R. § 206.252(d), the applicant is required to obtain and maintain flood insurance in the amount of eligible disaster assistance as a condition of receiving federal assistance. This requirement is inclusive of areas both inside and outside of the special flood hazard area. For damages caused by disasters other than flood, the Parties acknowledge that under Section 311(b) of the Stafford Act and 44 C.F.R. § 206.253(b)(1), the applicant is required to obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future damage from the types of hazard that caused the major disaster. However, in accordance with Section 311(a)(2) of the Stafford Act, FEMA acknowledges that the sub-recipient may seek a certification from the State Insurance Commissioner as to the type and extent of insurance that is reasonable for the applicant to obtain and maintain.

8. If the sub-recipient intends to include state-of-good-repair work in its construction contracts for replacement of disaster-damaged elements of the facility/facilities, the Parties agree that the sub-recipient shall submit the revised scope of work to FEMA to review for EHP compliance as outlined in Section 7(e) above and, if approved, FEMA shall issue a project worksheet for the revised scope of work, subject to the fixed, capped Public Assistance sub-award for the agreed upon total of \$36,945,264.

9. For all eligible work:

- a. In accordance with 42 U.S.C. § 5189f (f), FEMA has the authority to waive, as necessary, any regulation regarding the repair/restoration of eligible damaged portions of the facility(ies) not consistent with this approach, and will carry out the proposed alternative procedure project for the sub-recipient as part of a pilot program.

- b. The recipient and sub-recipient agree to waive any and all rights to bring appeals pursuant to 44 CFR §206.206 or requests for arbitration pursuant to 44 CFR § 206.210 (the Dispute Resolution Pilot Program authorized by Section 1105 of the Sandy Recovery Improvement Act,) against FEMA for additional costs related to the fixed, capped sub-award articulated in Section 7(a) above.
- c. The Office of Inspector General will have the ability to audit any sub-recipient and/or sub-award, and FEMA also can conduct compliance reviews of awards and sub-awards. For alternative procedures sub-awards, a compliance audit will review sub-awards and costs to ensure that the sub-recipient complied with this document's guidelines and other applicable requirements. FEMA may de-obligate funding because of a failure to comply with the terms and conditions of this agreement, any associated PWs, and the FEMA-State Agreement; or upon a determination of fraud, waste, or abuse; or at the direction of the designated audit follow up official for the Department of Homeland Security/FEMA. Any corrective actions, including any de-obligations, FEMA makes as a result of these audits or compliance reviews may constitute a new dispute and may be appealed in accordance with 44CFR § 206.206, or arbitrated under 44 C.F.R. § 206.210 (provided the circumstances of the dispute meet the requirements for arbitration articulated in that section).
- d. Upon receiving the recipient's and the sub-recipient's signed confirmation of the essential elements of this understanding, FEMA will generate a PW resulting in a fixed, capped Public Assistance sub-award for the agreed upon total of \$36,945,264, which will include, at a minimum, all of the flexibilities of 42 U.S.C. § 5189f(e)(1) and be based upon the terms and conditions contained herein.

Sincerely,



Gregory W. Eaton
Director, Recovery Division

By signing below, the parties confirm their understanding of, and their agreement to, the essential elements of this undertaking as set forth above:

State of New Mexico:



Jay Mitchell

28 JAN 16

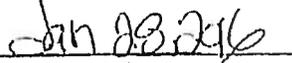
Date

Governor's Authorized Representative
State of New Mexico

Village of Ruidoso:



Tom Battin
Mayor
Village of Ruidoso



Date