

EASEMENT BETWEEN

**THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH
THE DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION**

AND

THE INCORPORATED COUNTY OF LOS ALAMOS

FOR

**THE LOS ALAMOS COUNTY BUS STOP PROJECT
AT
ELK RIDGE TRAILER PARK**

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**DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
EASEMENT FOR ROAD OR STREET RIGHT-OF-WAY**

The **UNITED STATES OF AMERICA**, acting by and through the **U.S. DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION (DOE/NNSA)**, hereby known as the “**Grantor**”, under and by virtue of the authority granted under Title 40 United States Code 1314, having determined that the granting of this instrument on the terms and conditions herein stated is not adverse to the interests of the Government, subject to reservations, exceptions, limitations, benefits, burdens, terms, or conditions, hereby grants to **THE INCORPORATED COUNTY OF LOS ALAMOS**, its successors and assigns, hereby known as the “**Grantee**”, an Easement for the construction, operation, and maintenance of a bus stop, hereby known as the “**Project**”. The Project is adjacent to the intersection of East Jemez Road and Royal Crest Road at the entrance of the Elk Ridge Trailer Park, hereby known as the “**Premises**”. This Easement is granted to Grantee in addition to other actions and in furtherance of the Settlement Agreement and Stipulated Final Order HWB-14-20, entered into by the New Mexico Environment Department (NMED) (Complainant), the U.S. Department of Energy (DOE), and Los Alamos National Security, LLC (LANS) (Respondents) on January 22, 2016, hereby known as the “**Settlement Agreement**”.

THIS EASEMENT is granted subject to the following terms and conditions:

1. PREMISES

The Premises contains approximately 0.282 acres and is further described in Exhibit A, Easement Legal Description; and Exhibit B, Jemez Road Bus Turnout, dated September 25, 2017, attached hereto and made a part hereof. Exhibit A shall govern over Exhibit B in the event of a conflict.

2. TERM/TERMINATION RIGHTS

This Easement shall be effective upon execution by the Grantor and shall be granted in perpetuity, but is revocable at any time by either party by giving ninety (90) days written notice. This Easement may be terminated by the Grantor if the Grantor determines that the right-of-way granted interferes with the interests of the United States, use or disposal of a portion or all of the Premises by the Grantor, or it may be terminated by the Grantor for failure, neglect, or refusal by the Grantee to fully and promptly comply with any and all of the conditions of this Easement, or for nonuse for a two-year period, or for abandonment.

3. CONSIDERATION

The consideration for this Easement is the construction, operation and maintenance of the Premises by the Grantee for the benefit of the United States and the general public in accordance with the conditions set forth herein.

4. AUTHORIZED REPRESENTATIVES

The Grantor's Representative shall be the Real Estate Contracting Officer. The Grantor's local representative shall be the Utilities and Sustainability Program Manager, Los Alamos Field Office. The Grantee's representative shall be the County Manager. Any changes in the designated representatives or in their respective addresses shall be given in writing to the other.

5. NOTICE

No notice, order, direction, determination, requirement, consent, or approval under this Easement shall be of any effect, within the restriction of this Easement, unless provided in writing. Any notice given by the Grantee to the Grantor shall be addressed to the Real Estate Contracting Officer, National Nuclear Security Administration Office of Infrastructure Planning & Analysis (NA-521), P.O. Box 5400, Albuquerque, New Mexico 87185, sarah.watts@nnsa.doe.gov; with a copy to the Utilities and Sustainability Program Manager, Los Alamos Field Office, 3747 West Jemez Road, Los Alamos, New Mexico 87544, cassandra.begay@nnsa.doe.gov. Any notice given by the Grantor to the Grantee shall be addressed by the Real Estate Contracting Officer to the Incorporated County of Los Alamos, County Manager, 1000 Central Avenue, Suite 350, Los Alamos, NM 87544, harry.burgess@lacnm.us.

6. PROJECT

a. The installation, operation, and maintenance of the Premises is pursuant to Paragraph III.b.ii. in the "LANL Improvements to Transportation Routes Used for Transportation of Transuranic Waste to WIPP, Addendum 1", submitted by LANL and approved by NMED on May 26, 2017, as directed in the Settlement Agreement.

1) It is agreed that the Grantee shall construct and fund that portion of the Project which consists of the following ("**Grantee's Work**"):

- a) subgrade improvements to be completed prior to asphalt paving;
- b) two (2) ADA accessible 6'x20' concrete bus pads for passenger boarding and neighborhood sidewalk connection within Grantor right-of-way (after asphalt installation by Grantor);
- c) lighting, signage, markings, and drainage; and
- d) covered bench area for passengers if warranted based on sufficient ridership in accordance with County requirements.

2) It is agreed that the Grantor shall construct and fund (through Interagency Agreement No. DE-NA0003309, dated July 14, 2017, by and between NNSA and the U.S. Army Corps of Engineers) that portion of the Project which consists of the following ("**Grantor's Work**"):

- a) installation of an asphalt paved, two-way bus turnout accessible from Royal Crest Road and East Jemez Road;
- b) restriping of East Jemez Road; and
- c) tie-in for one additional street lighting fixture at the bus pullout.

3) The Grantor's and Grantee's obligation and legal liability of the Project is contingent upon the availability of appropriated funds. Nothing in this Easement shall constitute, or be

deemed to constitute, an obligation of appropriations by the United States or County or considered as implying that Congress or the County Council will appropriate additional funds.

4) Upon completion of the Project, ownership of personal property and fixtures that are placed upon or added to the Premises by reason of this provision, shall be and will immediately become the property of the Grantee and may be removed from the Premises by the Grantee as provided in Condition 29 hereof. Pursuant to Condition 2, if the Easement is terminated by the Grantor, all ownership of personal property and fixtures placed on the Premises by the Grantee shall immediately become the property of the Grantor; however, the Grantee's responsibilities in Condition 29 remain.

5) The Project shall be constructed in coordination with the selected contractor for work on East Jemez Road via the aforementioned Interagency Agreement.

7. OPERATION AND MAINTENANCE

The Grantee's Work, operation and maintenance of the entire Premises shall be accomplished without cost or expense to the Grantor under the general supervision and subject to the approval of the representative having immediate jurisdiction over the property, designated as the Utilities and Sustainability Program Manager, Los Alamos Field Office. The said work shall be accomplished in such a manner as not to conflict with the rights of the Grantor or Grantee nor to endanger personnel or property of the Grantor or Grantee on Government-owned land.

8. PROTECTION OF PROPERTY

All portions of the Premises shall at all times be protected and maintained in good order and condition by and at the sole expense of the Grantee. Any property of the Grantor damaged or destroyed by the Grantee incident to the use, purpose, and occupation of the Premises shall be promptly repaired or replaced by the Grantee to the satisfaction of the Grantor or in lieu of such repair or replacement the Grantee shall, if so required by the Grantor, pay to the Grantor money in an amount sufficient to compensate for the loss sustained by the Grantor by reason of damages to or destruction of the Grantor's property.

9. TRANSFER/ASSIGNMENTS

The conditions of this Easement shall extend to and be binding upon and shall inure to the heirs, representatives, successors, and assigns of the Grantee. The Grantee shall neither transfer nor assign this Easement or any property on the Premises, nor sublet the Premises or any part of the Premises, nor grant any interest, privilege, or license whatsoever in connection with this Easement without the express and prior written permission of the Grantor.

10. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Easement or to any benefit arising from it. However, nothing contained within this Easement shall be construed to extend to any incorporated company if the Easement be for the corporation's general benefit.

11. NON-DISCRIMINATION

Usage of the Premises will be operated in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, sex, age, handicap, or national origin, be excluded from using the Premises under this Easement.

12. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Grantor shall have the right to annul this Easement without liability or, in its discretion, to require the Grantee to pay the full amount of such commission, percentage, brokerage, or contingent fee. Licensed Real Estate agents or brokers having listings on property for rent, in accordance with general business practices and who have not obtained such licenses for the sole purpose of effecting this Easement, may be considered as bona fide employees or agencies with the exception contained in this Condition.

13. ENVIRONMENT

The Grantee shall not unlawfully pollute the air, ground or water or create a public nuisance. The Grantee shall use all reasonable means available to protect the environment and natural resources from damage arising from this Easement or activities incident to it and, where damage nonetheless occurs, the Grantee shall be liable to repair the damaged resources. The Grantee shall not create, use, store, treat, or dispose of any toxic or hazardous material on the Premises without prior Grantor written approval. For the purpose of this Condition, hazardous materials shall include but not be limited to substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq.; Hazardous Materials Transport Act, 49 U.S.C. Sec. 1802; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. and in the regulations adopted and publications promulgated pursuant to said laws. The Grantee shall, at no cost to the Government, promptly comply with present and future Federal, State, and local laws, ordinances, regulations, or instructions controlling the quality of the environment. This does not affect the Grantee's right to contest their validity or enjoin their applicability. The Grantee shall not be responsible for pollution caused by others. If the Grantee discovers contamination on the Premises, the Grantee shall immediately cease all activities and notify the Grantor's representative. The Grantee, where it becomes aware of or causes, shall report to the New Mexico Environment Department any covered discharges on the Premises per 20.6.2.1203 NMAC.

14. CULTURAL ITEMS

A cultural site was identified on the north side of the East Jemez Road. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the Premises or if the aforementioned site is disturbed by the

Grantee, the Grantee shall immediately notify the Grantor's representative and protect the site and the material from further disturbance until the Grantor gives clearance to proceed.

15. LAWS, ORDINANCES, REGULATIONS

Grantee shall comply with all applicable laws, ordinances, and regulations of the State, county and municipality wherein the Premises are located with regard to construction, sanitation, licenses or permits to do business, and all other matters affecting the Premises. Grantor agrees that the Grantee is subject to laws of the Incorporated County of Los Alamos and State of New Mexico, as applicable, and such laws shall govern.

16. GRANTEE RESPONSIBILITY

The Grantee shall supervise the Premises, inspect it at reasonable intervals and shall use reasonable efforts to immediately repair any damage found as a result of the inspection or when requested by the Grantor's representative to repair any defects. Upon completion of the installation of the facility and/or the repairs, the Grantee, at the Grantee's own expense shall remove construction debris, re-vegetate for erosion control, and grade to the original contour of the land. Grantee shall comply with such rules and regulations regarding Government security, ingress, egress, safety, sanitation, etc. as may be prescribed from time to time by the Grantor. The Grantee shall not remove, relocate or damage any existing utilities and/or associated facilities belonging to Grantor. Grantee shall be liable for any damages or repair or replacement of existing utilities.

17. GRANTOR RESERVATIONS

The Grantor reserves to itself the right to construct, use, and maintain across, over and/or under the right-of-way granted any necessary electric transmission, telephone, telegraph, water, gas, gasoline, oil, sewer lines, and other facilities in such manner as not to create any unreasonable interference with the use of the right-of-way granted within this Easement.

18. ACCESS TO SITE

Grantee understands and agrees that access to the Premises is subject to Grantor security regulations. Grantee agrees to comply and to have its awardee comply with any and all applicable Grantor security regulations including, but not limited to, requirements for obtaining access authorization for personnel working at the Premises. All Grantee personnel requiring access to the Premises shall acquire and wear at all times, badges authorized through the security badging process at the LANL badging office, and shall stay within the boundaries of the said Premises with the exception of access to and from the Premises. Access may be denied at times due to programmatic security requirements, but arrangements will be made to escort the Grantee personnel to and from the Premises within a reasonable amount of time.

19. THIRD-PARTY RESERVATIONS

a. This Easement is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this Easement does not eliminate the necessity of obtaining any other agreement for performance of the Project.

b. This Easement is granted subject to such other rights that may be outstanding to third-parties in, on, over, and/or across the Premises.

c. The Grantee shall obtain an excavation permit before beginning work, and shall do so by contacting Grantor's Utilities Representative, Michael Williams, at (505) 665-8392. The Grantee shall also contact Grantor's Utilities Representative seventy-two (72) hours before beginning work.

20. HOLD HARMLESS AND INDEMNITY

a. The Grantor shall not be responsible for damages or property or injuries to persons which may arise from or be incident to the use and occupation of the Premises nor shall it be responsible for damages to the property or injuries to the persons of the Grantee, its agents, employees, or representative or others who may be on the Premises at their invitation, arising from Grantee activities.

b. The Grantor shall be solely responsible for the claims or damages arising from injury to persons or property caused by the action of the Grantor, its employees, agents, or contractors during its activities on the Premises or arising from any neglect or fault of the Grantor or the agents and the employees of the Grantor in using the Premises, or arising from the failure of the Grantor to comply and conform with all Federal and State Laws.

c. The Grantee agrees that to the extent authorized by the New Mexico Tort Claims Act ("Act"), NMSA 1978, Sections 41-4-1 through 41-4-27, the Grantee will be responsible for related claims and damages arising from injury to persons or property caused solely by the actions of the Grantee, its employees, agents, or contractors during its operation on the Premises. Grantor recognizes that the Act prohibits Grantee from indemnifying Grantor.

d. The Grantee does not assume any liability or responsibility for environmental remediation, impacts and damage caused by the Grantor's use of toxic or hazardous waste, substances or materials on any portion of the Premises. Grantee has no obligation under this Easement to undertake the defense of any such claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage arising out of the use of or release of any toxic or hazardous waste, substance, or materials caused by Grantor. The Grantor shall retain liability for damages for exposure and responsibility for remediation which is caused by or arises from the presence of any hazardous waste in, on or under the Premises on or prior to time Grantee first began operations on the property.

21. GRANTOR CONNECTION RIGHTS

The Grantor reserves the right to make or maintain such connections to the road and crossovers between the public road and adjacent property or roads of the Grantor as it may from time to time consider to be necessary, consistent with traffic safety and other requirements of law; provided however, that such right shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the Grantee of the right-of-way for road purposes.

22. GRANTOR POSTING OF SIGNS

The Grantor reserves the right, with the agreement of the Grantee, to erect and maintain on the public road right-of-way billboards, signs, or posters relating to safety and security of the Grantor. The size and location of such will be subject to agreement of the Grantor and Grantee consistent with traffic safety, local zoning requirements, and other requirements of law.

23. GRANTOR CLOSURE/REGULATION RIGHTS

The Grantor reserves the right, after consultation with the Grantee, to close or regulate traffic over the Premises whenever the Grantor deems such actions necessary in the interest of public health, safety, and national security and defense, and that such right is exercisable in times of perceived, threatened, or actual emergency, and that such right does not extend to the routine day-to-day operation, regulation, and control of traffic over the Premises, such being the right of the Grantee.

24. BOUNDARY OR SURVEY MONUMENTATION

The Grantee shall not disturb, obliterate or destroy any land boundary or survey monument on the Premises without prior approval from the Grantor's representative.

25. WETLANDS AND FLOODPLAINS

All activity within any flood plain or jurisdictional wetlands must comply with applicable Federal, State and local laws, rules or ordinances governing land use in flood plains or wetlands.

26. TIMBER

The Grantee shall notify and obtain written approval from the Grantor prior to cutting any trees within the right-of-way area on the Premises, and will remove and dispose of any trees that it cuts on the Premises.

27. GRANTEE'S PLANS AND SPECIFICATIONS

The Grantee shall submit plans and specifications to the Local Representative for approval before beginning installation, and shall comply with the approved plans. Grantee shall submit any changes to the approved plans for approval before undertaking any changes.

28. REMOVAL/RELOCATION OF FACILITIES

In the event any portion or all of the Premises shall be needed by the Grantor, the Grantee shall remove the appurtenant improvements, upon notice to do so, to such other location(s) on the Premises as may be reasonably designated by the Grantor. In the event the improvements shall not be removed or relocated within ninety (90) days after the Grantor's notice, and where there is no force majeure causing delay in the removal of such improvements, the Grantor may cause the same to be done at the expense of the Grantee, provided in lieu of taking such action, the Grantee may wholly remove its improvements from the lands of the Grantor. In this event, the rights set out within this Easement shall cease but the restoration obligation set out in Condition 28 shall remain.

29. RESTORATION

Upon expiration or termination of any portion of this Easement, the Grantee shall, without expense to the Grantor and within such time as the Grantor may reasonably indicate, restore the Premises to a condition reasonably satisfactory to the Grantor. In the event the Grantee shall fail, neglect, or refuse to restore the Premises, the Grantor shall have the option either to take over the improvements as the property of the Grantor, without compensation therefore, or to remove the improvements and perform the restoration work at the expense of the Grantee. In no event shall the Grantee have any claim for damages against the Grantor or its officers or agents on account of the taking over of the improvements or on account of its abandonment or removal.

30. GRANTEE PERFORMANCE

The failure of the Grantor to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Easement shall not be construed as a waiver or relinquishment of the Grantor's right to the future performance of any such terms, covenants, or conditions and the Grantee's obligations with respect to any such future performance shall continue in full force and effect.

31. GRANTOR'S LIMITATIONS TO GRANT

It is understood that this instrument is effective only insofar as the rights of the Grantor in the Premises are concerned and that the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

32. AMENDMENT

This Easement contains the entire agreement between the parties hereto, and no modification of this Easement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative.

33. ELECTRONIC SIGNATURES

Pursuant to the Uniform Electronic Transactions Act and the federal E-SIGN Act, the undersigned Signatory agrees that any and all signatures required on this Easement required or permitted to be given hereunder may be in electronic form ("Electronic Signature"). Any Electronic Signature submitted shall constitute a representation by the Signatory that (i) his/her signature is authentic, (ii) the Signatory has the authority to execute such record, and (iii) the Electronic Signature is binding on the Signatory.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, all parties accept the terms and conditions of this Easement and cause this Easement to be signed on their behalf by their duly authorized representatives.

GRANTEE: INCORPORATED COUNTY OF LOS ALAMOS

By: _____ Date: _____
Harry Burgess
County Manager

ACKNOWLEDGEMENT:

State of NEW MEXICO
County of LOS ALAMOS

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, Incorporated County of Los Alamos, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANTOR: UNITED STATES OF AMERICA

BY: Department of Energy/National Nuclear Security Administration (DOE/NNSA)

By: _____ Date: _____

Joelle Altamirano
Real Estate Contracting Officer
National Nuclear Security Administration

ACKNOWLEDGEMENT:

State of NEW MEXICO
County of BERNALLILO

On this _____ day of _____ 20__, before me the undersigned Notary Public, personally appeared Joelle Altamirano, Real Estate Contracting Officer, Department of Energy/National Nuclear Security Administration (DOE/NNSA), known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

Easement Legal Description

A certain tract or parcel of land adjoining and parallel to the land being identified as "East Jemez Road Trailer Park", Los Alamos, Los Alamos County, New Mexico, more particularly described as:

Beginning at the point for Los Alamos County Survey control monument BC-SOUTH MESA,
Thence S. 75° 54' 43" W., a distance of 693.27 ft.; to a point along the right of way of East Jemez Road,
Thence S. 88° 51' 06" W., a distance of 619.98 ft. to the southeast corner and the true point of beginning.;
Thence N. 01° 08' 54" W., a distance of 50.00 ft.;
Thence S. 88° 51' 06" W., a distance of 246.36 ft.;
Thence S. 01°08' 54" E., a distance of 50.00 ft.,
Thence N. 88°51' 06" E., a distance of 246.36 ft., to the point of beginning.
Tract contains 0.282 acres OR 12303.74 square feet,+/-.

Jason A. Romero, NMPLS 18375

Date

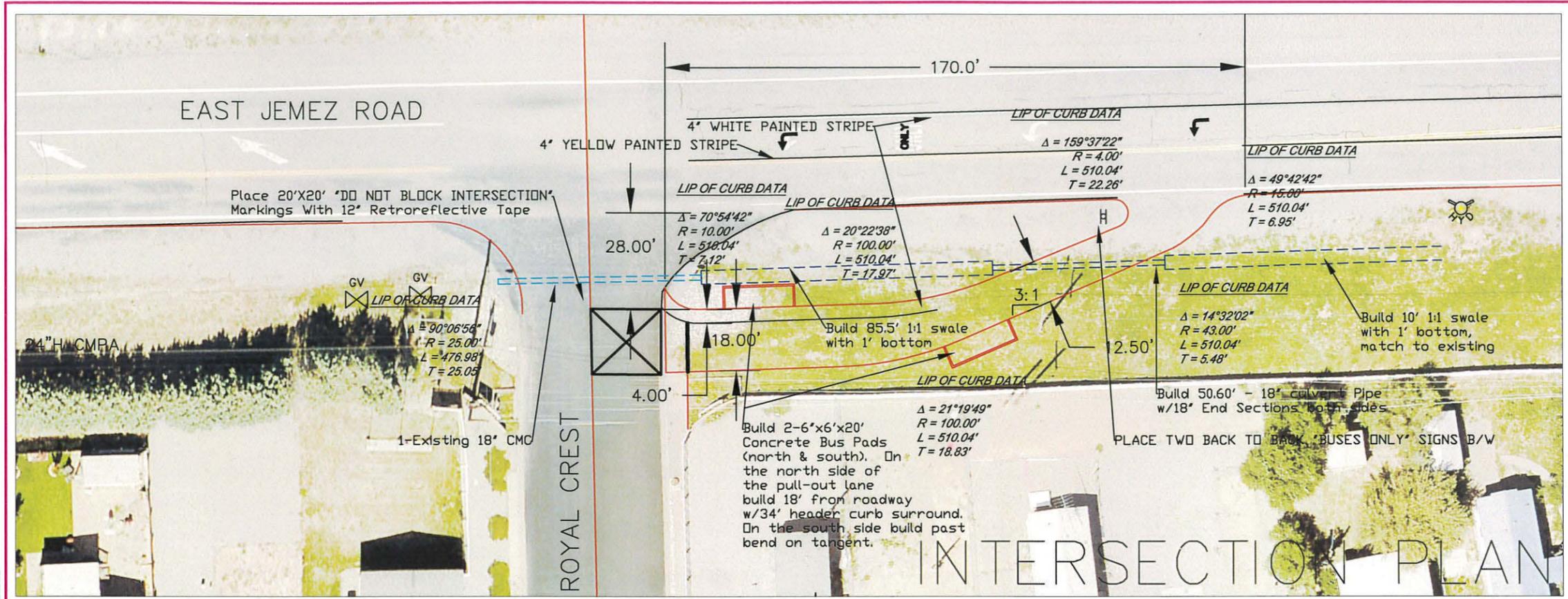
Los Alamos County

1000 Central Ave Suite 160 Los Alamos, N.M. 87544

(505) 662-8162

EXHIBIT A

Exhibit A, Easement M18NA70207
Los Alamos County Bus Stop Project
Elk Ridge Trailer Park



Drawing File: U:\PROJECTS\2016-1620-ROYAL_CREST_WEST_JEMEZ\ROYAL_CREST_WEST_JEMEZ\ROYAL_CREST_WEST_JEMEZ-REV.DWG

NO.	REVISION DESCRIPTION
1	
2	
3	
4	
5	

DESIGNED BY:	DLL
DRAWN BY:	DLL
APPROVED BY:	EBM
DATE:	9/25/17
SCALE:	

JEMEZ ROAD BUS TURNOUT



INCORPORATED COUNTY OF LOS ALAMOS
 PUBLIC WORKS DEPARTMENT
 1000 CENTRAL AVE., SUITE 160
 LOS ALAMOS, NEW MEXICO 87544
 (505) 662-8150 FAX: (505) 662-8109

SHEET
1 of 1