

PARTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

EMCO of Santa Fe LLC

City of Santa Fe

This Partial Settlement Agreement and Mutual Release (“Agreement”) is entered into as of the 19 day of May, 2026 (the “Effective Date”), by and between:

EMCO of Santa Fe, LLC, a New Mexico limited liability company (“EMCO”); and

The City of Santa Fe, a New Mexico municipal corporation (the “City”).

EMCO and the City are referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. On-Call Construction Contract. In or around May 2023, the City and EMCO entered an on-call construction contract for roadways and trails construction services (the “On-Call Construction Contract”).

B. Arroyo de los Chamisos Project. In or around February 2023, EMCO and the City entered a Construction Contract for Erosion Control and Bank Repair at Arroyo de los Chamisos (the “ALC Contract”), pursuant to which EMCO performed erosion control and repair work (the “Arroyo Project”). Disputes arose between the Parties concerning, among other things, additional work performed by EMCO following storm damage, the adequacy of the design, and the City’s rejection of Change Order No. 7 and Pay Application No. 6. EMCO contends that the City owes \$238,697.24 for work completed on the Arroyo Project, together with Prompt Payment Act penalties and attorney’s fees.

C. Calle Angelina Mill and Fill Project. EMCO was awarded the Calle Angelina Mill and Fill Project under the On-Call Construction Contract. After completing the work, EMCO submitted Pay Application No. 1 in the amount of \$119,696.05 on March 18, 2026. Striping remediation was completed on April 13, 2026. Payment was made on May 15, 2026.

D. Mediation. The Parties participated in a Public Works Mediation on May 19, 2026, before mediator Peter Wirth, and have agreed to resolve the Arroyo Project and Calle Angelina Project claims on the terms set forth herein, without admission of liability by any Party.

E. Scope. This Agreement fully and completely resolves only the Arroyo Project and Calle Angelina Project claims identified herein.

TERMS AND CONDITIONS

1. **Settlement Payment.** In full and complete satisfaction of all claims asserted by EMCO arising from or related to the Arroyo Project and the Calle Angelina Project, including but not limited to unpaid pay applications, change orders, Prompt Payment Act penalties, and attorney's fees, the City shall pay to EMCO the sum of Two Hundred Thousand Dollars (\$200,000.00) (the "Settlement Payment").
2. **Payment Terms and Timing.** The City shall tender the Settlement Payment by check or ACH transfer payable to EMCO of Santa Fe, LLC no later than May 31, 2026. If the Settlement Payment is not received by EMCO by May 31, 2026, interest shall accrue on the unpaid balance at the rate of 1.5% per month, compounded monthly, from the thirty-first (31st) day after the Effective Date until the date of actual payment, and EMCO shall be entitled to recover its reasonable attorney's fees incurred in enforcing this Agreement.
3. **EMCO's Release.** Conditioned upon and effective upon receipt of the Settlement Payment in full, EMCO, on behalf of itself and its members, managers, officers, employees, agents, successors, and assigns, hereby releases and forever discharges the City and its officers, employees, agents, attorneys, successors, and assigns (collectively, the "City Released Parties") from any and all claims, demands, causes of action, suits, damages, debts, obligations, and liabilities of every kind and nature, whether known or unknown, that arise from or relate to (a) the Arroyo de los Chamisos Project; and (b) the Calle Angelina Mill and Fill Project, including without limitation all claims for payment, Prompt Payment Act penalties, and attorney's fees asserted in connection with those projects through the Effective Date. This release does not extend to any claims arising under the On-Call Construction Contract price escalation dispute, the Agua Fria Project, or any project not expressly identified in this Agreement.
4. **City's Release.** Effective upon the Effective Date, the City, on behalf of itself and its officers, employees, agents, successors, and assigns, hereby releases and forever discharges EMCO and its members, managers, officers, employees, agents, attorneys, successors, and assigns (collectively, the "EMCO Released Parties") from any and all claims, demands, causes of action, suits, damages, defenses, and set-offs of every kind and nature, whether known or unknown, that arise from or relate to the Arroyo de los Chamisos Project or the Calle Angelina Mill and Fill Project through the Effective Date.
5. **No Admission of Liability.** This Agreement is a compromise of disputed claims and shall not be construed as an admission of liability, wrongdoing, or fault by any Party. No Party shall use this Agreement as evidence of liability in any proceeding.
6. **Scope.** This Agreement fully and completely resolves only the Arroyo Project and Calle Angelina Project claims identified herein.
7. **Pay Application No. 10.** The City hereby acknowledges and confirms receipt of EMCO's Pay Application No. 10 in the amount of \$150,763.99, submitted October 1, 2025. The City shall certify Pay Application No. 10 within ten (10) calendar days of May 19, 2026, that is, no later than May 29, 2026. Certification shall constitute the City's determination that the work covered by Pay Application No. 10 has been performed and that the amount claimed is not disputed, except for any specific portion identified in writing as disputed in accordance with the New Mexico Prompt Payment Act, NMSA 1978, §§ 57-28-1 et seq. Upon certification, all

payment obligations of the City with respect to Pay Application No. 10 shall be governed in full by the Prompt Payment Act, including without limitation the accrual of interest penalties at 1.5% per month or portion thereof from the twenty-second (22nd) day after the date of certification, and EMCO's right to recover attorney's fees under NMSA § 57-28-11 for any late payment.

8. **Change Order No. 6.** EMCO has submitted Change Order No. 6 for additional traffic control performed on the Agua Fria Project. The City shall complete its review of Change Order No. 6 and issue written approval or denial within seven (7) calendar days of the Effective Date. Any denial shall be in writing and shall state with specificity the contractual or factual basis for the denial. If the City approves Change Order No. 6, the approved amount shall be incorporated into Pay Application No. 11 as provided in Section 9 below. If the City denies Change Order No. 6 in whole or in part, EMCO's rights to pursue recovery of the denied amount through any available contractual or legal remedy are expressly preserved, and EMCO shall submit Pay Application No. 11 for the undisputed amounts without inclusion of the denied amount and without prejudice to any such right.
9. **Pay Application No. 11.** Following the City's written action on Change Order No. 6 pursuant to Section 8 above, EMCO shall submit Pay Application No. 11 to the City. The Prompt Payment Act shall govern all payment obligations of the City with respect to Pay Application No. 11 in full, including the accrual of interest penalties and EMCO's right to attorney's fees for any late payment.
10. **Price Escalation Dispute -- Preserved.** EMCO's claim for the price increase for work performed during the May 2024 through April 2025 contract year and the May 2025 to April 2026 contract year under the On-Call Construction Contract is not resolved by this Agreement. All claims and defenses of the Parties with respect to that dispute are preserved in their entirety.
11. **Final Walk-Through.** Following PNM's service reconnection via the new permanent utility pole and the removal of the PNM temporary service pole currently located at the project site, the Parties shall cooperate in good faith with New Mexico Department of Transportation to schedule the final walk-through. EMCO shall provide written notice to the City's designated project representative within two (2) business days of learning of the pole's removal, and the Parties shall confirm the walk-through date in writing within that same period.
12. **No Implicit Acceptance.** No Pay Application or Change Order is accepted via this agreement. The City will review submitted pay applications and change orders without undue delay. The City preserves any and all contractual rights pursuant to Paragraph 23 and applicable statute and/or regulation to audit EMCO billings on Agua Fria and to recover excessive or illegal payments.
13. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of New Mexico. Any dispute arising from this Agreement shall be resolved in the First Judicial District Court, County of Santa Fe, State of New Mexico.
14. **Attorney's Fees and Enforcement.** In the event of a dispute over the enforcement of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs incurred in connection with such enforcement action.
15. **Waiver of Subrogation.** EMCO, on behalf of itself and its insurers, hereby waives any and all rights of subrogation against the City Released Parties with respect to the Arroyo de los

Chamisos Project and the Calle Angelina Mill and Fill Project. To the extent any insurer of EMCO has paid, or hereafter pays, any amount in connection with a claim arising from either of those projects, EMCO represents and warrants that it has obtained, or will obtain prior to the Effective Date, a written waiver of subrogation from each such insurer as to any claims against the City Released Parties. EMCO shall provide written confirmation of any such waiver upon the City's written request.

16. **Indemnification Against Subrogation Claims.** EMCO shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the City Released Parties from and against any and all claims, demands, causes of action, judgments, losses, costs, and attorney's fees asserted by any insurer, surety, or other third party claiming by, through, or under EMCO by way of subrogation, assignment, or any other derivative right arising from or related to the Arroyo de los Chamisos Project or the Calle Angelina Mill and Fill Project. This indemnification obligation survives the Effective Date and the payment of the Settlement Payment and is not subject to the limitations of EMCO's release in Section 3 of this Agreement.
17. **Anti-Donation Clause Compliance.** The Parties expressly acknowledge and agree that the Settlement Payment constitutes fair and reasonable consideration for the compromise and settlement of bona fide, disputed claims by EMCO for compensation for construction services actually rendered and work actually performed for the benefit of the City on the Arroyo de los Chamisos Project and the Calle Angelina Mill and Fill Project, and is not a gift, donation, or gratuity within the meaning of Article IX, Section 14 of the New Mexico Constitution. The Parties further acknowledge that the Settlement Payment represents the City's good-faith determination of its reasonable exposure on the disputed claims, and that the City receives adequate public benefit and consideration in exchange, including the resolution of litigation risk, the avoidance of additional accruing interest and attorney's fee exposure under the New Mexico Prompt Payment Act, and the discharge of the City's obligation to pay for public works services rendered. This Agreement has been reviewed and approved by the City's legal counsel and, to the extent required by applicable law or City ordinance, by the governing body of the City, as a lawful exercise of the City's authority to settle claims arising from public works contracts.
18. **City's Ongoing Prompt Payment Act Compliance.** The City affirmatively represents and agrees that, from and after the Effective Date, it shall process and pay all pay applications submitted by EMCO on the Agua Fria Project in full good faith and in conformance with the New Mexico Prompt Payment Act, NMSA 1978, §§ 57-28-1 et seq. Specifically and without limitation, the City shall: (a) pay all undisputed pay application within twenty-one (21) days of submission or reject disputed pay applications within seven (7) days together with a written statement of the specific basis for any rejection or withholding; (b) pay all interest penalties accruing under the Act at the rate of 1.5% per month or portion thereof from the twenty-second (22nd) day after submission of any undisputed pay application that is not timely paid; and (c) not withhold or retain any amounts from EMCO's pay applications except as expressly authorized by applicable law and in accordance with the procedures required by the Act. Nothing in this Section limits EMCO's right to pursue all remedies available under the Prompt Payment Act, including attorney's fees under NMSA § 57-28-11, for any violation of this Section or the Act.
19. **Authority.** Each Party represents and warrants that the person signing this Agreement on its behalf has full authority to do so, and that all necessary corporate, governmental, or


organizational approvals required to authorize execution and performance of this Agreement have been obtained. The City's signatory further represents that this Agreement has been authorized pursuant to applicable City ordinance, resolution, or charter authority, and that the Settlement Payment has been or will be appropriated from lawfully available City funds prior to payment.

- 20. **Entire Agreement.** This Agreement, together with the concurrent Partial Settlement Agreement and Agreed Payment Schedule, constitutes the entire agreement of the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations, and understandings. This Agreement may be amended only by a written instrument signed by both Parties.
- 21. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Electronic signatures shall be deemed valid and enforceable to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

EMCO OF SANTA FE, LLC

CITY OF SANTA FE

By: 
Name: Katharine Fishman
Title: Chief Executive Officer
Date: 5/19/2026

By: BRYAN MOYA
Name: Bryan Moya
Title: Interim City Manager
Date: 05/21/2026

Date: _____

Date: _____

IN WITNESS WHEREOF, the City of Santa Fe has executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

BRIAN MOYA

BRIAN MOYA, INTERIM CITY MANAGER

DATE: 05/21/2026

ATTEST:

GERALYN CARDENAS



GERALYN CARDENAS, CITY CLERK

CG

CITY ATTORNEY'S OFFICE:

Kevin L. Nault

Kevin L. Nault (May 21, 2026 08:51:46 MDT)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Andrea Phillips

ANDREA PHILLIPS (May 21, 2026 11:11:11 MDT)

ANDREA PHILLIPS, INTERIM FINANCE DIRECTOR

ORG/OBJ: 2310411/555900

Final Settlement Agreement

Final Audit Report

2026-05-26

Created:	2026-05-20
By:	KANDRA PAYNE (klpayne@santafenm.gov)
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Transaction ID:	CBJCHBCAABAAfSPobmK4tYa-TgpcP4OejVGu_HHJxT7l

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-  Signer klnault@santafenm.gov entered name at signing as Kevin L. Nault
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Signature Date: 2026-05-21 - 5:19:37 PM GMT - Time Source: server- IP address: 174.240.20.57 - Signature Appearance Selected: MOBILE_IMAGE



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Decline reason: Kandra, can you please route this through Erika Quintana before me so that she can add an Item # to this, log it in to our spreadsheet and initial by my signature? If you just send it to her, she can prepare it for my signature. Thanks,G

2026-05-26 - 5:57:36 PM GMT- IP address: 63.232.20.2

Signature: *Erika Quintana*

Email: efquintana@santafenm.gov