

PUBLIC IMPROVEMENT DISTRICT 2007-1
IN THE VILLAGE OF ANGEL FIRE, NEW MEXICO
RESOLUTION NO. 2009-11

A RESOLUTION TO FULFILL BONDING REQUIREMENTS BY
CERTIFYING THAT THE PUBLIC IMPROVEMENT DISTRICT 2007-1
("District") IN THE VILLAGE OF ANGEL FIRE, NEW MEXICO WILL NOT
SUBMIT PROJECT COSTS IN EXCESS OF THE ALLOWABLE FUNDING.

WHEREAS, pursuant to Sections 5-11-1 through 5-11-27, NMSA 1978 as amended (the "Public Improvement District Act") and the Village of Angel Fire, New Mexico (the "Village") Resolution No. 2007-34, on February 14, 2008, the Village adopted Resolution No. 2008-07 (the "Formation Resolution") creating the Village of Angel Fire Public Improvement District No. 2007-1 (the District); and

WHEREAS, the Formation Resolution authorized the Board of Directors of the District (the "Board"), among other things, to: (i) finance and construct certain public infrastructure improvements ("Improvements") upon real property in the District ("Real Property"); and (ii) impose a District special levy upon the Real Property within the District (the "District Special Levy") to finance the Improvements; and

WHEREAS, the District will fulfill bonding requirements by certifying that the District will not submit project costs in excess of the allowable funding. The District desires to ratify Amendment No. 3 of the contract between the District and the Design/Builder executed by Chairman James LeBus on August 21, 2009.

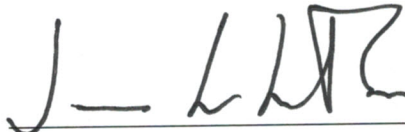
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANGEL FIRE PUBLIC IMPROVEMENT DISTRICT:

1. The authorization of Amendment No. 3 executed by Chairman LeBus on August 21, 2009 is hereby ratified. This Resolution is to fulfill bonding requirements by Certifying that the Public Improvement District will not submit project costs in excess of the allowable funding. Therefore, his designees shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated by this Resolution.

2. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

3. Effective Date. This Resolution shall be effective immediately.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE ANGEL FIRE
PUBLIC IMPROVEMENT DISTRICT No. 2007-1 THIS 27th DAY OF AUGUST, 2009.

A handwritten signature in black ink, appearing to be 'J. L. Lutz', written over a horizontal line.

Chairperson

ATTEST:

A handwritten signature in blue ink, appearing to be 'John A. Dancy', written over a horizontal line.
District Administrator

District Clerk

AMENDMENT NO. 3

This Amendment No. 3 to the *Standard Form of Agreement Between Owner and Design/Builder on the Basis of a Stipulated Price (Revised)* (EJCDC D-520 [2002]) for Angel Fire Public Improvement District 2007-1 Roadway and Infrastructure Improvements Design-Build Project (hereinafter "Agreement") is entered into by Owner and Design/Builder and is intended to modify the Agreement including, without limitation, Articles 4.01 and 8.01, and Articles 1.01 §27, 2.04 and 5.01 of the *Standard General Conditions of the Contract Between Owner and Design/Builder (Revised)* (EJCDC D-700 [2002]) (hereinafter "General Conditions") and Amendment Nos. 1 & 2 as follows:

1. Phase II of the Project will be divided into two sub-phases. Sub-phase IIA shall consist of work to be performed and materials to be purchased through April 30, 2010 in accordance with Design/Builder's Phase II Schedule of Values dated August 25, 2009. The not to exceed price for Sub-phase IIA shall be **Eight-Million-Five-Hundred-Thousand Dollars (\$8,500,000) plus NMGRT**. Owner will issue a Notice to Proceed (NTP) for Sub-phase IIA within five (5) calendar days of the date of this Amendment.
2. Sub-phase IIB will consist of all remaining Phase II work. Owner is not obligated to issue a NTP for Phase IIB if, in Owner's sole discretion, it determines that it does not have adequate funds to proceed with Phase IIB. In the event that Owner determines that it will not proceed with Phase IIB, it will promptly terminate the Agreement for Owner's convenience as provided in the General Conditions. If Owner does not issue a NTP for Phase IIB on or before April 1, 2010, Design/Builder may, either immediately terminate the Agreement for Design/Builder's convenience or request that the Owner negotiate a revised Contract Price and Contract Schedule for Phase IIB work that cannot be completed within the Contract Time. If negotiations are not successful either Design/Builder or Owner may terminate for convenience.
3. Design/Builder shall submit a preliminary progress schedule for Phase IIA within ten (10) days of this NTP. Upon receipt of a NTP for Phase IIB, Design/Builder shall provide a preliminary schedule for the entire project incorporating the accepted and updated progress schedule for Phase IIA.
4. Design/Builder shall provide performance and payment bonds in the form required by the Contract Documents. Upon execution of this Amendment No.3, Design/Builder shall provide such bonds for 100% of the total Phase IIA price. Upon Owner's issuance of a NTP for Phase IIB, Design/Builder shall, within seven (7) days, provide substitute payment and performance bonds for 100% of the entire Contract Price.

5. This Amendment shall be a Contract Document as that term is defined in the General Conditions and shall be incorporated as though specifically enumerated in Article 8.01 of the Agreement. The amendment is intended to be consistent with the other Contract Documents except as specifically provided herein. In the event that this Amendment conflicts with any other Contract Document, this Amendment shall control.

This Amendment No. 3 is agreed to and effective on this 21 day of August, 2009.

Owner: Angel Fire Public Improvements District 2007-1

J L L Bm

(signature)

By: JAMES L LEBUS - CHAIR

(printed name and title)

Design/Builder: AUI Inc.

Kari Biernacki

(signature)

By: Kari Biernacki, Vice President

(printed name and title)

Notice to Proceed – Phase IIa

Dated: August 21, 2009

Project:	Owner:	Owner's Contract No.:
Roadway and Infrastructure Improvement Design-Build Project	Angel Fire Public Improvement District 2007-1	2009-1
Contract:	Engineer's Project No.:	
Roadway and Infrastructure Improvement Design-Build Project	HDR 90953	
Contractor:		
AUI, Inc.		
Contractor's Address: [send Certified Mail, Return Receipt Requested]		
PO Box 9825		
Albuquerque, NM 87119-9825		

In accordance with **Amendment 3** of the Contract, Phase II of the Project shall be subdivided into two (2) phases. Phase IIa shall consist of mobilization and construction activities by the Design/Builder as set forth in Design/Builder's Phase II Schedule of Values dated **August 19, 2009** and shall have a not to exceed cost of **Eight-Million-Five-Hundred-Thousand Dollars (\$8,500,000) plus NMGRT**. This document is **Notice to Proceed for Phase IIa only**.

You are notified that NTP for Phase IIa is **August 21, 2009**. On or before that date, you are to start performing your obligations under the Contract Documents. The date of Substantial Completion remains unchanged.

Before you may start any Work at the Site, Paragraph 2.01.A of the General Conditions provides that you deliver (with copies to Program Manager and other identified additional insureds) certificates of insurance and bonds which you are required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must: **n/a**

AUI, Inc

Contractor

Received by:

Kari Biennadi

Title

Vice President

Date

8-21-09

Angel Fire Public Improvement District 2007-1

Owner

Given by:

Authorized Signature

Chairman PID

Title

Date

08/21/09

Copy to Program Manager (HDR)

EJCDC No. C-550 (2002 Edition)

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Prepared by the Engineers' Joint Contract Documents Committee and endorsed by the
Associated General Contractors of America and the Construction Specifications Institute.