

DARREN K. INDYKE
DARREN K. INDYKE, PLLC

Enrout: [REDACTED]

March 28, 2019

Michael F. Menicucci, Esq.
Calvert Menicucci

Re: Zorro Ranch Rd. Improvements
49 Zorro Ranch Rd., Stanley, New Mexico

Dear Mr. Menicucci:

It was nice speaking with you last week. I appreciate you giving me time to familiarize myself with the dispute described in your letter of March 14, 2019 between my client, Zorro Management, LLC ("Zorro"), and yours, Universal Constructors, Inc. ("Universal"). I now have had a chance to review the file, and it appears to me that your letter substantially understates the nature and extent of the defects in the paving work performed by Universal at Zorro Ranch (the "Ranch") at the end of Summer/early Fall of 2018.

In or about August 2018, Zorro engaged Universal, among other things, to pave three sections of roadway on the Ranch: (a) the private road to the main house on the Ranch spanning from the "Z Entrance" of that private road to the entrance of the main house complex (the "Z Road"), (b) the roadway spanning from the "Z Entrance" to a complex of buildings on the Ranch known as "Ranch Central" (the "Ranch Central Road"), and (C) the roadway spanning from Ranch Central to the main entrance of the Ranch off of State Route 41 (the "Entry Road").

In your letter, you cite as a "perceived issue" only six or seven cold joints in the roadwork on these sections. While refusing to attribute them to Universal's defective work, you also acknowledge two of the three cracks that have appeared in the Z Road. To be sure, these are among the numerous defects in Universal's paving work. However, the actual defects are far more extensive, as is the remediation that will be required to address the full extent of those defects.

There are substantial defects in Universal's paving work on all three sections of the roadway at the Ranch. At the bend approximately half way along the Z Road, there are not two, but three, major cracks across the surface of the Z Road that penetrate down through the surface of the original road. In addition, in that same section of the Z Road, the paving is unacceptably

rough and uneven. The paving is also unacceptably rough on the section of the Z Road leading to the entrance of the main house complex. The Ranch Central Road, which you refer to as the upper road, is unacceptably rough and uneven throughout its course and has several cold joints that require remediation. Moreover, the Entry Road is equally rough and uneven throughout and also has one large cold joint that requires correction. I have attached for your review only a few examples of the photographic evidence maintained by Zorro to establish the true nature and extent of the defective paving work in this matter.

Universal represented itself as a qualified paving contractor with extensive roadway experience. However, Universal has failed to deliver the consistent, smooth and uniform surface over the long stretches of roadway at the Ranch that an experienced roadway contractor should be able to provide. Further, in its original proposal, Universal failed to anticipate the requirement for additional base course to address soft spots in the roadway that I understand invariably arise in projects of this nature. When those soft spots arose in this project, Zorro was forced to agree to pay additionally for base course that it never contemplated when it approved the price of Universal's initial proposal. Moreover, an experienced roadway contractor would not have proposed to resolve the unevenly paved surface it created in the Ranch Central Road by simply re-rolling it, which Universal did in September 2018. As Universal should have known, re-rolling did not and could not fix a roadway that had already been improperly paved.

Finally, there is nothing that can justify the inadequate supervision on this job. Zorro had every right to expect close and continuous supervision from qualified professionals over the work in this \$635,000 roadway project. I understand, however, that Universal's principal, Glibert Luna, and his foreman, Beto Sanchez, rarely appeared at the job site to review its progress. In fact, when Zorro met with them at the end of January 2019, neither of these men had even viewed the final stage of the project, which involved paving the Entry Road. Consequently, neither of them were aware of the cited defects in the Entry Road until Zorro pointed them out. Had either of them monitored this project more closely, they could have and presumably would have immediately corrected or prevented the issues we now are trying to resolve.

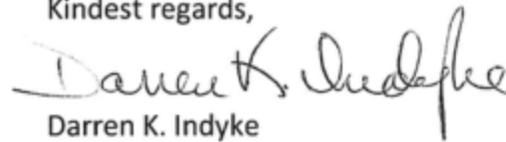
As evidence that Universal, itself, has acknowledged far more extensive defects in the work it performed than those described in your March 14 letter, I would ask you to review the attached emails dated January 3, 2019, and January 23, 2019, respectively, from Gilbert Luna to Brice Gordon. In the January 3 email, Mr. Luna acknowledged that he must resurface the entire upper road when the weather allows. On January 23, 2019, Mr. Luna emailed additional details, acknowledging to Mr. Gordon that Universal would "resurface 5,000 LF of the upper road with one inch thick hot mix asphalt overlay" and also confirmed the need to "resurface the main entrance road" with "one inch hot mix overlay." This does not specifically include the remediation of the cold joints that you mention or the defects in the Z Road that must also be addressed as part of any resolution of this matter.

All of that being said, Zorro sees no reason why this matter cannot be resolved amicably. Zorro is prepared to pay Universal the full balance it claims to be due, once Universal satisfactorily completes appropriate remediation of the full extent of the defects in the paving work at the

Ranch. To ensure payment of the balance, Zorro would be willing to place the balance in escrow with a mutually acceptable third party to whom would be provided joint instructions for the release of the funds on reasonable terms that you and I will negotiate.

Please pass this on to your client so we may resolve this matter without further delay or discord. I look forward to hearing from you.

Kindest regards,

A handwritten signature in black ink, appearing to read "Darren K. Indyke". The signature is written in a cursive style with a large, stylized initial 'D'.

Darren K. Indyke





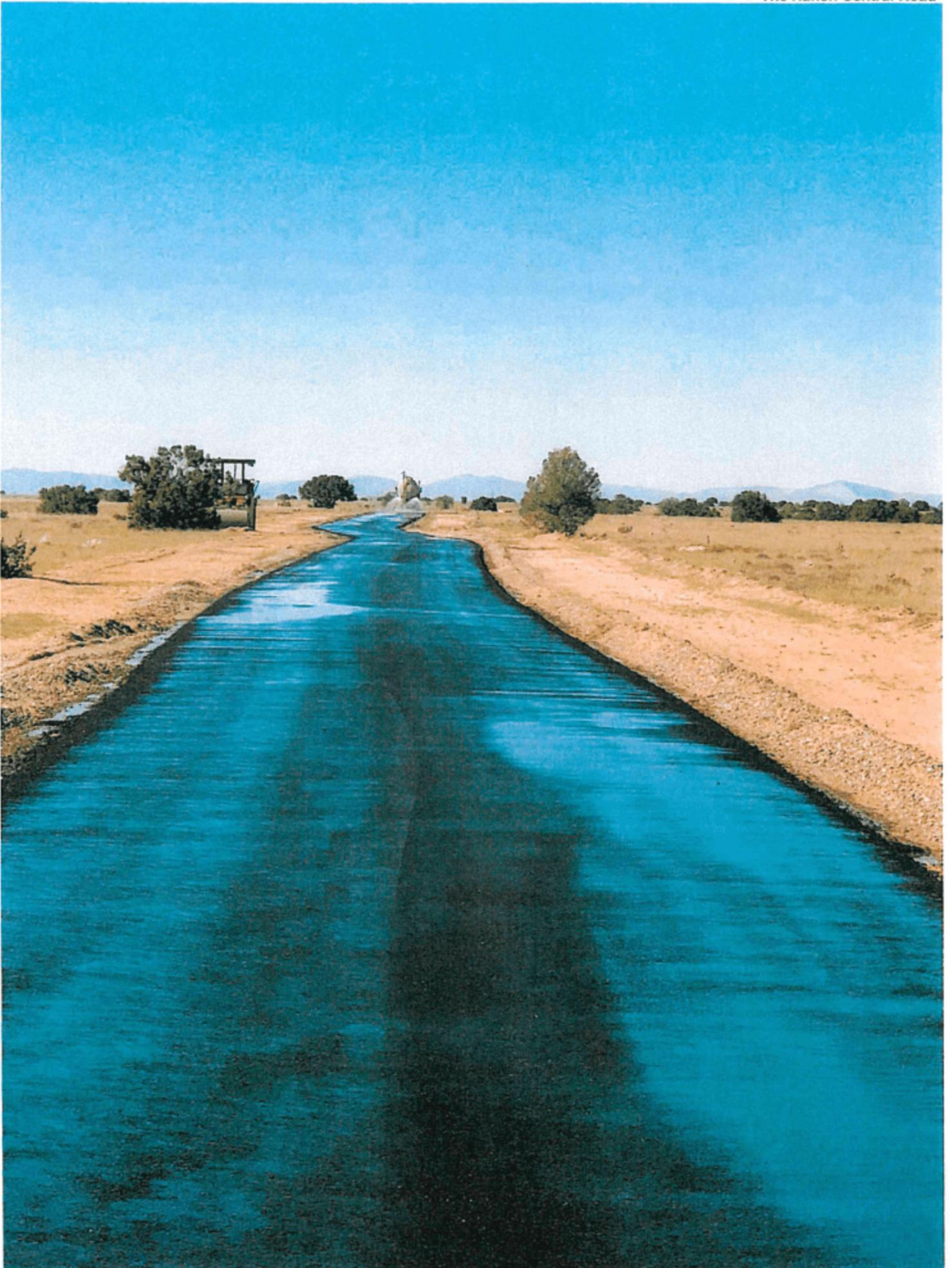


























From: [REDACTED]
Subject: Fwd: Zorro Ranch Road Project
Date: March 27, 2019 at 5:01 PM
To: [REDACTED]



Forwarded Conversation
Subject: Zorro Ranch Road Project

From: Gilbert Luna <[REDACTED]>
Date: Thu, Jan 3, 2019 at 1:39 PM
To: [REDACTED] <zdc.rt41>
Cc: Richard Kahn <[REDACTED]>

Hello Brice,
I am following up to confirm our last phone conversation in which I assured you that we are going to resurface the upper road when the weather allows. It will probably be March before it warms up enough. In the mean time, please address our past due accounts. We are owed \$ 137,869.88 for the work we did in October, and \$ 45,758.84 for November's billing. The final 5% of the contract has not yet been billed for. Please pay.
Thank you,

--



Gilbert A. Luna
President
[REDACTED]
3825 Academy Parkway North, [REDACTED]
Albuquerque, NM 87109
Cell Phone 505-401-4277
Phone: 505-884-0400
Fax: 505-344-8646

From: Richard Kahn <[REDACTED]>
Date: Thu, Jan 3, 2019 at 3:16 PM
To: Gilbert Luna <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>

gilbert,
how is it that you expect to be paid in full for work that is very very incomplete?

Richard Kahn
HBRK Associates Inc.
575 Lexington Avenue 4th Floor
New York, NY 10022
tel 212-971-1306
fax 212-320-0381
cell 917-414-7584

From: Gilbert Luna <[REDACTED]>
Date: Thu, Jan 3, 2019 at 4:02 PM
To: Richard Kahn <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>

Richard,
The work has been completed. Brice isn't happy with the ride on the upper road going to the main house and we have agreed to resurface it when the weather warms. We don't expect payment in full until that happens but we do need some payment. Please at least send the October payment.
Thank you,

--
[REDACTED]

Stanley, NM
Ph: (505) 934 2809

From: [REDACTED] zdc.rt41@gmail.com
Subject: Fwd: Zorro Ranch
Date: March 27, 2019 at 5:03 PM
To: [REDACTED]



Forwarded Conversation
Subject: Zorro Ranch

From: Gilbert Luna <[REDACTED]>
Date: Wed, Jan 23, 2019 at 12:35 PM
To: [REDACTED] <zdc.rt41>

Hello Brice,

This will serve as a follow up to our meeting on Monday to address your concerns. We will resurface 5,000 LF of the upper road with a one inch thick hot mix asphalt overlay. This work will cost us \$ 40,00.00. Also, you insist that we resurface the main entrance road from NM 41 to the ranch gate. We will place a one inch hot mix overlay on this road which will cost us \$ 26,000.00.

This work can not be done until the weather warms up in the Spring. We have not received payment for our November billing (\$ 45,758.84) nor have we billed you yet for the final 5 % of the contract amount (\$ 36,341.05). Therefore, you still hold \$ 79,682.81 to pay for overlay work that will cost us \$ 66,000.00 to complete.

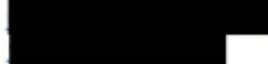
In order for this to happen, we must receive payment of our October billing (\$ 137,869.88). October's billing was for the paving around the ranch buildings and garage areas which you said were fine.

Thank you,

--



Gilbert A. Luna
President



3825 Academy Parkway North, [REDACTED]
Albuquerque, NM 87109
Cell Phone 505-401-4277
Phone: 505-884-0400
Fax: 505-344-8646

From: [REDACTED] <zdc.rt41>
Date: Thu, Jan 24, 2019 at 10:56 AM
To: Gilbert Luna <[REDACTED]>

Good Morning Gilbert

Received and will be forwarded to Owner for his review.

Thank you



Stanley, NM
Ph: (505) 934 2809

From: Brice Gordon <zdc.rt41@gmail.com>