

**AGREEMENT FOR
ROAD IMPROVEMENTS TO
LA TIERRA SUBDIVISION
SANTA FE COUNTY, NEW MEXICO**

This Agreement is made this 1st day of November 2012, by and between the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter "County") and the La Tierra Association, Inc. (hereinafter "Association").

WHEREAS, the County is responsible for maintenance, repair and improvements to these County roads within the La Tierra Subdivision;

WHEREAS, the Association has requested that a double Chip Seal application be made on some of the roads within the La Tierra Subdivision;

WHEREAS, the County has estimated that Chip Seal improvements to the roads within the subdivision, described on Exhibit "A" will cost Two Hundred Thousand Dollars (\$200,000.00) to improve;

WHEREAS, the County does not have the total amount of funds to complete the Chip Seal improvements on the County roads within the La Tierra Subdivision;

WHEREAS, the County has received a \$100,000.00 legislative appropriation for the Chip Seal improvements on the roads within the La Tierra Subdivision;

WHEREAS, the Association committed to provide a \$100,000.00 match to acquire the legislative appropriation for the Chip Seal improvements on the roads within the La Tierra Subdivision;

WHEREAS, the parties desire to enter into an agreement whereby the Association will pay up to \$100,000.00 to the County for the material costs and expenses for the Chip Seal improvements to the roads within the La Tierra Subdivision; and

WHEREAS, the Chip Seal improvements will be completed by the County using County-owned equipment, the cost for which will not be charged against the legislative appropriation or the La Tierra contribution/match;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. SCOPE.

The County will reconstruct the roads and provide a double penetration chip seal on the roads within the La Tierra Subdivision described on Exhibit "A". Such improvements, repairs, maintenance and resurfacing shall include repairing and improving roadsides, ditches and existing culverts within the road rights-of-way and chip seal resurfacing, including base course

where needed. The intent is to clean and reestablish ditches, fill and stabilize eroded ditches, rebuild eroded road shoulders, install erosion control features and repair and maintain the road surface. (All repairs, maintenance and improvements on the road identified on Exhibit "A" shall hereinafter be referred to as the "Work"). This Agreement shall include the repair and maintenance of existing road surface.

2. STANDARD.

The parties recognize that there are differing standards for new road construction versus maintenance standards of previously constructed roads and that the roads, subject to this Agreement, was originally constructed to the County's road standards at the time the La Tierra Subdivision was created. Therefore, nothing contained herein shall require the County to conduct such studies and reviews as might be necessary to determine the extent of construction required to improve such road to meet current standards of new road construction. Further, the County is not, by this Agreement, bound to improve said road to new road standards. The parties understand that all Work performed under this Agreement shall be performed according to what is determined necessary by the County relying on its experience and expertise in order to achieve reasonably safe road conditions and the reasonable elimination or reduction of the deterioration of the roads and associated problems. The parties agree that the Work will be performed according to all current and applicable "maintenance and improvement" standards only. To the extent that it is reasonable and practical and, where appropriate, the County will seek to employ the standards set forth in the New Mexico Highway Department's "Standard Specifications for Highway and Bridge Construction" (for new road construction).

3. COMMENCEMENT.

The Work contemplated under this Agreement shall commence in the Spring of 2013 and shall continue on a timely basis until completed.

4. ELIGIBLE COSTS AND EXPENSES.

The eligible costs and expenses under this Agreement shall be limited to the County's actual expenditures for materials and rental of equipment necessitated by the non-availability of the County's own equipment, materials and services. Eligible costs and expenses shall also include payments to any private contractors procured by the County necessitated by the non-availability of County employees who are qualified to perform the Work involved in this project or the County's inability to provide materials and/or equipment necessary to complete the Work ("Eligible Costs"). The County will not use inmate or prison labor to perform any of the Work under this Agreement.

5. PAYMENT.

The Association hereby represents that it has deposited in an Association account the total amount of One Hundred Thousand Dollars (\$100,000.00) which is dedicated to the payment of Eligible Costs.

Upon completion of the work or a portion thereof, the County will prepare an itemized statement, which will be provided to the Association showing the specific work completed, and all Eligible Costs. The Association may request, and shall receive, documentation supporting the statement of Eligible Costs and may also audit the accounting. The County agrees to expend its legislative appropriation for Eligible Costs before initiating reimbursement requests for Eligible Costs from the Association.

6. ACCOUNTING AND APPLICATION.

The County shall account for the receipt of reimbursements by the State of New Mexico from the legislative appropriation and all payments by the Association under a separate line item in the County's budget. All accounting shall be completed pursuant to generally accepted accounting practices and applicable New Mexico statutes. No payment made under this Agreement shall be considered a tax or assessment of any nature.

7. TERM.

This Agreement shall commence as set forth in Paragraph 3 above and terminate upon completion of the work or December 1, 2014, whichever is earlier. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party, provided that the County shall be required to complete any Work in progress and the Association shall be required to pay for any Work completed. The foregoing is subject to the availability of funds by both parties and the determination of the availability of County funds and resources is in the sole discretion of the County.

8. TORT CLAIM LIABILITY.

Nothing contained herein shall be deemed a waiver by the County of its rights pursuant to NMSA 1978, Section 41-4-1, et. seq., as amended, also known as the Tort Claims Act. The County hereby acknowledges and agrees that by entering into this Agreement, the Association shall not incur any liability to any third party or entity for any injury or damage resulting from the work completed or in progress. The Association does not have the right to control the performance of the Work in any manner.

9. MISCELLANEOUS.

This Agreement:

(a) constitutes the entire agreement between the parties and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto;

(b) shall be construed and enforced in accordance with the laws of the State of New Mexico;

(c) shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives;

(d) may be modified only by a writing duly executed by the parties;

(e) may not be assigned or delegated by either party without the written consent of the other party. Any purported assignment without such consent shall be void and shall entitle the other party to the remedies allowed herein for a default in the performance of this Agreement;

(f) is the product of mutual effort and shall not be construed against one party in favor of the other.

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

If any provision of this Agreement, or application thereof, shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and any application of its other provisions shall remain in full force and effect.

The title and paragraph headings used in this Agreement are solely for the convenience of the parties and shall not be used to explain, construe, modify or aid in the interpretation of the provisions of this Agreement.

10. NOTICE.

All notices required to be given to the County shall be mailed (pre-postage paid) to the County at:

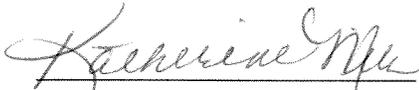
Santa Fe County
Attn: Legal Department
P.O. Box 276
Santa Fe, N.M. 87504-0276

All notices required to be given to the Association shall be mailed (pre-postage paid) to the Association at:

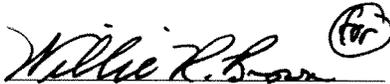
La Tierra Association, Inc.
P.O. Box 90039
Albuquerque, N.M. 87199

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year last shown below.

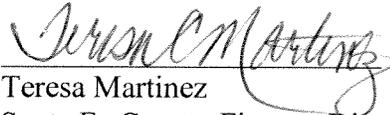
SANTA FE COUNTY

 11.1.12
Katherine Miller Date
Santa Fe County Manager

APPROVED AS TO LEGAL FORM:

 10/10/12
Stephen Ross Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL:

 10/25/12
Teresa Martinez Date
Santa Fe County Finance Director

LA TIERRA ASSOCIATION, INC.

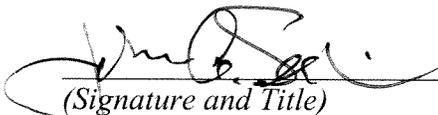
 10/11/12
(Signature and Title) Date
President

EXHIBIT "A"

LA TIERRA SUBDIVISION

COUNTY MAINTAINED ROADS

<u>ROAD:</u>	<u>BEGIN:</u>	<u>END:</u>	<u>LENGTH:</u>	<u>ESTIMATE:</u>
Vuelta Tomas	Paseo La Tierra	Dead end	0.48 miles	
Vuelta Linda	Estrada Redonda	Dead end	0.20 miles	
Vuelta Muerdago	Camino Montuoso	Dead end	0.38 miles	
Vuelta Montuoso	Vuelta Susana	Dead end	0.35 miles	
Estrada Redonda	Estrada Maya	Vuelta Linda	<u>0.34 miles</u>	
				1.75 miles