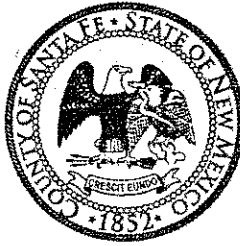


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: *October 30, 2017*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director MK 10/30/17*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting November 14, 2017*

Approval of a Cooperative Project Agreement with the New Mexico Department of Transportation to Provide Federal Highway Administration (FHWA) Funds in the Amount of \$389,062 to the County for Construction of a Portion of the Santa Fe Rail Trail (Public Works / Colleen Baker)

SUMMARY:

The purpose of this Cooperative Agreement is to provide \$389,062 in Federal Highway Administration (FHWA) funds to the County to construct the Santa Fe Rail Trail from Avenida Eldorado to Spur Ranch Road.

BACKGROUND:

The Santa Fe Rail Trail is a regional, multi-modal trail that runs along the historic Atchison, Topeka, Santa Fe Railway from the depot in Santa Fe, NM to Lamy, NM. Santa Fe County manages the portion of the trail from I-25 to NM 285. Currently the unimproved, two track, maintenance road for the railway serves as the trail. Santa Fe County hired Loris and Associates, Inc. to design improvements to the trail in order to 1) comply with federal setback requirements for a trail along an active railroad; 2) correct drainage and erosion problems along the trail corridor; and 3) make the trail more accessible to a wider range of users as primary multi-modal recreational trail. Loris and Associates completed the design of the trail in 2011. The County completed construction of the trail from Rabbit Road to the Spur Trail in 2012, Spur Trail to Avenida Vista Grande in 2016, and Avenida Vista Grande to Avenida Eldorado in 2017.

In April 2017 the New Mexico Department of Transportation (NMDOT) awarded Santa Fe County a Transportation Alternatives Program (TAP) grant in the amount of \$389,062 for 85% of the total project cost of \$455,363 to construct the Santa Fe Rail Trail from Avenida Eldorado to Spur Ranch Road. Santa Fe County has budgeted 2016 general obligation bond revenues to provide the required matching funding in the amount of \$66,301. The purpose of the Cooperative Project Agreement with the New Mexico Department of Transportation is to provide the FHWA funds to the County for construction of the trail.

ACTION REQUESTED:

Approval of Cooperative Project Agreement with the New Mexico Department of Transportation to provide Federal Highway Administration (FHWA) funds in the amount of \$389,062 to the County for construction of a portion of the Santa Fe Rail Trail.

Contract Number

Vendor Number

0000054297

Control Number

S100550

COOPERATIVE PROJECT AGREEMENT-CONSTRUCTION WORK

This Agreement is between the NEW MEXICO DEPARTMENT OF TRANSPORTATION ("Department"), and the County of Santa Fe ("Public Entity"), collectively referred to as the "Parties." This Agreement is effective as of the date of the last party to sign it on the signature page below.

In consideration of the covenants contained herein and pursuant to NMSA 1978, Section 67-3-28, the Parties agree as follows:

1. Purpose:

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the Public Entity for a transportation project described in the Public Entity's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). The deliverables under this Agreement may be referred to as the "Construction Work" for the project, which is referred to interchangeably as "Project" or "Project Control No. S100550." The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. Additionally, the purpose of this Agreement is to ensure that the scope of work is maintained throughout the life of the Project.

2. Funding:

- a. The total funding for Project Control No. S100550, is **Four Hundred Fifty Five Thousand Three Hundred Sixty Three Dollars and No Cents (\$455,363)** which will be shared by the Parties as follows:

1. **FFY 2018 TRANSP. ALT. SMALL URBAN (TAPS) Funds**

Department's 85.44% share

\$389,062

Construction of Multi-use Trail on the Santa Fe Rail Trail-Segment 5, from Avenida Eldorado to Spur Ranch Road. (Description as per STIP database and Agreement Request Form, this agreement only pertains to the construction portion of Project Control No. S100550.)

2. **County's matching 14.56% share**

\$66,301

For the purpose stated above.

3. **The Total Project (Construction Work) Funding**

\$455,363

- b. The Public Entity shall pay all Project costs that exceed the total funding amount specified in this section and all costs determined to be ineligible for reimbursement under the terms of the listed funding sources.

The EE shall be submitted to the Department's North Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.

- d. After the project is advertised, bids shall be submitted in accordance with the advertisement for bids. The Public Entity will open sealed bids in accordance with the Public Entity established procurement procedures. The Department will review the Public Entity's determination of lowest responsive bid to determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106. The Public Entity's responsive low bid for the project, including approved alternates, will be compared to the amount obligated. The Department will allow a 15% increase over the base bid and any approved alternates to cover Engineering and Contingencies and Gross Receipts Tax. If the difference between the FHWA's obligation amount and the responsive low bid plus the 15% is within \$250,000, the amount of funds obligated will not change. If the difference between the obligation amount and the responsive low bid plus the 15% exceeds \$250,000, the difference will be deducted reducing the amount of funds obligated.
- e. The Public Entity may not make changes and add extra work to the Project after the construction contract has been awarded in order to take advantage of the project Costs as per the agreement amount. Pursuant to 23 CFR 630 and 23 CFR 635, specifically 23 CFR 635.120, extra work may be added to a project as a change order if such work could NOT have been reasonably anticipated at the time of letting and such work is necessary to the completion of the project. If at any point in the construction, the Public Entity identifies extra work as defined by the Department's specifications, current edition as of the date of execution of this agreement, that may be justified by incorporation into the contract, this proposed work shall be reviewed by the Department (District Engineer and Construction Liaison Engineer or Designee), which must concur prior to the commencement of the extra work.

3. Method of Payment – Reimbursement:

The Department's District T/LPA Coordinator shall reimburse the Public Entity upon receipt of payment requests for the purposes stated in Section 2, with supporting documentation as determined and/or approved by the Department and Federal Regulations, certifying that costs have been incurred in compliance with this Agreement. **Appendix B** will also need to be submitted with Payment requests. Invoices will be accepted monthly, but must be submitted at a minimum quarterly to the Department's District T/LPA Coordinator. Payment requests shall be identified by the project control number and certified that the requests accurately reflect work completed, amount due and the remaining Agreement balance. All expenses must be actual, rather than estimated, and listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed. Incomplete submittals will be returned to the Public Entity for corrections. Only invoices for approved/undisputed work will be processed.

The Department's District T/LPA Coordinator will not reimburse the Public Entity for costs incurred prior to obligation of federal funding and the full execution of this Agreement, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Final payment requests shall be submitted to the Department's District T/LPA Coordinator within thirty (30) calendar days of physical completion of the project and prior to the termination date identified within Section 20.

4. Public Entity Shall:

- a. Act in the capacity of the lead agency for the Project.
- b. Use the Project Control Number in all correspondence and submittals to the Department.
- c. In the event a contract term extension is needed, provide written notice to the Department sixty (60) days prior to the expiration date identified in Section 20 below to ensure timely processing.
- d. Obtain authorization of final Contract Book from Department's Region T/LPA Coordinator prior to advertisement.
- e. Provide notice to the Department's North Region T/LPA Coordinator of the bid tabs and the lowest responsive bidder.
- f. Pay all costs, perform all labor and supply all material for the Project, or procure construction services to perform all labor and supply all materials for the Project.
- g. Identify a Project Manager who shall be the single point of contact for all communications to and from the Department.
- h. Advertise, let, and supervise the construction of Project Control No. S100550 using applicable federal, state or local requirements or procure services to accomplish these tasks.
- i. Ensure and maintain proof of compliance with 23 CFR Section 635.410 and ensure construction materials, including those associated with utility facilities and relocations, to be in accordance with "Buy America" requirements which require proof of origin and place of manufacture of iron and steel products and materials to be made in America. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- j. Ensure construction of the Project complies with Title II of the Americans with Disabilities Act of 1990 (ADA), implemented by 28 CFR 35, Section 504 of the 1973 Rehabilitation Act, implemented by 49 CFR 27, NMDOT Pedestrian Access Details, and NMSA 1978 Sections 67-3-62 and 67-3-64. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- k. If the Project will be built with Public Entity resources, you will need to coordinate with your Region T/LPA Coordinator to obtain prior FHWA approval. Then prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District T/LPA Coordinator.
- l. The Public Entity shall ensure that the contractor and all subcontractors register and enter all required data into B2Gnow and LCPTracker programs. Assistance can be obtained in this effort by contacting the Construction and Civil Rights Bureau (CCRB) as identified in Section 11. The Public Entity shall verify all entries by the contractor and all subcontractors into the B2Gnow and LCPTracker programs. Failure by the Public Entity to adhere to this reporting provision may result in the Project being deemed ineligible for reimbursement.
- m. Ensure construction activities comply with approved design, environmental commitments, right of way activities, utility coordination, ITS, railroad requirements and construction management and testing.
 1. Construction management, testing and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations. Prior approval will be needed from the Department's District T/LPA Coordinator's before awarding the services.

2. The Public Entity's award of contracts for construction management, testing or inspection services shall be independent and shall not be procured through the construction contractor. Unless states otherwise in the Specifications.
- n. Develop and execute the Project in accordance with the Department's current Specifications or approved equal by the District Engineer and concurred by the State Construction Engineer, and the Tribal/Local Public Agency Handbook.
- o. Comply with **Appendix A**, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
- p. Timely submit and receive all required environmental documentation and authorization for the construction phase to the Project. Copies of all approvals shall be provided to the District T/LPA Coordinator prior to construction.
- q. Shall register with www.sam.gov and DUNS.
- r. Conduct an audit pursuant to OMB Super Circular Section 200.501, if the Public Entity has received a combined \$750,000 in Federal Funding.

5. The Department Shall:

- a. Assign the District T/LPA Coordinator as the representative to provide technical assistance to develop, monitor and oversee progress under this Agreement during Construction.
- b. Assign a T/LPA Construction Liaison Engineer to oversee the Project for Federal funding compliance.
- c. The District T/LPA Coordinator will timely process accepted requests for reimbursement.

6. Both Parties Agree:

Upon termination of this Agreement, the Public Entity shall account for any remaining property, materials or equipment that belongs to the Department, and dispose of it as directed by the Department.

7. Project Responsibility:

The Public Entity is solely responsible for ensuring that the Project is carried out to completion. The improvements and services required under this Agreement shall remain the full responsibility of the Public Entity unless stated otherwise in this agreement.

8. Public Entity Sole Jurisdiction:

Unless otherwise specified in this agreement the Department is not incorporating this Project into the State Highway System and ownership of the project shall remain with the Public Entity including maintenance, unless otherwise specified or legally agreed upon.

9. Legal Compliance:

The Public Entity shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement. These laws include, but are not limited to: FHWA memorandums; Authorization to proceed and project monitoring at 23 CFR Part 630.106; Agreement provisions at 23 CFR Part 630.112; Project approval and oversight at 23 U.S.C. § 106 [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; Titles VI and VII of the Civil Rights Act of 1964

and related statutes; Disadvantaged Business Enterprise Program, 49 CFR Part 26; External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements, 23 CFR Part 230; the Americans with Disabilities Act, 42 §§ 12101-12213 and 28 CFR Parts 35 and 36; the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252; 2 CFR Part 170; and 2 CFR Part 25.

Additionally, the Public Entity shall comply with all applicable federal, state and local laws and regulations governing environmental issues, workplace safety, employer-employee relations and all other laws and regulations governing operation of the workplace. The Public Entity shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

10. Federal Grant Reporting Requirements:

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This information will be made available to the public on www.USASpending.gov. For this reporting Public Entity is the "subgrantee".

The type of information the Department is required to report includes:

- a. Name of subgrantee receiving the award;
- b. Amount of award;
- c. Funding Agency;
- d. NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants;
- e. Program source;
- f. Award title descriptive of the purpose of the funding action;
- g. Location of the subgrantee, which includes the Congressional District;
- h. Place of performance of the program or activity, which includes the Congressional District;
- i. Unique identifier – DUNS -- of the subgrantee and its parent organization, if one exists; and,
- j. Total compensation and names of the top five executives of the subgrantee. This information is required, if the subgrantee in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Public Entity's grant application and standard reports. The subgrantee will be required to provide the total compensation and names of the subgrantee's top five executives, if applicable, and shall register with www.sam.gov and DUNS and provide that information to the Department.

More information on the Transparency Act may be located via the following links: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>; and, <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

11. Disadvantaged Business Enterprise (DBE) Program:

- a. DBE Goal Setting – In accordance with 49 CFR Part 26, The Department establishes an overall state DBE goal tri-annually. In the event the Department assigns a project specific DBE goal, the Public Entity is required to meet that goal through its contractors or demonstrate good faith efforts. The Public Entity shall ensure that DBE provisions and goals are included in its invitations to bid and resulting contracts. DBE payment and utilization information shall be tracked through the B2Gnow software.
- b. Record Keeping Responsibilities – The Public Entity shall appoint a DBE liaison officer and assure that its officer completes and submits required Program forms and information to the Department's Construction and Civil Rights Bureau (CCRB). The CCRB can be contacted as follows:

New Mexico Department of Transportation
CCRB
1570 Pacheco Street, Ste. A10
Santa Fe, New Mexico 87505
Phone: (505) 629-9890
Fax: (505) 476-0910

- c. Sanctions – Compliance with the DBE provisions is mandatory. Failure to comply will be treated as a violation of this Agreement. Furthermore, if the Public Entity fails to comply with the DBE provisions, the Department may impose sanctions as provided in 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801, et seq.).
- d. Required Contract Assurance: Each contract the Department signs with the Public Entity Contractor and each subcontract the Public Entity Contractor signs with a contractor or subcontractor must include the following assurance: "The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as NMDOT deems appropriate which may include but is not limited to:
 - i. Withholding of monthly progress payment;
 - ii. Assessing sanctions;
 - iii. Liquidated damages; and/or
 - iv. Disqualifying the contractor from future bidding as non-responsive

Provision of DBE Program Information: The Public Entity contractor shall provide any DBE related information or data to the District's T/LPA Coordinator or the Department's Office of Construction and Civil Rights Bureau, including but not limited to lists of quoters and DBE monthly participation forms, as required or upon request.

12. Title VI Program Obligations:

- a. Public Entity Assurances – Each contract the Public Entity enters into with a construction contractor, design consultant, other consultant or recipient on a project assisted by the

United States Department of Transportation (USDOT), and any subcontract thereto, shall include the assurances contained in **Appendix C**.

- b. The Public Entity shall sign and submit the attached **Appendix C (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department's Construction and Civil Rights Bureau as identified within the Appendix. By signing **Appendix C**, assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Public Entity.
- c. The Public Entity shall require recipients to sign and submit the attached **Appendix C (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department's Construction and Civil Rights Bureau as identified within the Appendix for each contract the Public Entity enters into with a construction contractor, design consultant, other consultant or recipient on a USDOT-assisted project, and any subcontract thereto.

13. Third Party Beneficiary:

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

14. New Mexico Tort Claims Act:

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

15. Office of Inspector General Reviews:

The Public Entity shall provide to all bidders the reporting and oversight requirements that they are bound to from the time of bid submission. The following provisions must be included in all prime contracts, subcontracts, and other contracts for services for a federally-funded project.

- a. Inspector General Reviews. Any Inspector General of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned.
- b. Access of Offices of Inspector General to Certain Records and Employees. With respect to each contract or grant awarded using federal funds, any representative of an appropriate Inspector General appointed under the Inspector General Act of 1978, 5 U.S.C. App. §§ 3 or 8G, is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub-grant; and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.

1. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the contractor or any of contractor's subcontractors, or any state or local agency administering such contract that directly pertain to, and involve transactions relating to, the contract or subcontract.
 2. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of contractor's subcontractors, or of any state or local government agency administering the contract, regarding such transactions.
 3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
- c. New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, has the authority to carry out all duties required. The duties are the same as those specified in Federal Law: Office of Inspector General, 23 U.S.C. §302 (the capability to carry out the duties required by law); 23 U.S.C. §112 (contracting for engineering and design services); the review of Federal-aid construction contracts references; 23 U.S.C. § 106 (project approval); 23 U.S.C. § 112 (letting of contracts); 23 U.S.C. § 113 (prevailing rate of wage); 23 U.S.C. § 114 (construction); 23 CFR Parts 635 and 636 (design build); 23 CFR Part 637 (construction inspection approval); the State Departments of Transportation are responsible for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. § 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

16. Access to Records, Accountability of Receipts and Disbursements:

There shall be strict accountability for all receipts and disbursements. The Public Entity shall maintain all records and documents relative to the Project for five (5) years after completion. Project files should be kept in accordance with the Department's "Office Procedures Manual" current edition as of the date of execution of this agreement. The Public Entity shall furnish the Department, State Auditor, or appropriate Federal Auditors, upon demand, any and all records relevant to this Agreement for auditing purposes. If an audit determines that a specific expense was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense identified shall be reimbursed to the Department within thirty (30) days of written notification.

17. Appropriation

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the State Legislature, or the Congress of the United States, if federal funds are involved. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice given by the Department to the Public Entity. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, obligated by FHWA, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

18. Scope of this Agreement:

This Agreement constitutes the entire Agreement between the Parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

19. Severability:

In the event that any portion of this Agreement is determined to be void, unconstitutional, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

20. Term:

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement shall terminate on **September 30, 2020**. In the event a contract term extension is needed, the Public Entity shall provide written notice to the Department Region T/LPA Coordinator sixty (60) days prior to the expiration date to ensure timely processing of an Amendment. Upon termination, neither party shall have any obligation after said date except as stated in Sections 7 and 16 above.

21. Termination:

- a. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed between the Public Entity and a contractor within three (3) months from the date this agreement is effective.
- b. The Department will review inactive projects on a quarterly basis. An inactive project is a project for which no expenditures have been charged against federal funds for the past three (3) months. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance pursuant to 23 CFR Part 630.106.
- c. The Department may, at its option, terminate this Agreement if the Public Entity fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.
- d. If Public Entity decides to terminate they will need to submit official letter with justification on why project is being terminated. They will also need to work with Region T/LPA Coordinator to make sure all steps have been followed as per FHWA Termination process.

22. Principal Contacts and Notices:

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail), including the Control Number and shall be given to the principal contacts listed below.

North Region T/LPA Coordinator

Bradley Fisher
North Region T/LPA Coordinator
New Mexico Department of Transportation
P.O. Box 1149, Room 203
Santa Fe, NM 87504
Office: 505-827-5396
E-mail: bradleyF.fisher@state.nm.us

District T/LPA Coordinator

Angelica Trujillo
T/LPA Coordinator
New Mexico Department of Transportation
P.O. Box 4127
Santa Fe, NM 87502
Office: 1-800-388-6630
E-Mail: angelica.trujillo@state.nm.us

Construction Liaison Engineer

Eunice Cazares De Bravo
T/LPA Construction Liaison Engineer
New Mexico Department of Transportation
1570 Pacheco St., STE. A10
Santa Fe
Office: 505-3218380
E-Mail: eunice.cazares@state.nm.us

Public Entity

Colleen Baker
Project Manager
County of Santa Fe
P.O. Box 276
Santa Fe, New Mexico 87504
Office: 505-992-9868
E-mail: cbaker@santafecounty.org

23. Amendment

The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties.

In witness whereof, the Parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE
DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

By: Cynthia A. Christ
Assistant General Counsel

Date: 10-20-17

COUNTY OF SANTA FE

By: _____
Chairman of County Commission

Date: _____

ATTEST

By: _____
COUNTY OF SANTA FE Clerk

Date: _____

APPROVED AS TO FORM BY THE COUNTY OF SANTA FE ATTORNEY

By: _____
COUNTY OF SANTA FE Attorney

Date: _____

APPENDIX A

Construction Phase Duties and Obligations

1. The Public Entity shall ensure compliance for all construction engineering; including project supervision, surveying, inspection, and testing. The Public Entity shall comply with the current edition of the Department's Specifications as stated in the plans or otherwise approved by the District Engineer and concurred by the State Construction Engineer, the New Mexico Transportation Departments Office Procedures Manual, and the Department's Tribal/Local Public Agency Handbook.
2. The Department's Minimum Testing requirements, as identified in the Department's Construction Procedures Handbook for Federal Aid Local Government Projects shall be adhered to.
 - a. The Public Entity's lab personnel or consultant may perform project acceptance testing of materials in accordance with the Public Entity's procedures and requirements, if approved by the Department. All test reports shall be available for review by the Department and FHWA (if applicable).
 - b. Independent assurance testing is required and is the sole responsibility of the Public Entity and shall be done by an independent lab not responsible for acceptance testing.
 - c. The Department maintains a listing of pre-approved independent testing assurance labs, which may be used by the Public Entity or the Public Entity's consultant for independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the Public Entity and/or their consultant.
 - d. The Public Entity's Engineer or the Public Entity's consultant shall certify that all materials incorporated into the project meet or exceed the specification requirements. The Minimum Testing Requirements are available on the Department's external website.
 - e. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall have current certifications by the Technical Training and Certificate Program.
4. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the Certificates of Compliance are on file with the Public Entity Engineer's Office and Public Entity consultant's office, for products and materials incorporated into the Project and for the quantities shown on the progress payment estimate. The Department may periodically conduct an audit of the Certificates of Compliance pursuant to Section 106.4 of the Department's Standard Specifications. Department personnel may occasionally check the Public Entity's procedures for handling of all Certificates of Compliance. All records shall be kept in one location during the entirety of the project, either the Public Entity or the Consultants.
5. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the items shown on the estimate have been completed and accepted in accordance with the contract requirements.
6. Department or FHWA (if applicable) personnel may periodically review the Public Entity's procedures for documentation of all materials, construction, traffic control, ADA forms, etc. during construction.
7. Change Orders:
 - a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the District T/LPA coordinator and the Construction Liaison Engineer prior to implementation, in accordance with the Department's Change Order Specifications. The change order shall be submitted soon thereafter to the Project

APPENDIX A

Manager. All decreases/increases shall be documented and attached to the change order. No payment shall be made for additional quantities until the Department approves the change orders.

- b. "Extra Work" for which there is no unit bid price shall be negotiated and the price shall be supported by a cost breakdown, the Department's average unit bid price, or the Public Entity's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the District T/LPA coordinator and the Construction Liaison Engineer, if participation is requested. If, "Extra Work" cannot be negotiated by the preceding manner, then the contractor may be required to do similar work on a "Force Account" basis as per the Department's specifications.
 - c. Change orders for non-participating work shall be submitted to the District T/LPA coordinator and the Construction Liaison Engineer for review and approval. If the work impacts the scope of work, contract time in excess of pro-rated time, and/or additional contracted funds, it shall require Department approval.
8. The Public Entity's Project Manager shall keep the Department's District T/LPA Coordinator routinely apprised of the Project's progress and important issues concerning the Project, and send copies and communicate all pertinent correspondence as it arises.

APPENDIX B

New Mexico Department of Transportation Estimate of T/LPA Project Pay-Out

Project Control Number S100550

Project Termini

Total Project Cost (Funded under this Project Agreement)	\$ **
	(Including gross receipts tax)

[illegible]

APPENDIX C

Title VI Nondiscrimination Assurances For FHWA Recipients

The _____ (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT) through the Federal Highway Administration (FHWA), is subject to and will comply with the following:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *non-discrimination, In Federally-Assisted Programs Of The Department of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Act, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measure necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the DOT, including the FHWA."

Specific Assurances

More specifically and without limiting the above general Assurance, the Recipient hereby gives the following Assurances with respect to its Federally assisted programs and activities:

1. That the Recipient agrees that each "activity", "facility," or "program", as defined in 49 CFR subsections 21.23(e) and (b), will be (with regard to a "program") conducted, or will be (with regard to a "facility") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids, Request For Proposals for work or material subject to the Acts and the Regulations and made in connection with all (Name of Appropriate Program) and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and the Regulations hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement,

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disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix C of this assurance in every contract subject to the Acts and the Regulations.
4. That the Recipient shall insert the clauses of Appendix C of this assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon, or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the Assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any Federal grants, loans, contracts, property, and/or discounts or other Federal-aid and Federal financial

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assistance extended after the date hereof to the Recipients by the U.S. Department of Transportation under the (Name of Appropriate Program). THIS ASSURANCE is binding on it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The person or persons signing below are authorized to sign this ASSURANCE on behalf of the Recipient.

Date: _____ Project Control Number: S100550

Recipient Name: County of Santa Fe

Signature of Authorized Official: _____

Print Name: _____

Title: _____

Phone: _____

E-mail: _____

This Appendix should be signed and mailed to the following:

New Mexico Department of Transportation
Construction and Civil Rights Bureau
1570 Pacheco Street, Ste. A10
Santa Fe, New Mexico 87505
Phone: 1-800-544-0936 or 505-827-1774
Fax: 505-827-1779

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During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, and the Federal Highway Administration (hereinafter "FHWA") (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited of the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Recipient) or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Recipient), or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Recipient) will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. cancelling, terminating or suspending the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the (Recipient) or the FHWA may direct as a means of enforcing such provisions including sanctions

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for non-compliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the (Recipient) to enter into any litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that the (Name of Recipient) will accept title to the lands and maintain the project constructed thereon, in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Name of Appropriate Program) and the policies and procedures prescribed by FHWA, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Name of Recipient) all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "___" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Name of Recipient) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the (Name of Recipient), its successors and assigns.

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The (Name of Recipient), in consideration or the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [and]* (2) that the (Name of Recipient) shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes - Implementation and Review Procedures, and as said Regulations may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction]. *

(*Reverter clause and related language to be used only when it is determined that such clause is necessary in order to Make clear the purposes of Title VI of the Civil Rights Act of 1964.)

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the (Name of Recipient) pursuant to the provisions of Assurance 7(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the State of New Mexico will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) and never been made or issued.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

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With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the State of New Mexico will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the State of New Mexico and its assigns.*

(* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by (Name of Recipient) pursuant to the provisions of Assurance 7(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself/herself, his/her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to the Act and Regulations, as amended, set forth in this Assurance.

With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the State of New Mexico will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

With respect to the deeds, in the event of breach of any of the above Non-discrimination covenants, the State of New Mexico will there upon revert to and vest in and become the absolute property of the State of New Mexico and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

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- Federal-Aid Highway Act of 1973, (29 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et seq.*)

APPENDIX D

CERTIFICATION OF COOPERATIVE AGREEMENT – CONSTRUCTION WORK
COMPLIANCE/COMPLETION

I, _____, in my capacity as _____ of
_____ do hereby certify as follows:

That the County has complied with all the terms and conditions in the Agreement for

Control Number: S100550

By: _____
Chairman of County Commission or designee

Date: _____

When completed, please send Certification to:

Angelica Trujillo, T/LPA Coordinator
New Mexico Department of Transportation
District 5
P.O. Box 4127
Santa Fe, NM 87502

