

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE CITY OF SANTA FE
REGARDING THE PLANNING AND DESIGN
IMPROVEMENTS TO HENRY LYNCH ROAD**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered on this 31 day of March, 2022, between **Santa Fe County** (“County”), a political subdivision of the state of New Mexico, and the **City of Santa Fe**, a municipality (“City”).

RECITALS

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of the County and the City, this MOA confirms the parties’ commitment and mutual cooperation which recognizes that the partnering activities between government entities may produce community and constituency benefits beyond what might be produced independently; and

WHEREAS, this MOA is exempt from the Procurement Code according to Section 13-1-98 (A), NMSA 1978; and

WHEREAS, the parties agree the improvements described in this MOA are of mutual interest and benefit to the County and the City;

WHEREAS, Henry Lynch Road lies within the boundary of Santa Fe County and extends into the City Limits of the City of Santa Fe. The parties agree that it is in the best interest of the County and the City, and the public, that the City assumes the planning and design of improvements to the entirety of Henry Lynch Road from Agua Fria Road to Rufina Street, including the portion of Henry Lynch Road that lies within the County; and

WHEREAS, the estimated total cost for the Project is \$450,000.00. The New Mexico Department of Transportation (“NMDOT”) is providing 95% of the funding in the amount of \$427,500.00. The City shall be responsible for the estimated remaining match of 5% or \$22,500.00. The parties to this MOA acknowledge that the funding agreement between the City and NMDOT is subject to change.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF AGREEMENT

The City is the recipient of a Transportation Project Fund Grant from NMDOT for the planning and design of Henry Lynch Road from Agua Fria Road to Rufina Street; specifically, the repaving of the road, bicycle lanes, ADA compliant sidewalks, curb, gutter and drainage facilities (the “Project”). The County hereby authorizes the City to manage and complete the Project for the entirety of Henry Lynch Road, including the portion that lies within the County.

The County and City agree that the Project and improvements to Henry Lynch Road are necessary. Through this coordinated and joint effort, the City and County will ensure compliance with County, City, state and applicable federal requirements for the Project.

The County currently maintains 0.14 of a mile of Henry Lynch Road from Agua Fria Road to the Santa Fe City Limits. In collaboration with the City the County shall review the planning and design documents for Henry Lynch Road at 30%, 60% and 90% percent design as well as the 100% final design. County and City representatives shall attend public meetings and outreach within the community.

2. COMPENSATION

This MOA does not involve any compensation to be provided by either party to the other party.

3. EFFECTIVE DATE AND TERM

This MOA shall become effective upon the date of last signature by the parties and will terminate four years from such date, unless earlier terminated pursuant to Section 4 (Termination) or Section 11 (Appropriations and Authorizations).

4. TERMINATION

Termination of Agreement for Cause. If a party fails to fulfill in a timely and proper manner its obligations under this MOA, or if a party violates any of the covenants, agreements, or stipulations of this MOA, the non-breaching party shall thereupon have the right to suspend or terminate this MOA by giving written notice to the other party such termination and specifying the effective date thereof.

5. ASSIGNMENT

The City shall not assign or transfer any interest or duties with regard to the Project without prior written approval of the County.

6. NO THIRD-PARTY BENEFICIARIES

This MOA was not intended to and does not create any rights in any persons or party not a party to this Agreement.

7. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omission 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, § 41-4-1, et seq., NMSA 1978, as amended.

8. AMENDMENT

This MOA shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

9. INTEGRATION CLAUSE

This MOA incorporates all covenants and understandings the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this MOA. No prior covenants or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOA.

10. APPLICABLE LAW; VENUE

Duties and obligations under this MOA shall be performed and completed in accordance with the laws of the State of New Mexico. The forum for any litigation between the parties related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

11. APPROPRIATIONS AND AUTHORIZATIONS

The performance of the duties and obligations under this MOA are contingent upon sufficient appropriations and authorizations being made by the respective governing boards of the parties; for the County, the Santa Fe County Board of County Commissioners; for the City, the Governing Body of the City of Santa Fe; for NMDOT, the New Mexico State Transportation Commission; and for legislative appropriations, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made, this MOA shall terminate immediately upon written notice being given by a party to the other party. Such termination shall be without penalty.

12. FASCIMILE OR ELECTRONIC SIGNATURES

The parties hereto agree that a facsimile or electronic signature has the same force and effect as an original for all purposes.

13. NEW MEXICO TORT CLAIMS ACT

No provision of this MOA modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or the City or their public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

14. RECORDS AND FINANCIAL AUDIT

To the extent its books and records relate to (i) its performance of this MOA or any subcontract entered into pursuant to it or (ii) cost or pricing data in this MOA, the City agrees to (i) maintain such books and records during the term of this MOA and for a period of six years; (ii) allow the

County or its designee to audit such books and records at reasonable notice; (iii) to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).

15. PENALTIES FOR VIOLATIONS OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. INVALID TERM OR CONDITION

If any term or condition of this MOA shall be valid or unenforceable, the remainder of this MOA shall not be affected and shall be valid and enforceable.

17. NOTICES

Any notice required by this MOA shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

COUNTY: Gary L.J. Girón
Public Works Director
Santa Fe County
424 599 Frontage Road
Santa Fe, New Mexico 87507
505-332-3023

CITY: Regina Wheeler
Public Works Director
City of Santa Fe
500 Market Street
Santa Fe, NM 87507
505-690-4197

18. SURVIVAL

The provisions of the following provisions shall survive the termination of this MOA: RECORDS AND FINANCIAL AUDIT; RELEASE; APPLICABLE LAW VENUE; NO THIRD PARTY BENEFICIARIES; LIABILITY; and SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this MOA as of the last date of signature by the parties hereto.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

2.1.2022
Date

Approved as to form:

Roberta D. Joe for G.S.S.
Gregory S. Shaffer
Santa Fe County Attorney


January 25, 2022
Date

Finance Division:


Yvonne S. Herrera
Finance Director



1/27/2022
Date

CITY OF SANTA FE:


Alan Webber, Mayor


Mar 31, 2022
Date

ATTEST:


Kristine Bustos Mihelcic, City Clerk
GB MTG 03/30/2022 

Mar 31, 2022
Date

City Attorney's Office:


Senior Assistant City Attorney

Feb 28, 2022
Date

Approved for Finance:

Mary McCoy

Mary McCoy, Finance Director

Mar 31, 2022

Date