

**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Virgina Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## ***MEMORANDUM***

**DATE:** *January 12, 2012*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director <sup>ALC</sup>*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting January 31, 2012*

A RESOLUTION AMENDING RESOLUTION 2011-52 (ESTABLISHING THE ROAD ADVISORY COMMITTEE) TO DELETE REFERENCES TO ALTERNATE COMMITTEE MEMBERS, TO DELETE EXHIBIT A AND REFERENCES TO GEOGRAPHIC DISTRICT BOUNDARIES AND TO SPECIFY THE NUMBER OF COMMITTEE MEMBERS REQUIRED FROM EACH COMMISSISON DISTRICT (TRANSPORTATION & SOLID WASTE DIVISION, ROBERT MARTINEZ)

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**BACKGROUND AND SUMMARY:**

On April 12, 2011, the BCC adopted Resolution 2011-52 creating the Santa Fe County Road Advisory Committee. Since this resolution was adopted the County Commission redistricting has taken place, which resulted in Road Advisory districts extending into multiple Commission districts. To comply with the BCC directive of Road Advisory districts not extending into more than one Commission district and equity of representation amongst Commission districts, the following amendments are proposed.

- Eliminate the 15 geographical boundaries.
- Eliminate the 15 alternate members.
- Appoint members per Commission Districts based on road mileage and areas served.

- Commission District I – 3 appointments
- Commission District II – 2 appointments
- Commission District III – 5 appointments
- Commission District IV – 2 appointments
- Commission District V – 3 appointments

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:  
505-995-2740 [www.santafecounty.org](http://www.santafecounty.org)

Commissioners would have the discretion to appoint members from anywhere within their districts, but are encouraged to seek representation from more than one area of their respective districts. In the past, it was difficult to obtain a quorum to conduct meetings, due to the rigid road advisory boundaries and the fact that numerous areas were unrepresented due to the lack of an appointee for that specific road advisory area. Removing the road advisory geographic boundaries will make it easier to appoint members to the committee.

**ACTION REQUESTED:**

The Public Works Department requests approval of the resolution amending Resolution 2011-52.

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**RESOLUTION 2012-**

**A RESOLUTION AMENDING RESOLUTION 2011-52(ESTABLISHING THE ROAD  
ADVISORY COMMITTEE) TO DELETE REFERENCES TO ALTERNATE  
COMMITTEE MEMBERS, TO DELETE EXHIBIT A AND REFERENCES TO  
GEOGRAPHIC DISTRICT BOUNDARIES AND TO SPECIFY THE NUMBER OF  
COMMITTEE MEMBERS REQUIRED FROM EACH COMMISSION DISTRICT**

**WHEREAS**, the Board of County Commissioners (the "BCC") enacted Resolution No. 2011-52, A Resolution creating the Santa Fe County Road Advisory Committee on April 12, 2011;

**WHEREAS**, created a Road Advisory Committee composed of fifteen (15) members and fifteen (15) alternate members from each geographical area of the County;

**WHEREAS**, paragraphs 4, 5, and 6 of Resolution No. 2011-52 reference the appointment and qualifications of alternate committee members;

**WHEREAS** paragraphs 4, 5, and 6 of Resolution No. 2011-52 reference the requirement that each committee member and alternate member shall each be from a specific geographical area of the County as is consistent with the County Commission District enumerated in Exhibit A of Resolution No. 2011-52; and

**WHEREAS**, since the enactment of that resolution there is no longer a need for alternate members to be appointed to the Road Advisory Committee nor a need to limit membership to residency in a particular Commission District;

**WHEREAS**, since alternate committee members and Commission District boundaries are no longer necessary, the exhibit setting forth each Commission District in Resolution No. 2011-52 is not needed.

**NOW, THEREFORE BE IT RESOLVED**, that the following amendments are made to Resolution No. 2011-52:

1. Paragraph 4 is amended to read as follows:

"Members will be appointed by the BCC based on submitted letters of interest, qualification and County wide representation and serve at the pleasure of the BCC for the terms set forth herein."

2. Paragraph 5 is amended to read as follows:

“The Committee shall be made up of fifteen (15) members, including three (3) members from Commission District 1, two (2) members from Commission District 2, five (5) members from Commission District 3, two (2) members from Commission District 4, and three (3) members from Commission District 5. Of the initial appointments, seven (7) Committee members shall serve for a two year term, and eight (8) shall serve for a three year term. Subsequent terms shall be for three years to maintain the staggering of terms and reappointment as is consistent with this Resolution. Committee members shall serve for no more than two (2) consecutive terms. The Committee chairperson shall serve for a one year term and shall be selected by majority vote of the members of the Committee annually at the January meeting. Vacancies shall be filled for the remainder of the unexpired term by the BCC in accordance with this Resolution. Members and alternates may be removed by the BCC with or without cause.”

3. Paragraph 6 is amended to read as follows:

“All Committee members shall be charged with working for and representing the best interests of the County as a whole.”

**PASSED, APPROVED, SIGNED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012.**

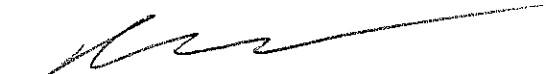
**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

\_\_\_\_\_  
**Liz Stefanics, Chair**

**Attest:**

\_\_\_\_\_  
**Valerie Espinoza, County Clerk**

**Approved as to form:**

  
\_\_\_\_\_  
**Stephen C. Ross, County Attorney**

## EXHIBIT "A"

<i>Comm. District:</i>	<i>Road Adv. Area:</i>	<i>Communities served:</i>
I	1	Arroyo Seco, Chimayo & La Puebla
I	2	El Rancho, Jacona, Pojoaque, Nambe & Cuyamungue
II	3	La Tierra, Caja del Rio, Puesta del Sol, Pinon Hills & Agua Fria
I	4	Tano Road, Tesuque, Chupadero, Rio en Medio & Hyde Park Estates
IV	5	Seton Village, Arroyo Hondo, Sunlit Hills, Old Galisteo Road & Lamy
V	6	Rancho Viejo, Valle Lindo Subdivision & Town & Country Subdivision
IV	7	Hondo Hills, Old Santa Fe Trail, Canada de Los Alamos & Canoncito
IV	8	Valencia, Glorieta, La Cueva & La Joya
III	9	La Cienega, La Cieneguilla, Remuda Ridge & Rancho de La Luna Subdivision
V	10	Turquoise Trail, Valle Vista Subdivision, Lone Butte & San Marcos area
V	11	Eldorado Subdivision
III	12	Turquoise Trail, Rancho Alegre, Cerrillos, Waldo & Madrid
III	13	Galisteo, Ojo de La Vaca & White Lakes Area
III	14	Golden, San Pedro, Cedar Grove & Edgewood
III	15	Stanley & Clines Corners area



**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5


**Katherine Miller**  
County Manager

## MEMORANDUM

**DATE:** *JANUARY 4, 2012*

**TO:** *BOARD OF COUNTY COMMISSIONERS*

**VIA:** *KATHERINE MILLER, COUNTY MANAGER*

**FROM:** *ADAM LEIGLAND, PUBLIC WORKS DEPARTMENT DIRECTOR* 

**SUBJECT:** *BCC MEETING JANUARY 31, 2012*  
*REQUEST AUTHORIZATION TO PUBLISH THE TITLE AND GENERAL SUMMARY OF AN ORDINANCE TO AMEND ORDINANCE NO. 2010-17, "TO EXPAND THE LIST OF ROADWAYS WITHIN SANTA FE COUNTY WHERE ENGINE RETARDERS ARE PROHIBITED" (TRANSPORTATION AND SOLID WASTE DIVISION, ROBERT MARTINEZ)*

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### BACKGROUND AND SUMMARY:

The Public Works Department is requesting to amend Ordinance 2010-17, an Ordinance prohibiting the use of Engine Retarders to include additional roads and road segments in Santa Fe County. Ordinance 2010-17 repealed certain provisions of Ordinance 1999-12.

The Public Works Department seeks to include the following roads and road segments:

- I-25 between the Old Pecos Trail exit #284 and Lamy exit #290 at US 285.
- NM 14 between mile posts (23) thru (38).
- County Road 42 or Camino de Los Abuelos extending east from State Road 14 to State Road 41, a distance of 9.33 miles.
- County Road 45 or Bonanza Creek Road extending north from State Road 14 to the I-25 Frontage Road, a distance of 6.72 miles.
- On Santa Fe County Road 70 or West Alameda, and extending from the City of Santa Fe limits west to Via Abajo Road, a distance of 2.27 miles.
- On State Road 344, including any frontage road, ramps and intersections to include mile posts (1) thru (7).

### ACTION REQUESTED:

Request authorization to publish title and general summary of an Ordinance to amend Ordinance No. 2010-17, "To expand the list of roadways within Santa Fe County where Engine Retarders are prohibited."

SANTA FE COUNTY

1707105

ORDINANCE NO. 1999-12

AN ORDINANCE PROHIBITING THE USE OF ENGINE RETARDERS ON STATE ROUTE 599 FROM U.S. HIGHWAY 285 TO INTERSTATE 25, ON U.S. HIGHWAY 285 IN THE VICINITY OF THE STATE ROUTE 503/NAMBE INTERSECTION AND FROM THE INTERSECTION WITH INTERSTATE 25 TO THE INTERSECTION WITH COUNTY ROAD 33, ON U.S. HIGHWAY 84/285 FROM THE NORTH ENTRANCE OF THE SANTA FE OPERA TO THE NORTH TESUQUE INTERCHANGE AND ON STATE ROUTE 344 FROM MILEPOST 16 TO MILEPOST 17; REPEALING EMERGENCY ORDINANCES 1999-8 AND 1999-9

**Section 1. Short Title**

This ordinance may be cited as the "Engine Retarder Ordinance"

**Section 2. Repeal of Emergency Ordinances 1999-8 and 1999-9**

Emergency Ordinances 1999-8 and 1999-9 are hereby repealed.

**Section 3. Purpose and legislative intent**

The purpose of this ordinance is to preserve and protect the health, safety and quality of life of the residents of Santa Fe County and to improve the environmental quality of the County.

This ordinance is intended to control noise emissions from engine retarders in the populated areas of the County and to coordinate notification and enforcement efforts between the City of Santa Fe and Santa Fe County.

**Section 4. Definitions**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Engine Retarder:** A device commonly known as an engine retarding system, engine brake or exhaust brake, which helps slow a motor vehicle's rate of speed and, when activated, creates noise through the motor vehicle's engine or exhaust system.



**Section 5. Engine retarders prohibited**

The use of engine retarders is prohibited, except in a bona fide emergency, in the following locations:

- A. On U.S. Highway 84/285 from the north entrance to the Santa Fe Opera to the north Tesuque interchange.
- B. On U.S. Highway 285 between a point one (1) mile north of the State Route 503 intersection to a point one and one half (1 1/2) miles south of the State Route 503 intersection.
- C. On U.S. Highway 285 from the intersection with Interstate 25 to the intersection with County Road 33.
- D. On State Route 599 from U.S. Highway 285 to Interstate 25.
- E. On State Route 344 from milepost sixteen (16) to milepost seventeen (17).
- F. On that portion of County Road 56 (Airport Road) within Santa Fe County.

**Section 6. Notification**

The body(ies) or agency(ies) responsible for maintenance of qualifying roads shall erect and maintain signs, posted in conspicuous locations, indicating that engine retarder use is prohibited.

Provided, however, that the absence of a sign or signs shall not be a defense to a charge of violation of this ordinance.

**Section 7. Penalties**

Any person violating the provisions of this ordinance shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed ninety (90) days, or

1707107

both.

Section 8. Conflicts

If at any time this ordinance conflicts with published State Highway Department regulations or policy, the latter shall apply.

PASSED, ADOPTED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO THIS 9<sup>th</sup> DAY OF November, 1999.



BOARD OF COUNTY COMMISSIONERS

by: [Signature]  
Joe Grifé, Chairman

[Signature]  
Rebecca Bustamante  
Santa Fe County Clerk

Approved as to legal form:

[Signature]  
Denice Brown  
County Attorney

COUNTY OF SANTA FE  
STATE OF NEW MEXICO 1096<sup>JSS</sup> 699  
I hereby certify that this instrument was filed  
for record on the 10<sup>th</sup> day of Nov A.D.  
19 99 at 11:49 o'clock a m  
and was duly recorded in book 1707  
page 105-107 of the records of  
Santa Fe County.

Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.

[Signature]  
Deputy



THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY

ORDINANCE NO. 2010 - 17

AN ORDINANCE AMENDING ORDINANCE NO. 1999-12, WHICH PROHIBITS THE  
USE OF ENGINE RETARDERS, TO INCLUDE ADDITIONAL PORTIONS OF  
HIGHWAY 84/285 AND REPEALING CERTAIN PROVISIONS OF ORDINANCE NO.  
1999-12

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE, NEW MEXICO:

**Section One. Amendment to include additional portions of U.S. Highway 84/285.**  
Section 5 ("Engine retarders prohibited") of Ordinance No. 1999-12 shall be and hereby is  
amended with the following language:

"Section 5. Engine retarders prohibited. The use of engine retarders is  
prohibited, except in a bona fide emergency, in the following locations:

"A. On U.S. Highway 84/285, including any frontage road, ramps and  
intersections, between the Santa Fe city limits at mile marker 167.68 to the  
Española city limits at NM 106 at mile marker 186.80.

"B. On U.S. Highway 285, including any frontage road, ramps and  
intersections, from the intersection with Interstate 25 to the intersection with  
County Road 33.

"C. On State Route 599, including any frontage road, ramps and  
intersections, from U.S. Highway 285 to Interstate 25 within Santa Fe County.

"D. On State Route 344, including any frontage road, ramps and  
intersections, from milepost sixteen (16) to milepost seventeen (17).

E. On that portion of County Road 56 (Airport Road) within Santa Fe  
County."

**Section Two. Partial Repeal of Ordinance No. 1999-12.**

Section 5 of Ordinance No. 1999-12 shall be and hereby is repealed and replaced with the  
amendatory language provided in this Ordinance.

PASSED, APPROVED, AND ENACTED this 14 day of December, 2010, by the  
Board of County Commissioners of Santa Fe County.

SEC DEPT RECORDING 78-2011

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

By: *Harry B. Montoya*  
Harry B. Montoya, Chair

ATTEST:

*Valerie Espinoza*  
Valerie Espinoza, County Clerk

Approved as to form:

*Stephen C. Ross*  
Stephen C. Ross, County Attorney

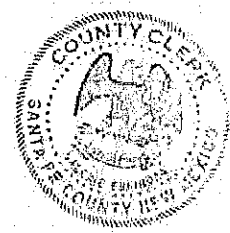


COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC ORDINANCE  
PAGES: 2

I Hereby Certify That This Instrument Was Filed for  
Record On The 20TH Day Of January, 2011 at 02:54:29 PM  
And Was Duly Recorded as Instrument # 1624389  
Of The Records Of Santa Fe County

*Valerie Espinoza* Witness My Hand And Seal Of Office  
Deputy \_\_\_\_\_ Valerie Espinoza  
County Clerk, Santa Fe, NM



SFC CLERK RECORDED 1/20/2011

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY  
ORDINANCE NO. 2012 -**

**AN ORDINANCE AMENDING ORDINANCE NO. 2010-17 TO EXPAND THE  
LIST OF ROADWAYS WITHIN SANTA FE COUNTY WHERE ENGINE  
RETARDERS ARE PROHIBITED**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE, NEW MEXICO:**

**Section 1. Amendment to expand the list of roadways within Santa Fe County where engine retarders are prohibited.** Section 5 of Ordinance No. 2010-17 shall be and is hereby amended to expand the list of portions of roadway within Santa Fe County where the use of engine retarders are prohibited as follows:

F. On Interstate 25, between Old Pecos Trail exit #284 and Lamy exit # 290 at US 285.

G. On State Route 14 between mile post twenty-three through mile post thirty-eight.

H. On Santa Fe County Road 42 or Camino de Los Abuelos, and extending east from State Route 14 to State Route 41, a distance of 9.33 miles.

I. On Santa Fe County Road 45 or Bonanza Creek Road, and extending north from State Route 14 to Interstate 25 Frontage Road, a distance of 6.72 miles.

J. On Santa Fe County Road 70 or West Alameda, and extending from the City of Santa Fe limits west to Via Abajo road, a distance of 2.27 miles.

K. On State Route 344, including any frontage road, ramps and intersections, from milepost one to milepost seven.

**PASSED, APPROVED, AND ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the Board of County Commissioners of Santa Fe County.

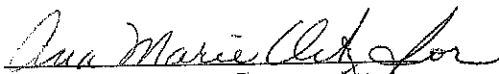
**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza  
Santa Fe County Clerk

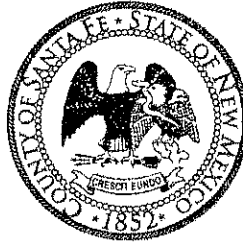
**Approved as to form:**

  
Stephen C. Ross, County Attorney

**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4


**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## **MEMORANDUM**

**DATE:** *January 19, 2012*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director* 

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting January 31, 2012*

A RESOLUTION AUTHORIZING THE FILING OF APPLICATION TO THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT FOR A PATENT UNDER THE RECREATION AND PUBLIC PURPOSES ACT FOR THE SANTA FE RIVER GREENWAY AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE THE APPLICATION (Public Works)

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**BACKGROUND AND SUMMARY:**

Since 1998 the Santa Fe County Open Space and Trails Program has been working to acquire the land along the Santa Fe River to achieve the long-term goal of creating a public greenway and trail system along the river. The Bureau of Land Management (BLM) owns approximately 28.4 acres along the Santa Fe River near South Meadows Road. This land comprises approximately 0.58 miles of the Santa Fe River and is a critical link in connecting the greenway between Caja del Oro Grant Road and South Meadows Road.

The Recreation and Public Purposes Act Revised August 1996 authorizes the sale or lease of public lands for recreational or public purposes to state and local governments. Under this Act, permanent conveyances of land for recreation and historic monument purposes are made without charge to state and local governments.

**ACTION REQUESTED:**

Staff recommends approval of the resolution authorizing the filing of application to the BLM for a patent under the Recreation and Public Purposes Act and authorizing the County Manager to execute the application for the purpose of creating a public greenway and trail to further the County's long term efforts to restore the Santa Fe River.

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**RESOLUTION NO. 2012-**

**A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION  
TO THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT  
TO APPLY FOR A PATENT UNDER THE RECREATION AND PUBLIC PURPOSES ACT  
FOR THE SANTA FE RIVER GREENWAY, AND  
AUTHORIZING THE COUNTY MANAGER TO EXECUTE THE APPLICATION**

**WHEREAS**, Santa Fe County Open Space and Trails Program (“the County”) has undertaken to complete a recreational trail and park areas adjacent to the Santa Fe River in Santa Fe County, such project known as the “Santa Fe River Greenway”;

**WHEREAS**, the U.S. Department of the Interior Bureau of Land Management owns approximately 28 acres of property in T17N, R9E, Sec. 31, NMPM, which is located within an area proposed for the Santa Fe River Greenway;

**WHEREAS**, the federal Recreation and Public Purposes Act , 43 USC § 896, authorizes the sale or lease of public lands for recreational or public purposes to state and local governments;

**WHEREAS**, the County wishes to allow for a timely and efficient process for the filing of an application to the BLM requesting the acquisition of the 28 acres within the Santa River Greenway;

**WHEREAS**, the Open Space and Trails Program requests that the Board authorize the County to file the application and the County Manager to execute the application.

**NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:**

1. The Board authorizes the County to submit an application to the BLM to request the acquisition of approximately 28 acres within the Santa River Greenway and authorizes the County Manager to execute any and all documents necessary to complete and submit the application.

**APPROVED and ADOPTED this 31st DAY OF JANUARY 2012.**

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

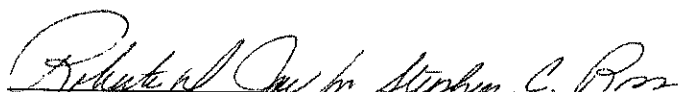
By: \_\_\_\_\_

Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:

  
Stephen C. Ross, Santa Fe County Attorney



# **Proposed Santa Fe River Trail Extension**

## **Development Plan**

### **Description**

The purpose of the application is to obtain right-of-way to construct a planned multiuse, accessible trail along the Santa Fe River. The trail will serve as a recreational amenity for local residents and an off-road alternative transportation route. This project is part of a larger plan to create a greenway of public parks and trails along the Santa Fe River from Two-mile Reservoir to the City of Santa Fe Waste Water Treatment Plant.

The City and the County of Santa Fe are collaborating on the planning and development of the trail. The County's portion of the trail runs from Camino Carlos Real at the current City limits to the Waste Water Treatment Plant. The trail has been divided into six phases in the County. To date the County has completed one phase of the trail between San Ysidro Crossing and Caja del Oro Road.

Phase four of the trail development runs from Caja del Oro Road to Cottonwood Drive for approximately 1.75 miles. The current application includes approximately 0.58 miles of this phase of development.

Trail design will be consistent with completed sections to create a coherent greenway along the Santa Fe River. Trail elements are based on a Santa Fe River Master Plan and elements of a typical trail section.

### **Statement of Need**

The project is located in an area of the community that currently does not have adequate public recreation areas and safe bicycle routes. The planned trail facilities will serve this community need. The portion of the trail that will be constructed under this project will have immediate utility as a recreational trail for neighboring residents.

### **Location**

The following lots are the subject of this application:

T17N R9E Sec 31 Lot 18  
T17N R9E Sec 31 Lot 20  
T17N R9E Sec 31 Lot 21  
T17N R9E Sec 31 Lot 22  
T17N R9E Sec 31 Lot 23  
T17N R9E Sec 31 Lot 24  
T17N R9E Sec 31 Lot 26  
T17N R9E Sec 31 Lot 28

The lots will be used as follows:

Trail head parking, multi-purpose trail, park and playground and river channel reconstruction and riparian habitat enhancement.

**Description of proposed improvements and estimated costs of development for lands encompassed by the proposed Santa Fe River Trail Extension**

<b>Acquisition</b>	<b>\$1,866,667</b>
The County will acquire necessary right-of-way property for trail construction.	
<b>Design</b>	<b>\$154,167</b>
<b>Construction</b>	<b>\$1,541,667</b>
<b>Total Project Cost</b>	<b>\$3,562,500</b>

Funding will come from the County's general obligation bonds.

**Timetable for Development of the Santa Fe River Trail Extension**

The plan is to begin design of the current project, which is part of Phase Four of the trail, in 2013. The following is a timeline for construction of the trail phases:

- |  |                         |
|--|-------------------------|
| 1) San Ysidro Crossing to Caja del Oro Road      | Construction Complete   |
| 2) San Felipe Rd. to Constellation Dr.           | Under Construction      |
| 3) Camino Carlos Rael to Siler Rd.               | Under Design            |
| 4) Caja del Oro Grant Rd. to Cottonwood Dr.      | Planned Completion 2015 |
| 5) Siler Rd. to San Ysidro Crossing              | Planned Completion 2017 |
| 6) Constellation Dr. to the Santa Fe County WWTP | Planned Completion 2019 |

The majority of the funding will come from the County's general obligation bonds and gross receipts tax revenues. The County will also seek state appropriations and grant funding.

**Management Plan**

The Santa Fe River Trail will be managed and maintained by the Santa Fe County Open Space and Trails Program. The maintenance of the trail extension and park will be funded by the County's General Fund under the maintenance budget for County parks, trails and open space.

Santa Fe County agrees to the following:


1. To maintain the lands open to use by the public for recreational purposes without discrimination or favor.
2. To make no more than a reasonable charge for the use of the facilities on the land (whether by concession or otherwise) and to charge no more for entrance to and use of


the area than is charged at other comparable installations managed by State and local agencies. Santa Fe County does not plan to charge for the use of the facilities at this time. If at any time in the future the County determines that it is necessary to charge for the use of the facilities, the County will submit to the Bureau of Land Management a schedule of proposed charges. All charges will be subject to review and modification by the Secretary of the Interior under due process procedures.

3. To develop and manage the land in accordance with the approved program of utilization.
4. To secure the approval of the Secretary of the Interior, or his delegate, of all plans of construction prior to commencing construction.
5. To maintain in a satisfactory condition the facilities constructed on these lands.

# Proposed Santa Fe River Trail Extension Site Plan

## Legend


 BLM Owned Land Parcels


 Santa Fe River 100-year Flood Plain

**Proposed Development**

 Access Point from S. Meadows

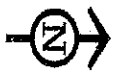
 Parking

 Trail Head

 Multi-purpose Trail

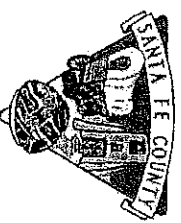
 Park and Playground

 River Channel Restoration

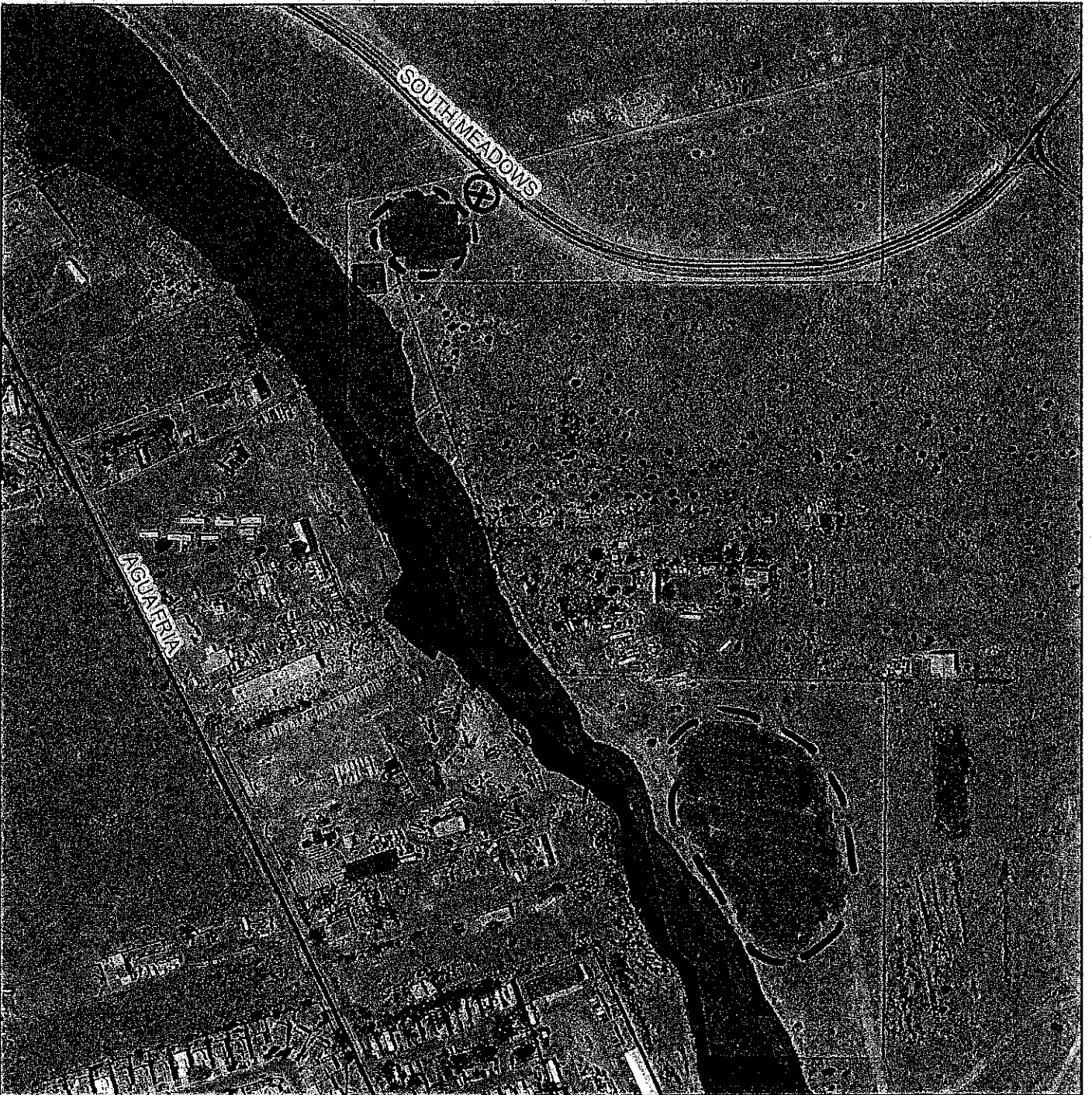


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This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



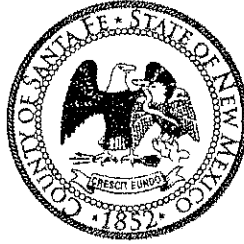
January 4, 2012



**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *January 19, 2012*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director M*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting January 31, 2012*

REQUEST APPROVAL OF COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FEDERAL HIGHWAY ADMINISTRATION (FHWA) FUNDS IN THE AMOUNT OF \$150,750 TO THE COUNTY FOR CONSTRUCTION OF A PORTION OF THE SANTA FE RAIL TRAIL (Public Works)

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**BACKGROUND AND SUMMARY:**

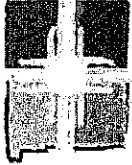
Santa Fe County purchased an easement from the Santa Fe Southern Railway in 1997 for a trail along the railway from I-25 to NM 285. The trail is known as the Santa Fe Rail Trail.

The trail is included in the Santa Fe Metropolitan Planning Organization Transportation Improvement Program (TIP) for federal fiscal years 2012-2015 and the New Mexico Department of Transportation Statewide Transportation Improvement Program (STIP) for FY 2012, and is therefore eligible for \$150,750 in Federal Transportation Enhancement Funds through the New Mexico Department of Transportation. The purpose of the Cooperative Project Agreement with the New Mexico Department of Transportation is to provide the FHWA funds to the County.

The Open Space and Trail Program completed design of the trail in 2011. The County has awarded the construction contract for the first segment of the trail from Rabbit Road to the Spur Trail. The funding from the FHWA will be used to construct the next segment of the trail from the Spur Trail to Avenida Vista Grande. The \$50,250 in matching funds required under the cooperative project agreement will come from the County gross receipts tax revenues already budgeted for the project in account 213-7707-481.

**ACTION REQUESTED:**

Staff recommends approval of the Cooperative Project Agreement with the New Mexico Department of Transportation to provide Federal Highway Administration (FHWA) funds in the amount of \$150,750 to the County for construction of the next segment of the Santa Fe Rail Trail.



NEW MEXICO DEPARTMENT OF  
**TRANSPORTATION**

November 21, 2011

Mr. Paul Olefson  
Community Projects Division Director  
County of Santa Fe  
P.O. Box 276  
Santa Fe, New Mexico 87501

RE: Control Number: S100040

Dear Mr. Olefson:

Enclosed for your coordination of signatures are three originals of the Cooperative Project Agreement referenced above. Please return them to my attention at the address shown below.

Also, please Do Not fill in the date on the first page of the enclosed agreements. An original will be mailed to you at the time they are fully executed.

If you have any questions concerning the agreement or if I can be of further assistance, please contact me at 505-827-5309.

Sincerely,

Kimberly Wildharber  
Contract Manager

Enclosures

c: Miguel Gabaldon, District 5 Engineer  
Joe Garcia, Assistant Regional Division Manager

**Susana Martinez**  
Governor

**Alvin C. Dominguez, P.E.**  
Cabinet Secretary

**Commissioners**

**Pete Rahn**  
Chairman  
District 3

**Debra Hicks**  
Vice Chairman  
District 2

**Dr. Kenneth White**  
Secretary  
District 1

**Ronald Schmeits**  
Commissioner  
District 4

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

Contract Number	
Vendor Number	<u>0000054297</u>
Control Number	<u>S100040</u>

**COOPERATIVE PROJECT AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the New Mexico Department of Transportation (Department) and the County of Santa Fe (County), collectively referred to as the "Parties."

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

**SECTION ONE: PURPOSE**

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the County for a transportation project described in the County's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). This Project is referred to interchangeably as "Project" or "Project Control No. S100040." The Project is a joint and coordinated effort for which the Department and the County each have authority or jurisdiction.

**SECTION TWO: FUNDING**

1. The total funding for Project Control No. S100040, is Two Hundred One Thousand Dollars (\$201,000) which will be shared by the Parties as follows:

A.	<b><u>2011/2012 Surface Transportation Enhancements (TPE) Funds</u></b> <b><u>Department's 75% share</u></b>	\$150,750
	Construction of a bike and pedestrian multi-use trail intersecting with Spur Trail @ mp 11.5 to Avenida Vista Grande @ mp 6.5.	
B.	<b><u>County's matching 25% share</u></b>	\$50,250
	For the purpose stated above.	
C.	<b><u>The Total Project Funding</u></b>	<b><u>\$201,000</u></b>

2. The **County** shall pay all Project costs that exceed the total funding amount specified in this section.

3. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the County's Engineer's Estimate of Probable Cost. The engineer's estimate shall be submitted to the Department's Regional Division Manager or Designee prior to the PS&E Review pursuant to 23 CFR Part 630B.

4. After the project is advertised, bids shall be submitted to the Department's Regional Division Manager or Designee, who will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106. The County's approved 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.

5. The County shall abide with the conditions identified within 23 CFR 635.120 in entirety. If the County identifies additional work that may be justifiable in incorporating into the construction contract this work shall be reviewed and approved by the Department prior to commencing with the additional work.

### **SECTION THREE: METHOD OF PAYMENT--REIMBURSEMENT**

The Department's District Office shall reimburse the County upon receipt of payment requests for the purposes stated in Section Two, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Invoices shall be submitted monthly to the Department District Office. 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 County for corrections. Reimbursements shall include the information contained in **Appendix J**.

The Department's District Office will not reimburse the County for costs incurred prior to the full execution of the Agreement and obligation of federal funding, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Costs incurred prior to FHWA authorization require additional justification pursuant to 23 CFR Part 1.9. Final payment requests shall be submitted to the Department's District Office within four months of completion of the project and prior to the termination date identified within Section Twenty.

### **SECTION FOUR: COUNTY SHALL**

1. Be the lead agency for the Project.
2. Use the Project Control Number in all correspondence and submittals to the Department.
3. Pay all costs, perform all labor, and supply all material for the Project.
4. Identify a Project Manager who shall be the single point of contact to the Department.
5. Adopt a written resolution of support for the Project, including, as appropriate, an assumption of ownership, liability, maintenance, related amenities, and the availability of required matching funds.
6. Obtain approval from the Department's Regional Division Manager or Designee and the District Technical Support Engineer of PS&E Package which includes the following:
  - a. Construction Plans;
  - b. Engineer's Estimate/Engineer's Opinion of Probable Cost;
  - c. Specifications; and,
  - d. Contract Book.
7. Obtain written authorization from the Department prior to advertising the Project for bids or performing work with the County's personnel, equipment, and /or resources.



8. Advertise, let, and supervise the construction of Project Control No. S100040 using applicable federal, state or local requirements.
9. If the Project is to be put out for bid, prepare a final, detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price, and cost of the items based on the bid price.
10. If the Project will be built with County resources, prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District Office.
11. Obtain Department agreement in awarding the bid.
12. Register and enter all required data into B2Gnow and LCPtracker programs and contractually require the prime contractor and subcontractors to do the same.
13. Submit reimbursement requests monthly in the Department's federal aid format to include details of the quantities allowed on various items of work.
14. Agree that the Department has the option to terminate this Agreement if the County's Certification Package is not received by the Department's Regional Division Manager or Designee by August 15<sup>th</sup> of the year in which the project funds are programmed. The Certification Package shall remain in the County's project file for five years after project completion and shall contain, the following documents:
  - a. Signed Certification of Pre-Construction Phase (**Appendix F-1**);
  - b. Estimate of T/LGA Project Pay-Out (**Appendix F-2**);
  - c. The PS&E assembly;
  - d. Environmental clearance and certification documentation;
  - e. The State Historic Preservation Officer's concurrence;
  - f. Right of Way certification documentation;
  - g. Utility certification documentation;
  - h. Intelligent Transportation Systems (ITS) certification documentation; and,
  - i. Railroad certification documentation.
15. Agree that if current federal fiscal year funding is not obligated by **September 30<sup>th</sup>**, this Agreement shall terminate. However, if prior federal fiscal year funding has been authorized, this Agreement will remain in effect. If the County cannot meet the federal fiscal year deadline, and the money is reprogrammed for the next fiscal year, this Agreement will remain in effect.
16. Be responsible for preliminary engineering, environmental documentation, right-of-way activities, project development, utility coordination, project construction, and construction management and testing.
  - a. Construction management and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations.
  - b. The County's award of contracts for construction management or inspection services must be pre-approved by the Department's Regional Division Manager or Designee.
  - c. If the County hires construction management or inspection services, County shall provide copies of any applicable task order, contract and supporting procurement documents to the Department's Regional Division Manager or Designee prior to the Project construction start date.
17. Be responsible for all applicable design, pre-construction and maintenance activity including, but not limited to the following:

- a. utility coordination and relocation;
  - b. drainage and storm drain design;
  - c. geotechnical design;
  - d. pavement design;
  - e. traffic design;
  - f. structural design;
  - g. obtaining environmental and cultural resource clearances;
  - h. right-of-way mappings;
  - i. right-of-way acquisition;
  - j. submitting acceptable hazardous materials reports;
  - k. public involvement;
  - l. agency coordination;
  - m. permit application;
  - n. blading;
  - o. shaping;
  - p. snow removal;
  - q. gravel;
  - r. repair of washouts; and,
  - s. chip sealing.
18. Develop and execute the Project in accordance with the Department's current Tribal/Local Government Agency Handbook, Construction Procedures Handbook for Federal Aid Local Government Lead Projects, and the New Mexico Transportation Department's Office Procedures Manual.
  19. Insure all designs comply with **Appendix A**, "Preliminary Engineering/Construction Engineering" to be performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, §§ 61-23-21 and 61-15-1.
  20. Design the Project in accordance with **Appendix C**, "Design Standards," which is hereby incorporated in this Agreement.
  21. Comply with **Appendix D**, "Survey and Right of Way Acquisition Requirements," which is hereby incorporated in this Agreement.
  22. Comply with **Appendix E**, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
  23. Submit all required environmental documents to the Department's Environmental Design Division. The Department shall coordinate all activities related to environmental certifications through the FHWA.
  24. Warrant, covenant, and agree that the County will comply with conditions and terms contained in **Appendices A through F-2**. The County will perform any and all applicable obligations contained herein.
  25. Complete the environmental process as described in the Department's Tribal/Local Government Agency Handbook and in accordance with state and federal guidelines and regulations including the National Environmental Policy Act (NEPA), FHWA Technical Advisory T 6640.8, 23 CFR Part 771, and guidance for preparing environmental documents. This effort includes, but will not be limited to:
    - a. A Location Corridor Study (if applicable) as described in **Appendix B**. Initiate and cause to be prepared, an Initial Corridor Analysis Report "Phase A Report," a

- Location Study Report "Phase B Report," and the appropriate level of environmental documentation "Phase C";
- b. Submittal of a scope of work to the Department's Environmental Design Division to determine the level of effort needed for completing the environmental certification process;
  - c. Conducting a cultural resources survey if required, and submitting the cultural resources survey report to the Department's Environmental Design Division for review and submittal to SHPO. The survey will be conducted and the report will be prepared in accordance with the Department's Guidelines for Cultural Resource Investigations;
  - d. Conducting and documenting hazardous materials investigations according to the Department's Environmental Geology Bureau's Hazardous Materials Assessment Handbook. The appropriate environmental documents will be prepared by a qualified environmental professional, as defined in 40 CFR Part 312, and submitted to the Department's Environmental Geology Bureau for review;
  - e. Conducting and documenting the appropriate public notifications and public involvement activities;
  - f. Submittal of appropriate and acceptable NEPA documents prepared by a qualified environmental professional to the Department's Environmental Design Division for review and certification. "Acceptable" means documents that meet the criteria specified in the Department's Tribal/Local Government Agency Handbook; and,
  - g. Produce and distribute to regulatory agencies and interested parties the appropriate number of copies of environmental documents.
26. Comply with **Appendix H-1** if the Project involves lighting and/or highway lighting.
  27. Comply with **Appendix H-2** if the Project involves signal(s) and/or highway signal(s).
  28. Shall register with [www.ccr.gov](http://www.ccr.gov) and DUNS and provide such information to the Department as well as the total compensation and names of the County's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
  29. If the County has received a combined \$500k in Federal Funding, which under OMB Circular A-133 requires the County to have a single audit performed, the County must provide the Department a copy of the most recent completed audit report before the start of work.
  30. Ensure that Project inspection and material testing records are certified and sealed by a professional engineer. The records shall remain in the County's project file for five years after project completion.

#### **SECTION FIVE: DEPARTMENT SHALL**

1. Assign a representative to provide technical assistance to develop, monitor and oversee the project.
2. Provide copies of environmental guidelines, Location Corridor Study Procedures, laws, and regulations, as requested.
3. Review NEPA and related environmental documentation for appropriate level of effort and acceptability.
4. Transmit NEPA documents to the FHWA for review and approval.
5. Review cultural resource technical reports and coordinate consultation between FHWA and the State Historic Preservation Officer.

6. Review hazardous material investigation deliverables to ensure they are ASTM- and NMDOT-compliant.
7. Review required certification documents for completion prior to requesting obligation of federal funding. Review of documents by the Department does not relieve the County or its consultants of their responsibility for errors and omissions.

#### **SECTION SIX: BOTH PARTIES AGREE**

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

#### **SECTION SEVEN: PROJECT RESPONSIBILITY**

The County 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 County, unless stated otherwise in **Appendices H-1 and H-2**.

#### **SECTION EIGHT: COUNTY SOLE JURISDICTION**

The Department is not incorporating this Project into the State Highway System. After the completion of this Agreement, ownership of the project shall remain with the County.

#### **SECTION NINE: LEGAL COMPLIANCE**

The County 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 County 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 County shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

#### **SECTION TEN: 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](http://www.USASpending.gov).

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

1. Name of SUBGRANTEE receiving the award;
2. Amount of Award;
3. Funding Agency;
4. NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants;
5. Program source;
6. Award title descriptive of the purpose of the funding action;
7. Location of the SUBGRANTEE, which includes the Congressional District;
8. Place of performance of the program or activity, which includes the Congressional District;
9. Unique identifier – DUNS -- of the SUBGRANTEE and its parent organization, if one exists; and,
10. 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 SUBGRANTEE'S grant application and standard reports. As specified in Section Four, Paragraph 28, 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.ccr.gov](http://www.ccr.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>.

#### **SECTION ELEVEN: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM OBLIGATIONS**

1. 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 County is required to meet that goal through its contractors or demonstrate good faith efforts. The County 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.
2. Record Keeping Responsibilities – The County shall appoint a DBE liaison officer and assure that its officer completes and submits required Program forms and information to the Department's Office of Equal Opportunity Programs (OEOP). The OEOP can be contacted as follows:

New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 107  
1596 Pacheco Street  
Santa Fe, New Mexico 87505

Phone: 1-800-544-0936 or 505-827-1774  
Fax: 505-827-1779

3. Sanctions – Compliance with the DBE provisions is mandatory. Failure to comply will be treated as a violation of this Agreement. Furthermore, if the County 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.).

#### **SECTION TWELVE: ON-THE-JOB TRAINING (OJT) PROGRAM OBLIGATIONS**

1. OJT Goal Setting – In the event the Department assigns a project specific OJT goal, the County is required to meet that goal through its contractors. If a project specific goal is assigned, the County shall include the Department's Apprentice/Trainee Special Provisions (May 13, 2009) in the County's Invitation to Bid and resulting contracts. The County shall also ensure that an OJT Plan and Training Schedule is provided to the Department at the pre-construction conference.
2. Record Keeping Responsibilities – The County is responsible to appoint or have its prime contractor appoint an OJT liaison officer who is responsible for ensuring compliance with the OJT goal, plan and training schedule. OJT compliance efforts will be reported to the Department's Project Manager and tracked through the LCPTracker software.
3. Sanctions – Compliance with the OJT provisions is mandatory. Failure to comply with the OJT provisions shall be treated as a violation of this Agreement. Further, if the County fails to comply with the OJT provisions, the Department may impose sanctions 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.).

#### **SECTION THIRTEEN: EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND TITLE VI PROGRAM OBLIGATIONS**

1. County Assurances – Each contract the County enters into with a construction contractor, design consultant, other consultant or recipient on a project assisted by the United States Department of Transportation (DOT), and any subcontract thereto, shall include the assurances contained in **Appendix G, G-1, G-2 and G-3:**
2. The County shall sign and submit the attached Appendix G (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances) to the Department's Office of Equal Opportunity Programs as identified within the Appendix. By signing **Appendix G, 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 County.
3. The County shall require recipients to sign and submit the attached Appendix G (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances) to the Department's Office of Equal Opportunity Programs as identified within the Appendix for each contract the County enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project, and any subcontract thereto.

#### **SECTION FOURTEEN: THIRD PARTY BENEFICIARY CLAUSE**

No provision of this Agreement creates in the public, or any member thereof, a third-party beneficiary nor authorizes anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

#### **SECTION FIFTEEN: NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the County arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq.

#### **SECTION SIXTEEN: OFFICE OF INSPECTOR GENERAL REVIEWS**

The County 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.
  - i. 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.
  - ii. 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.
  - iii. 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).

#### **SECTION SEVENTEEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS**

There shall be strict accountability for all receipts and disbursements. The County shall maintain all records and documents relative to the Project for five years after completion. Project files should be kept in accordance with the Department's "Office Procedures Manual (December 2009 Edition)." The County 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 County shall reimburse that portion to the Department within thirty 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 days of written notification.

#### **SECTION EIGHTEEN: 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 County. 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.

#### **SECTION NINETEEN: TERMS 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.

#### **SECTION TWENTY: TERMINATION**

1. This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date except as stated in Section Seven.
2. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed between the County and a contractor within one year from the date the funds have been authorized by the FHWA.



3. 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 12 months.
4. 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.
5. The Department may, at its option, terminate this Agreement if the County 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.

**SECTION TWENTY ONE: 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.

**SECTION TWENTY TWO: AMENDMENT**

This Agreement shall not be altered, modified, supplemented, or amended except by an instrument in writing and 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**

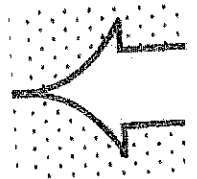
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Secretary

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

By: *Cynthia A. Christ* Date: 11-18-11  
Assistant General Counsel

**COUNTY OF SANTA FE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman of County Commission



**ATTEST**

By: \_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM BY THE COUNTY ATTORNEY**

By: Ana Marie DeFior Steve Ross Date: 1/11/12  
County Attorney  
Jason C. Martiny 1/17/12

## APPENDIX A

### Preliminary Engineering/Construction Engineering

1. The County may select design consultants for studies and preliminary engineering and construction engineering. Preliminary Engineering/Construction Engineering, consultant selection procedures shall be in accordance with 23 CFR Part 172 and the State Procurement Code, NMSA 1978, §§ Chapter 13-1-1 et. seq. If the County is a Home Rule City, their Procurement Code shall be followed.
2. Costs incurred for Preliminary Engineering/Construction Engineering may be reimbursed if funding for design is stipulated in Section Two of the Project Agreement, programmed into the Statewide Transportation Improvement Program (STIP), authorized and obligated under the design phase, and comply with applicable provisions listed in paragraph 1 above.
3. On occasion, state funds are used for the design of a federal aid construction project. Stand-alone projects funded with these monies, such as Municipal Arterial Program, Severance Tax, or General Fund are normally certification projects that require minimal oversight by the Department. If state funds are used for preliminary engineering for a federal aid construction project, the associated Request for Proposals and Architectural/Engineering Contracts must follow the same procedures as if federal funds were being used.
4. Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The County shall keep this on file for five years.
5. Requests for Proposals (RFP) for federally funded professional engineering services shall be reviewed and approved by the Department's Regional Division Manager or Designee before it is advertised. After approval, the County can advertise the RFP and can enter into a contract with the consultant pursuant to the Department's Consultant Services Procedures Manual or their own procedures that comply with 23 CFR Part 172. After the contract is in place the FHWA will authorize the federal funds. If the County uses their own funds for design or construction engineering, no approvals for the consultant selection or process are required.
6. Reimbursements to the County for preliminary engineering or construction engineering will be made in accordance with reimbursement provisions of this Agreement, and based upon appropriate, timely submittals by the County of **Appendix F-1**, and compliance with applicable provisions listed in **Appendix A** of this Agreement. Costs incurred prior to FHWA authorization require additional justification pursuant to 23 CFR Part 1.9.
7. The County's Project Manager shall keep the Department's Regional Division Manager and Assistant District Engineer or their respective Designees apprised of the Project's progress and important issues as well as forward to them all pertinent correspondence in a timely manner.
8. The County shall invite the FHWA Area Engineer, Department's Regional Division Manager, Assistant District Engineer, and Construction Liaison Engineer to participate in any design reviews, pre-construction conference and any pre-paving and partnering meetings.

## APPENDIX B

### Location Corridor Study Guidelines The County shall:

1. Be responsible for the Location Corridor Study, preliminary design, environmental documentation, and preliminary right of way activities.
2. Agree to comply with the Department's Location Study Procedures, Phases A, B, and C.
  - a. **PHASE A – INITIAL CORRIDOR STUDY**  
Determine the need for the project, define the full range of viable alternates, identify social, economic, environmental constraints, and select the most practical alignments for further study.
  - b. **PHASE B – DETAILED ALTERNATE EVALUATION**  
Refine alternate alignments and generate feasible designs for each alternate at a conceptual level and provide adequate detailed information to serve as a basis for the preparation of the environmental documentation and the selection of the final alternate.
  - c. **PHASE C – ENVIRONMENTAL DOCUMENTATION**  
Complete the environmental documentation process, subsequent circulation and public hearing procedures in accordance with the action plan and federal requirements.
3. Initiate and ensure the reports detailed in Number 2 above are prepared.
4. Require its Engineering Consultant to prepare a final fee estimate of the work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The County shall keep this on file for a minimum of five years.
5. Secure the Department's approval of the reports detailed in Number 2 above. The Department shall coordinate all related activities through the FHWA.

## APPENDIX C

### Design Standards

#### I. Roadway Projects (paving, landscaping, parking lots, etc.)

1. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, New Mexico Department of Transportation-Pedestrian Access Details and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of pavement shall have, at a minimum, a 20-year-life. Rehabilitation of pavement shall have, at a minimum, a 10-year-life.
3. The Department's Standard Specifications for Highway and Bridge Construction, 2007 edition "Orange Book," shall be used for projects on the State Highway System and the National Highway System and on supplemental specifications.
4. The following documents shall be used as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico American Public Works Association (APWA) or the County standards may be used on County facilities. Asterisk (\*) items shall be used on **all** roadway projects:
  - \*a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
  - b. AASHTO A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
  - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
  - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
  - e. Department's Urban Drainage Design Criteria;
  - f. Department's Geotechnical Manual, September 1990;
  - \*g. Department's Tribal/Local Government Agency Handbook, latest edition;
  - h. Department's Hazardous Materials Assessment Handbook, latest edition;
  - \*i. Department's Location Study Procedures, August 2000;
  - \*j. Department's Right of Way Handbooks, May 2005;
  - \*k. Department's Right of Way Mapping Development Procedures, latest edition;
  - \*l. AASHTO Guide to Design of Pavement Structures, latest edition;
  - \*m. Department's Pedestrian Access Details (NMDOT-PAD), latest edition; and
  - \*n. Department's New Mexico State Access Management Manual (SAMM), 2001.

## APPENDIX C

### II. Architectural Projects (Transportation Related Buildings, etc.)

1. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, the Americans with Disabilities Accessibility Guidelines, and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of structure(s) or artwork shall have, at a minimum, a 20-year-life. Rehabilitation of structure(s) or artwork shall have, at a minimum, a 10-year-life.
3. The Local International Building Code, electrical code, plumbing code or federal or state codes shall be used, as applicable, for design, construction or rehabilitation project(s).
4. The following documents shall be used, as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico APWA or the County standards may be used on County facilities. Asterisk (\*) items shall be used on **all** architectural projects:
  - \*a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
  - b. American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
  - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
  - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
  - e. Department's Urban Drainage Design Criteria;
  - f. Department's Geotechnical Manual, September 1990;
  - g. Department's Hazardous Materials Assessment Handbook, latest edition;
  - \*h. Department's Location Study Procedures, August 2000;
  - \*i. Department's Right of Way Handbooks, May 2005;
  - j. Department's Right of Way Mapping Development Procedures, latest edition;
  - k. AASHTO Guide to Design of Pavement Structures, latest edition;
  - \*l. 2006 New Mexico Commercial Building Code;
  - \*m. 2006 New Mexico Plumbing Code;
  - \*n. 2006 New Mexico Mechanical Code;
  - \*o. 2008 New Mexico Electrical Code;
  - p. U. S. Department of Interior, National Park Service Preservation Assistance Division, Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings, 1983 edition;
  - \*q. Department's Pedestrian Access Details (NMDOT-PAD), latest edition; and,
  - \*r. Department's New Mexico State Access Management Manual (SAMM), 2001.

## APPENDIX D

### Survey and Right of Way Acquisition Requirements

1. All Department Right of Way Handbooks, particularly Volume VII Tribal/Local Government Agency (T/LGA), shall be adhered to for all right of way operations, including title search, property survey, right of way mapping, appraisal, appraisal review, acquisition (including donations), relocation, and right of way certification. *Only qualified personnel may undertake right of way functions.* The County's staff or consultants may not perform any right of way functions unless the following conditions are first met:
  - a. The County submits to the Department's Right of Way Bureau a listing of persons proposed to perform the individual right of way functions, along with their qualifications reflecting right of way experience and training.
  - b. The County submits the name of a contact person for right of way functions and submits a progress schedule for said activities.Upon written request from the County, the Right of Way Bureau will supply the names of the right of way contractors currently doing business with the Department. Right of way functions performed prior to making the above submittals will jeopardize federal funding for this Project.
2. All right of way surveying, mapping, and monumentation shall be performed by a licensed professional surveyor experienced in right of way projects and shall conform with the Minimum Standards for Surveying in New Mexico adopted by the New Mexico State Board of Registration for Professional Engineers and Surveyors in February, 1994, as provided in NMSA 1978, Sections 61-23-1 to 61-23-32, as amended.
3. Right of way surveying, mapping, and monumentation shall be performed in accordance with the Department's Surveying Manual, the Right of Way Mapping Development Procedures, latest edition, and subsequent Department guidelines, policies, and procedures. Right of way maps and documents must be 100% complete prior to review by the Department's Lands Engineering Section. Information, additional guidance, and early assistance can be obtained from the Lands Engineering Section Supervisor at (505) 827-5420. Early contact is recommended in order to facilitate and expedite the right of way acquisition process.
4. Title reports shall be obtained and prepared to meet Department format and standards for all affected right of way parcels. Title reports shall be submitted to the Lands Abstracting Unit of the Right of Way Bureau for review prior to the final right of way map submittal according to the Right of Way Acceptance Plan (Volume VII) Tribal/Local Government Agency. Non-compliance with the state and/or federal requirements may result in loss of project funds.
5. Appraisals shall not begin until the Department approves the right of way maps. The County or contracted (fee) appraisers shall not be used prior to making the submittals in paragraph one above.
6. All real property appraisals shall be developed and reported in accordance with the right of way regulations, policies, and procedures of the Department, and the Uniform Standards of Professional Appraisal Practice (USPAP) and where federal funds are involved, 49 CFR Parts 103 and 104. All appraisal and appraisal review actions are subject to Department and FHWA review (see Right of Way Acceptance Plan). Non-compliance with state, federal and/or USPAP requirements may result in loss of project funds.
7. Before the initiation of negotiations, the County shall, through a proper appraisal, establish an amount which it believes is just compensation for the real property to be acquired. The

## APPENDIX D

County shall not utilize the same individual/firm to conduct both the appraisals and the appraisal reviews. Upon the completion of the acquisition function, the County shall inform the Acquisition Unit Supervisor and schedule an on-site review of the work. The Department will review the work to render an opinion as to the apparent conformance of the County's work with federal and state statutes and regulations (see Right of Way Acceptance Plan). In the event that a significant amount of the work is found to be unacceptable, no approval of the right of way function will be issued for the Project until the Department is satisfied that the work meets the requirements.

8. The County shall maintain all records and documents relating to the right of way acquisition for a minimum of five years and shall record all transfer of ownership documents with the County Clerk. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.
9. The County shall furnish the Department with a written certification (Right of Way Certification) stating that the right of way acquisition (and relocations, if applicable) has been performed in compliance with federal and state laws and regulations.
10. The County shall be responsible for certifying to the Department that all right of way work has been performed according to the required federal and state statutes and regulations.



## APPENDIX E

### Construction Phase Duties and Obligations

1. The County shall be responsible for all construction engineering; including project supervision, surveying, inspection, and testing. The County shall comply with the Department's Construction Procedures Handbook for Federal-Aid Local Government Projects, the New Mexico Transportation Departments Office Procedures Manual, and Chapter 7 of the Department's Tribal/Local Government Agency Handbook, [www.nmshtd.state.nm.us/main.asp?secid=11187](http://www.nmshtd.state.nm.us/main.asp?secid=11187)
2. The County's general conditions, standard drawings, and specifications may be used if approved by the Department prior to initiating the procurement process.
3. Mix designs, price reduction guidelines, daily production, and test reports shall be pursuant to the Department's or the County's established procedures as approved by the Department, depending on the governing specifications. The American Standard Testing Method equivalents of the American Association of State Highway and Transportation Officials test methods are acceptable. Technician and Training Certification Program (TTCP) procedures are acceptable.
4. The Department's Minimum Acceptance Testing requirements, as identified in the Department's Construction Procedures Handbook for Federal Aid Local Government Projects shall be adhered to, as directed by District lab personnel (Compliance), and as per the following:
  - a. The County's lab personnel or consultant may perform project acceptance testing of materials in accordance with the County'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 County and shall be done by an independent lab not responsible for acceptance testing. Periodic independent assurance testing may be conducted by the Department's District personnel to ensure material and construction compliance.
  - c. The Department's District lab personnel shall inspect the County's lab, or the consultant's lab if a consultant is used for project acceptance testing, independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the County and/or their consultant.
  - d. The County's Engineer shall certify that all materials incorporated into the project meet or exceed the specification requirements. The Department's District Engineer, in turn, shall certify projects to FHWA (if applicable) based on the County's certification.
  - e. Upon request, the Department's Assistant District Engineer or representative shall furnish copies of the Minimum Acceptance Requirements for federal aid projects to the County for guidance at the pre-construction conference.
  - f. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall be certified by the Technical Training and Certificate Program pursuant to the TTCP Manual.
5. The County Engineer shall certify with each reimbursement request that the Certificates of Compliance are on file with the County Engineer'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

## APPENDIX E

- personnel may occasionally check the County's procedures for handling of all Certificates of Compliance.
6. The County Engineer shall certify with each reimbursement request that the items shown on the estimate have been completed in accordance with the contract requirements.
  7. The Department may periodically audit the County's source documents for each project. The Department's established guidelines shall be used to prepare the Source Document Books. Department or FHWA (if applicable) personnel may periodically review the County's procedures for documentation.
  8. Change Orders:
    - a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the Department prior to implementation, in accordance with the Department's Change Order Procedures. The change order shall be submitted soon thereafter to the Project Manager. All decreases/increases shall be documented on factor sheets, which may be obtained from the Department 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 County's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the Department and approved by FHWA, 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 Department 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.
  9. The Department shall assign personnel to assist the County in complying with the procedures and stipulations contained herein.
  10. The County shall identify a Project Manager to the Department as the single point of contact and shall be in charge of the Project.
  11. The County's Project Manager shall keep the Department's Assistant District Engineer or Designee routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's Assistant District Engineer on a monthly basis.

**APPENDIX F-1**

**Certification of Pre-Construction Phase**

**Control No. S100040**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the County has complied with all applicable terms, conditions and certification requirements of this Agreement.
2. That the County has completed environmental coordination and obtained Department and FHWA approval of the Environmental, Right of Way, Utility, Railroad, and ITS documents and completed the consultation process with the State Historic Preservation Officer as required by law. Furthermore, the County has complied with Section Four of the Agreement.

**COUNTY OF SANTA FE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman of County Commission or designee

**When complete, please send APPENDIX F-1 and F-2 to:**

Kevin Mentz, North Region Manager  
NMDOT North Regional Division  
P.O. Box 1149 Room 203  
Santa Fe, NM 87504-1149



## APPENDIX G

### 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 Department of Transportation (the Federal Highway Administration), it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), 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 (hereinafter referred to as the Regulations) and other pertinent nondiscrimination authorities and directives, to the end that in accordance with the Act, Regulations, and other pertinent nondiscrimination authorities and directives, no person in the United States shall, on the grounds of race color, or national origin, sex (23 USC 324), age (42 USC 6101), disability/handicap (29 USC 790) and low income (Executive Order 12898) 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 Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Title 49 Code of Federal Regulations, subsection 21.7(a)(1) and Title 23 Code of Federal Regulations, section 200.9(a) (1) of the Regulations, copies of which are attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. That the Recipient agrees that each "program" and each "facility as defined in 49 CFR subsections 21.23(e) and (b) and 23 CFR 200.5(k) and (g) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (Name of Appropriate Program) and, in adapted form in all proposals for negotiated agreements:

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 Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office 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, issued pursuant to such Acts, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and low income in consideration for an award.

## APPENDIX G

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Acts and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.'
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 G-3 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 delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, 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 and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the (Name of Appropriate Program) and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The

**APPENDIX G**

person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Date: \_\_\_\_\_ Project Control Number: S100040  
Recipient Name: County of Santa Fe  
Signature of Authorized Official: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Appendix G should be signed and mailed to the following:  
New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 107  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
Phone: 1-800-544-0936 or 505-827-1774  
Fax: 505-827-1779

## APPENDIX G-1

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 shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (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, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income 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 by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall 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 Regulations, orders and 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) shall 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. cancellation, termination or suspension of 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 Regulations, or directives issued pursuant thereto.



## APPENDIX G-1

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 for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (Recipient) to enter into such 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.

## APPENDIX G-2

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 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 "G" 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.

The (Name of Recipient), in consideration of 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, sex, age, and disability/handicap, and low income 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 Department of Transportation and its assigns as such interest existed prior to this instruction. \*

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\* 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.

### APPENDIX G-3

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 Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed 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.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assigns.

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, his 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 sex, age, disability/handicap, and low income shall 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 sex, age, disability/handicap, and low income shall 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 Title 49, Code of Federal

\* 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.

### APPENDIX G-3

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.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assigns.

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\* 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.

## APPENDIX H-1

### Lighting and/or Highway Lighting

If the Project involves lighting and/or highway lighting, the County shall:

1. Provide at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and in case of accidental damage to poles or fixtures, replace them with the same brand or equivalent for continued satisfactory operation of said subject lighting system.
2. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the subject lighting system.
3. Service and maintain the lighting system with its own funds.

If the project involves highway lighting, the lighting improvements and services required to be provided under this Agreement shall remain the full responsibility of the County. The roadway shall remain part of the State Highway System. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.

## APPENDIX H-2

### Signal(s) and/or Highway Signal(s)

If the Project involves signal(s) and/or highway signal(s), the County shall:

1. Make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the controller (and cabinet) or the loop detection system, promptly notify the Traffic Services Section of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "controller") including maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the controller in the event the controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway signal system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject signal system.
7. Make all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the County as an additional insured in the construction contractor's general liability policy.
10. Signal improvements and services required under this Agreement shall remain the full responsibility of the County.
11. Maintain the signal system and all facilities constructed with its own funds.

If the project involves highway signals, the signal system, improvements and services required to be provided under this Agreement shall remain the full responsibility of the County. The roadway shall remain part of the State Highway System. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.

APPENDIX I

CERTIFICATION OF COOPERATIVE AGREEMENT 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: S100040

By: \_\_\_\_\_

Date: \_\_\_\_\_

Chairman of County Commission or designee

When Completed, please send Certification to:

David Quintana, TSE  
New Mexico Department of Transportation  
District 5  
P.O. Box 4127  
Santa Fe, NM 87592-4127

## APPENDIX J

### CHECK LIST FOR PAYMENTS AND FOR AUDITS

The following items are needed for DISBURSEMENT, PROGRESS, or FINAL PAYMENTS:

**NOTE: Please have "PROJECT AND CONTROL NUMBERS" on all documentation submitted for disbursement and reimbursement**

- Newspaper bid (advertisement), copy of ad **(BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST)**
- Bidder's list at bid opening-Company(s) and quotation sheet(s) **(BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST)**
- Copy of Contract Between Entity and Contractor **(BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST)**
- Award Letter "NOTICE OF AWARD" and "NOTICE TO PROCEED" forms are required. **(BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST)**
- Environmental and Cultural Clearances **(BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST)**
- Construction Notices required **(THROUGHOUT PROJECT)** – start, suspend, resume and completion
- All invoicing (copies) and copies of cancelled checks-for contactor, vendors, suppliers **(EVERY REIMBURSEMENT)**
- Haul tickets (copies) if applicable **(EVERY REIMBURSEMENT)**
- Force account documentation – labor and equipment **(EVERY REIMBURSEMENT)**
- Engineer certification **(EVERY REIMBURSEMENT)** that certifies all materials incorporated into the project to date meet or exceed specification requirements – stamped/sealed – required for all Agreements in excess of \$100,000.00
- Tabulation of quantities (cover letter) itemized expenditure if requesting for reimbursement **(EVERY REIMBURSEMENT)**
- Tabulation of estimated quantities (cover letter) expenditure if requesting for disbursement
- Status Reports **(MONTHLY)** are required for all Federal/ARRA projects and are due at the 1<sup>st</sup> of each month
- Status Reports are required with each reimbursement request for Non-Federal projects

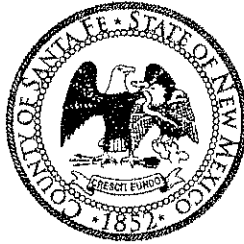
Final Project Certification from Entity **(FINAL REIMBURSEMENT)**



**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virgina Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## ***MEMORANDUM***

**DATE:** *January 19, 2012*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director* *ML*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting January 31, 2012*

REQUEST APPROVAL OF COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FEDERAL HIGHWAY ADMINISTRATION (FHWA) FUNDS IN THE AMOUNT OF \$75,000 TO THE COUNTY FOR DESIGN OF THE NEW MEXICO CENTRAL RAIL TRAIL (Public Works)

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**BACKGROUND AND SUMMARY:**

The Santa Fe County Open Space and Trails Program has been working with the New Mexico Department of Transportation and the Santa Fe Metropolitan Planning Organization to plan a trail along the historic New Mexico Central Railroad between Rancho Viejo and Eldorado.

The trail is included in the Santa Fe Metropolitan Planning Organization Transportation Improvement Program (TIP) for federal fiscal years 2012-2015 and the New Mexico Department of Transportation Statewide Transportation Improvement Program (STIP) for FY 2012, and is therefore eligible for \$75,000 in Federal Transportation Enhancement Funds through the New Mexico Department of Transportation. The purpose of the Cooperative Project Agreement with the New Mexico Department of Transportation is to provide the FHWA funds to the County.

The funding from the FHWA will be used to design the trail from Richard's Avenue to Avenida Vista Grande. The \$25,000 in matching funds required under the cooperative project agreement will come from the County gross receipts tax revenues already budgeted for the project in account 213-7721-481.

**ACTION REQUESTED:**

Staff recommends approval of the Cooperative Project Agreement with the New Mexico Department of Transportation to provide Federal Highway Administration (FHWA) funds in the amount of \$75,000 to the County for design of the New Mexico Central Rail Trail.

Contract Number	
Vendor Number	<u>0000054360</u>
Control Number	<u>S100060</u>

**COOPERATIVE PROJECT AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the New Mexico Department of Transportation (Department) and the County of Santa Fe (County), collectively referred to as the "Parties."

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

**SECTION ONE: PURPOSE**

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the County for a transportation project described in the County's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). This Project is referred to interchangeably as "Project" or "Project Control No. S100060." The Project is a joint and coordinated effort for which the Department and the County each have authority or jurisdiction.

**SECTION TWO: FUNDING**

1. The total funding for Project Control No. S100060, is One Hundred Thousand Dollars (\$100,000) which will be shared by the Parties as follows:
 

<b>A.</b>	<b><u>2011/2012 Surface Transportation Enhancements (TPE) Funds</u></b>	
	<b><u>Department's 75% share</u></b>	\$75,000
	For Right of Way, acquisition, planning, design and construction of A multi-use trail and trail facilities from Richards Ave. to Avenida Vista Grande.	
<b>B.</b>	<b><u>County's matching 25% share</u></b>	\$25,000
	For the purpose stated above.	
<b>C.</b>	<b><u>The Total Project Funding</u></b>	<b><u>\$100,000</u></b>
  
2. The County shall pay all Project costs that exceed the total funding amount specified in this section.
3. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the County's Engineer's Estimate of Probable Cost. The engineer's estimate shall be submitted to the Department's Regional Division Manager or Designee prior to the PS&E Review pursuant to 23 CFR Part 630B.
4. After the project is advertised, bids shall be submitted to the Department's Regional Division Manager or Designee, who will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106. The County's approved 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.

5. The County shall abide with the conditions identified within 23 CFR 635.120 in entirety. If the County identifies additional work that may be justifiable in incorporating into the construction contract this work shall be reviewed and approved by the Department prior to commencing with the additional work.

### **SECTION THREE: METHOD OF PAYMENT--REIMBURSEMENT**

The Department's District Office shall reimburse the County upon receipt of payment requests for the purposes stated in Section Two, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Invoices shall be submitted monthly to the Department District Office. 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 County for corrections. Reimbursements shall include the information contained in **Appendix J**.

The Department's District Office will not reimburse the County for costs incurred prior to the full execution of the Agreement and obligation of federal funding, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Costs incurred prior to FHWA authorization require additional justification pursuant to 23 CFR Part 1.9. Final payment requests shall be submitted to the Department's District Office within four months of completion of the project and prior to the termination date identified within Section Twenty.

### **SECTION FOUR: COUNTY SHALL**

1. Be the lead agency for the Project.
2. Use the Project Control Number in all correspondence and submittals to the Department.
3. Pay all costs, perform all labor, and supply all material for the Project.
4. Identify a Project Manager who shall be the single point of contact to the Department.
5. Adopt a written resolution of support for the Project, including, as appropriate, an assumption of ownership, liability, maintenance, related amenities, and the availability of required matching funds.
6. Obtain approval from the Department's Regional Division Manager or Designee, and the District Technical Support Engineer of PS&E Package which includes the following:
  - a. Construction Plans;
  - b. Engineer's Estimate/Engineer's Opinion of Probable Cost;
  - c. Specifications; and,
  - d. Contract Book.
7. Obtain written authorization from the Department prior to advertising the Project for bids or performing work with the County's personnel, equipment, and /or resources.

8. Advertise, let, and supervise the construction of Project Control No. S100060 using applicable federal, state or local requirements.
9. If the Project is to be put out for bid, prepare a final, detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price, and cost of the items based on the bid price.
10. If the Project will be built with County resources, prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District Office.
11. Obtain Department agreement in awarding the bid.
12. Register and enter all required data into B2Gnow and LCPtracker programs and contractually require the prime contractor and subcontractors to do the same.
13. Submit reimbursement requests monthly in the Department's federal aid format to include details of the quantities allowed on various items of work.
14. Agree that the Department has the option to terminate this Agreement if the County's Certification Package is not received by the Department's Regional Division Manager or Designee by August 15<sup>th</sup> of the year in which the project funds are programmed. The Certification Package shall remain in the County's project file for five years after project completion and shall contain, the following documents:
  - a. Signed Certification of Pre-Construction Phase (**Appendix F-1**);
  - b. Estimate of T/LGA Project Pay-Out (**Appendix F-2**);
  - c. The PS&E assembly;
  - d. Environmental clearance and certification documentation;
  - e. The State Historic Preservation Officer's concurrence;
  - f. Right of Way certification documentation;
  - g. Utility certification documentation;
  - h. Intelligent Transportation Systems (ITS) certification documentation; and,
  - i. Railroad certification documentation.
15. Agree that if current federal fiscal year funding is not obligated by **September 30<sup>th</sup>**, this Agreement shall terminate. However, if prior federal fiscal year funding has been authorized, this Agreement will remain in effect. If the County cannot meet the federal fiscal year deadline, and the money is reprogrammed for the next fiscal year, this Agreement will remain in effect.
16. Be responsible for preliminary engineering, environmental documentation, right-of-way activities, project development, utility coordination, project construction, and construction management and testing.
  - a. Construction management and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations.
  - b. The County's award of contracts for construction management or inspection services must be pre-approved by the Department's Regional Division Manager or Designee.
  - c. If the County hires construction management or inspection services, County shall provide copies of any applicable task order, contract and supporting procurement documents to the Department's Regional Division Manager or Designee prior to the Project construction start date.
17. Be responsible for all applicable design, pre-construction and maintenance activity including, but not limited to the following:

- a. utility coordination and relocation;
  - b. drainage and storm drain design;
  - c. geotechnical design;
  - d. pavement design;
  - e. traffic design;
  - f. structural design;
  - g. obtaining environmental and cultural resource clearances;
  - h. right-of-way mappings;
  - i. right-of-way acquisition;
  - j. submitting acceptable hazardous materials reports;
  - k. public involvement;
  - l. agency coordination;
  - m. permit application;
  - n. blading;
  - o. shaping;
  - p. snow removal;
  - q. gravel;
  - r. repair of washouts; and,
  - s. chip sealing.
18. Develop and execute the Project in accordance with the Department's current Tribal/Local Government Agency Handbook, Construction Procedures Handbook for Federal Aid Local Government Lead Projects, and the New Mexico Transportation Department's Office Procedures Manual.
  19. Insure all designs comply with **Appendix A**, "Preliminary Engineering/Construction Engineering" to be performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, §§ 61-23-21 and 61-15-1.
  20. Design the Project in accordance with **Appendix C**, "Design Standards," which is hereby incorporated in this Agreement.
  21. Comply with **Appendix D**, "Survey and Right of Way Acquisition Requirements," which is hereby incorporated in this Agreement.
  22. Comply with **Appendix E**, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
  23. Submit all required environmental documents to the Department's Environmental Design Division. The Department shall coordinate all activities related to environmental certifications through the FHWA.
  24. Warrant, covenant, and agree that the County will comply with conditions and terms contained in **Appendices A through F-2**. The County will perform any and all applicable obligations contained herein.
  25. Complete the environmental process as described in the Department's Tribal/Local Government Agency Handbook and in accordance with state and federal guidelines and regulations including the National Environmental Policy Act (NEPA), FHWA Technical Advisory T 6640.8, 23 CFR Part 771, and guidance for preparing environmental documents. This effort includes, but will not be limited to:
    - a. A Location Corridor Study (if applicable) as described in **Appendix B**. Initiate and cause to be prepared, an Initial Corridor Analysis Report "Phase A Report," a

- Location Study Report "Phase B Report," and the appropriate level of environmental documentation "Phase C";
- b. Submittal of a scope of work to the Department's Environmental Design Division to determine the level of effort needed for completing the environmental certification process;
  - c. Conducting a cultural resources survey if required, and submitting the cultural resources survey report to the Department's Environmental Design Division for review and submittal to SHPO. The survey will be conducted and the report will be prepared in accordance with the Department's Guidelines for Cultural Resource Investigations;
  - d. Conducting and documenting hazardous materials investigations according to the Department's Environmental Geology Bureau's Hazardous Materials Assessment Handbook. The appropriate environmental documents will be prepared by a qualified environmental professional, as defined in 40 CFR Part 312, and submitted to the Department's Environmental Geology Bureau for review;
  - e. Conducting and documenting the appropriate public notifications and public involvement activities;
  - f. Submittal of appropriate and acceptable NEPA documents prepared by a qualified environmental professional to the Department's Environmental Design Division for review and certification. "Acceptable" means documents that meet the criteria specified in the Department's Tribal/Local Government Agency Handbook; and,
  - g. Produce and distribute to regulatory agencies and interested parties the appropriate number of copies of environmental documents.
26. Comply with **Appendix H-1** if the Project involves lighting and/or highway lighting.
  27. Comply with **Appendix H-2** if the Project involves signal(s) and/or highway signal(s).
  28. Shall register with [www.ccr.gov](http://www.ccr.gov) and DUNS and provide such information to the Department as well as the total compensation and names of the County's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
  29. If the County has received a combined \$500k in Federal Funding, which under OMB Circular A-133 requires the County to have a single audit performed, the County must provide the Department a copy of the most recent completed audit report before the start of work.
  30. Ensure that Project inspection and material testing records are certified and sealed by a professional engineer. The records shall remain in the County's project file for five years after project completion.

#### **SECTION FIVE: DEPARTMENT SHALL**

1. Assign a representative to provide technical assistance to develop, monitor and oversee the project.
2. Provide copies of environmental guidelines, Location Corridor Study Procedures, laws, and regulations, as requested.
3. Review NEPA and related environmental documentation for appropriate level of effort and acceptability.
4. Transmit NEPA documents to the FHWA for review and approval.
5. Review cultural resource technical reports and coordinate consultation between FHWA and the State Historic Preservation Officer.

6. Review hazardous material investigation deliverables to ensure they are ASTM- and NMDOT-compliant.
7. Review required certification documents for completion prior to requesting obligation of federal funding. Review of documents by the Department does not relieve the County or its consultants of their responsibility for errors and omissions.

#### **SECTION SIX: BOTH PARTIES AGREE**

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

#### **SECTION SEVEN: PROJECT RESPONSIBILITY**

The County 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 County, unless stated otherwise in **Appendices H-1 and H-2**.

#### **SECTION EIGHT: COUNTY SOLE JURISDICTION**

The Department is not incorporating this Project into the State Highway System. After the completion of this Agreement, ownership of the project shall remain with the County.

#### **SECTION NINE: LEGAL COMPLIANCE**

The County 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 County 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 County shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

#### **SECTION TEN: 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](http://www.USASpending.gov).

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

1. Name of SUBGRANTEE receiving the award;
2. Amount of Award;
3. Funding Agency;
4. NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants;
5. Program source;
6. Award title descriptive of the purpose of the funding action;
7. Location of the SUBGRANTEE, which includes the Congressional District;
8. Place of performance of the program or activity, which includes the Congressional District;
9. Unique identifier – DUNS -- of the SUBGRANTEE and its parent organization, if one exists; and,
10. 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 SUBGRANTEE'S grant application and standard reports. As specified in Section Four, Paragraph 28, 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.ccr.gov](http://www.ccr.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>.

#### **SECTION ELEVEN: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM OBLIGATIONS**

1. 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 County is required to meet that goal through its contractors or demonstrate good faith efforts. The County 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.
2. Record Keeping Responsibilities – The County shall appoint a DBE liaison officer and assure that its officer completes and submits required Program forms and information to the Department's Office of Equal Opportunity Programs (OEOP). The OEOP can be contacted as follows:

New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 107  
1596 Pacheco Street  
Santa Fe, New Mexico 87505



Phone: 1-800-544-0936 or 505-827-1774

Fax: 505-827-1779

3. Sanctions – Compliance with the DBE provisions is mandatory. Failure to comply will be treated as a violation of this Agreement. Furthermore, if the County 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.).

#### **SECTION TWELVE: ON-THE-JOB TRAINING (OJT) PROGRAM OBLIGATIONS**

1. OJT Goal Setting – In the event the Department assigns a project specific OJT goal, the County is required to meet that goal through its contractors. If a project specific goal is assigned, the County shall include the Department's Apprentice/Trainee Special Provisions (May 13, 2009) in the County's Invitation to Bid and resulting contracts. The County shall also ensure that an OJT Plan and Training Schedule is provided to the Department at the pre-construction conference.
2. Record Keeping Responsibilities – The County is responsible to appoint or have its prime contractor appoint an OJT liaison officer who is responsible for ensuring compliance with the OJT goal, plan and training schedule. OJT compliance efforts will be reported to the Department's Project Manager and tracked through the LCPtracker software.
3. Sanctions – Compliance with the OJT provisions is mandatory. Failure to comply with the OJT provisions shall be treated as a violation of this Agreement. Further, if the County fails to comply with the OJT provisions, the Department may impose sanctions 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.).

#### **SECTION THIRTEEN: EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND TITLE VI PROGRAM OBLIGATIONS**

1. County Assurances – Each contract the County enters into with a construction contractor, design consultant, other consultant or recipient on a project assisted by the United States Department of Transportation (DOT), and any subcontract thereto, shall include the assurances contained in **Appendix G, G-1, G-2 and G-3**:
2. The County shall sign and submit the attached Appendix G (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances) to the Department's Office of Equal Opportunity Programs as identified within the Appendix. By signing **Appendix G, 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 County.
3. The County shall require recipients to sign and submit the attached Appendix G (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances) to the Department's Office of Equal Opportunity Programs as identified within the Appendix for each contract the County enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project, and any subcontract thereto.

#### **SECTION FOURTEEN: THIRD PARTY BENEFICIARY CLAUSE**

No provision of this Agreement creates in the public, or any member thereof, a third-party beneficiary nor authorizes anyone not a party to the Agreement to maintain a suit for wrongful

death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

#### **SECTION FIFTEEN: NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the County arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq.

#### **SECTION SIXTEEN: OFFICE OF INSPECTOR GENERAL REVIEWS**

The County 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.
  - i. 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.
  - ii. 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.
  - iii. 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).

#### **SECTION SEVENTEEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS**

There shall be strict accountability for all receipts and disbursements. The County shall maintain all records and documents relative to the Project for five years after completion. Project files should be kept in accordance with the Department's "Office Procedures Manual (December 2009 Edition)." The County 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 County shall reimburse that portion to the Department within thirty 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 days of written notification.

#### **SECTION EIGHTEEN: 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 County. 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.

#### **SECTION NINETEEN: TERMS 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.

#### **SECTION TWENTY: TERMINATION**

1. This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date except as stated in Section Seven.
2. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed between the County and a contractor within one year from the date the funds have been authorized by the FHWA.
3. 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 12 months.
4. 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.

5. The Department may, at its option, terminate this Agreement if the County 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.

**SECTION TWENTY ONE: 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.

**SECTION TWENTY TWO: AMENDMENT**

This Agreement shall not be altered, modified, supplemented, or amended except by an instrument in writing and 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: \_\_\_\_\_  
Deputy Secretary

Date: \_\_\_\_\_

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

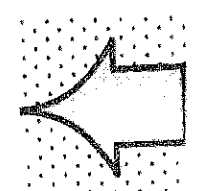
By: Cynthia A. Christ  
Assistant General Counsel

Date: 11-18-11

**COUNTY OF SANTA FE**

By: \_\_\_\_\_  
Chairman of County Commission

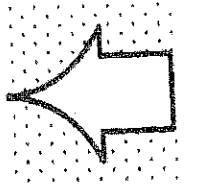
Date: \_\_\_\_\_



**ATTEST**

By: \_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_



APPROVED AS TO FORM BY THE COUNTY ATTORNEY

By: *Ana Maria Rely for Slow Loss* Date: *1/11/12*  
County Attorney  
*William M. ... 1/17/12*

## APPENDIX A

### Preliminary Engineering/Construction Engineering

1. The County may select design consultants for studies and preliminary engineering and construction engineering. Preliminary Engineering/Construction Engineering, consultant selection procedures shall be in accordance with 23 CFR Part 172 and the State Procurement Code, NMSA 1978, §§ Chapter 13-1-1 et. seq. If the County is a Home Rule City, their Procurement Code shall be followed.
2. Costs incurred for Preliminary Engineering/Construction Engineering may be reimbursed if funding for design is stipulated in Section Two of the Project Agreement, programmed into the Statewide Transportation Improvement Program (STIP), authorized and obligated under the design phase, and comply with applicable provisions listed in paragraph 1 above.
3. On occasion, state funds are used for the design of a federal aid construction project. Stand-alone projects funded with these monies, such as Municipal Arterial Program, Severance Tax, or General Fund are normally certification projects that require minimal oversight by the Department. If state funds are used for preliminary engineering for a federal aid construction project, the associated Request for Proposals and Architectural/Engineering Contracts must follow the same procedures as if federal funds were being used.
4. Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The County shall keep this on file for five years.
5. Requests for Proposals (RFP) for federally funded professional engineering services shall be reviewed and approved by the Department's Regional Division Manager or Designee before it is advertised. After approval, the County can advertise the RFP and can enter into a contract with the consultant pursuant to the Department's Consultant Services Procedures Manual or their own procedures that comply with 23 CFR Part 172. After the contract is in place the FHWA will authorize the federal funds. If the County uses their own funds for design or construction engineering, no approvals for the consultant selection or process are required.
6. Reimbursements to the County for preliminary engineering or construction engineering will be made in accordance with reimbursement provisions of this Agreement, and based upon appropriate, timely submittals by the County of **Appendix F-1**, and compliance with applicable provisions listed in **Appendix A** of this Agreement. Costs incurred prior to FHWA authorization require additional justification pursuant to 23 CFR Part 1.9.
7. The County's Project Manager shall keep the Department's Regional Division Manager and Assistant District Engineer or their respective Designees apprised of the Project's progress and important issues as well as forward to them all pertinent correspondence in a timely manner.
8. The County shall invite the FHWA Area Engineer, Department's Regional Division Manager, Assistant District Engineer, and Construction Liaison Engineer to participate in any design reviews, pre-construction conference and any pre-paving and partnering meetings.

## APPENDIX B

### Location Corridor Study Guidelines The County shall:

1. Be responsible for the Location Corridor Study, preliminary design, environmental documentation, and preliminary right of way activities.
2. Agree to comply with the Department's Location Study Procedures, Phases A, B, and C.
  - a. **PHASE A – INITIAL CORRIDOR STUDY**  
Determine the need for the project, define the full range of viable alternates, identify social, economic, environmental constraints, and select the most practical alignments for further study.
  - b. **PHASE B – DETAILED ALTERNATE EVALUATION**  
Refine alternate alignments and generate feasible designs for each alternate at a conceptual level and provide adequate detailed information to serve as a basis for the preparation of the environmental documentation and the selection of the final alternate.
  - c. **PHASE C – ENVIRONMENTAL DOCUMENTATION**  
Complete the environmental documentation process, subsequent circulation and public hearing procedures in accordance with the action plan and federal requirements.
3. Initiate and ensure the reports detailed in Number 2 above are prepared.
4. Require its Engineering Consultant to prepare a final fee estimate of the work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The County shall keep this on file for a minimum of five years.
5. Secure the Department's approval of the reports detailed in Number 2 above. The Department shall coordinate all related activities through the FHWA.

## APPENDIX C

### Design Standards

#### I. Roadway Projects (paving, landscaping, parking lots, etc.)

1. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, New Mexico Department of Transportation-Pedestrian Access Details and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of pavement shall have, at a minimum, a 20-year-life. Rehabilitation of pavement shall have, at a minimum, a 10-year-life.
3. The Department's Standard Specifications for Highway and Bridge Construction, 2007 edition "Orange Book," shall be used for projects on the State Highway System and the National Highway System and on supplemental specifications.
4. The following documents shall be used as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico American Public Works Association (APWA) or the County standards may be used on County facilities. Asterisk (\*) items shall be used on **all** roadway projects:
  - \*a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
  - b. AASHTO A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
  - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
  - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
  - e. Department's Urban Drainage Design Criteria;
  - f. Department's Geotechnical Manual, September 1990;
  - \*g. Department's Tribal/Local Government Agency Handbook, latest edition;
  - h. Department's Hazardous Materials Assessment Handbook, latest edition;
  - \*i. Department's Location Study Procedures, August 2000;
  - \*j. Department's Right of Way Handbooks, May 2005;
  - \*k. Department's Right of Way Mapping Development Procedures, latest edition;
  - \*l. AASHTO Guide to Design of Pavement Structures, latest edition;
  - \*m. Department's Pedestrian Access Details (NMDOT-PAD), latest edition; and,
  - \*n. Department's New Mexico State Access Management Manual (SAMM), 2001.



## APPENDIX C

### II. Architectural Projects (Transportation Related Buildings, etc.)

1. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, the Americans with Disabilities Accessibility Guidelines, and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of structure(s) or artwork shall have, at a minimum, a 20-year-life. Rehabilitation of structure(s) or artwork shall have, at a minimum, a 10-year-life.
3. The Local International Building Code, electrical code, plumbing code or federal or state codes shall be used, as applicable, for design, construction or rehabilitation project(s).
4. The following documents shall be used, as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico APWA or the County standards may be used on County facilities. Asterisk (\*) items shall be used on **all** architectural projects:
  - \*a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
  - b. American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
  - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
  - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
  - e. Department's Urban Drainage Design Criteria;
  - f. Department's Geotechnical Manual, September 1990;
  - g. Department's Hazardous Materials Assessment Handbook, latest edition;
  - \*h. Department's Location Study Procedures, August 2000;
  - \*i. Department's Right of Way Handbooks, May 2005;
  - j. Department's Right of Way Mapping Development Procedures, latest edition;
  - k. AASHTO Guide to Design of Pavement Structures, latest edition;
  - \*l. 2006 New Mexico Commercial Building Code;
  - \*m. 2006 New Mexico Plumbing Code;
  - \*n. 2006 New Mexico Mechanical Code;
  - \*o. 2008 New Mexico Electrical Code;
  - p. U. S. Department of Interior, National Park Service Preservation Assistance Division, Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings, 1983 edition;
  - \*q. Department's Pedestrian Access Details (NMDOT-PAD), latest edition; and,
  - \*r. Department's New Mexico State Access Management Manual (SAMM), 2001.

## APPENDIX D

### Survey and Right of Way Acquisition Requirements

1. All Department Right of Way Handbooks, particularly Volume VII Tribal/Local Government Agency (T/LGA), shall be adhered to for all right of way operations, including title search, property survey, right of way mapping, appraisal, appraisal review, acquisition (including donations), relocation, and right of way certification. *Only qualified personnel may undertake right of way functions.* The County's staff or consultants may not perform any right of way functions unless the following conditions are first met:
  - a. The County submits to the Department's Right of Way Bureau a listing of persons proposed to perform the individual right of way functions, along with their qualifications reflecting right of way experience and training.
  - b. The County submits the name of a contact person for right of way functions and submits a progress schedule for said activities.Upon written request from the County, the Right of Way Bureau will supply the names of the right of way contractors currently doing business with the Department. Right of way functions performed prior to making the above submittals will jeopardize federal funding for this Project.
2. All right of way surveying, mapping, and monumentation shall be performed by a licensed professional surveyor experienced in right of way projects and shall conform with the Minimum Standards for Surveying in New Mexico adopted by the New Mexico State Board of Registration for Professional Engineers and Surveyors in February, 1994, as provided in NMSA 1978, Sections 61-23-1 to 61-23-32, as amended.
3. Right of way surveying, mapping, and monumentation shall be performed in accordance with the Department's Surveying Manual, the Right of Way Mapping Development Procedures, latest edition, and subsequent Department guidelines, policies, and procedures. Right of way maps and documents must be 100% complete prior to review by the Department's Lands Engineering Section. Information, additional guidance, and early assistance can be obtained from the Lands Engineering Section Supervisor at (505) 827-5420. Early contact is recommended in order to facilitate and expedite the right of way acquisition process.
4. Title reports shall be obtained and prepared to meet Department format and standards for all affected right of way parcels. Title reports shall be submitted to the Lands Abstracting Unit of the Right of Way Bureau for review prior to the final right of way map submittal according to the Right of Way Acceptance Plan (Volume VII) Tribal/Local Government Agency. Non-compliance with the state and/or federal requirements may result in loss of project funds.
5. Appraisals shall not begin until the Department approves the right of way maps. The County or contracted (fee) appraisers shall not be used prior to making the submittals in paragraph one above.
6. All real property appraisals shall be developed and reported in accordance with the right of way regulations, policies, and procedures of the Department, and the Uniform Standards of Professional Appraisal Practice (USPAP) and where federal funds are involved, 49 CFR Parts 103 and 104. All appraisal and appraisal review actions are subject to Department and FHWA review (see Right of Way Acceptance Plan). Non-compliance with state, federal and/or USPAP requirements may result in loss of project funds.
7. Before the initiation of negotiations, the County shall, through a proper appraisal, establish an amount which it believes is just compensation for the real property to be acquired. The

## APPENDIX D

County shall not utilize the same individual/firm to conduct both the appraisals and the appraisal reviews. Upon the completion of the acquisition function, the County shall inform the Acquisition Unit Supervisor and schedule an on-site review of the work. The Department will review the work to render an opinion as to the apparent conformance of the County's work with federal and state statutes and regulations (see Right of Way Acceptance Plan). In the event that a significant amount of the work is found to be unacceptable, no approval of the right of way function will be issued for the Project until the Department is satisfied that the work meets the requirements.

8. The County shall maintain all records and documents relating to the right of way acquisition for a minimum of five years and shall record all transfer of ownership documents with the County Clerk. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.
9. The County shall furnish the Department with a written certification (Right of Way Certification) stating that the right of way acquisition (and relocations, if applicable) has been performed in compliance with federal and state laws and regulations.
10. The County shall be responsible for certifying to the Department that all right of way work has been performed according to the required federal and state statutes and regulations.

## APPENDIX E

### Construction Phase Duties and Obligations

1. The County shall be responsible for all construction engineering; including project supervision, surveying, inspection, and testing. The County shall comply with the Department's Construction Procedures Handbook for Federal-Aid Local Government Projects, the New Mexico Transportation Departments Office Procedures Manual, and Chapter 7 of the Department's Tribal/Local Government Agency Handbook. [www.nmshtd.state.nm.us/main.asp?secid=11187](http://www.nmshtd.state.nm.us/main.asp?secid=11187)
2. The County's general conditions, standard drawings, and specifications may be used if approved by the Department prior to initiating the procurement process.
3. Mix designs, price reduction guidelines, daily production, and test reports shall be pursuant to the Department's or the County's established procedures as approved by the Department, depending on the governing specifications. The American Standard Testing Method equivalents of the American Association of State Highway and Transportation Officials test methods are acceptable. Technician and Training Certification Program (TTCP) procedures are acceptable.
4. The Department's Minimum Acceptance Testing requirements, as identified in the Department's Construction Procedures Handbook for Federal Aid Local Government Projects shall be adhered to, as directed by District lab personnel (Compliance), and as per the following:
  - a. The County's lab personnel or consultant may perform project acceptance testing of materials in accordance with the County'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 County and shall be done by an independent lab not responsible for acceptance testing. Periodic independent assurance testing may be conducted by the Department's District personnel to ensure material and construction compliance.
  - c. The Department's District lab personnel shall inspect the County's lab, or the consultant's lab if a consultant is used for project acceptance testing, independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the County and/or their consultant.
  - d. The County's Engineer shall certify that all materials incorporated into the project meet or exceed the specification requirements. The Department's District Engineer, in turn, shall certify projects to FHWA (if applicable) based on the County's certification.
  - e. Upon request, the Department's Assistant District Engineer or representative shall furnish copies of the Minimum Acceptance Requirements for federal aid projects to the County for guidance at the pre-construction conference.
  - f. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall be certified by the Technical Training and Certificate Program pursuant to the TTCP Manual.
5. The County Engineer shall certify with each reimbursement request that the Certificates of Compliance are on file with the County Engineer'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

## APPENDIX E

- personnel may occasionally check the County's procedures for handling of all Certificates of Compliance.
6. The County Engineer shall certify with each reimbursement request that the items shown on the estimate have been completed in accordance with the contract requirements.
  7. The Department may periodically audit the County's source documents for each project. The Department's established guidelines shall be used to prepare the Source Document Books. Department or FHWA (if applicable) personnel may periodically review the County's procedures for documentation.
  8. Change Orders:
    - a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the Department prior to implementation, in accordance with the Department's Change Order Procedures. The change order shall be submitted soon thereafter to the Project Manager. All decreases/increases shall be documented on factor sheets, which may be obtained from the Department 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 County's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the Department and approved by FHWA, 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 Department 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.
  9. The Department shall assign personnel to assist the County in complying with the procedures and stipulations contained herein.
  10. The County shall identify a Project Manager to the Department as the single point of contact and shall be in charge of the Project.
  11. The County's Project Manager shall keep the Department's Assistant District Engineer or Designee routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's Assistant District Engineer on a monthly basis.

**APPENDIX F-1**

**Certification of Pre-Construction Phase**

**Control No. S100060**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ do hereby certify with reference to the aforementioned

Project Control Number as follows:

1. That the County has complied with all applicable terms, conditions and certification requirements of this Agreement.
2. That the County has completed environmental coordination and obtained Department and FHWA approval of the Environmental, Right of Way, Utility, Railroad, and ITS documents and completed the consultation process with the State Historic Preservation Officer as required by law. Furthermore, the County has complied with Section Four of the Agreement.

**COUNTY OF SANTA FE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman of County Commission or designee

**When complete, please send APPENDIX F-1 and F-2 to:**

Kevin Mentz, North Region Manager  
NMDOT North Regional Division  
P.O. Box 1149 Room 203  
Santa Fe, NM 87504-1149

APPENDIX F-2

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

Project Control Number S100060

Project Termini NM Central Railroad Trail from I-25 to Avenida Eldorado

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

<b>Month &amp; Year</b>	<b>Monthly Pay-Out</b>
<b>** TOTAL -&gt; -&gt; -&gt;</b>	<b>\$</b>

## APPENDIX G

### 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 Department of Transportation (the Federal Highway Administration), it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), 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 (hereinafter referred to as the Regulations) and other pertinent nondiscrimination authorities and directives, to the end that in accordance with the Act, Regulations, and other pertinent nondiscrimination authorities and directives, no person in the United States shall, on the grounds of race color, or national origin, sex (23 USC 324), age (42 USC 6101), disability/handicap (29 USC 790) and low income (Executive Order 12898) 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 Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Title 49 Code of Federal Regulations, subsection 21.7(a)(1) and Title 23 Code of Federal Regulations, section 200.9(a) (1) of the Regulations, copies of which are attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its (Name of Appropriate Program):

1. That the Recipient agrees that each "program" and each "facility as defined in 49 CFR subsections 21.23(e) and (b) and 23 CFR 200.5(k) and (g) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (Name of Appropriate Program) and, in adapted form in all proposals for negotiated agreements:

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 Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office 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, issued pursuant to such Acts, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and low income in consideration for an award.



## APPENDIX G

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Acts and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
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 G-3 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 delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, 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 and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the (Name of Appropriate Program) and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The

**APPENDIX G**

person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient

Date: \_\_\_\_\_ Project Control Number: S100060

Recipient Name: County of Santa Fe

Signature of Authorized Official: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Appendix G should be signed and mailed to the following:  
New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 107  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
Phone: 1-800-544-0936 or 505-827-1774  
Fax: 505-827-1779

## APPENDIX G-1

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 shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (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, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income 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 by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall 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 Regulations, orders and 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) shall 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. cancellation, termination or suspension of 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 Regulations, or directives issued pursuant thereto.

## APPENDIX G-1

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 for non-compliance; Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (Recipient) to enter into such 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.

## APPENDIX G-2

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 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 "G" 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.

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, sex, age, and disability/handicap, and low income 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 Department of Transportation and its assigns as such interest existed prior to this instruction. \*

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\* 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.

### APPENDIX G-3

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 Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed 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.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assigns.

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, his 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 sex, age, disability/handicap, and low income shall 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 sex, age, disability/handicap, and low income shall 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 Title 49, Code of Federal

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\* 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.

**APPENDIX G-3**

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.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]\*

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (Name of Recipient) and its assigns.

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\* 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.

## APPENDIX H-1

### Lighting and/or Highway Lighting

If the Project involves lighting and/or highway lighting, the County shall:

1. Provide at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and in case of accidental damage to poles or fixtures, replace them with the same brand or equivalent for continued satisfactory operation of said subject lighting system.
2. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the subject lighting system.
3. Service and maintain the lighting system with its own funds.

If the project involves highway lighting, the lighting improvements and services required to be provided under this Agreement shall remain the full responsibility of the County. The roadway shall remain part of the State Highway System. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.



**Signal(s) and/or Highway Signal(s)**

If the Project involves signal(s) and/or highway signal(s), the County shall:

1. Make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the controller (and cabinet) or the loop detection system, promptly notify the Traffic Services Section of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "controller") including maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the controller in the event the controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway signal system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject signal system.
7. Make all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the County as an additional insured in the construction contractor's general liability policy.
10. Signal improvements and services required under this Agreement shall remain the full responsibility of the County.
11. Maintain the signal system and all facilities constructed with its own funds.

If the project involves highway signals, the signal system, improvements and services required to be provided under this Agreement shall remain the full responsibility of the County. The roadway shall remain part of the State Highway System. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.

**APPENDIX I**

**CERTIFICATION OF COOPERATIVE AGREEMENT 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: S100060

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman of County Commission or designee

When Completed, please send Certification to:

David Quintana, TSE  
New Mexico Department of Transportation  
District 5  
P.O. Box 4127  
Santa Fe, NM 87592-4127

## APPENDIX J

### CHECK LIST FOR PAYMENTS AND FOR AUDITS

The following items are needed for DISBURSEMENT, PROGRESS, or FINAL PAYMENTS:

**NOTE: Please have "PROJECT AND CONTROL NUMBERS" on all documentation submitted for disbursement and reimbursement**

- Newspaper bid (advertisement), copy of ad (**BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST**)
- Bidder's list at bid opening-Company(s) and quotation sheet(s) (**BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST**)
- Copy of Contract Between Entity and Contractor (**BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST**)
- Award Letter "NOTICE OF AWARD" and "NOTICE TO PROCEED" forms are required. (**BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST**)
- Environmental and Cultural Clearances (**BEFORE DISBURSEMENT OR THE FIRST REIMBURSEMENT REQUEST**)
- Construction Notices required (**THROUGHOUT PROJECT**) – start, suspend, resume and completion
- All invoicing (copies) and copies of cancelled checks-for contactor, vendors, suppliers (**EVERY REIMBURSEMENT**)
- Haul tickets (copies) if applicable (**EVERY REIMBURSEMENT**)
- Force account documentation – labor and equipment (**EVERY REIMBURSEMENT**)
- Engineer certification (**EVERY REIMBURSEMENT**) that certifies all materials incorporated into the project to date meet or exceed specification requirements – stamped/sealed – required for all Agreements in excess of \$100,000.00
- Tabulation of quantities (cover letter) itemized expenditure if requesting for reimbursement (**EVERY REIMBURSEMENT**)
- Tabulation of estimated quantities (cover letter) expenditure if requesting for disbursement
- Status Reports (**MONTHLY**) are required for all Federal/ARRA projects and are due at the 1<sup>st</sup> of each month
- Status Reports are required with each reimbursement request for Non-Federal projects

Final Project Certification from Entity (**FINAL REIMBURSEMENT**)