



# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Resolution No. 2014-\_\_\_\_  
Pedestrian Signal Co-Op

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**SPONSOR(S):** Councilor Trujillo

**SUMMARY:** The proposed resolution authorizes the city of Santa Fe to enter into a cooperative project agreement with the New Mexico Department of Transportation to receive Highway Safety Improvement Program funds for a city wide pedestrian signal head upgrade project.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** Yes

**DATE:** August 15, 2014

**ATTACHMENTS:** Resolution  
FIR

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-\_\_\_\_**

3 **INTRODUCED BY:**

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5 Councilor Ron Trujillo

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10 **A RESOLUTION**

11 **AUTHORIZING THE CITY OF SANTA FE TO ENTER INTO A COOPERATIVE**  
12 **PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF**  
13 **TRANSPORTATION FOR RECEIPT OF HIGHWAY SAFETY IMPROVEMENT**  
14 **PROGRAM FUNDS FOR A CITY WIDE PEDESTRIAN SIGNAL HEAD UPGRADE**  
15 **PROJECT.**

16  
17 **WHEREAS**, the City of Santa Fe, New Mexico ("City") has the legal authority to apply  
18 for, receive and administer state and federal funds; and

19 **WHEREAS**, the City submitted an application for New Mexico Department of  
20 Transportation (NMDOT) Highway Safety Improvement Program (HSIP) funds for the purpose  
21 of upgrading 415 pedestrian signal heads at 58 intersections to the countdown type pedestrian  
22 signals ("Project"); and

23 **WHEREAS**, the City was awarded funding for the Project by the NMDOT and must  
24 adopt a resolution of support for the Project and enter into a cooperative project agreement with  
25 NMDOT to receive the funding; and

**WHEREAS, the Santa Fe Metropolitan Planning Organization (SFMPO) Transportation Policy Board approved the Project for placement in the FFY 2014-2017 Transportation Improvement Program; and**

**WHEREAS**, the Project is programmed in the NMDOT's Statewide Transportation Improvement Program approved by the New Mexico State Transportation Commission and Federal Highway Administration; and

**WHEREAS**, funding for the Project construction, in the amount of \$300,000, has been approved for FFY 2015 and such funding requires a 0% local government match; and

**WHEREAS**, the City is required to be responsible for the maintenance of the Project,  
over the useable life of the Project.

**NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
**CITY OF SANTA FE** that the Governing Body of the City of Santa Fe, New Mexico:

1. Supports construction of the Project (NMDOT Project Control Number S100270) funded through a cooperative project agreement with NMDOT;
2. Accepts responsibility for the project;
3. Assumes the lead role for the design development and construction of the project;
4. Agrees to the terms, conditions and certification and reporting requirements of the cooperative project agreement; and
5. Assumes ownership, liability, maintenance, and related amenities of the Project, and assures the NMDOT that sufficient funding for the local match and for upfront project costs is available.

PASSED, APPROVED, and ADOPTED this            day of            , 2014.

JAVIER M. GONZALES, MAYOR

1 ATTEST:

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4 YOLANDA Y. VIGIL, CITY CLERK

5 APPROVED AS TO FORM:

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8 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *M/Melissa/Resolutions 2014/Pedestrian Signal Co-Op*

## City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

### Section A.      General Information

(Check) Bill: \_\_\_\_\_ Resolution: X \_\_\_\_\_

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AUTHORIZING THE CITY OF SANTA FE TO ENTER INTO A COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR RECEIPT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS FOR A CITY WIDE PEDESTRIAN SIGNAL HEAD UPGRADE PROJECT.

Sponsor(s): Councilor Trujillo

Reviewing Department(s): Public Works

Persons Completing FIR: John Romero Date: 08/11/14 Phone: 955-6638

Reviewed by City Attorney: Kelly A. Brennan Date: 8/19/14  
(Signature)

Reviewed by Finance Director: Jessica Garcia Date: 8/19/14  
Assistant (Signature)

### Section B.      Summary

Briefly explain the purpose and major provisions of the bill/resolution:

Directing staff to pursue funding for and implement a City wide Pedestrian Signal Upgrade Project.

### Section C.      Fiscal Impact

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*
- 1. Projected Expenditures:**
  - a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
  - b. Indicate:      "A" if current budget and level of staffing will absorb the costs  
                      "N" if new, additional, or increased budget or staffing will be required
  - c. Indicate:      "R" – if recurring annual costs  
                      "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
  - d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
  - e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

\_\_\_\_\_ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 15/16			FY			Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____
<del>Contractual</del> Capital Outlay Service	\$ <u>300,000</u>	_____	_____	\$ _____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____
Total:	\$ <u>300,000</u>			\$ _____			

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 15/16		FY		

<u>HSIP</u>	\$ <u>300,000</u>	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
Total:	\$ <u>300,000</u>		\$ _____		

### 3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The City will receive \$300,000 of Highway Safety Improvement Program (HSIP) funds which is comprised of state and federal funds. No City match is required.

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### Section D. General Narrative

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None staff is aware of

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### **2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

The city will not obtain the \$300,000 in HSIP funds mentioned above.

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### **3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None staff is aware of

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### **4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The proposed project will allow the city to upgrade 415 pedestrian signal heads at 58 intersections to the countdown type pedestrian signals. After completion of this project, all pedestrian signal heads will meet current MUTCD requirements.

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Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08



# City of Santa Fe, New Mexico

# memo

**DATE:** August 11, 2014

**TO:** Public Works Committee

**VIA:**   
Isaac J. Pino, P.E., Public Works Department Director

**FROM:** John Romero, Traffic Engineering Division Director 

**ITEM AND ISSUE:**

**CITY WIDE PEDESTRIAN SIGNAL HEAD UPGRADES**

- APPROVAL OF RESOLUTION IN SUPPORT OF THE CITY WIDE PEDESTRIAN SIGNAL HEAD UPGRADES PROJECT
- APPROVAL OF NMDOT COOPERATIVE AGREEMENT PROVIDING CITY WITH \$300,000 IN FUNDING

**BACKGROUND & SUMMARY:**

The City's Traffic Engineering Division applied for New Mexico Department of Transportation (NMDOT) administered Highway Safety Improvement Program (HSIP) funds in 2013 for the purpose of upgrading 415 outdated pedestrian signal heads to the countdown type. Countdown pedestrian signal heads have a numerical countdown during the clearance phase, which notifies pedestrians of how much time they have left to cross the intersection. Our outdated pedestrian signal heads only have a flashing hand or a flashing don't walk indication during the clearance phase. After completion of this project, all City owned and/or maintained pedestrian signal heads will meet current Manual on Uniform Traffic Control Devices (MUTCD) requirements.

The City has been selected to receive the HSIP funds in the amount of \$300,000. This funding requires no City match.

**RECOMMENDED ACTION:**

The Traffic Engineering Division recommends the approval of the attached Resolution in support of the project and the attached Cooperative agreement with the NMDOT which will provide the City with \$300,000 of state and federal funding for the purpose of upgrading 415 outdated pedestrian signal heads to the countdown type.

**Attachments:** Resolution  
NMDOT Coop Agreement

**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2014-\_\_\_\_**

**INTRODUCED BY:**

Councilor Ron Trujillo

**A RESOLUTION**

**AUTHORIZING THE CITY OF SANTA FE TO ENTER INTO A COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR RECEIPT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS FOR A CITY WIDE PEDESTRIAN SIGNAL HEAD UPGRADE PROJECT.**

**WHEREAS**, the City of Santa Fe, New Mexico (“City”) has the legal authority to apply for, receive and administer state and federal funds; and

**WHEREAS**, the City submitted an application for New Mexico Department of Transportation (NMDOT) Highway Safety Improvement Project (HSIP) funds for the purpose of upgrading 415 pedestrian signal heads at 58 intersections to the countdown type pedestrian signals (“Project”); and

**WHEREAS**, the City was awarded funding for the Project by the NMDOT and must adopt a resolution of support for the Project and enter into a cooperative project agreement with NMDOT to receive the funding; and

**WHEREAS**, the Santa Fe Metropolitan Planning Organization (SFMPO) Transportation Policy Board approved the Project for placement in the FFY 2014-2017 Transportation Improvement Program; and

**WHEREAS**, the Project is programmed in the NMDOT's Statewide Transportation Improvement Program approved by the New Mexico State Transportation Commission and Federal Highway Administration; and

**WHEREAS**, funding for the Project construction, in the amount of \$300,000, has been approved for FFY 2015 and such funding requires a 0% local government match; and

**WHEREAS**, the City is required to be responsible for the maintenance of the Project,  
over the useable life of the Project.

**NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE** that the Governing Body of the City of Santa Fe, New Mexico:

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PASSED, APPROVED, and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

JAVIER M. GONZALES, MAYOR

1 ATTEST:

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3 \_\_\_\_\_  
4 YOLANDA Y. VIGIL, CITY CLERK

5 APPROVED AS TO FORM:

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8 KELLEY A. BRENNAN, CITY ATTORNEY

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Reviewed by City Attorney: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

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(Signature)

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Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

Contract Number	
Vendor Number	<u>0000054360</u>
Control Number	<u>S100270</u>

## COOPERATIVE PROJECT AGREEMENT-CONSTRUCTION WORK

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

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

### 1. Purpose:

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the Public Entity for a transportation project described in the Public Entity's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). The deliverables under this Agreement may be referred to as the "Construction Work" for the project, which is referred to interchangeably as "Project" or "Project Control No. S100270." The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. Additionally, the purpose of this Agreement is to ensure that the scope of work is maintained throughout the life of the Project.

### 2. Funding:

- a. The total funding for Project Control No. **S100270**, is **Three Hundred Thousand Dollars and No Cents (\$300,000)** which will be shared by the Parties as follows:

1. **FFY 2014 Highway Safety Improvement Program (HSIP) Funds**  
**Department's 92.64% share** \$277,920  
 To upgrade all 415 pedestrian signal heads in the City of Santa Fe at 58 intersections to the countdown type. This counter measure is related to reducing pedestrian related crashes. (Description as per STIP database and Agreement Request Form, this agreement only pertains to the construction portion of Project Control No. S100270.)
2. **State's matching 7.36% share** \$22,080  
 For the purpose stated above.
3. **The Total Project (Construction Work) Funding** \$300,000

- b. **If current federal fiscal year funding is not obligated by September 30<sup>th</sup> of the current federal fiscal year, this Agreement shall terminate.** Should this occur the Public Entity shall be solely responsible for all termination costs. However, if prior federal fiscal year funding has been authorized, this Agreement will remain in effect. If the Public Entity cannot meet the federal fiscal year deadline, and the money is reprogrammed for the next fiscal year, this Agreement will remain in effect.



- c. The Public Entity shall pay all Project costs that exceed the total funding amount specified in this section and all costs determined to be ineligible for reimbursement under the terms of the listed funding sources.
- d. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the Public Entity's Engineer's Estimate (EE). The EE shall be submitted to the Department's North Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.
- e. After the project is advertised, bids shall be submitted in accordance with the advertisement for bids. The Public Entity will open sealed bids in accordance with the Public Entity established procurement procedures. The Department will review the Public Entity's determination of lowest responsive bid to determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106. The Public Entity's responsive low bid for the project, including approved alternates, will be compared to the amount obligated. The Department will allow a 15% increase over the base bid and any approved alternates to cover Engineering and Contingencies and Gross Receipts Tax. If the difference between the FHWA's obligation amount and the responsive low bid plus the 15% is within \$250,000, the amount of funds obligated will not change. If the difference between the obligation amount and the responsive low bid plus the 15% exceeds \$250,000, the difference will be deducted reducing the amount of funds obligated.
- f. The Public Entity may not add additional work to the Project after the construction contract has been let in order to take advantage of any savings that might result from the lowest responsible bid being lower than the projected cost used to set the obligation. State and Federal law do not allow additional work to be added to a project as a change order unless such work could not have been reasonably anticipated at the time of letting and such work is necessary to the completion of the project. If at any point in the construction, the Public Entity identifies Extra Work as defined by the Department's current specifications that may be justified for incorporation into the contract, this proposed work shall be reviewed by the Department (State Construction Engineer or Designee), which must concur prior to the commencement of the Extra Work.

### **3. Method of Payment – Reimbursement:**

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

The Department's District T/LPA Coordinator will not reimburse the Public Entity for costs incurred prior to obligation of federal funding and the full execution of this Agreement, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Final

payment requests shall be submitted to the Department's District T/LPA Coordinator within thirty (30) calendar days of physical completion of the project and prior to the termination date identified within Section 20.

#### **4. Public Entity Shall:**

- a. Act in the capacity of the lead agency for the Project.
- b. Use the Project Control Number in all correspondence and submittals to the Department.
- c. Provide notice to the Department's **North** Region T/LPA Coordinator of the bid tabs and the lowest responsive bidder.
- d. Pay all costs, perform all labor and supply all material for the Project, or procure construction services to perform all labor and supply all materials for the Project.
- e. Identify a Project Manager who shall be the single point of contact for all communications to and from the Department.
- f. 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.
- g. Provide the written authorization received from the Department's North Region T/LPA Coordinator to the District T/LPA Coordinator prior to advertising the Project for bids or performing work with the Public Entity's personnel, equipment, and /or resources.
- h. Advertise, let, and supervise the construction of Project Control No. S100270 using applicable federal, state or local requirements or procure services to accomplish these tasks.
- i. Ensure and maintain proof of compliance with 23 CFR Section 635.410 and ensure construction materials, including those associated with utility facilities and relocations, to be in accordance with "Buy America" requirements which require proof of origin and place of manufacture of iron and steel products and materials to be made in America. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- j. Ensure construction of the Project complies with Title II of the Americans with Disabilities Act of 1990 (ADA), implemented by 28 CFR 35, Section 504 of the 1973 Rehabilitation Act, implemented by 49 CFR 27, NMDOT Pedestrian Access Details, and NMSA 1978 Sections 67-3-62 and 67-3-64. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- k. If the Project will be built with Public Entity resources, prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District T/LPA Coordinator. If Public Entity is not building the Project with Public Entity resources a detailed report is not required.
- l. The Public Entity shall ensure that the contractor and all subcontractors register and enter all required data into B2Gnow and LCPtracker programs. Assistance can be obtained in this effort by contacting the Office of Equal Opportunity Programs ("OEOP") as identified in Section 11. The Public Entity shall verify all entries by the contractor and all subcontractors into the B2Gnow and LCPtracker programs. Failure by the Public Entity to adhere to this reporting provision may result in the Project being deemed ineligible for reimbursement.
- m. Ensure construction activities comply with approved design, environmental commitments, right of way activities, utility coordination, and construction management and testing.

1. Construction management, testing and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations.
  2. The Public Entity's award of contracts for construction management testing or inspection services shall be independent and shall not be procured through the construction contractor.
- n. Develop and execute the Project in accordance with the Department's current Specifications, Tribal/Local Public Agency Handbook, and the Construction Procedures Handbook for Federal Aid Local Government Lead Projects.
  - o. Comply with Appendix A, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
  - p. Timely submit and receive all required environmental documentation and authorization for the construction phase to the Project. Copies of all approvals shall be provided to the District T/LPA Coordinator prior to construction.
  - q. Shall register with www.sam.gov and DUNS and provide such information to the Department as well as the total compensation and names of the Public Entity 2014's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
  - r. If the Public Entity has received a combined \$500k in Federal Funding, which under OMB Circular A-133 requires the Public Entity to have a single audit performed, the Public Entity must provide the Department a copy of the most recent completed audit report before the start of work.

#### **5. The Department Shall:**

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

#### **6. Both Parties Agree:**

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

#### **7. Project Responsibility:**

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

#### **8. Public Entity Sole Jurisdiction:**

Unless otherwise specified in this agreement the Department is not incorporating this Project into the State Highway System and ownership of the project shall remain with the Public Entity.

## **9. Legal Compliance:**

The Public Entity shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement. These laws include, but are not limited to: FHWA memorandums; Authorization to proceed and project monitoring at 23 CFR Part 630.106; Agreement provisions at 23 CFR Part 630.112; Project approval and oversight at 23 U.S.C. § 106 [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; Disadvantaged Business Enterprise Program, 49 CFR Part 26; External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements, 23 CFR Part 230; the Americans with Disabilities Act, 42 §§ 12101-12213 and 28 CFR Parts 35 and 36; the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252; 2 CFR Part 170; and 2 CFR Part 25.

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

## **10. Federal Grant Reporting Requirements:**

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

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

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

The Department will extract as much information as possible from the Public Entity's grant application and standard reports. As specified in Section 4, Paragraph r, the subgrantee will be required to provide the total compensation and names of the subgrantee's top five executives, if applicable, and shall register with [www.sam.gov](http://www.sam.gov) and DUNS and provide that information to the Department.

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

#### **11. Disadvantaged Business Enterprise (DBE) Program:**

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

New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 201  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
Phone: 1-800-544-0936 or 505-827-1774  
Fax: 505-827-1779

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

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

## **12. Title VI Program Obligations:**

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

## **13. Third Party Beneficiary:**

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

The Department will not be a party to any claim between Public Entity and their designated contractor or subcontractor at any tier. The Public Entity shall solely defend any claim brought against the Department as a result of the Project.

## **14. 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 Public Entity 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.

## **15. Office of Inspector General Reviews:**

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

- a. Inspector General Reviews. Any Inspector General of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing

criminal proceeding shall be relayed immediately to the head of the department or agency concerned.

- b. Access of Offices of Inspector General to Certain Records and Employees. With respect to each contract or grant awarded using federal funds, any representative of an appropriate Inspector General appointed under the Inspector General Act of 1978, 5 U.S.C. App. §§ 3 or 8G, is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub-grant; and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.
  1. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the contractor or any of contractor's subcontractors, or any state or local agency administering such contract that directly pertain to, and involve transactions relating to, the contract or subcontract.
  2. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of contractor's subcontractors, or of any state or local government agency administering the contract, regarding such transactions.
  3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
- c. New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, has the authority to carry out all duties required. The duties are the same as those specified in Federal Law: Office of Inspector General, 23 U.S.C. §302 (the capability to carry out the duties required by law); 23 U.S.C. §112 (contracting for engineering and design services); the review of Federal-aid construction contracts references; 23 U.S.C. § 106 (project approval); 23 U.S.C. § 112 (letting of contracts); 23 U.S.C. § 113 (prevailing rate of wage); 23 U.S.C. § 114 (construction); 23 CFR Parts 635 and 636 (design build); 23 CFR Part 637 (construction inspection approval); the State Departments of Transportation are responsible for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. § 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

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

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

## **17. Appropriation**

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

## **18. Scope of this Agreement:**

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

## **19. Severability:**

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

## **20. Term:**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date except as stated in Sections 7 and 16 above.

## **21. Termination:**

This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date unless otherwise provided in this agreement.

- a. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed between the Public Entity and a contractor.
- b. The Department will review inactive projects on a quarterly basis. An inactive project is a project for which no expenditures have been charged against federal funds for the past three (3) months.
- c. 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.
- d. The Department may, at its option, terminate this Agreement if the Public Entity fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

## **22. Principal Contacts and Notices:**

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



**North Region T/LPA Coordinator**

Yolanda M. Roybal, P.E.  
North Region Design T/LPA Coordinator  
New Mexico Department of Transportation  
P.O. Box 1149, Room 203  
Santa Fe, NM 87504  
Office: 505-827-9734  
E-mail: Yolanda.Roybal@state.nm.us

**District T/LPA Coordinator**

David Quintana, P.E.  
TSE  
New Mexico Department of Transportation  
P.O. Box 4127  
Santa Fe, NM 87502  
Office: 1-800-388-6630

**Public Entity**

Eric Martinez  
Project Engineer  
City of Santa Fe  
P.O. Box 909  
Santa Fe, New Mexico 87504  
Office: 505-955-6612  
E-mail: ebmartinez@ci.santa-fe.nm.us

**23. 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: \_\_\_\_\_  
Cabinet Secretary or Designee

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

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

By: *Cynthia A. Cheri*  
Assistant General Counsel

Date: 7-24-14

**CITY OF SANTA FE**

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

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

**ATTEST**

By: \_\_\_\_\_  
City Clerk

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

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

By: *MDM*  
City Attorney

Date: 8/13/14

**APPROVED:**

\_\_\_\_\_  
Teresita Garcia, Assistant Finance Dir.

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

## APPENDIX A

### Construction Phase Duties and Obligations

1. The Public Entity shall be responsible for all construction engineering; including project supervision, surveying, inspection, and testing. The Public Entity shall comply with the current edition of the Department's Specifications, Construction Procedures Handbook for Federal-Aid Local Government Projects, the New Mexico Transportation Departments Office Procedures Manual, and the Department's Tribal/Local Public Agency Handbook.
2. Mix designs, price reduction guidelines, daily production, and test reports shall be pursuant to the Department's or the Public Entity'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.
3. 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.
  - a. The Public Entity's lab personnel or consultant may perform project acceptance testing of materials in accordance with the Public Entity's procedures and requirements, if approved by the Department. All test reports shall be available for review by the Department and FHWA (if applicable).
  - b. Independent assurance testing is required and is the sole responsibility of the Public Entity and shall be done by an independent lab not responsible for acceptance testing. Periodic independent assurance testing may be conducted by the Department's District personnel to ensure material and construction compliance.
  - c. The Department maintains a listing of pre-approved independent testing assurance labs, which may be used by the Public Entity or the Public Entity's consultant for independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the Public Entity and/or their consultant.
  - d. The Public Entity's Engineer or the Public Entity's consultant shall certify that all materials incorporated into the project meet or exceed the specification requirements. The Minimum Acceptance Requirements are available on the Department's external website.
  - e. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall have current certifications by the Technical Training and Certificate Program.
5. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the Certificates of Compliance are on file with the Public Entity Engineer's Office and Public Entity consultant's office, for products and materials incorporated into the Project and for the quantities shown on the progress payment estimate. The Department may periodically conduct an audit of the Certificates of Compliance pursuant to Section 106.4 of the Department's Standard Specifications. Department personnel may occasionally check the Public Entity's procedures for handling of all Certificates of Compliance.
6. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the items shown on the estimate have been completed and accepted in accordance with the contract requirements.
7. The Department may periodically audit the Public Entity's source documents for each project. The Department's established guidelines shall be used to prepare the Source Document Books.

## APPENDIX A

Department or FHWA (if applicable) personnel may periodically review the Public Entity'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 Public Entity'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 Public Entity shall identify a Project Manager to the Department as the single point of contact for all communications to and from the Department and shall be in charge of the Project.
10. The Public Entity's Project Manager shall keep the Department's District T/LPA Coordinator routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence on a monthly basis.

## APPENDIX B

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

Project Control Number **S100270**

Project Termini	<u>58 intersections, located city wide, City of Santa Fe</u>
-----------------	--

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>	\$

## APPENDIX C

### Title VI Nondiscrimination Assurances For FHWA Recipients

The \_\_\_\_\_ (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the 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.

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 contract 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 C

3. That the Recipient shall insert the clauses of Appendix C of this assurance in every contract subject to the Acts and the Regulations.
4. That the Recipient shall insert the clauses of Appendix C of this assurance, 'as a covenant running with the land, in any deed from the United States effecting 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 C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he 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).

## APPENDIX C

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

Date: \_\_\_\_\_ Project Control Number: S100270

Recipient Name: City of Santa Fe

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

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

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

This Appendix should be signed and mailed to the following:

New Mexico Department of Transportation  
OEOP  
Aspen Plaza, Suite 201  
1596 Pacheco Street  
Santa Fe, New Mexico 87505  
Phone: 1-800-544-0936 or 505-827-1774  
Fax: 505-827-1779



## APPENDIX C

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 U.S. Department of Transportation (hereinafter, "UsDOT") 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 C

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.

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

### (GRANTING CLAUSE)

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

### (HABENDUM CLAUSE)

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

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

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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 C

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. \*

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

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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.

\* 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 C

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 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 D**

**CERTIFICATION OF COOPERATIVE AGREEMENT – CONSTRUCTION WORK  
COMPLIANCE/COMPLETION**

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

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

Control Number: S100270

By: \_\_\_\_\_  
Mayor or designee

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

When completed, please send Certification to:

David Quintana, P.E., TSE  
New Mexico Department of Transportation  
District 5  
P.O. Box 4127  
Santa Fe, NM 87502