

Contract No.:

Vendor No.:

Control No.:

0000054360

S100370

COOPERATIVE PROJECT AGREEMENT – CONSTRUCTION

The New Mexico Department of Transportation (Department), and the City of Santa Fe (Local Agency) enter into this Agreement for Federal Highway Administration (FHWA) funding under NMSA 1978, Section 67-3-28. This Agreement for Project Control No.: S100370 is effective as of the date of the last party to sign it on the signature page.

1. Funding and Project Description.

a. Funding for Construction Work is as follows:

1. FFY 2023 HIGHWAY SAFETY IMPROVEMENT PROGRAM(HSIP) Funds

Department's 90.00% share

\$2,752,765

Design, ROW acquisition and construction of a roundabout at the intersection. DESIGN, ROW ACQUISITION AND CONSTRUCTION OF A ROUNDABOUT AT THE INTERSECTION. Agua Fria St./Cottonwood Drive Intersection. (Description as per STIP database, this agreement only pertains to the Construction Work portion of Project Control No. S100370.)

2. State's matching 10.00% share

\$305,863

For the purpose stated above.

3. The Total Project Funding for Construction Work

\$3,058,628

b. Attached as Exhibit A is a table of data on funding as required by 2 CFR 200.331.

c. The Local Agency shall provide all the work, labor, materials and services necessary to perform the Project.

d. The Local Agency is responsible for all Project costs that exceed federal funding.

e. The Local Agency must repay certain federal funding to the Department if:

1. The Project is cancelled.

2. An audit determines an overpayment or federal funds were used for ineligible cost items.

3. The construction of a road on a right-of-way acquisition is not undertaken within twenty (20) years after the fiscal year in which the funds are authorized.

4. Acquisition of right-of-way or construction of the road for a preliminary engineering project is not undertaken within ten (10) years following the fiscal year in which the project is authorized.

The Local Agency must repay or establish a repayment plan for the federal funds within forty-five (45) days of notice from the Department.

2. Payment – Reimbursement.

The Department will reimburse the Local Agency upon receipt of reimbursement requests with supporting documentation and certification that costs have been incurred. Reimbursement requests may be submitted monthly or, at a minimum, quarterly. Expenses that are documented and determined to be eligible under 2 CFR Part 200 will be reimbursed based on the Local Agency's required Match. The final Project payment request must be submitted within thirty (30) calendar days of completion of (a) the PS&E package or (b) final payment to the contractor for Construction or Project Work and (c) prior to termination of this Agreement. The Department will not reimburse the Local Agency for costs incurred (a) prior to obligation

of federal funding and the effective date of this Agreement; (b) after expiration of this Agreement; or (c) in excess of the federal funding identified in Section 1.

3. Federal, State and Department Requirements.

By entering into this Agreement, the Local Agency certifies and agrees to comply with any applicable Federal and State laws and regulations, and terms and conditions as set forth in:

- a. Title 23, U.S. Code Highways and its associated regulations
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See Exhibit B.
- c. 49 CFR Part 20, Lobbying Certification
- d. 49 CFR Part 29, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Debarment and Suspension (Grants) and Certification
- e. The Department's policies and standards
- f. The current Tribal/Local Government Handbook located at: <https://www.dot.nm.gov/business-support/project-oversight-division/t-lpa-documents-and-information/>
- g. The Federal Funding Accountability and Transparency Act (FFATA) and certain contracting requirements in regard to Office of Inspector General Reviews as identified on Exhibit B.

4. 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. This Agreement terminates on **August 30, 2024**. If a contract term extension is needed, the Local Agency must provide written request to the Region or District T/LPA Coordinator sixty (60) days prior to the expiration date to ensure timely processing of an Amendment. The Region or District will then have two weeks to submit to Project Oversight Division to ensure timely processing of an Amendment.

5. Termination.

The Department may terminate this agreement and request repayment under Section 1e above for the following reasons:

- a. Failure to timely contract: The Local Agency, under a Design Agreement, must enter into a written agreement with an engineering consultant within three (3) months from the effective date this Agreement.
- b. Inactivity: If there is no Project expenditures for twelve (12) consecutive months.
- c. Failure to comply: If the Local Agency fails to comply with any provision of this Agreement.
- d. Local Agency's Request: The Local Agency may seek termination in a writing to the Department, which will be fully considered.

6. Third Party Beneficiary.

This Agreement does not confirm any rights or remedies on anyone other than the Department and the Local Agency. The Department is not a party to any agreement between the Local Agency and a Project contractor at any tier.

7. New Mexico Tort Claims Act.

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

8. Appropriation.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations from the New Mexico Legislature or the United States Congress when federal funds are involved. If sufficient appropriations and authorizations are not made, this Agreement terminates immediately upon written notice from the Department. The Department is not committed to expenditure of funds until they are programmed, budgeted, obligated by FHWA, encumbered, and approved for expenditure. The Department's decision on whether funds are sufficient is final.

9. Scope of this Agreement.

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

10. Severability.

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

11. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices must be in writing and must be given to the principal contacts listed below.

Region T/LPA Coordinator

Sharon R. Cruz
North Region T/LPA Coordinator
New Mexico Department of Transportation
P.O. Box 1149, Room 203
Santa Fe, NM 87504
Office: (505) 221-8220
E-mail: Sharonr.Cruz@dot.nm.gov

District T/LPA Coordinator

James Mexia, P.E.
T/LPA Coordinator
New Mexico Department of Transportation
P.O. Box 4127
Santa Fe, NM 87502
Office: (505) 231-1139
E-mail: James.Mexia@dot.nm.gov

Construction Liaison Engineer

Eunice Cazares de Bravo
T/LPA Construction Liaison Engineer
New Mexico Department of Transportation
1570 Pacheco St., STE. A10
Santa Fe, NM 87505
Office: (505) 321-8380
E-mail: Eunice.Cazares@dot.nm.gov

Local Agency

Romella Glorioso-Moss

Projects Administrator
City of Santa Fe
P.O. Box 909
Santa Fe, New Mexico 87504
Office: 505-955-6623
E-mail: rsglorioso-moss@santafenm.gov

12. Amendment.

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

The remainder of this page is intentionally left blank.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Cabinet Secretary or Designee

Reviewed and Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By:  Date: 9/15/2023
Assistant General Counsel

CITY OF SANTA FE

By: John Blair Date: Sep 19, 2023
[John Blair \(Sep 19, 2023 11:23 MDT\)](#)
~~XXXXX~~ John Blair, City Manager

ATTEST

By: Kristen Miller Date: Sep 19, 2023
CITY OF SANTA FE Clerk XIV

Approved as to form and legal sufficiency by the City's Attorney

By: Marcos Martinez Date: _____
[Marcos Martinez \(Sep 19, 2023 09:26 MDT\)](#)
CITY OF SANTA FE Attorney

Approved for finances

By: Emily K. Oster Date: Sep 19, 2023
[Emily K. Oster \(Sep 19, 2023 11:18 MDT\)](#)
CITY OF SANTA FE Finance Director

EXHIBIT A**2 CFR 200.331 Requirements****Federal Award Identification.**

(i) Public Entity name (which must match the name associated with its unique entity identifier);	City of Santa Fe
(ii) Public Entity's unique entity identifier (UEI);	QLN2YKMMJ8X6
(iii) Federal Award Identification Number (FAIN);	Please see approved Federal Highway form.
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	Please see date on approved Federal Highway form.
(v) Cooperative Project Agreement (Construction) Period of Performance Start and End Date;	Please see date on approved Federal Highway form thru 08/30/2024 (End Date).
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the Public Entity;	\$2,752,765
(vii) Total Amount of Federal Funds Obligated to the Public Entity by the pass-through entity including the current obligation;	This award is in addition to any previous awards received by sub-recipient from NMDOT.
(viii) Total Amount of the Federal Award committed to the Public Entity by the pass-through entity;	The total amount of this award is in addition to any previous awards received by sub-recipient from NMDOT.
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Design, ROW acquisition and construction of a roundabout at the intersection. DESIGN, ROW ACQUISITION AND CONSTRUCTION OF A ROUNDABOUT AT THE INTERSECTION. Agua Fria St./Cottonwood Drive Intersection
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	FHWA, New Mexico Department of Transportation Sean Sandoval - 505 -660-6102, Sean.Sandoval@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name;	20.205- Highway Planning & Construction
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

EXHIBIT B

Uniform Administrative Requirements and Audit

2 CFR § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, applies to each non-profit organization, each institution of higher education, and local governments as a whole when they or one of their departments receives federal funds. 2 CFR § 200 is formally OMB Circular A-133. Any non-profit organization, institution of higher education, or local government spending more than \$750,000 in federal funds from all sources within a 12-month period must have an audit performed on the use of the funds. The Department defines the 12-month period as July 1 to June 30.

Federal Funding Accountability and Transparency Act (FFATA).

The FFATA requires full disclosure to the public of all entities or organizations receiving federal funds. Central to this law is www.USASpending.gov, a publicly available website with searchable information on each federal grant and contract over \$25,000. In addition, the Federal Subaward Reporting System (FSRS), www.FSRS.gov, was developed for reporting on executive compensation and first-tier subawards. The Local Agency is required to register with the US Contractor Registration (System for Award Management [SAM] System) and get a Unique Entity Identifier (UEI) number. The Local Agency is responsible for providing their executive compensation and subaward information to the Department for entry into FSRS.gov. The Department is responsible for providing award information to USASpending. The type of information reported includes:

- Name of Local Agency receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Local Agency, including the Congressional District
- Place of performance of the program or activity, including the Congressional District
- UEI number of the Local Agency and its parent organization if one exists
- Total compensation – If the Local Agency 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, then the names of the top five executives of the Local Agency are also required to comply with the FFATA.
- The Department will extract as much information as possible from the Local Agency's grant application and standard reports.

Office of Inspector General Review

The Local Agency, when procuring services, 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:

1. **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 New Mexico Department of Transportation or the agency concerned.
2. **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, 1,5 USC App. 3 and specifically § 8G, 5 USC App. 3 (2014) 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. In addition, the Local Agency should do the following:
 - a. 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
 - b. 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 Agency administering the contract, regarding such transactions

Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General. The Department's Office of Inspector General (OIG) has the authority to carry out all duties required. The duties are the same as those specified in Federal Law: OIG, 23 USC § 302 (1998) (the capability to carry out the duties required by law); 23 USC § 112(2) (2012) (contracting for engineering and design services); the review of Federal-aid construction contract.

From: [Schwamberger, Christine, DOT](#)
To: [Hurtado, Jacquelyn, DOT](#)
Subject: RE: S100370 Page Swap Request
Date: Monday, September 18, 2023 2:17:25 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)

OK, Jackie, I concur with the page swap since I am the only one affected, the original incorrect version has been deleted, and there will be only one correct version circulating. Chris

Christine M. Schwamberger

Assistant General Counsel
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, New Mexico 87504-1149
Cell: (505) 490-2696
Fax: (505) 476-3639
Christine.Schwamberger@dot.nm.gov



CONFIDENTIALITY NOTICE: This email, including all replies, forwards, and attachments, is intended for the sole use of the above-identified recipients. It may contain information that is privileged and confidential, and is protected by privilege of attorney-client communication, attorney work product, or otherwise. Unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If this email has been sent to you in error, or if you are not an intended recipient, please delete and destroy all copies of this email and attachments, and immediately notify me by email at the above address. Thank you.

From: Hurtado, Jacquelyn, DOT <Jacquelyn.Hurtado@dot.nm.gov>
Sent: Monday, September 18, 2023 9:49 AM
To: Schwamberger, Christine, DOT <Christine.Schwamberger@dot.nm.gov>
Subject: S100370 Page Swap Request
Importance: High

Good morning Christine,

I hope you had a wonderful weekend.

Upon sending S100370 to the entity for signatures, it was found that the State Match percentage (#2) was listed incorrectly on the agreement. The agreement should have reflected 10% instead of 100%. Due to the time constraint for the close of Federal Fiscal Year 2023, I am requesting your concurrence to correct the match % to 10% and utilize your signature from 9/15/2023. The agreement has not been signed by the entity or executed by the Secretary. Attached is the incorrect agreement and the revised agreement to review.

Incorrect

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a. Funding for Construction Work is as follows:

1. **FFY 2023 HIGHWAY SAFETY IMPROVEMENT PROGRAM(HSIP) Funds**
Department's 90.00% share \$2,752,765
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2. **State's matching 100.00% share** \$305,863
 For the purpose stated above.
3. **The Total Project Funding for Construction Work** \$3,058,628

Revised

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	\$305,863
For the purpose stated above.	
3. **The Total Project Funding for Construction Work**

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Jacquelyn Hurtado
 Project Oversight Division
 New Mexico Department of Transportation
 (505) 690-6016

23-0577 New Mexico Department of Transportation

Final Audit Report

2023-09-19

Created:	2023-09-19
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPk1BEsJkIX6M3YFXPE_cqkik4gCKAUof

"23-0577 New Mexico Department of Transportation" History

 Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)

2023-09-19 - 3:37:34 PM GMT- IP address: 63.232.20.2

 Document emailed to ekoster@santafenm.gov for signature

2023-09-19 - 3:38:18 PM GMT

 Email viewed by ekoster@santafenm.gov

2023-09-19 - 5:17:27 PM GMT- IP address: 104.47.65.254

 Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster

2023-09-19 - 5:18:45 PM GMT- IP address: 63.232.20.2

 Document e-signed by Emily K. Oster (ekoster@santafenm.gov)


Signature Date: 2023-09-19 - 5:18:47 PM GMT - Time Source: server- IP address: 63.232.20.2

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2023-09-19 - 5:18:48 PM GMT

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2023-09-19 - 5:23:30 PM GMT- IP address: 166.137.163.16

 Signer jwblair@santafenm.gov entered name at signing as John Blair


2023-09-19 - 5:23:52 PM GMT- IP address: 166.137.163.16

 Document e-signed by John Blair (jwblair@santafenm.gov)

Signature Date: 2023-09-19 - 5:23:54 PM GMT - Time Source: server- IP address: 166.137.163.16

 Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature


2023-09-19 - 5:23:56 PM GMT

 Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

2023-09-19 - 5:28:07 PM GMT- IP address: 104.47.65.254

 Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2023-09-19 - 5:28:16 PM GMT - Time Source: server- IP address: 63.232.20.2

 Agreement completed.

2023-09-19 - 5:28:16 PM GMT