

TRIBAL/LOCAL PUBLIC AGENCY

STATE FUNDING HANDBOOK 2023



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

TRIBAL/LOCAL PUBLIC AGENCY *STATE FUNDING HANDBOOK*

JANUARY 2023

Cover page photo courtesy of Andreas Dress on Unsplash.

TABLE OF CONTENTS

- I. CAPITAL OUTLAY 4**
 - Introduction and Purpose4
 - A. Bond Sale Process5
 - B. Grant Agreement Process8
 - C. State Funded Clearance Requirements.....8
 - 1. Project Certifications FY22 and future projects8
 - 2. Utility Special Provisions for Inclusion in Highway Contracts:9
 - D. Notice of Obligation Process9
 - E. Reimbursement Process10
 - F. Reauthorizations11
 - G. Stalled projects12
 - H. Reporting Process for Capital Project Monitoring System Database.....13
 - I. Project Close Out17
- II. LOCAL GOVERNMENT ROAD FUND 20**
 - Introduction and Purpose20
 - A. Project Development20
 - B. Application Procedures.....21
 - C. Agreement Procedures.....23
 - D. Agreement Conditions and Requirements26
 - E. Construction28
 - F. Project Certifications29
 - G. Project Documentation30
 - H. Waivers33
 - I. Tort Claims Provisions.....35
 - J. Statutory Requirements.....36
 - K. Restrictions38
 - L. Interpretations40
- III. TRANSPORTATION PROJECT FUND 42**
 - Introduction and Purpose42
 - A. Project Development42
 - B. General Guidelines.....43
 - C. Application Requirements.....44
 - D. Application procedures44
 - E. Agreement Procedures.....45
 - F. Waivers47
- IV. REFERENCE MATERIALS..... 49**
 - Appendix A – NMSA 1978, 67-3-28.....49
 - Appendix B – NMSA 22-16-452
 - List of Abbreviations and Acronyms53
 - Local Government Road Fund Project Scopes.....57

I. CAPITAL OUTLAY

INTRODUCTION AND PURPOSE

Capital outlay is funded by the proceeds from Severance Tax Bonds (STB), non-recurring revenue in the general fund, and general obligation bonds. Typical capital outlay projects as administered through NMDOT include planning, design, and construction of street and/or drainage improvements, ROW acquisition, and materials. Items such as operating costs, salaries, brochures, and publications do not qualify for capital outlay funding. State-funded projects are requested through the New Mexico Legislature annually. The Tribal and Local Public Agency (T/LPA) should work with their respective RTPO or MPO on state funding scenarios to ensure compliance with all regulations.

The guidance contained in this chapter was developed by NMDOT to provide T/LPAs with an overview of the process and procedures to be followed when utilizing state funding on transportation projects. The following procedures also ensure that state agencies always know the status of a capital outlay project.

If the T/LPA plans on using federal funding for any phase or portion of the project, all federal requirements described in the federal T/LPA Handbook must be followed, including obtaining clearances and adherence to all design requirements.

Project Numbering

Capital Cooperative Project Agreements can only be executed for General Fund and Severance Tax projects listed in a funding bill that has passed through the New Mexico State Legislature and signed by the Governor and applicable bonds have been sold.

What T/LPAs Need to Know:

This handbook describes state funding, meaning there are no federal funds programmed for any portion of the project.

For state funds, the state statutes apply, not the CFRs.

The point of contact for all stages of Capital Outlay and Local Government Road Fund Projects is the District Capital Project Coordinator.

T/LPAs should contact their District Capital Project Coordinator for guidance on obtaining required project certifications. The process differs from the process in the T/LPA Handbook related to federal funding.

Severance Tax Bond projects must be contractually committed within six months of bond sale.

Projects must be performed in accordance with the language listed in the funding bill. If the T/LPA is unclear what phases can be performed, they are encouraged to seek clarification with the District Capital Project Coordinator. Additional guidance may be obtained from 2.61.6 NMAC.

Each funded project will be assigned a NMDOT Control Number (CN). The T/LPA must include this number on the resolution of support, as required by the program, and will need to be referenced on all documentation, including certification and invoices. The CN provides the T/LPA with information about the awarded project. Each of the CNs begins with a letter "C" which identifies it as a capital outlay project, next is the NMDOT District that the project is located within, followed by the year in which the appropriation law was passed (e.g. 18 for capital outlay awards approved into law in the year 2018), and finally, the last four digits of the Appropriation ID (a 5-digit number assigned by the NM Department of Finance Authority (DFA) to all capital outlay appropriations). The appropriation code is needed for the T/LPA to report on project status in the [Capital Project Monitoring System](#) (CPMS) located on the DFA website.

INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN

The Infrastructure Capital Improvement Plan (ICIP) is a prioritized list developed and submitted to DFA by each T/LPA in the state. The list must be developed with input from the public and is updated each year as projects are funded and constructed. It is required that any projects submitted for potential capital outlay funds be included on this list and the governor has the discretion to line-item veto projects that are not included on a T/LPA ICIP. Instructions for preparation and update of the ICIP and other relevant information can be found [here](#).

ICIP capital outlay appropriation requests should be descriptive and request enough funding to complete the project or a phase of the project. For example, if a project is estimated to cost \$100,000 for design and \$1,500,000 for construction, the description should specify if the funding is for design or construction.

A. BOND SALE PROCESS

During each legislative session, a capital outlay bill is passed providing funds for T/LPA projects through revenues from STB sales. Funding is not available until the Bond Sale

Questionnaire (which can be found on the CPMS website) is returned electronically and the bonds are sold through the State Board of Finance (SBOF). Bond sales occur in June and December of each year. Included in the provisions of the Bond Sale Questionnaire is the following statement:

“Before an agency may certify for the need of bond proceeds the project must be developed sufficiently so that the agency reasonably expects to:

1. Have a third-party obligation to expend at least five percent, within six months, after the applicable bond proceeds are available for the project; and
2. Expend at least eighty-five percent of the bond proceeds within three years after the applicable bond proceeds are available for the project.”

If funds are not being obligated or expended in accordance with the SBOF provisions, as agreed to in the Bond Sale Questionnaire, these projects have a higher risk of being reverted in the event of an economic shift. The Project Oversight Division (POD) will not execute a grant agreement until the bond sale has occurred.

For the State of New Mexico to sell the bond, the following steps must occur:

1. The New Mexico Legislature awards projects funded with Severance Tax and General Funds – depending upon funding availability.
2. The Governor then signs the Capital Bill.
3. POD will get notification from the SBOF bond counsel that questionnaires are available in the Capital Project Monitoring system (CPMS) web-based system. POD will notify the T/LPA to complete the questionnaire.
 - a. The questionnaire process is the State’s verification that the project is ready to begin. The T/LPA identified as the lead agency will need to certify through the questionnaire that the project is ready to go.
 - b. Questions left blank will automatically disqualify the bond from being sold.
 - i. POD reviews the questionnaires as they are filled out to help identify and avoid possible disqualifications.
 - c. Bond Sale Provisions:
 - i. The Appropriation Bills require T/LPA Public Agencies to comply with the following Severance Tax Provisions:
 1. Enter a third-party contract to expend at least five percent (5%) of the bond proceeds within six (6) months after the bond is sold.

2. Spend at least eighty-five percent (85%) of the bond proceeds within three (3) years after the bond is sold.
 - d. Questionnaires will automatically be sent to SBOF for processing through their web-based system.
4. Based on Executive Order 2013-006 (EO 2013-006), capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired. Please see [EO 2013-006](#):
 - a. NMDOT must ensure that the grantees' most recent audit has been submitted and is public record, have approved budgets with DFA, and financial reports are necessary to assess a grantee's accounting methods and procedures. If a grantee is not required to have annual audits by the Audit Act, the grantee must demonstrate that it has adequate accounting procedures or the NMDOT General Office will impose adequate conditions to safeguard funds. Alternatively, the grantee may find an alternative fiscal agent.
 - b. State agencies must critically examine annual audits to identify relevant material weaknesses and significant deficiencies.
 - c. If audits reveal weaknesses, deficiencies, or findings that raise concerns about a grantee's ability to properly account for funds, the grantee must have remedied the issues or special conditions can be imposed by the State agency. Alternatively, a different fiscal agent approved by the state agency can be put into place in order to allow grantee to receive funding.
 - d. Based on the information identified in the Audit, POD fills out a Uniform Funding Criteria (UFC) form and submits to the NMDOT Chief Financial Officer for review and approval.
5. Once approved, POD will submit the UFC form to DFA. The UFC form is used to determine if the T/LPA is able to meet criteria listed in the Executive Orders listed above or if an alternative fiscal agent is needed.
6. POD receives the Project Notification and Certification form and No Arbitrage Certification form and a list of certified projects from the bonding attorney. POD will verify and send the list to the NMDOT secretary for approval. Signed forms will be returned to the bonding attorney and copies will be sent to SBOF.
7. The bonding attorney includes the project in next bond sale.

B. GRANT AGREEMENT PROCESS

Once Capital Bonds have been sold, POD will begin the Grant Agreement process as detailed below:

1. POD drafts and reviews the Grant Agreement internally and submits to NMDOT Office of General Counsel for signature.
2. POD mails the Grant Agreement to the District Capital Coordinator for review and concurrence and to the T/LPA for signature.
3. T/LPA obtains signatures the Grant Agreement and returns the agreement and a [resolution](#) in support of the project to the District Capital Project Coordinator.
4. District Capital Project Coordinator reviews and submits partially executed agreements to POD.
5. POD submits the Grant Agreement for NMDOT Deputy Secretary or Designee signature and contract number assignment.
6. POD will send the fully executed grant agreement to the District Capital Coordinator.
7. District Capital Coordinator will send executed agreement to T/LPA along with a letter explaining the Third Party Agreement / Notice of Obligation steps.

C. STATE FUNDED CLEARANCE REQUIREMENTS

For all projects the prior to Fiscal Year 2022 the T/LPA shall obtain all five (5) required clearances, including: Utility, Environmental, Right-of-Way (ROW), Intelligent Transportation Systems (ITS), and Railroad. All clearance requests must be sent to the District Capital Project Coordinator who will work directly with the appropriate NMDOT bureau to obtain the required clearances.

The Public Entity will be required to consult with NMDOT Environmental section on all projects in order to determine the Public Entities level of effort to comply with Federal/State/and Local laws.

1. PROJECT CERTIFICATIONS FY22 AND FUTURE PROJECTS

All 5 certifications (Environmental, ROW, Utilities, Railroad, ITS) are NOT required for projects that are funded with 100% State and Local funds EXCEPT when the following conditions are met:

- 1) The Project required Federal Actions, i.e., ROW acquisition of Federal Lands, etc.

- 2) The Project is within or crosses NMDOT Right-of-Way.
- 3) The Project agreement was executed for State Fiscal Year 2021 or Prior.

2. UTILITY SPECIAL PROVISIONS FOR INCLUSION IN HIGHWAY CONTRACTS:

On projects that will involve concurrent utility and facility work, the T/LPA must develop and submit a Notice to Contractors that details which utility will perform concurrent utility work, the location(s) where the work will occur, who will perform the work, when it will start and end, a contact person and phone number, and any other details that may impact construction and operation. The Notice to Contractors must be submitted in final form along with the Certification Letter to the District Capital Project Coordinator.

D. NOTICE OF OBLIGATION PROCESS

Article II of the Intergovernmental Grant Agreement (IGA) establishes the requirements and process for reimbursement of capital projects. Article II states that “the T/LPA shall only be reimbursed monies for which the Department has issued, and the T/LPA has received a Notice of Department’s Obligation to Reimburse T/LPA. The Notice of Obligation (NOO) is used to establish an encumbrance. Once a NOO is approved, the NMDOT is authorized to establish the encumbrance in SHARE (the State’s financial system). **PLEASE NOTE: AN ENCUMBRANCE CANNOT BE ESTABLISHED WITHOUT A NOTICE OF OBLIGATION.**

The following steps must be taken to establish the NOO:

1. T/LPA submits a third-party agreement in accordance with the T/LPA’s procurement code and the approved scope of work and budget.
2. T/LPA shall complete and submit:
 - a. A third-party agreement
 - b. A copy of the T/LPA’s procurement code.
 - c. Documentation of how the third-party agreement was procured (copy of bids, copy of RFP, copy of public notice, etc.).
 - d. Complete [NOO](#)
 - i. “Third Party Obligation Amount” may exceed the grant agreement amount.
 - ii. “Amount of this Notice of Obligation to Reimburse” **cannot** exceed grant agreement amount.

3. NMDOT verifies the following information:
 - a. The third-party agreement falls within the scope of work defined in the grant agreement.
 - b. The Language of the appropriation.
 - c. Project budget.
 - d. Third-party contractor was secured by the procurement process in place for T/LPA.
 - e. Third-party agreement contains “termination” language.
4. Once NMDOT determines the third-party agreement and NOO meet the criteria, NMDOT signs the NOO submitted by the T/LPA.
5. Once the T/LPA receives the signed NOO, the T/LPA may proceed with the execution of the third-party agreement. T/LPAs should be advised that if they proceed with the project before the NOO is approved by NMDOT they are doing so at their own risk.
6. NMDOT issues a purchase order in SHARE encumbering the funds for the amount indicated on the NOO. If additional funds are needed for a prior NOO available funds must be verified, and a new NOO must be submitted. **ENCUMBRANCES IN SHARE CAN ONLY BE ESTABLISHED ONCE THE NOTICE OF OBLIGATION HAS BEEN APPROVED BY NMDOT.**

E. REIMBURSEMENT PROCESS

Invoiced work that is performed prior to encumbering of capital outlay funds, execution of the Project Agreement, and prior to receipt of NMDOT issued Purchase Order will not qualify for NMDOT reimbursement and will not be processed. Also, proper documentation as identified in the Project Agreement and current handbook is required prior to processing payment.

Progress billing shall be submitted to the District Capital Project Coordinator for processing and reimbursement in accordance with the terms of the Project Agreement.

1. To claim reimbursement, T/LPAs are required to submit a pay request to the T/LPA District Coordinator with an invoice cover page on T/LPA letter head and to follow the procedures below. These steps ensure payment is processed and approved within fourteen days of receiving a pay request from the T/LPA. T/LPA must adhere to Article IX section C Deadlines of the Capital Outlay Grant Agreement.

- a. The cover page must follow the provided [example](#) and should include the invoice billing period.
 - b. Submit a pay request upon receiving a dated invoice from the consultant/contractor/vendor.
 - c. Progress payments must be sequentially numbered.
 - d. Control Number (CN) and Project Contract Number found on the cover sheet of the project agreement must be on invoice cover page.
 - e. Certification from the T/LPA that the work or services have been performed, and T/LPA has not been reimbursed for the same work previously.
 - f. The original detailed invoice should clearly describe the work or services performed.
 - g. Cancelled checks or direct deposit verification of payments for services must be provided.
 - h. Exhibit 1 (provided in the T/LPA's Capital Outlay Agreement)
 - i. Submit pay request to District Capital Coordinator.
2. The following actions are taken by NMDOT:
- a. The District Coordinator or designee reviews pay request.
 - b. The District Coordinator or designee signs and sends the completed pay request to the District Engineer or ADE for review and approval.
 - c. The District Coordinator will print their name, Sign and Date the invoice cover sheet with a stamp stating: I certify that this is Accurate to the Best of my Knowledge.
 - d. The District Coordinator or designee keys the pay request in SHARE and monitors status of pay voucher.

F. REAUTHORIZATIONS

A reauthorization is a change to a previously approved capital outlay bill. Changes typically include extending the expenditure period, expanding, or altering the project's purpose, changing the fiscal agent, and clarification of aspects of the project. The Legislative Council Services (LCS) needs as much information as possible about the original project – including DFA appropriation ID, current project balance, original citation in the law – to process the reauthorization request efficiently and accurately. These requests are made in December, prior to the start of the Legislative session. Follow the listed items below for

the reauthorization process. The deadline for Reauthorization Requests is two weeks from the session start date.

- Identify the change to the previous approved appropriation.
- Inform sponsor (legislator/governor) that a change to previous approved appropriation needs to be made.
- Complete and submit the Legislative Council Service Capital Outlay Reauthorization [Request Form](#) (available on the Capital Outlay Request Forms page of the New Mexico Legislature website)
- Upon submission of the reauthorization request, email the NMDOT POD Capital Outlay Coordinator with the information pertaining to the reauthorization to ensure the project is also on DFA's reauthorization list for the upcoming session. DFA's deadline is December 31. The ***NMDOT POD Capital Outlay Coordinator should be notified as soon as a project is identified as needing a reauthorization to ensure the project is on the list for reauthorization for the upcoming legislative session.***

**If a request for reauthorization cannot be processed for any reason, Legislative Council Services (LCS) will notify the legislator and detail the reasons.

G. STALLED PROJECTS

DFA periodically runs a report from CPMS on stalled projects. A project is considered stalled if: the T/LPA has not expended/encumbered at least 5% of the total awarded amount within six (6) months of the bond sale date, or if the T/LPA has not expended at least 85% of the total awarded amount within three (3) years of the bond sale date. The District Capital Project Coordinator will follow up with the grantees as to why funds are not being obligated and expended in accordance with the SBOF provisions agreed to in the bond questionnaire, but it is the responsibility of the T/LPA to ensure these milestones are met by accurately and consistently reporting expenditure status in CPMS. T/LPAs are encouraged to keep in contact with the District Capital Project Coordinator frequently throughout the process. The provision states: "Before the T/LPA may certify for the need of bond proceeds the project must be developed sufficiently so that the agency reasonably expects to: 1) have a third party obligation to expend at least five percent, within six months, after the applicable bond proceeds are available for the project; and 2) expend at least eighty-five percent of the bond proceeds within three years after the applicable bond proceeds are available for the project."

If the T/LPA project is stalled, they must record a detailed expenditure plan and timeline in CPMS, but ultimately it is the decision of DFA and LFC to rescind unexpended funds. Stalled projects that have an expenditure plan in CPMS have a higher chance of retaining their funding.

H. REPORTING PROCESS FOR CAPITAL PROJECT MONITORING SYSTEM DATABASE

The T/LPA must log into CPMS and provide project updates monthly. The updates are used by NMDOT staff to monitor the progress of capital outlay projects.

To VIEW Appropriations:

At the “*Capital Appropriations Search*” page you have the option to search for and filter current and past capital appropriations using different criteria. Choose your selection criteria(s) from the selection boxes and click **Submit**. A list of appropriations matching your selection criteria will be displayed. You can click on the **Approp ID** to view the appropriation information.

To UPDATE Appropriations:

1. At the top right of the “*Capital Appropriations Search*” title bar Click **Login**.
2. Select **Local Entity** to access the local entity “*Capital Appropriations*” login page.
3. Enter **Username** and **Password**. Click **Submit**. For Login username and password information contact:

New Mexico Department of Finance
Capital Outlay Bureau
(505) 827-3696

4. When you login, the “*Capital Appropriations*” page displays the “*Open Appropriations Only*” for your local entity. The list displays projects that have a balance greater than zero. If a project is not shown on the list for your local entity, do the following:

- ✓ Go to the *Capital Appropriations Search* page to find the *Admin Agency* for the project. Contact the project manager at the agency administering the appropriation and ask them to update the *Local Fiscal Agent Code*.

5. Click **Approp ID** in the “*Approp ID*” column to access project information for updates.
6. Update all required fields for the monthly update:

FIELD NAME	FIELD TYPE
ICIP Project #	Number – do not use \$ or comma
ICIP Priority #	Number – do not use \$ or comma
Expended Amount (Local Entity)	Number – do not use \$ or comma.
Current Balance (Local Entity)	Number – do not use \$ or comma.
Project Status (Local Entity)	Text – avoid special characters (see NOTE)
Project Phase (Local Entity)	Drop-Down Menu – see options and definitions
Goal/Milestone achieved last quarter	Text – avoid special characters (see NOTE)
Goal/Milestone for next quarter	Text – avoid special characters (see NOTE)
Valid Contracts in Place (True/False)	Check Box if valid contracts exist
No activity for month being reported (True/False)	Check box if no activity for month reporting
Last Submission Date (Local)	Enter date when final monthly payment complete

NOTE:

- For **Project Status** provide specific details about the project including any delays, problems, or changes to timelines or milestones. Date each comment to keep a history on the project progress. *Project Status* is required for each monthly update – if there is no activity for the project indicate “*No Activity*” and explain WHY.
7. Provide required details of Project Timeline including phases, other project funding sources and amounts secured for this project (i.e., CDBG, Federal, private, etc.), contractor information, and additional comments:

Local Data	
ICIP Project #	
ICIP Priority	
Expended Amount (Local Entity)	\$0
Current Balance (Local Entity)	\$0
Project Status (Local Entity)	
Project Phase (Local Entity)	
Goal/Milestone achieved last quarter	
Goal/Milestone for next quarter	
Valid Contracts in Place (True/False)	
No activity for month being reported (True/False)	
Last Submission Date (Local)	
Last Update (Local)	

	Date Completed, Expected Completion Date or N/A	Amount Funded to Date	Future Funding Amounts	Funding Sources	Contractor Name	Contract Amount	Comments
Grant Agreement Issued							
Water Rights							
Easement & ROW							
Acquisition							
Archaeological Studies							
Environmental Studies							
Planning							
Design							
Construction							
Furnish/Equipment							
Total							

NOTE:

➤ For **Contract Information** you must provide the name of the contractor, contract amount and when contract expires for ALL valid contracts in place.

8. Once updates are done, print page and click **Submit**. (If you do not submit, updated information will be lost.)

9. Once changes are submitted, the screen will go back to the “*Capital Appropriations*” page. At the top in the yellow header it will display in red “**Appropriation ID: ##-#### successfully updated**”. If you do not receive this statement, the changes were not saved.

TIP: If changes are not saved, you may need to TAB into and out of fields when updating.

10. Repeat steps 5, 6, and 7 for each project you are updating.

11. To print a copy of the data for your files, click the **Appr ID** in blue in the “*Printable Format*” column. Each monthly print out must be kept in the project file to maintain reporting history.

12. Upon completion of all updates, click **Logout** at top right corner.

Appropriation Phase – OPTIONS and DEFINITIONS		
CODE	DESCRIPTION	APPROPRIATION PHASE DEFINITION and ACCOUNTING STATUS
0150	Grant Agreement Issued	Indicates a Grant Agreement has been issued to the local public body.
0160	Grant Agreement Executed	Indicates a grant agreement has been received back from the local public body, signed, and fully executed.
0200	Purchase in Process	Appropriation is for a PURCHASE - use this option if the purchase is in process (i.e. bids, quotes, purchase order in place, etc.) Explain in <i>Status/Comments</i> specifics on the purchase. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0210	Project In Design	Appropriation is part of a construction project and appropriation is being used for design. Explain in <i>Status/Comments</i> specifics on the design stage for this appropriation. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0220	Project in Construction	Appropriation is for a construction project and construction has started. Explain in <i>Status/Comments</i> specifics on phase of construction. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0230	Substantial Completion	Project has reached substantial completion. Explain in <i>Status/Comments</i> specifics on completion of this

		appropriation. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0240	Project Complete	Project complete. Notify Agency if a balance remains and is ready to revert. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0245	Purchase Complete	Purchase complete. Notify Agency if a balance remains and is ready to revert. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0250	Project Closed	Closed - No further activity for appropriation - appropriation fully expended or balance has been reverted.

I. PROJECT CLOSE OUT

When the T/LPA submits their Final Reimbursement request to be paid, they must specify in their request that it is the “Final” request. This confirms the project is ready to close out and items 1 – 3 on the list below will be generated by the District Capital Project Coordinator upon receipt of the final reimbursement and [Exhibit 1](#).

The District Capital Project Coordinator will need to submit the following documents to POD to completely close out the project.

1. [Notice to Close](#)
2. [Final Certification Letter](#)
3. [Funding Sheet](#)
4. CPMS Appropriation Printout

1. PROJECT CHECKLIST – AT-A-GLANCE SUMMARY

Below is an “at-a-glance” summary outline of the Capital Outlay process, not all of these may apply to each project:

- Project is funded through Legislature.
- Project is assigned Control Number
- Bond Sale Questionnaire completed by T/LPA and Bonds are sold
- POD prepares Project Agreement
- Project Agreement executed
- T/LPA submits Professional Services Contract to District T/LPA Coordinator with request for NOO for preconstruction phase
- T/LPA District Coordinator reviews and issues Notice of Obligation to Department to obligate preconstruction funds
- T/LPA submits a project scope to the NMDOT Environmental Bureau and obtains guidance on the level of effort for environmental certification
- T/LPA holds 30% Design Inspection
- T/LPA initiates or continues public involvement.
- T/LPA prepares Environmental, Cultural Resource and Hazardous Materials investigation documentation as required.
- T/LPA requests review of documentation from regulatory agencies, and submits documentation to District T/LPA Coordinator
- T/LPA obtains District T/LPA Coordinator acceptance hazardous material investigation report.
- T/LPA begins Right of Way maps review and approval with Land Engineering Verification Unit, Survey and Lands Engineering Division
- T/LPA obtains Environmental certification.
- T/LPA holds 60% Design Inspection
- T/LPA makes 60% Design Inspection revisions and prepares 90% complete Plans
- Right of Way maps approved by ROW Bureau for projects on state system
- T/LPA coordination with T/LPA District Coordinator
- T/LPA Right of Way appraisals
- T/LPA Right of Way acquisition and relocations if necessary

- T/LPA certifies ROW to the NMDOT ROW Division
- T/LPA Utility relocations
- T/LPA certifies Utilities to the NMDOT Utilities Section if on a State Route
(certifies to the District Capital Project Coordinator if not on a State Route)
- T/LPA certifies Rail to the NMDOT Rail Section
- T/LPA holds 90% Design Inspection
- T/LPA makes 90% complete design inspection corrections.
- T/LPA holds PS&E Review (100% Complete)
- T/LPA advertises and receives bids
- T/LPA submits bid package for approval from T/LPA District Coordinators
- T/LPA awards project to construction contractor
- T/LPA issues Notice to Proceed to contractor and distributes Final Plans,
Contract, and Final Estimate
- Hold Pre-con prior to start of construction.
- T/LPA submits 3rd Party Contract to T/LPA District Coordinator with request for
Notice of Obligation
- T/LPA District Coordinator reviews and issues NOO to Department to obligate
construction funds
- Construction begins.
- Construction Oversight by District as needed.
- T/LPA requests reimbursement from District
- T/LPA completes and submits the Exhibit 1 Final Report Form to the T/LPA
District Coordinator

II. LOCAL GOVERNMENT ROAD FUND

INTRODUCTION AND PURPOSE

This chapter outlines the procedures, which serve as guidelines for the New Mexico Department of Transportation, Municipalities, Counties, Indian Tribes/Pueblos, and other State and Federal Agencies participating in the Local Government Road Fund Program. It also serves, delegates, and outlines responsibilities for the procedures to be followed as per Sections 67-3-28 and 67-3-28.2, NMSA 1978, Section 67-3-32 NMSA 1978, Commission Policy 44-12, 18 NMAC 27.3, 18 NMAC 27.4, and applicable provisions of the Tort Claims Act which have been incorporated into the Standard Cooperative Agreement forms. The Local Government Road Fund Unit of the New Mexico Department of Transportation shall have the responsibility to monitor the Local Government Road Fund Program.

A. PROJECT DEVELOPMENT

- A. The New Mexico State Transportation Commission will, on a project by project basis, determine what Local Government Road Fund projects it will enter into, and what monies will be made available for the upcoming fiscal year for project obligation.
- B. In general, the Department will participate up to seventy five percent (75%) of the project cost for Cooperative, School Bus Route, County Arterial, and Municipal Arterial projects. The District Engineer will determine the amount of participation based on the written project estimate developed and submitted by the respective entity in their letter of request.
- C. It will be the Public Entity's responsibility to insure compliance with any and all state, local, and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, and historic and cultural properties, and cultural resources.
- D. It will be the Public Entity's responsibility to insure that the project design complies with current engineering standards. If a consulting engineering firm has been contracted to do the design and engineering work, a professional engineer licensed in the state of New Mexico must certify the design. If a roadway has been identified to revert back to Department responsibility, via a road exchange

agreement, the Public Entity shall use New Mexico Department of Transportation design and construction standards and specifications.

- E. State participation for Municipal Arterial projects shall not include items not related to the roadway; such as, sanitary sewers, utilities, and area wide storm sewers. State participation for street lighting may be included in accordance with previous New Mexico Department of Transportation [Administrative Directive No. 226](#).
- F. In accordance with State Law, Section 67-3-62 NMSA 1978, projects for constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments must consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the project. **(Appendix A)**
- G. Pursuant to Section 61-23-26 NMSA 1978 (1993 Rep.), all Local Government Road Fund projects exceeding one hundred thousand dollars (\$100,000) and work involving structural design; structural modifications or surveying must be prepared under the responsible charge of a registered professional engineer. **(Appendix A)**

B. APPLICATION PROCEDURES

Public Entity Responsibility

- a) Criteria
 - i) All municipalities, counties, school districts, Indian tribes/pueblos, or other state or Federal agencies, or other parties who wish to enter into a Cooperative Agreement with the New Mexico Department of Transportation shall first submit a letter of request to the District Engineer by March 15, which will contain the following:
 - (1) The location of the proposed project including route designation and termini (including map).
 - (2) The scope of work to be performed.
 - (3) Project estimate including the amount of state participation requested.
 - (4) The justification for project construction.
 - (5) A certification that the proposed work is on a part of a public highway and necessary for the public good and convenience and to serve the public of the municipality, county; and school districts, and,

(6) Letter of Intent from governing body or agency head supporting the project.

All incomplete applications will be returned to the Public Entity for submission the following year.

ii) Municipalities participating in the Municipal Arterial Program shall submit applications to the Local Government Road Fund Coordinator at the Project Oversight Division by March 15. The application shall contain the following:

(1) A map of the project limits, including route and termini

(2) The scope of work to be performed, including proposed typical section, drainage improvements, geometric improvements, light or signal improvements, etc.

(3) Project estimate, including amount of state participation requested.

(4) Letter of Intent from municipality governing body supporting the project

(5) If applicable, a copy of an executed Road Exchange Agreement.

All incomplete applications will be returned to the municipality for submission the following year.

iii) Public Entities participating in programs provided for under Section 67-3-28.2; paragraph C. Subsection (1) (d) shall submit applications to the Local Government Road Fund Coordinator by March 15. The application shall contain the same items outlined in paragraph 'a.' of this section.

b) Prioritization

Prioritization of specific projects will be the responsibility of the Public Entity. The Department recommends that project(s) under consideration for LGRF funding have project scoping completed with project needs, limits, and construction process already established and ready to move into the initial design phase. The Department will not conduct a formal review of the project. It will be the Public Entity's responsibility to insure that the projects selected most effectively serve the needs of the public and are in compliance with appropriate and sound design standards. The Department will not conduct an analysis of preliminary cost estimates.

c) Letter of Intent/Resolutions

The Public Entity will submit a Letter of Intent included in their application, executed by its governing body respectively adopting the project and verifying its priority standing with the public entity by March 15. The Letter of Intent shall list the scope of work, route, and termini and shall reference the estimated project cost. The Public Entity will then submit a formal

resolution prior to development of an agreement between the Public Entity and the Department, passed by its governing body or agency head respectively adopting the project and verifying its priority standing with the Public Entity. Execution of the Agreement will not occur without submittal of this resolution.

Department Responsibility

- a) The district shall submit a written request for approval of all entity proposed projects to the Project Oversight Division for the upcoming fiscal year by no later than **April 15** or as directed by the Project Oversight Division. Each proposed project shall indicate the general scope of work, general project termini, and the exact amount of state and entity participation. Also attached to this request shall be the District Engineer or designee's recommendation for approval of the projects.
- b) Following review by the Project Oversight Division, all district requests shall be compiled and submitted to the State Transportation Commission for review and approval at its May meeting.
- c) Following approval by the State Transportation Commission, the Project Oversight Division will notify the Districts of action taken by the State Transportation Commission and the Districts will advise the entities.

C. AGREEMENT PROCEDURES

- A. The respective District will draft originals of the applicable Agreement for Cooperative, County Arterial, and School Bus Route projects; and submit to the Mayor of the Municipality, the Chairman of the County Commission, head of School District, the Governor of the Tribe/Pueblo, or the head of a political subdivision or their respective designees for signature. The District shall insure Agreement funding amount and project scope matches the Commission approved program. The Project Oversight Division will draft original Municipal Arterial Program Agreements and forward to the District who will submit to the entity for signature. All Agreements will be processed according to the Local Government Road Fund Contract and Payment Processing Procedures (**Appendix C**).
- B. The Public Entity will submit a formal resolution prior to development of an Agreement between the Public Entity and the Department, executed by its governing body or agency head respectively adopting the project and verifying its priority standing with the Public Entity. The Resolution shall list the general scope, route, and termini and shall reference the project cost. This resolution will be included in the

executed agreement as “Exhibit C”. Execution of the agreement will not occur without submittal of this resolution.

- C. The entire Agreement package [Original Agreements and project summary of quantities], together with the one SHARE Project Budget form (**Appendix D**), will be provided to the Project Oversight Division of the New Mexico Department of Transportation for review. The Project Oversight Division will review Agreements and compare to Commission approved program and will submit all agreements to the Office of General Counsel for review and signature.
- D. After Agreements have been signed by the Office of the General Counsel the Project Oversight Division will submit the agreements to the Deputy Secretary for review and signature.
- E. The Project Oversight Division will forward the contract package to the Contract Administration Section for assignment of a Department of Transportation contract number.
- F. The Contract Administration Section will return originals of the executed Cooperative Agreement to the Project Oversight Division who will complete by processing the SHARE Project Budget form and encumbering the Purchase Order (PO), and forward originals to the District who will forward one (1) original to the municipality, county, school district, or Indian tribe/pueblo. The Contract Administration Section will return originals of the executed Municipal Arterial Program Agreements to the Project Oversight Division who will complete by processing the SHARE Project Budget form and encumbering the Purchase Order (PO), then forward the originals to the district for district and municipality files.
- G. In order to allow entities sufficient time for project development and construction, the agreement shall be fully executed by **October 31** of the current fiscal year. If this condition is not met, the entity may lose funding at the discretion of the Department. The entity shall not proceed with work for projects until an Agreement is fully executed.
- H. The District shall inform the Public Entity that the Agreement is not binding upon the parties until approved and signed by the Cabinet Secretary of the New Mexico Department of Transportation. Any costs or in-kind labor, equipment, or materials incurred by the Public Entity prior to the execution of the Agreement are not eligible for reimbursement.

- I. Upon receipt of all required documentation from the District (Cover letter from Public Entity requesting disbursement, Notice of Award/Work Order, Notice to Proceed, Amendments (if applicable), Summary of costs and quantities and verification of available funds, the Project Oversight Division shall initiate approval for release of funding. The Project Oversight Division shall then **disburse a single lump sum payment** to the Public Entity. The disbursement shall be in the amount as approved by the State Transportation Commission. Disbursement requests shall not be submitted until actual construction on the roadway has commenced. Disbursements will not be issued for stockpiling of material for proposed project. The Public Entity shall provide an estimate of working or calendar days, progress schedule, required for actual construction of scope of work. This estimate shall exclude any time extensions for emergencies or contingencies.
- J. The Project Oversight Division will monitor the establishment and finalization of the contract, utilizing the SHARE Project Budget form, which will be provided by the Districts, and a copy of the final disbursement, and the Notification to Close Project form, which will be provided to the Project Oversight Division by each District, for each individual project.
- K. The Public Entity's performance and administration of Local Government Road Fund projects as per these procedures shall be monitored and evaluated by the District Engineer or designee. If a Public Entity exhibits an inability to properly administer a project, future Local Government Road Funds, considered on a case-by-case basis, may be withheld. The following criteria shall be used to determine whether a Public Entity cannot properly administer a project:
 1. The Public Entity has a history of unsatisfactory performance.
 2. The Public Entity is not financially stable.
 3. The Public Entity has a management system, which does not meet the management standards set forth.
 4. The Public Entity is otherwise not responsible.
 5. If random audits by the Department determine that the Public Entity has not performed in accordance with the terms of the agreement, the standards set forth in this handbook or in accordance with generally accepted governmental accounting principles.

D. AGREEMENT CONDITIONS AND REQUIREMENTS

A. The following conditions shall apply to agreements for the Local Government Road Fund Program.

1. The following conditions must be met on all **Cooperative Agreements** between the New Mexico Department of Transportation and political subdivisions within the state.

a. The contract form must be a Cooperative Agreement pursuant to Section 67-3-28 NMSA 1978 (**Appendix A**).

b. Cooperative Agreements with political subdivisions within the state (counties, school districts, and municipalities) normally shall require at least twenty-five percent (25%) participation from that political subdivision for Cooperative, School Bus Route, County Arterial, and Municipal Arterial projects. The Department may reduce its participation from seventy-five percent (75%) respectively and provided its cooperative agreement budget is limited and the political subdivision is willing and able to increase its participation to exceed the twenty-five percent (25%) minimum, respectively.

c. The funding must be for project development, construction, reconstruction, improvement, maintenance, or repair of public highways, streets, and public-school parking lots, or for the acquisition of right of way therefore or for in place material or improvement thereof.

d. In the event School Districts request a Cooperative Agreement for work to be done on streets or highways not under their ownership, a Joint Powers Agreement between the School Districts and the owning entity must become a part of the Cooperative Agreement.

2. The following conditions must be met on all Cooperative Agreements between the New Mexico Department of Transportation and other State and Federal agencies.

a. The contract form must be a Cooperative Agreement pursuant to Section 67-3-28 NMSA 1978 (**Appendix A**)

B. Standard Cooperative Agreement contracts for **County Arterial Projects, Cooperative Agreement Projects, School Bus Routes, and Municipal Arterial Projects** shall include the following:

1. Cooperative Agreements and School Bus Route Projects:

a. The Public Entity agrees to pay all costs, perform, or contract to perform all labor and supply all materials as called for in the construction work specified in the Public Entity's estimate as submitted to and approved by the District Engineer. Any

- change requests from the Public Entity shall be submitted to the District Engineer in writing.
- b. The New Mexico Department of Transportation agrees to pay Public Entity no more than the lesser of either a specified amount or seventy-five percent (75%) of the project's total.
2. County Arterial and Municipal Arterial Projects:
 - a. The Public Entity agrees to pay all costs, perform, or contract to perform all labor and supply all materials as called for in the construction work specified in the Public Entity's estimate as submitted to and approved by the District Engineer or in the plans developed for MAP projects.
 - b. The New Mexico Department of Transportation agrees to pay Public Entity no more than the lesser of either a specified amount or seventy five percent (75%) of the project's total.
 - C. The Public Entity shall be responsible for initiating amendments to the Cooperative, or Municipal Arterial Agreements if there are substantial changes in the scope of the project as stated in Section One of the Agreements.
 - D. The Public entity shall be responsible for initiating amendments to the Cooperative or Municipal Arterial Agreements within **60 calendar days** of the expiration date if a Time Extension is required. Only two (2) amendments for Time Extension will be allowed per Project.
 - E. The Public Entity shall make every effort to complete construction within the current fiscal year, but in no event later than December 31 of the following fiscal year, or as otherwise specified in the Agreement. In the event the Public Entity fails to comply with any provisions of the Agreement, the Department shall have the option to terminate the Agreement. The Department shall also have the option to deny future disbursement of Local Government Road Funds.
 - F. The Public Entity shall, within thirty (30) calendar days, certify completion of the project as required in "Project Certification of Design, Construction, and Cost" of the Cooperative Agreement or Certifications No. 1 & 2 of Municipal Arterial Program Agreements. If certification is not provided, all funds shall be reimbursed to the Department within thirty (30) days of written notification.
 - G. If the project is not completed by the deadline date stipulated in the Agreement, the Public Entity shall be liable to reimburse the Department, within thirty (30) calendar days of that deadline, any Local Government Road Funds not used by the said deadline date.

- H. Any costs or in-kind labor, equipment, or materials incurred by the Public Entity prior to the execution of this Agreement are not eligible for reimbursement.
- I. If an audit finding determines that specific funding use was inappropriate or not related to project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

E. CONSTRUCTION

- A. The “Certification of Pre-Construction Contract Phase” form for Municipal Arterial Program Projects shall be completed and submitted to the respective District LGRF Coordinators prior to construction of project.
- B. It will be the Public Entity's responsibility to insure that all work meets either the Department's standards as set forth in the New Mexico Department of Transportation Standard Specifications, Current Edition (English or Metric); American Public Works Association (APWA) specifications; Department approved Public Entity established specifications, for each project; or Department Specifications, **(Appendix A)**, for all Local Government Road Fund projects.
- C. The Public Entity shall implement a positive and continuous inspection and testing program for the entire duration of the project, which shall monitor work and material quality. The Public Entity shall maintain all test reports and materials certification in the project files for a period of not less than five (5) years following completion of the project. Any test reports indicating results or materials certifications not meeting specification must note corrections made to meet specifications. Failure to meet these requirements will be considered a violation of the terms and conditions of the Agreement.
- D. Department personnel will not conduct periodic assurance inspections or comparison material testing. The Department, at its discretion, may perform a final inspection upon project completion. The Department will conduct final inspections of all Municipal Arterial Program projects.
- E. Upon completion of the project or Agreement termination, the Public Entity shall submit to the District Engineer a certification stating that the project was designed and constructed in accordance with the provisions of these procedures. This certification shall be attached as “Project Certification of Design, Construction, and Cost,” to the Cooperative Agreement and, or as “Certification of the Pre-Construction Phase,” “Certification of the Construction Phase,” of the Municipal Arterial Program Cooperative Agreement. The certifications shall include an “As-Built Summary of Costs and Quantities” to support project

expenditures and utilization of Local Government Road Funds. All documentation listed above shall be submitted to the NMDOT LGRF District Coordinator for review and approval within Thirty (30) calendar days of project completion. The NMDOT LGRF District Coordinator must submit the closeout packet, including Notice to Close to the Project Oversight Division within Thirty (30) calendar days of receipt.

F. If a Local Government Road Fund project has been prepared under the responsible charge of a registered professional engineer, pursuant to Section 61-23-26 NMSA 1978 (1993 Rep.), the registered professional engineer licensed in the State of New Mexico must execute (stamp or seal) the project certification.

G. Upon completion of the project or Agreement termination, the Public Entity shall certify the total project cost ("Project Certification of Design, Construction, and Cost" or "Certification of Construction Phase" for Municipal Arterial Program projects). The Public Entity shall certify that the total project cost included in the statement is accurate, legitimate, and appropriate only to that project.

H. The Public Entity shall maintain a complete set of project files including all aspects of the project for a period of not less than five (5) years following the completion of the project.

F. PROJECT CERTIFICATIONS

For all projects the prior to Fiscal Year 2022 the T/LPA shall obtain all five (5) required clearances, including: Utility, Environmental, Right-of-Way (ROW), Intelligent Transportation Systems (ITS), and Railroad. All clearance requests must be sent to the District Capital Project Coordinator who will work directly with the appropriate NMDOT bureau to obtain the required clearances.

FY 2022 and forward

All 5 certifications (Environmental, ROW, Utilities, Railroad, ITS) are required for projects that are funded with 100% State and Local funds when the following conditions are met:

- 4) The Project required Federal Actions, i.e.; ROW acquisition of Federal Lands, etc.
- 5) The Project is within or crosses NMDOT Right-of-Way.
- 6) They Project is funded with LGRF funds and the agreement we executed for State Fiscal Year 2020/2021 or Prior.

The Public Entity will be required to consult with NMDOT Environmental section on all projects to determine the Public Entities level of effort to comply with Federal/State/and Local laws.

It is the Public Entities responsibility to obtain any required certifications and to maintain this in the project files for a period of no less than five (5) years following completion of the project.

G. PROJECT DOCUMENTATION

A. The Public Entity shall maintain a complete set of project files for a period of not less than five (5) years following the completion of the project. The project files shall contain, as a minimum; project related records as follows:

1. **Payments:**

- a. Purchase orders
- b. Disbursements
- c. Retainage (if applicable)
- d. Warrants from vendor to contractor/affidavit.
- e. Contractor invoices

2. **Correspondence:**

- a. Project related correspondence.
- b. Factor sheets
- c. Original project application package
- d. Copy of Annual CPA External Audit Report

3. **Agreements:**

- a. Contracts/Subcontracts
- b. District Engineer approved project estimate.
- c. Amendments
- d. Certification of the Pre-Construction Contract Phase (MAP Agreements)
- e. Certification of Construction Phase (MAP Agreements)
- f. Project Certification of Design, Construction, and Cost
- g. As-Built Summary of Cost and Quantities
- h. Notice of Award/Work Order
- i. Notice to Proceed

4. **Inspections:**

- a. Final certification of project
- b. Final inspection report (MAP Projects)
- c. Letter of Acceptance by Entity of contract work
- d. Inspection and Test Reports
- e. Material Certifications

5. **Plans (Municipal Arterial Projects)**

- a. As-let plans.
- b. As-built plans

6. **Right of Way (if applicable)**

- a. Appraisals
- b. Acquisition Agent notes
- c. Relocation (if applicable)
- d. Title Report
- e. Property survey
- f. Right of Way maps
- g. Right of Way certifications
- h. Archeological Survey
- i. Environmental Clearances

B. **Cost Documentation**

1. **Responsibilities of Municipalities, Counties, Indian Tribes/Pueblos, and other State and Federal Agencies:**

a. Supporting cost documentation shall be available for review and audit by authorized representatives of the Department of Transportation. Each cost must be directly related to the project. In general, costs incurred by the Public Entities may include payroll expenses, fringe benefits, materials and supplies, equipment usage, independent lab charges, and engineering fees. The costs are further restricted as follows:

- 1) Payroll expenses must be supported by total actual hours on the job. There must be a segregation of costs present which can be traced to source documents directly relative to the project (actual hours worked and actual funds paid must be proven).
- 2) Equipment usage expenses must be supported by daily records as to the hours used or the mileage spent. The rates to be used will be based on the following:
 - a) The rates shown in The New Mexico Department of Transportation Equipment Rates, have been computed from current costs of ownership and operation related to the

average number of hours of usage per year. The rates shown do not include operating personnel.

b) The Department's equipment rates shall apply to vehicles, heavy/off-road machinery, or special equipment (other than small tools). If entity uses equipment not listed on Department Equipment Rates, the entity shall notify the District LGRF Coordinator to determine rates to be used.

3) Materials and supplies expenses must be directly related to the project and well documented. Each invoice, payment voucher, and check used for this documentation must clearly state the cooperative project number and control number.

4) Costs for testing must be directly related to the project and be included as part of the engineer cost.

C. The District Office shall maintain a set of project files for a period of not less than five (5) years following the completion of the project. The project files shall contain, as a minimum, project related records as follows:

1. Application and/or letter of request
2. Letter of Intent
3. Resolution
4. Contract
5. SHARE Project Budget form
6. Plan Summary of Costs and Quantities (Preliminary Estimate)
7. Contract Amendment(s)
8. Payment Voucher
9. Purchase Order (PO)/Service Contract (SC)
10. Notice of Award/Work Order
11. Certification of Pre-Construction Phase (MAP projects)
12. Notice to Proceed
13. Project Certification of Design, Construction, and Cost
14. Certification of Construction Phase (MAP projects)
15. Final Inspection Forms (MAP projects)
16. As-Built Summary of Costs and Quantities
17. Disbursement Voucher
18. Notification to Close Project form

D. *The Project Oversight Division shall maintain a set of project files for a period of not less than five (5) years following the completion of the project. The project files shall contain, as a minimum, project related records as follows:*

1. *Applications (MAP Projects)*
2. *Contract*
3. *Resolution*
4. *SHARE Project Budget form*
5. *Purchase Orders (PO)*
6. *Contract Amendment(s)*
7. *Disbursement/Payment Request*
8. *Disbursement/Payment Voucher Documentation (SHARE- Payment, Invoice, & Summary Tabs)*
9. *Notification To Close Project form*

E. The New Mexico Department of Transportation will maintain a continuous audit program for all Local Government Road Fund projects. Each Public Entity shall be audited on a continuous cycle with a certain amount of audits performed annually per Department District.

F. The Project Oversight Division will complete a Monthly Status Report and submit to the Districts for review. District will complete a Quarterly Status Report and submit to the Project Oversight Division for review.

H. WAIVERS

A. Equipment Waiver

No more than five hundred thousand dollars (\$500,000) annually from the Local Government Road Fund shall be used by the department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. Pursuant to Section 67-3-28.2, NMSA 1978, the department has adopted rules setting the procedures to carry out the purpose of the Equipment Waiver Program. **(Appendix A)**

B. Match Waiver

No more than one million dollars (\$1,000,000) annually from the Local Government Road Fund shall be used for waiver of the 25% match for Municipalities and Counties that can demonstrate financial hardship as determined by certification by the Department of Finance

and Administration. Pursuant to Section 67-3-28.2, NMSA 1978, the department follows rules and guidelines setting the procedures to carry out the purpose of the Match Waiver Program in the NMAC 18.27.3.8. **(Appendix A)**

Match Waiver Application Process

- A. In May after approval of the LGRF program by the State Transportation Commission, the District LGRF coordinator sends an approval letter to the Public Entity. Along with this approval letter the District LGRF Coordinator sends the following for those Public Entities eligible to apply for Match Waiver:
 1. Initial Solicitation Letter for Match Waiver
 2. Copy of NMAC 18.27.3
 3. Sample Letter of Intent to Apply for Match Waiver
 4. Sample Resolution to Apply for Match Waiver (this template is used to satisfy both the normal resolution requirement at this part of the program, as well as the match waiver specific resolution, so only this one resolution is needed if the Public Entity is asking for match waiver)
- B. June / July (deadline set for Public Entity to apply for match waiver is July 31st):
 1. The Public Entity prepares the resolution and match waiver request letter and submits both to their District LGRF Coordinator
 2. Upon receipt of the resolution and match waiver request letter, the District LGRF Coordinator submits the request to Project Oversight Division.
 3. The Project Oversight Division compiles all Public Entity match waiver requests and submits those requests to DFA for review.
- C. August / October:
 1. DFA reviews the Match Waiver requests submitted.
 2. The Project Oversight Division receives approval or denial of the match waiver request from DFA
 3. The Project Oversight Division submits the DFA approved match waiver requests to NMDOT Cabinet Secretary for review.
 4. The Project Oversight Division receives NMDOT Cabinet Secretary approval of the DFA approved match waiver requests
 5. The Project Oversight Division presents match waiver requests to the State Transportation Commission for approval
 6. The Project Oversight Division prepares letters of approval or denial and mails to each Public Entity who had requested match waiver

7. The Project Oversight Division notifies the District LGRF Coordinators of the approvals and denials
- D. October:
1. The District LGRF Coordinator drafts match waiver amendments for the approved Public Entities and begins the amendment signature process, coordinating the Public Entity signatures and processing the amendments to NMDOT General Offices for execution, along with a SHARE Project Budget Form, to encumber the 25% match being waived.
- E. October / November:
1. The Project Oversight Division coordinates the completion of the execution of the match waiver amendments and sends fully executed amendments to the District LGRF Coordinator
 2. The District LGRF Coordinator distributes the fully executed match waiver amendment to the Public Entity.

I. TORT CLAIMS PROVISIONS

A. Each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (Section 41-4-1, et. seq., NMSA 1978) and any amendments thereto. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

By entering into this agreement, the public entity and its "employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitations of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

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

C. In Agreements with Indian Tribes/Pueblos, the Tort Claims Act will be revised to read: The Federal Tort Claims Act, 28 USC S2671 ET. Seq., shall govern the liability of Public Entity, and New Mexico Tort Claims Act, Section 41-4-1 ET. Seq., NMSA 1978 shall govern the liability of the Department in the performance of this Agreement.

J. STATUTORY REQUIREMENTS

A. Section 67-3-28 NMSA 1978 (being Laws of 1929, Chapter 100, Section 1, as amended) is amended to read:

"67-3-28. COOPERATION WITH THE STATE, MUNICIPALITIES, COUNTIES, SCHOOL DISTRICTS, ADJOINING STATES, AND FEDERAL AGENCIES."

The Department may enter into cooperative agreements with any branch, agency, department, Board, instrumentality, or institution of the state or United States Government; with the respective municipality, school districts, and counties in this state; or with any adjoining state for construction or improvements of public highways and streets within the control of a branch, agency, department, board, instrumentality, or institution of the state or United States Government or within a municipality, county, school district, or adjoining state for the division between the department and the branch, agency, board, instrumentality, or institution of the state or United States Government, county, school district, municipality, or adjoining state of the expense of the project development, construction, reconstruction, improvement, maintenance, or repair of public highways, streets, and public school parking lots, or for the acquisition of right of way therefore or for materials for the construction or improvement thereof. The Department shall bear all costs of the acquisition of right of way for federal aid interstate roads, both rural and urban."

B. A Local Government Road Fund has been established to fund the Cooperative Agreement Program. However, under the Local Government Road Fund statute, Section 67-3-28.2 NMSA 1978 (being Laws 1986, Chapter 20, Section 125, as amended) provides:

"67-3-28.2 LOCAL GOVERNMENT ROAD FUND CREATED; USES.

A. There is created in the State Treasury the "local government road fund" to be administered by the Department. All income received from the investments of the fund shall be credited to the fund. No money in the fund shall be used by the Department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. No more than five hundred thousand dollars (\$500,000) annually from the Local Government Road Fund shall be used by the Department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the Department, automotive, major road, and miscellaneous equipment that would otherwise be sold at auction by the Department as unusable for Department purposes. The Department shall adopt rules setting the procedures to carry out the purpose of this subsection.

C. Except for the amount in subsection B of this section, money in the local government road fund shall be distributed according to district-prioritized projects, in the following amounts for the specified purposes:

(1) **Forty-two (42) percent** of this local government road fund will be allocated to the **Cooperative Agreement Program** to be used solely for the Cooperative Agreements entered pursuant to Section 67-3-28.2 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

- (a) Thirty-three percent for agreements entered into with counties;
- (b) Forty-nine percent for agreements entered into with municipalities;
- (c) Fourteen percent for agreements entered into with school districts;
- (d) Four percent for agreements entered into with other entities;

(2) **Sixteen (16) percent** for the **municipal arterial program**, to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair, and right of way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the Department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the Department shall give preference to municipalities that contribute an amount equal to a least twenty-five (25) percent of the project cost.

(3) **Sixteen (16) percent** for school **bus routes**, to be used solely for cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NNMSA 1978 for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) **Twenty-six (26) percent** for the **County Arterial Program**, to be used for project development, construction, reconstruction, improvement, maintenance, repair, and right of way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on Number of Miles Maintained

By a County:	Entitlement to County
400 miles or under	\$250 for each mile
401 to 800 miles	\$100,000 plus \$200 for each mile over 400 miles
801 to 1200 miles	\$180,000 plus \$150 for each mile over 800 miles
1201 to 1600 miles	\$240,000 plus \$100 for each mile over 1200 miles
Over 1600 miles	\$300,000 plus \$50 for each mile over 1600 miles

If in any year, there is an insufficient amount in the fund of the county arterial program to certify that the total amount to which all the counties are entitled, the Department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlement to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any purposes for which the money may be spent requires an amount from the county equal to at least twenty- five (25) percent of the entitlement. Any **uncommitted or unencumbered balance** remaining in the **County Arterial Program** fund at the end of a fiscal year shall be transferred to the cooperative agreement program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

C. School bus routes shall be established by school districts pursuant to Section 22-16-4 NMSA 1978 (1996 Sup.) (**Appendix B**).

K. RESTRICTIONS

A. Under the cooperative agreement provisions, including **School Bus Route** projects, Section 67-3-32 (1996 Supple.) allows 25% minimum percentage of this cost from the

parities. Further, when the agreement is for the construction or improvement of public highways, the discretionary power of the State Transportation Commission is very broad. What restrictions does the Local Government Road Fund statute (Section 67-3-28.2) impose on public entities that receive matching funds?

A public entity cannot "double match" - that is, use money from any source requiring a match as its match for Local Government Road Fund distributions.

Section 67-3-28.2 Paragraph A provides in pertinent part:

"No money in the Local Government Road Fund shall be used by the Department to administer any program, and no public entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required."

Effectively, this means:

1. NMDOT cannot use the Local Government Road Fund to defray its own cost in administering the program (that is, for salary, overhead, etc.).
2. NMDOT **cannot** allow a recipient of Local Government Road Fund money to **use it as a match for other distributions, which also require a match** (whether that distribution is from the Local Government Road Fund or elsewhere).

B. Unless specified by statute, Local Government Road Funding **may not be transferred from one program to another**. For example, School Bus Route funding may not be transferred to a County Arterial Program project. Local Government Road Funding also may not be transferred within a program. For example, School District Cooperative funding may not be transferred to a Municipality Cooperative project, although the two projects are in the Cooperative Program.

C. If a monetary amendment is required for the Agreement, it must be executed within the existing budget fiscal year between July 1 and June 30 of the following year. Any proposed monetary amendment can only be executed during this period. Amendments may require Transportation Commission approval. Contact the Office of General Counsel or the Project Oversight Division for determination.

The amendment should be submitted to the Department from the Entity with sufficient time to process prior to expiration dates specified in Agreement in order to ensure continuous contract term and to retain funding in the Department's Financial Management System. The amendments shall be executed on standard formats.

L. INTERPRETATIONS

A. Legislative Appropriation

If the legislature appropriates money to a county as an unqualified, unconditional grant without reference in the appropriation to the grant as being a match, then, the Department can use money from the Local Government Road Fund. In essence, 67-3-28.2 prohibits only situations of a double match. Where the money to be used by the public entity is not expressly earmarked as matching funds, the Department is free to use the Local Government Road Fund.

B. Community Development Funds

If public entities are given unconditional grants of community development funds without the proviso that such funds are to be used as matching funds, the Department is legally permitted to spend Local Government Road Funds for the project. The rationale is identical to that contained in Subsection A. If, however, the community development funds are provided under DFA rules as a "matching" funds program, or if the grant is given under the express language that they are to be used as matching funds, then the Department is prohibited. Again, the key to analyzing the prohibition is whether or not it is a "double match."

C. Combination of School Districts and County Project

The statutory prohibition restricts "double matching." It does not prevent joint venturing between political subdivisions with each unit sharing the cost. If, on the other hand, the school district or county were to use funds, which had been previously earmarked by legislation or rules and regulations as requiring a match, then the Department would be prohibited from using the Local Government Road Fund.

D. The basic criteria for eligibility of a route for the Municipal Arterial Program are the degree to which it would assist in the distribution of state highway system traffic. This will be reflected in the proportion of the traffic, which is other than strictly local in character, and the ability of the existing approved system to function efficiently. As a "rule-of-thumb," four general criteria are designated:

1. Through extensions of state highway routes;
2. Major connections between state highway routes (circumferential route, terminal connection, etc.)
3. Major streets of particular service to state highways, and;

4. Major local service streets. The principal reason for including this class would be such circumstances that improvement to the local service street would substantially serve to relieve congestion on state highway routes.

III. TRANSPORTATION PROJECT FUND

INTRODUCTION AND PURPOSE

This chapter outlines the procedures, which serve as guidelines for the New Mexico Department of Transportation, Municipalities, Counties, Tribes/Pueblos, and other State Agencies participating in the Transportation Project Fund Program. The Transportation Project Fund (TPF) was created to assist local entities with the development of transportation infrastructure, which includes highways, streets, roadways, bridges, crossing structures, parking facilities, including all areas for vehicular, transit, bicycle or pedestrian use for travel, ingress, egress and parking. It also serves, delegates, and outlines responsibilities for the procedures to be followed as per Sections 67-3-28 and 67-3-78, NMSA 1978, 18.27.6 NMAC, and applicable provisions of the Tort Claims Act which have been incorporated into the Standard Cooperative Agreement forms.

A. PROJECT DEVELOPMENT

- A. The Department will participate up to ninety five percent (95%) of the project cost for TPF projects. The District Engineer will determine the amount of participation based on the written project estimate developed and submitted by the respective entity in their letter of request.
- B. It will be the Public Entity's responsibility to ensure compliance with any and all state, local, and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, and historic and cultural properties, and cultural resources.
- C. It will be the Public Entity's responsibility to ensure that the project design complies with current engineering standards. A professional engineer licensed in the state of New Mexico must certify the design. If a roadway has been identified to become Department ROW, the Public Entity shall use New Mexico Department of Transportation design and construction standards and specifications; all 5 certifications will be required.

B. GENERAL GUIDELINES

- A. The department may make grants to eligible entities for transportation projects as funds are appropriated in a manner deemed necessary to effectuate the purposes of the fund.
- B. Eligible projects include environmental and other studies, planning, design, construction and acquisition of rights of way necessary for the development of transportation infrastructure, and includes highways, streets, roadways, bridges, crossing structures, parking facilities, including all areas for vehicular, transit, bicycle or pedestrian use for travel, ingress, egress and parking. An eligible entity may seek funding for any discrete phase of a transportation project. A project included in a transportation improvement program is an eligible project provided the project is not funded with federal funds and the project does not qualify as a beautification project.
- C. The department will award up to ninety-five percent of the total cost of a transportation project provided that the eligible entity has demonstrated an ability to provide the remainder of the project costs in local funds. The eligible entity is responsible for any and all expenditures in excess of the grant award.
- D. The department will award up to one hundred percent of the total cost of a transportation project if a financial hardship qualification certificate is issued by DFA, or if the department makes such a determination in the event a tribe requests a waiver. The eligible entity is responsible for any and all expenditures in excess of the grant award.
- E. Costs associated with preparing, reviewing, and submitting an application and any required supporting documentation prepared by the eligible entity, and any costs of a consultant's services incurred in preparing an application, are not eligible for grant funding participation.
- F. The department will not perform any in depth analysis or review of project scope, cost estimates, functionality, project phasing and scheduling or overall constructability. The department may conduct an in-depth analysis after the completion of a project when evaluating the eligible entity's ability to properly administer, implement and complete a project.
- G. Applicants must have the ability to successfully deliver their project.
- H. All grant awarded funds must be spent no later than 30 months from the effective date of the grant agreement.

- I. All grants are subject to department audit.
- J. Grants awarded to an eligible entity will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. A grant award can be used for any project included in the state transportation improvement program provided the project will not be receiving any federal funding and is not a transportation beautification project. Unexpended grant awards will be returned to the department after project completion.

C. APPLICATION REQUIREMENTS

- A. Completed application: The format and content of the application will be determined by the department in the call for projects letter.
- B. Resolution of sponsorship from their governing body, indicating the availability of the proposed match. Subject to any local restrictions, the resolution may provide that the applicant's chief executive or other appropriate officer is authorized to sign the grant agreements and all associated documents and amendments on behalf of the eligible entity as required for receipt of the grant. Alternatively, the applicant may submit an official letter signed by the applicant's chief executive or official with budget authority, indicating the availability of the match.
- C. For more information, please refer to the [TPF FAQ's](#).

D. APPLICATION PROCEDURES

- A. Any eligible entity interested in applying for a grant award must submit a completed project feasibility form to their MPO or RTPO. A complete project feasibility form must be submitted to the appropriate MPO or RTPO before the deadline specified in the call for projects. If a project is determined to be feasible, the eligible entity will be requested to submit a project application.
- B. Application packages will be reviewed and ranked by the MPO/RTPO using the criteria specified in the call for projects.
- C. Each MPO/RTPO will submit its ranked list of projects to the district engineer for the district where the project is located no later than 30 days prior to the start of the fiscal year in which funding is available. If an MPO/RTPO decline to rank projects a letter acknowledging the District may do so on their behalf must be submitted to the Secretary for approval.

- D. The Secretary shall by August first of the fiscal year in which funds are available submit a proposed list of transportation projects identified by the above-described project review process to the State Transportation Commission (STC).
- E. Final project selection and funding amounts will be determined by the STC no later than September first of that same fiscal year. The STC's decision will be final. At its discretion, the STC may adjust the projects selected in an effort to program funds in a geographically equitable manner or in any other manner. The STC may, in its sole discretion, reject all applications or award grants totaling less than the funds appropriated for the particular fiscal year. The STC may approve subsequent changes to as it deems necessary.
- F. After projects are selected, the department will send out award letters and grant agreements to the selected eligible entities. Applicants whose projects were not selected will be notified as well. Each awarded eligible entity must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the eligible entity may proceed with authorized project activities. If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed and may be submitted to the commission for re-programming.

E. AGREEMENT PROCEDURES

- A. The Project Oversight Division will draft original Transportation Project Fund Agreements and forward to the District who will submit to the entity for signature.
- B. The Public Entity will submit a formal resolution prior to development of an Agreement between the Public Entity and the Department, executed by its governing body or agency head respectively adopting the project and verifying its priority standing with the Public Entity. The Resolution shall list the scope, route, and termini and shall reference the project cost. This resolution will be included in the executed agreement as "Exhibit B". Execution of the agreement will not occur without submittal of this resolution.
- C. The Agreements will be provided to the Project Oversight Division of the New Mexico Department of Transportation for review. The Project Oversight Division will review

Agreements and compare to Commission approved program and will submit all agreements to the Office of General Counsel for review and signature.

- D. After Agreements have been signed by the Office of the General Counsel the Project Oversight Division will submit the agreements to the Deputy Secretary for review and signature.
- E. The Project Oversight Division will forward the contract package to the Contract Administration Section for assignment of a Department of Transportation contract number.
- F. The Contract Administration Section will return originals of the executed Agreement to the Project Oversight Division who will complete by processing the SHARE Project Budget form and encumbering the Purchase Order (PO), and forward originals to the District who will forward one (1) original to the Public Entity.
- G. In order to allow entities sufficient time for project development and construction, the agreement shall be fully executed by **November 30** of the current fiscal year. If this condition is not met, the entity may lose funding at the discretion of the Department. The entity shall not proceed with work for projects until an Agreement is fully executed.
- H. The District shall inform the Public Entity that the Agreement is not binding upon the parties until approved and signed by the Cabinet Secretary of the New Mexico Department of Transportation. Any costs incurred by the Public Entity prior to the execution of the Agreement are not eligible for reimbursement.
- I. Upon receipt of all required documentation from the District (Cover letter from Public Entity requesting disbursement, Notice of Award/Work Order, Notice to Proceed, Amendments (if applicable), Summary of costs and quantities and verification of available funds, the Project Oversight Division shall initiate approval for release of funding. The Project Oversight Division shall then **disburse a single lump sum payment** to the Public Entity. The disbursement shall be in the amount as approved by the State Transportation Commission. Disbursement requests shall not be submitted until actual work has commenced. Disbursements will not be issued for stockpiling of material for proposed project.
- J. The Project Oversight Division will monitor the establishment and finalization of the contract, utilizing the SHARE Project Budget form, which will be provided by the Districts, and a copy of the final disbursement, and the Notification to Close Project

form, which will be provided to the Project Oversight Division by each District, for each individual project.

- K. The Public entity shall be responsible for initiating amendments to Agreements within **60 calendar days** of the expiration date if a Time Extension is required.

F. WAIVERS

B. Match Waiver

Transportation Project Funds be used for waiver of the 5% match for Public Entities that can demonstrate financial hardship as determined by certification by the Department of Finance and Administration.

Match Waiver Application Process

- F. In August after approval of the TPF program by the State Transportation Commission, the District LGRF coordinator sends an approval letter to the Public Entity. Along with this approval letter the District LGRF Coordinator sends the following for those Public Entities eligible to apply for Match Waiver:
 - 1. Initial Solicitation Letter for Match Waiver
 - 2. Sample Letter of Intent to Apply for Match Waiver
 - 3. Sample Resolution to Apply for Match Waiver
- G. September (deadline set for Public Entity to apply for match waiver is September 30th):
 - 1. The Public Entity prepares the resolution and match waiver request letter and submits both to their District LGRF Coordinator
 - 2. Upon receipt of the resolution and match waiver request letter, the District LGRF Coordinator submits the request to Project Oversight Division.
 - 3. The Project Oversight Division compiles all Public Entity match waiver requests and submits those requests to DFA for review.
- H. October:
 - 1. DFA reviews the Match Waiver requests submitted.
 - 2. The Project Oversight Division receives approval or denial of the match waiver request from DFA.
 - 3. The Project Oversight Division submits the DFA approved match waiver requests to NMDOT Cabinet Secretary for review.
 - 4. The Project Oversight Division receives NMDOT Cabinet Secretary approval of the DFA approved match waiver requests

5. The Project Oversight Division presents match waiver requests to the State Transportation Commission for approval
 6. The Project Oversight Division prepares letters of approval or denial and mails to each Public Entity who had requested match waiver
 7. The Project Oversight Division notifies the District LGRF Coordinators of the approvals and denials.
- I. November:
1. The District LGRF Coordinator drafts match waiver amendments for the approved Public Entities and begins the amendment signature process, coordinating the Public Entity signatures and processing the amendments to NMDOT General Offices for execution, along with a SHARE Project Budget Form, to encumber the 5% match being waived.
- J. December / January:
1. The Project Oversight Division coordinates the completion of the execution of the match waiver amendments and sends fully executed amendments to the District LGRF Coordinator
 2. The District LGRF Coordinator distributes the fully executed match waiver amendment to the Public Entity.

IV. REFERENCE MATERIALS

APPENDIX A – NMSA 1978, 67-3-28

Chapter 67 Highways

Article 3 State Transportation Commission

NMSA 1978, 67-3-28.2. Local governments road fund created; uses.

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and except as provided in Subsection E of this section, no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. The department may use up to five hundred thousand dollars (\$500,000) annually from the local government's road fund, to purchase at fair market value, for municipalities, counties and land grants-mercedes that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. The department shall adopt rules setting the procedure to carry out the purposes of this subsection.

C. Except for the amounts in Subsections B and E of this section, money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program, to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

- (a) thirty-three percent for agreements entered into with counties;
- (b) forty-nine percent for agreements entered into with municipalities;
- (c) fourteen percent for agreements entered into with school districts; and
- (d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program, to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give preference to municipalities that contribute an amount equal to at least twenty-five percent of the project cost, including a contribution made through funding received pursuant to Subsection E of this section;

(3) sixteen percent for school bus routes, to be used solely for cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program, to be used for project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on Number of Miles Maintained

by a County:	Entitlement to County:
400 miles or under	\$250 for each mile
401 to 800 miles	\$100,000 plus \$200 for each mile over 400 miles
801 to 1,200 miles	\$180,000 plus \$150 for each mile over 800 miles
1,201 to 1,600 miles	\$240,000 plus \$100 for each mile over 1,200 miles
Over 1,600 miles	\$300,000 plus \$50 for each mile over 1,600 miles.

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the

entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. The county contribution may be made through funds received pursuant to Subsection E of this section. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreements program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

D. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local government's road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers.

E. The department may distribute up to one million dollars (\$1,000,000) per calendar year of the money in the local governments road fund to municipalities and counties that can demonstrate financial hardship, for use as all or a portion of the municipality's or county's matching fund requirements pursuant to this section. In order to qualify for matching funds under this subsection, a county or municipality shall provide the department with a financial hardship qualification certificate issued by the department of finance and administration.

History: Laws 1986, ch. 20, § 125; 1989, ch. 117, § 2; 1993, ch. 277, § 2; 1993, ch. 312, § 1; 1995, ch. 6, § 14; 2009, ch. 167, § 1; 2019, ch. 150, § 1.

NMSA 1978, 67-3-32. Cooperative agreements; preference.

In entering into cooperative agreements pursuant to Section 67-3-28 NMSA 1978, the state transportation commission shall give preference to political subdivisions of this state if the subdivision contributes an amount equal to at least twenty-five percent of the project cost.

History: 1978 Comp., § 67-3-32, enacted by Laws 1983, ch. 38, § 1; 1999, ch. 212, § 4; 2003, ch. 142, § 46.

APPENDIX B – NMSA 22-16-4

Chapter 22 - Public Schools

Section 16 Transportation of Students

Section 22-16-4 School bus routes; limitations; exceptions; minimum requirements.

Universal Citation: [NM Stat § 22-16-4 \(2015\)](#)

22-16-4. School bus routes; limitations; exceptions; minimum requirements.

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and D of this section, no school bus route shall be maintained for distances less than:

(1) one mile one way for students in grades kindergarten through six;

(2) one and one-half miles one way for students in grades seven through nine; and

(3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department of education [public education department] with the approval of the state board [department], but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board [department] approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

History: 1953 Comp., 77-14-4, enacted by Laws 1967, ch. 16, 222; 1975, ch. 342, 4; 1987, ch. 149, 3; 1993, ch. 234, 1; 1995, ch. 208, 7.

LIST OF ABBREVIATIONS AND ACRONYMS

3C	Continuous, Cooperative, and Comprehensive
ADA	Americans with Disabilities Act
ADE	Assistant District Engineer
ARF	Agreement Request Form
CCRB	Construction Civil Rights Bureau
CE	Categorical Exclusion
CE	Cost Estimate
CLE	Construction Liaison Engineer
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CMAQ-F	Congestion Mitigation and Air Quality Improvement Program-Flexible
CMAQ-M	Congestion Mitigation and Air Quality-Mandatory Funds
CME	Construction Maintenance Easement
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise Program
DE	District Engineer
DOT	Department of Transportation
DSI	Detailed Site Investigation
EA	Environmental Assessment
EGB	Environmental Geology Bureau
EIS	Environmental Impact Statement
EEO	Equal Employment Opportunity
eSTIP	Electronic Statewide Transportation Improvement Program
FAHP	Federal-aid Highway Program
FAST	Fixing America's Surface Transportation Act
FFY	Federal Fiscal Year
FHWA	Federal Highway Administration
FTA	Federal Transit Administration

GRT	Gross Receipts Tax
GSA	General Services Administration
HMB	Hazardous Material Investigation Bureau
HSIP	Highway Safety Improvement Program
IA	Independent Assurance
ICE	Independent Cost Estimate
IDIQ	Indefinite Delivery/Indefinite Quantity
ISA	Initial Site Assessment
ITS	Intelligent Transportation System
LOE	Level of Effort
LRSTP	Long-Range Statewide Transportation Plan
MAP-21	Moving Ahead for Progress in the 21st Century Act
MPO	Metropolitan Planning Organization
MUTCD	Manual on Uniform Traffic Control Devices for Streets and Highways
MPPB	Multi-Modal Planning and Programs Bureau
NEPA	National Environmental Policy Act of 1969
NHPP	National Highway Performance Program
NHS	National Highway System
NMDOT	New Mexico Department of Transportation
NPDES	National Pollutant Discharge Elimination System
NTC	Notice to Contractor
NTP	Notice to Proceed
OIG	Office of Inspector General
OJT	On-the-Job Training Program
PCE	Programmatic Categorical Exclusion
PE	Preliminary Engineering
PEL	Planning and Environment Linkages
PIF	Project Feasibility Form
PIF	Public Interest Finding

POD	Project Oversight Division
PPF	Project Prospectus Form
PROWAG	Public Right-of-Way Accessibility Guidelines
PS&E	Plans, Specification, and Estimates
PSI	Preliminary Site Investigation
QC/QA	Quality Control/Quality Assurance
REC	Recreational Trails Program
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right-of-way
RTD	Regional Transit District
RTP	Regional Transportation Plan
RTPO	Regional Transportation Planning Organization
RTIPR	Regional Transportation Improvement Program Recommendations
SAM	System for Award Management
SAM-E	System for Award Management-Exclusions
SDDCTEA	Surface Distribution and Deployment Command Transportation Engineering Agency
SE	Systems Engineering
SHPO	State Historic Preservation Officer
SHSP	Strategic Highway Safety Plan
SMP	State Management Plan
SP	Special Provisions
SPB	Statewide Planning Bureau
STBG	Surface Transportation Block Grants
STBG-L	Surface Transportation Block Grant-Large Urban
STBG-S	Surface Transportation Block Grant-Small Urban
STBG-R	Surface Transportation Block Grant-Rural
STIP	Statewide Transportation Improvement Program

STRAHNET	Strategic Highway Network
SUE	Subsurface Utility Engineering
SWPPP	Storm Water Pollution Prevention Plan
TAP	Transportation Alternatives Program
TAP-L	Surface Transportation Block Grant-TAP Large Urban
TCP	Temporary Construction Permit
TESCP	Temporary Erosion and Sediment Control Plan
THPO	Tribal Historic Preservation Officer
TIP	Transportation Improvement Program
T/LPA	Tribal/Local Public Agencies
TMA	Transportation Management Area
TSE	Technical Support Engineer
TTCP	Technician Training Certification Program
TTP	Tribal Transportation Program
USDOT	United States Department of Transportation

LOCAL GOVERNMENT ROAD FUND PROJECT SCOPES

Pavement Rehabilitation/Improvements

1. Mill/Inlay
2. Fog Seal
3. Overlay with PMPB
4. Micro surfacing
5. Chip seal
6. Hot Insitu
7. Cold Milling recycling
8. Pothole patching
9. Blade patching
10. Slurry seals
11. Scrub seals
12. Double Penetration Chip Seals
13. Sand seals
14. Striping

Reconstruction

1. Curb and gutter replacement
2. Manhole adjustments
3. Wheelchair ramps
4. Sidewalk
5. Pulverize
6. Roadway which are removed and rebuilt from subgrade preparation and up
7. Geometric improvements (includes adding acceleration or deceleration lanes, new lanes, turn bays)
8. Striping included
9. Utility Adjustments
10. Striping
11. Signing

Full Construction

1. Roadway alignment
2. Roadway extensions
3. New roadway
4. Survey
5. Striping
6. Signing

Drainage Improvements

1. Culvert installation and replacement
2. Grading ditches
3. Construction of v-ditches
4. Drop inlets
5. French drains
6. Drainage ponds
7. Concrete Box Culverts

Blading, & Shaping

1. With Borrow, (base course, caliche, pit run) includes compaction
2. Without borrow
3. Prime for borrow

Traffic Signal improvements

1. New signals
2. Upgrade signals (upgrades to actual signal or addition of new system to existing signal)

Parking Lot Improvements

1. New parking lot
2. Expansion of parking lot
3. New student drop off and pickup
4. Chip seal
5. Overlay
6. Fog seal
7. Parking lot reconstruction
8. Curb and Gutter (perimeter of parking lot)
9. Light installation (perimeter of parking lot)
10. Sidewalk construction (perimeter of parking lot)
11. Parking lot striping

Note: Improvements to access roads to campuses may be covered under the pavement rehabilitation, reconstruction, or full construction categories

Miscellaneous

1. Slope paving
2. Guardrail
3. Striping
4. Signing
5. Cattle guards
6. Vegetation management

Bridge Replacement

Design

Right of Way Acquisition

Roadway Lighting

Construction Management

Fencing Right of Way