

<b>Contract No.:</b>	_____
<b>Vendor No.:</b>	<u>0000«Vendor Code»</u>
<b>Control No.:</b>	<u>«CN»</u>

**COOPERATIVE PROJECT AGREEMENT – Choose an item.**

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

**1. Funding and Project Description.**

- a. Funding for Choose an item. is as follows:
  - 1. **FFY «Project InformationFY» «FUNDING»(«TYPE») Funds Department’s !Syntax Error, \*share «FED\_AMOUNT»**  
 «Description»(Description as per STIP database, this agreement only pertains to the Choose an item. portion of Project Control No. «CN».)
  - 2. **«Match\_Source\_1»’s matching !Syntax Error, \*share «Match»**  
 For the purpose stated above.
  - 3. **The Total Project Funding for Choose an item.** **«TOTAL»**
- b. Attached, as Exhibit A is a table of data on funding.
- c. The Local Agency shall provide all the work, labor, materials and services necessary to perform the Project.
- d. The Local Agency is responsible for all Project costs that exceed federal funding.
- e. The Local Agency must repay certain federal funding to the Department if:
  - 1. The Project is cancelled.
  - 2. An audit determines an overpayment or federal funds were used for ineligible cost items.
  - 3. The construction of a road on a right-of-way acquisition is not undertaken within twenty (20) years after the fiscal year in which the funds are authorized.
  - 4. Acquisition of right-of-way or construction of the road for a preliminary engineering project is not undertaken within ten (10) years following the fiscal year in which the project is authorized.

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

**2. Payment – Reimbursement.**

The Department will reimburse the Local Agency upon receipt of reimbursement requests with supporting documentation and certification that costs have been incurred. Reimbursement requests may be submitted monthly or, at a minimum, quarterly. Expenses that are documented and determined to be eligible under 2 CFR Part 200 will be reimbursed based on the Local Agency’s required Match. The final Project payment request must be submitted within thirty (30) calendar days of completion of (a) the PS&E package or (b) final payment to the contractor for Construction or Project Work and (c) prior to termination of this Agreement. The Department will not reimburse the Local Agency for costs incurred (a) prior to obligation of federal funding and the effective date of this Agreement; (b) after expiration of this Agreement; or (c) in excess of the federal funding identified in Section 1.

### **3. Federal, State and Department Requirements.**

By entering into this Agreement, the Local Agency certifies and agrees to comply with the terms and conditions as set forth in:

- a. Title 23, U.S. Code Highways and its associated regulations
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See Exhibit B.
- c. 49 CFR Part 29, Government wide Debarment and Suspension (Nonprocurement) and Government wide Debarment and Suspension (Grants) and Certification
- d. 49 CFR Part 20, Lobbying Certification
- e. The Department's policies and standards
- f. The current Tribal/Local Government Handbook located at:  
[http://dot.state.nm.us/content/dam/nmdot/TLPA/TLPA\\_Handbook\\_Final\\_Version\\_3-4-2019.pdf](http://dot.state.nm.us/content/dam/nmdot/TLPA/TLPA_Handbook_Final_Version_3-4-2019.pdf)
- g. The Federal Funding Accountability and Transparency Act (FFATA) and certain contracting requirements in regard to Office of Inspector General Reviews as identified on Exhibit B.

### **4. Term.**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page. This Agreement terminates on «End\_Date». If a contract term extension is needed, the Local Agency must provide written request to the Region or District T/LPA Coordinator sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.

### **5. Termination.**

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

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

### **6. Third Party Beneficiary.**

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

### **7. New Mexico Tort Claims Act.**

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

### **8. Appropriation.**

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

## **9. Scope of this Agreement.**

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

## **10. Severability.**

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

## **11. Principal Contacts and Notices.**

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

### **Region T/LPA Coordinator**

«REGIONAL\_ENGINEER»  
«REG\_TITLE»  
New Mexico Department of Transportation  
«REG\_ADDRESS»  
«Regional\_CityStateZip»  
Office: «REGION\_PHONE»  
E-mail: «Email1»

### **District T/LPA Coordinator**

«DISTRICT\_REP»  
«DIST\_REP\_1\_TITLE»  
New Mexico Department of Transportation  
«ADDRESS1»  
«DIST\_ADDRESS\_CITY\_STATE\_ZIP»  
Office: «DIST\_PHONE»  
E-mail: «District\_Email»

### **Construction Liaison Engineer**

«CONSTRUCTION\_LIAISON\_ENGINEER»  
«CLE\_TITLE»  
New Mexico Department of Transportation  
«CLE\_ADDRESS»  
«CLE\_ADDRESS\_CITY\_STATE\_ZIP»  
Office: «CLE\_PHONE»  
E-mail: «CLE\_EMAIL»

### **Local Agency**

«FIRST\_NAME» «LAST\_NAME»  
«TITLE»  
«LEAD\_AGENCY»  
«ADDRESS»  
«CITY», «STATE» «ZIP»  
Office: «PHONE»  
E-mail: «EMAIL»

## **12. Amendment.**

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

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**The remainder of this page is intentionally left blank.**

DRAFT

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant General Counsel

«LEAD\_AGENCY»

By: \_\_\_\_\_ Date: \_\_\_\_\_  
«Mayor\_Chairman»

ATTEST

By: \_\_\_\_\_ Date: \_\_\_\_\_  
«LEAD\_AGENCY» Clerk

Approved as to form and legal sufficiency by the «Match\_Source\_1»'s Attorney

By: \_\_\_\_\_ Date: \_\_\_\_\_  
«LEAD\_AGENCY» Attorney

## EXHIBIT A

### 2 CFR 200.331 Requirements

#### Federal Award Identification.

(i) Public Entity name (which must match the name associated with its unique entity identifier);	«LEAD_AGENCY»
(ii) Public Entity's unique entity identifier (DUNS);	«DUNS»
(iii) Federal Award Identification Number (FAIN);	Please see approved Federal Highway form.
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	Please see date on approved Federal Highway form.
(v) Cooperative Project Agreement(Construction) Period of Performance Start and End Date;	Please see date on approved Federal Highway form thru «End_Date» (End Date).
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the Public Entity;	«FED_AMOUNT»
(vii) Total Amount of Federal Funds Obligated to the Public Entity by the pass-through entity including the current obligation;	This award is in addition to any previous awards received by sub-recipient from NMDOT.
(viii) Total Amount of the Federal Award committed to the Public Entity by the pass-through entity;	The total amount of this award is in addition to any previous awards received by sub-recipient from NMDOT.
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Federal Highway Administration (FHWA)
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	FHWA, New Mexico Department of Transportation Sean Sandoval - 505 -660-6102, Sean.Sandoval@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name;	«CFDA»
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

## EXHIBIT B

### **Uniform Administrative Requirements and Audit**

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

### **Federal Funding Accountability and Transparency Act (FFATA).**

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

- Name of Local Agency receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Local Agency, including the Congressional District
- Place of performance of the program or activity, including the Congressional District
- DUNS number of the Local Agency and its parent organization, if one exists
- Total compensation – If the Local Agency in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code, then the names of the top five executives of the Local Agency are also required to comply with the FFATA.
- The Department will extract as much information as possible from the Local Agency's grant application and standard reports.

### **Office of Inspector General Review**

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

- 1. Inspector General Reviews:** Any Inspector General of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the New Mexico Department of Transportation or the agency concerned.
- 2. Access of Offices of Inspector General to Certain Records and Employees:** With respect to each contract or grant awarded using federal funds, any representative of an appropriate Inspector General

appointed under the Inspector General Act of 1978, 1,5 USC App. 3 and specifically § 8G, 5 USC App. 3 (2014) is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub-grant; and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions. In addition, the Local Agency should do the following:

- a. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the contractor or any of contractor's subcontractors, or any state or local agency administering such contract that directly pertain to, and involve transactions relating to, the contract or subcontract
- b. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of contractor's subcontractors, or of any state or Local Agency administering the contract, regarding such transactions

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