

RESOLUTION # 2007-38

WHEREAS,

This resolution being duly written and executed this Eighth Day of August 2007 does hereby acknowledge in accordance with prevailing State Statute 67-3-28, through 67-3-28.2. NMSA, 1978 Compilation, declares that the State Highway Commission may enter into the fiscal year 2007/2008 Local Government Road Fund Program a Cooperative Agreement with counties for the improvement of public roads; and

WHEREAS,

the County of Torrance acknowledges that the State Highway Commission has entered and approved Torrance County's request for participation into the fiscal year 2007/2008 LGRFP for the County Cooperative Program; and

WHEREAS,

Torrance County Commission hereby in pursuant with prevailing State Statute 67-3-28.2, NMSA 1978 (1995 Supp.), as amended will meet the (25%) match required; and

WHEREAS,

the project number is SP-5-08(052), Entity Share(25%) for the amount of \$21,135.00, State Share(75%) for the amount of \$63,405.00, a Project Total of \$84,540.00; and

WHEREAS,

the job scope on this project is Pavement Rehabilitation/ Improvements on various county roads; and

WHEREAS,

roadways for construction are county designated roads for maintenance recorded with the NMDOT, Planning Division.

NOW THEREFORE,

Be it resolved that the Board of Commissioners of the County of Torrance adopts this resolution as a formal acceptance in a Cooperative Agreement with the New Mexico Department of Transportation, for the fiscal year 2007/2008 LGRFP for the County Cooperative Program.

ADOPTED,

and approved this Twenty Second Day of August 2007.

TORRANCE COUNTY COMMISSION

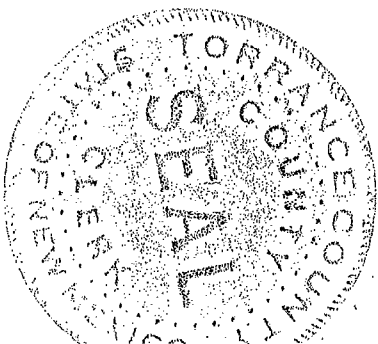

Leroy Candeleria, Chairman


Paul M. (Tito) Chavez, Member


James Frost, Member

Attest:


Linda Kayser, Clerk of the Board



Contract No. _____
Vendor No. 0000054405
Project No. SP-5-08(052)
Control No. HW2 88341

COOPERATIVE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2007 by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, herein referred to as "**DEPARTMENT**", and **TORRANCE COUNTY** herein referred to as "**PUBLIC ENTITY**".

In consideration of the covenants contained herein and pursuant to the NMSA, 1978, Section 67-3-28, as amended, and Section 67-3-28.2 NMSA as amended, and Commission Policy No. 44-92, **THE PARTIES AGREE AS FOLLOWS:**

SECTION ONE -- PURPOSE:

The purpose of this Agreement is for the **PAVEMENT REHABILITATION/IMPROVEMENTS OF VARIOUS COUNTY ROADS** within the control of **PUBLIC ENTITY**, Project No. **SP-5-08(052)**, Control No. **HW2 88341**, there after referred to as "Project", is a joint and coordinated effort for which the **DEPARTMENT** and the **PUBLIC ENTITY** each have authority or jurisdiction. This Agreement shall specify and delineate the rights and duties of the parties hereto.

SECTION TWO -- PROJECT FUNDING BY PARTIES:

1. The estimated total cost for the Project is **EIGHTY FOUR THOUSAND FIVE HUNDRED AND FORTY DOLLARS AND ZERO CENTS (\$84,540.00)** to be funded in proportional share by the parties hereto as follows:

a. **DEPARTMENT's** share shall be **75%** **\$63,405.00**

PAVEMENT REHABILITATION/IMPROVEMENTS OF VARIOUS COUNTY ROADS

- b. The **PUBLIC ENTITY's** required proportional matching

Share shall be **25%** **\$21,135.00**

For purpose stated above

c. **Total Project Cost**

\$84,540.00

2. The **PUBLIC ENTITY** shall pay all Project costs, which exceed the total amount of **EIGHTY FOUR THOUSAND FIVE HUNDRED AND FORTY DOLLARS AND ZERO CENTS (\$84,540.00)**.

SECTION THREE -- PUBLIC ENTITY SHALL:

1. Act in the capacity of lead agency for the purpose as described in Section One.
2. Pay all costs, perform or contract to perform all labor and supply all material, except as provided in Section Two of this Agreement, for the purpose as described in Section One for the construction work specified in the **PUBLIC ENTITY**'s estimate submitted to and approved by the District Engineer within thirty (30) days of execution of this agreement, or as otherwise agreed to in writing by the parties hereto.
3. Maintain all records and documents relative to this Agreement for a minimum of five (5) years.
4. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
 - a. Utility relocation,
 - b. Drainage and storm drain design,
 - c. Geotechnical design,
 - d. Pavement design,
 - e. Environmental and archaeological clearances,
 - f. Right(s)-of-way acquisition and maps, and,
 - g. Hazardous substance/waste site(s) contamination.
5. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the **DEPARTMENT**.

6. Furnish the **DEPARTMENT**, upon demand, all records relevant to this Agreement and to allow the **DEPARTMENT** and State Auditor the right to audit all records, which support the terms of this Agreement.
7. Obtain all required written agreements or permits, when applicable, from all public and private entities.
8. Maintain all facilities constructed or reconstructed with Project funds.
9. Furnish the **DEPARTMENT'S District 5 Office**, upon project completion, written certification, "**Project Certification of Design, Construction, and Cost,**" which is hereby incorporated into this Agreement, that all work was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; **DEPARTMENT** approved **PUBLIC ENTITY** established Specifications; or **DEPARTMENT** Specifications established for Local Government Road Fund projects.
10. Project shall be completed by the **PUBLIC ENTITY** by **December 31, 2008**. Should this condition not be met, this Agreement shall automatically terminate. Should such termination occur, the **DEPARTMENT** may claim reimbursement from the **PUBLIC ENTITY** of all unexpended funds disbursed in the performance of this Agreement.
11. Allow the **DEPARTMENT** the right to inspect the Project for the purpose of determining if it is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the **DEPARTMENT**, shall result in termination of this Agreement, for default, including without limitation its costs for funding, labor, equipment and materials.
12. Assume the lead planning and implementation role and are solely responsible for providing local matching funds.
13. Certify that the entire proportionate share of funds committed by **PUBLIC ENTITY** to the project described in **PUBLIC ENTITY's** Estimate have been and are appropriated, budgeted, and approved for expenditure effective at such time as this Agreement is executed by the parties hereto.

14. Furnish the **DEPARTMENT** written "Project Certification of Design, Construction, and Costs." Failure to furnish the above certification to the **DEPARTMENT** shall amount to a material breach of this agreement and shall entitle the **DEPARTMENT** to cease performance of any obligation set forth in this agreement at its sole discretion. This certification is attached hereto as "**Project Certification of Design, Construction, and Cost**" and is hereby incorporated by reference and made part of this Agreement. If the certification, "**Project Certification of Design, Construction, and Cost**," is not furnished to the **DEPARTMENT** within thirty-(30) days of project completion, the **PUBLIC ENTITY** shall reimburse to the **DEPARTMENT** all funds disbursed in accordance with this agreement.
15. Furnish the **DEPARTMENT** upon completion of project, an "**AS BUILT Summary of Costs and Quantities**," attached to "**Project Certification of Design, Construction, and Cost**" submitted as "**AS BUILT Summary of Costs and Quantities**," which reflect the total cost of project as stated in "**Project Certification of Design, Construction, and Cost**." If the "**AS BUILT Summary of Costs and Quantities**," is not furnished to the **DEPARTMENT** within (30) days of project completion, the **PUBLIC ENTITY** shall reimburse to the **DEPARTMENT** all funds disbursed in accordance with this agreement.

SECTION FOUR - BOTH PARTIES AGREE:

1. If upon termination of this Agreement there remains any property, materials or equipment, or surplus money belonging to the **DEPARTMENT**, the **PUBLIC ENTITY** shall account for the same and dispose of them as directed by the **DEPARTMENT**.
2. Disbursement to the **PUBLIC ENTITY** shall be made in a single lump sum payment after receipt of a bid award and notice to the contractor to proceed on construction or a work order and Notice to Proceed for in-house construction and verification of available funds.
3. That no money in the Local Government Road 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 Section 67-3-28.2, NMSA, to meet the match required.

4. That the provisions of the Local Government Road Fund Project Handbook (Current Edition) and any amendments thereto, are incorporated herein by reference and shall control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments thereto.

SECTION FIVE -- THIRD PARTY BENEFICIARY CLAUSE:

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

SECTION SIX -- PROJECT RESPONSIBILITY:

The improvements proposed in Section One of this Agreement shall not be under the jurisdiction and control of the DEPARTMENT.

SECTION SEVEN -- JURISDICTION:

By reason of the DEPARTMENT's participation in the funding of this Project, the DEPARTMENT is not incorporating this Project into the state highway system, nor is the DEPARTMENT assuming any maintenance or user responsibility of liability for participation on this project.

SECTION EIGHT-- LEGAL COMPLIANCE:

The PUBLIC ENTITY shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this AGREEMENT, including , but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace, including laws

and regulations hereafter enacted. The **PUBLIC ENTITY** shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

SECTION NINE -- EQUAL OPPORTUNITY COMPLIANCE:

The **PUBLIC ENTITY** agrees to abide by all applicable Federal and State Laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the **PUBLIC ENTITY** agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the **PUBLIC ENTITY** is found to be not in compliance with these requirements during the life of this Agreement, the **PUBLIC ENTITY** agrees to take appropriate steps to correct these deficiencies.

SECTION TEN -- PUBLIC ENTITY'S PRIOR COSTS:

Any costs incurred by the **PUBLIC ENTITY** prior to this Agreement are not eligible for reimbursement and will not be included in the amount to be disbursed as agreed upon.

SECTION ELEVEN -- ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating hereto. The **PUBLIC ENTITY** shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The **PUBLIC ENTITY** shall furnish the **DEPARTMENT** and State Auditor, upon demand, any and all such records relevant to this **AGREEMENT**. If an audit finding determines that specific funding was inappropriate or not related to the Project, the **PUBLIC ENTITY** shall reimburse that portion to the **DEPARTMENT** within thirty days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation shall be reimbursed to the **DEPARTMENT** within thirty days.

SECTION TWELVE -- DEPARTMENT'S AUTHORIZATION OF EXPENDITURES:

The terms of this **AGREEMENT** are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, for performance of this **AGREEMENT**. The **DEPARTMENT** is expressly not committed to expenditure of any funds until such time as they are budgeted, appropriated by the legislature, and approved for expenditure. The **DEPARTMENT's** decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

SECTION THIRTEEN-- UNEXPENDED AND UNENCUMBERED PROJECT BALANCES:

Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this project shall revert to the **DEPARTMENT**. These balances, if any, shall be reimbursed to the **DEPARTMENT** within thirty- (30) days of project completion or expiration of this Agreement, whichever occurs first.

SECTION FOURTEEN -- TERMS OF THIS AGREEMENT:

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

SECTION FIFTEEN -- TERMINATION:

1. This Agreement terminates on **December 31, 2008**.
2. If **PUBLIC ENTITY** fails to comply with any provisions of this Agreement, the **DEPARTMENT** has the option to terminate this Agreement.
3. If the Project is not completed by **December 31, 2008**, this Agreement shall automatically terminate. The **PUBLIC ENTITY** agrees to reimburse to the **DEPARTMENT** all unexpended **DEPARTMENT** funds disbursed in accordance with this Agreement.

SECTION SIXTEEN -- SCOPE OF AGREEMENT:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

SECTION SEVENTEEN -- SEVERABILITY:

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

SECTION EIGHTEEN -- AMENDMENT:

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

SECTION NINETEEN -- EXECUTION OF AGREEMENT:


This Agreement shall not take effect until executed by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
District 5 Engineer

TORRANCE COUNTY

By:  Date: 8/8/07
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County Commission Chairman

Joy Anselmy
County Manager

08/08/07