

**TORRANCE COUNTY  
BOARD OF COUNTY COMMISSONERS  
RESOLUTION NO. R 2021- 42**

**PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED BY  
NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the **Torrance County** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

**WHEREAS**, the total cost of the project will be \$2,346,031 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 95% or \$2,228,729.45

and

b. Torrance County's proportional matching share shall be 5% or \$117,301.55

TOTAL PROJECT COST IS \$2,346,031.00

The Torrance County shall pay all costs, which exceed the total amount of \$2,346,031.00.

**NOW THEREFORE, BE IT RESOLVED** in official session that Torrance County determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2025, and the Torrance County 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 the written agreement.

**NOW THEREFORE, BE IT RESOLVED** by the governing body of TORRANCE COUNTY that Torrance County enters into a Cooperative Agreement for Project Control Number LP50026 with the New Mexico Department of Transportation for the TPF Program for year 2022 for - Repave Riley Road in Torrance County within the control of the Torrance County in New Mexico.

DONE THIS 13<sup>th</sup> DAY OF October, 2021.

APPROVED AS TO FORM ONLY:

*John W. B. [Signature]* 10/13/2021  
County Attorney Date

BOARD OF COUNTY COMMISSIONERS

*[Signature]*

Ryan Schwebach, Chair

*[Signature]*

Kevin McCall, Vice Chair

*[Signature]*

LeRoy Candelaria, Member

ATTEST:

*[Signature]*  
Yvonne Otero, County Clerk  
Date: 10-13-2021



Contract No. \_\_\_\_\_  
Vendor No. 0000054405  
Control No. HW2LP50026

**TRANSPORTATION PROJECT FUND  
GRANT AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Torrance County** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-78 and 18.27.6 NMAC, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Transportation Project Funds (TPF) to the Public Entity for the following project scope **Repave Riley Road in Torrance County** (Project or CN LP50026). This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

a. The estimated total cost for the Project is Two Million Three Hundred Forty Six Thousand Thirty One Dollars and No Cents (**\$2,346,031.00**) to be funded in proportional share by the parties as follows:

- |   |                       |
|---|-----------------------|
| 1. Department's share shall be 95%                                      | <b>\$2,228,729.45</b> |
| Repave Riley Road in Torrance County                                    |                       |
| 2. The Public Entity's required proportional matching Share shall be 5% | <b>\$117,301.55</b>   |
| For purpose stated above  |                       |
| 3. Total Project Cost   | <b>\$2,346,031.00</b> |

b. The Public Entity is responsible for all costs that exceed Project funding.

c. All allocated funds must be spent by **June 30, 2025**.

d. The Public Entity represents that no federal funds will be used to finance the Project.

e. The Public Entity must repay Project funding to the Department if:

1. The Project is cancelled or partially performed.
2. A final audit conducted by the Department at Project completion determines the following: an overpayment, unexpended monies or ineligible expenses.

**3. The Department:**

a. Shall distribute the funds, identified in Section 2a1, in a lump sum to the Public Entity after:

**7. Termination.**

If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) days written notice. This Agreement may also be terminated pursuant to Section 15. Neither party has any obligation after termination, except as stated in Sections 2e, 4l, 4n and 7.

**8. Third Party Beneficiary.**

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

**9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.*

**10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

**11. Scope of Agreement.**

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. 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 will be valid or enforceable unless embodied in this Agreement.

**12. Terms of this Agreement.**

The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**13. 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. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

**14. Equal Opportunity Compliance.**

The parties agree to abide by all 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 parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

**15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity and the Legislature this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five (5) 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 (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

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

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be amended by an instrument in writing executed by the parties.

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

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

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

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

By: Craig C Kling  
Craig C Kling (Sep 24, 2021 08:18 MDT)  
Assistant General Counsel

Date: Sep 24, 2021

**Torrance County**

By: Janice Y. Barde

Date: 10.13.2021

Title: County manager

Attest: [Signature]

Title: County Clerk



**EXHIBIT A**

**CERTIFICATION OF PROJECT COMPLETION**

**Public Entity:**

**Control No. LP50026**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ certify in regard to Control No. **LP50026**:

1. That the Public Entity has complied with the terms and conditions of the requirements under this Agreement and 18.27.6 NMAC.
2. That all work in was performed in accordance with the Agreement.
3. That the total Project cost of \_\_\_\_\_, with New Mexico Department of Transportation 95% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ is accurate, legitimate, and appropriate for the Project.
4. That the Project was completed on \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_

**In Witness Whereof**, \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ certify that the matters stated above are true to his/her knowledge and belief.

**Torrance County**

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

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

**ATTEST:**

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

**Public Entity Clerk**

When completed, send Certification of Project Completion to the District Coordinator, New Mexico Department of Transportation.



**EXHIBIT B**  
**RESOLUTION**  
**Torrance County**

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Now therefore, be it resolved by the **Torrance County** to enter into Cooperative Agreement for Project Control Number **LP50026** with the New Mexico Department of Transportation for the TPF Program for year 2022 for - Repave Riley Road in Torrance County within the control of the **Torrance County** in New Mexico.

(Appropriate Signatures below (Council, Commission, School Board, Tribe, Pueblo, Nation, etc.)

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE






# LP50026

Final Audit Report

2021-09-24

Created:	2021-09-23
By:	Clarissa Martinez (Clarissa.Martinez@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXbw-olaUp3OIHKdIYtYdAOJ3DFNAwGMG

## "LP50026" History

-  Document created by Clarissa Martinez (Clarissa.Martinez@state.nm.us)  
2021-09-23 - 7:42:04 PM GMT- IP address: 76.127.3.135
-  Document emailed to Craig C Kling (craig.kling1@state.nm.us) for signature  
2021-09-23 - 7:42:32 PM GMT
-  Email viewed by Craig C Kling (craig.kling1@state.nm.us)  
2021-09-24 - 2:17:26 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Craig C Kling (craig.kling1@state.nm.us)  
Signature Date: 2021-09-24 - 2:18:47 PM GMT - Time Source: server- IP address: 164.64.74.20
-  Agreement completed.  
2021-09-24 - 2:18:47 PM GMT