



RESOLUTION NO. 2015 -26

**CITY OF RATON, NEW MEXICO
ACCEPTANCE OF NMDOT COOPERATIVE AGREEMENT SP-4-16(907) AND
PLEDGE OF MATCHING FUNDS**

WHEREAS, the Raton City Commission has considered the needs of the local road system; and

WHEREAS, the New Mexico Department of Transportation funding for 2015/2016 has been awarded for \$46,503.00 for Project #SP-4-16(907); and

WHEREAS, the City of Raton approves the cooperative agreement with the New Mexico Department of Transportation for Project No. SP-4-16(907); and

WHEREAS, the Raton City Commission agrees to use funds for the design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction to various entity streets; and

WHEREAS, the City of Raton hereby certifies and will budget for \$15,501.00 in required matching funds to complete the essential roadway project.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the Municipality of Raton, State of New Mexico does hereby approve execution of the Cooperative Agreement between the Department of Transportation and the City of Raton.

PASSED, APPROVED AND ADOPTED this 14th day of July 2015.

CITY OF RATON

Sandra Mantz, Mayor

ATTEST:

Tricia Garcia – City Clerk

Contract No. _____
Vendor No. 54356
Project No. SP-4-16(907)
Control No. L400242

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT entered into this _____ day of _____, 2015 between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** ("Department") and the **CITY OF RATON**, ("Public Entity").

In consideration of the covenants contained herein and pursuant to Sections 67-3-28 and 67-3-28.2 NMSA 1978 and Commission Policy No. 44-12, THE PARTIES AGREE AS FOLLOWS:

SECTION ONE – PURPOSE:

The purpose of this Agreement is to provide Local Government Road Funds to **Public Entity** for the **Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction to various entity streets**, as described in Project No. **SP-4-16(907)**, Control No. **L400242** and the Public Entity's resolution attached as Appendix C ("Project"). The 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 **Sixty Two Thousand, Four Dollars (\$62,004.00)** to be funded in proportional share by the parties hereto as follows:
 - a. **Department's share shall be 75%** **\$46,503.00**
Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction to various entity streets.

- b. The **Public Entity's** required proportional matching
Share shall be **25%** **\$15,501.00**
For purpose stated above

- c. **Total Project Cost** **\$62,004.00**

2. The **Public Entity** shall pay all Project costs, which exceed the total amount of **Sixty Two Thousand, Four Dollars (\$62,004.00)**.

SECTION THREE – THE PUBLIC ENTITY SHALL:

1. Act in the capacity of lead agency for the purpose as described in Section One.
2. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
3. Be solely responsible for all local matching funds identified in Section Two. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
4. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section One and the Project estimate approved by the District Engineer.
5. In the event a contractor is hired for the Project, require the contractor 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 contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.
6. Require contractors that the Public Entity hires to perform services to defend, indemnify and hold harmless the Department from and against all suits, actions or claims of any character brought because of injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

7. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
 - a. Utility Certification,
 - b. Drainage and storm drain design,
 - c. Geotechnical design,
 - d. Pavement design,
 - e. Environmental and archaeological clearances Certification,
 - f. Right of-way acquisition Certification,
 - g. Hazardous substance/waste site(s) contamination,
 - h. Railroad Certification,
 - i. Intelligent Transportation System (ITS) Certification
8. 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.
9. Obtain all required written agreements or permits, when applicable, from all public and private entities.
10. Allow the Department to inspect the Project to determine that the Project 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, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
11. Complete the project within 18 months of approval of funding by the State Transportation Commission.
12. Agree that the Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within nine (9) months from the effective date of this agreement.
13. Within thirty (30) days of completion, provide written certification that all work under this Agreement 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, by submitting the **“Project Certification of Design, Construction, and Cost,” form**, which is attached as Exhibit A.

14. Within thirty (30) days of completion, furnish the Department an **“AS BUILT Summary of Costs and Quantities”** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **“Project Certification of Design, Construction, and Cost”** form.
15. Failure to provide the **“Project Certification of Design, Construction, and Cost”** form and an **“AS BUILT Summary of Costs and Quantities”** report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
16. Maintain all facilities constructed or reconstructed with funds provided by this Agreement.

SECTION FOUR – THE DEPARTMENT SHALL:

Pay project funds as identified in Section Two, Paragraph 1a, to the Public Entity in a single lump sum payment after:

1. Receipt of a Notice of Award and Notice to Proceed and,
2. Verification of available Local Government Road Funds and Public Entity’s local matching funds identified in Section Two, Paragraph 1b.

SECTION FIVE – BOTH PARTIES AGREE:

1. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department shall be accounted for and disposed of by the Public Entity as directed by the Department.
2. 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 NMSA 1978 Section 67-3-28.2, to meet the match required.
3. 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 SIX – 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 SEVEN – PROJECT RESPONSIBILITY:

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

SECTION EIGHT – 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 NINE – NEW MEXICO TORT CLAIMS ACT:

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). 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.

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 limitation of liability

pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

SECTION TEN – 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 disability, 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 ELEVEN –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 TWELVE – 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 THIRTEEN – 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 (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 shall be reimbursed to the Department within thirty days.

SECTION FOURTEEN – 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 FIFTEEN – UNEXPENDED, 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 SIXTEEN – 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 SEVENTEEN – TERM:

This Agreement becomes effective upon signature of all Parties. This Agreement terminates on December 31, 2016.

SECTION EIGHTEEN – TERMINATION:

1. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing 30 days written notice.
2. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within nine months from the effective date of this agreement.
3. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
4. Neither party shall have any obligation after said date of termination, except as stated in Sections Five, Seven and Eight. The Public Entity agrees to reimburse to the Department all unexpended Department funds disbursed in accordance with this Agreement.

SECTION NINETEEN – 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 TWENTY – 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 TWENTY-ONE – APPLICABLE LAW:

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

SECTION TWENTY-TWO – AMENDMENT:

This Agreement shall not be altered, modified, or amended except by an instrument in writing and 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: _____
Cabinet Secretary or Designee

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S
OFFICE OF GENERAL COUNSEL**

By: _____ Date: _____
Assistant General Counsel

CITY OF RATON

By: _____ Date: _____
City Manager

ATTESTED

By: _____ Date: _____
City Clerk

**EXHIBIT A
PROJECT CERTIFICATION OF
DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation
District _____ LGRF Coordinator

Cooperative Agreement No. _____ Control No. _____
Joint Powers Agreement No. _____ Control No. _____

Entity: _____

Scope of Work (Including Routes and Termini):

I, the undersigned, in my capacity as _____ of _____
state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this agreement and in the Local Government Road Fund Project Handbook (Current Edition);

2. Construction of the project was performed in accordance with standards and specifications set forth in:

And completed on _____, 20____; and

3. That the total project cost of _____, with New Mexico Department of Transportation 75% share of _____ and the **Public Entity** share of _____ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

Name Date

Print Name

Title