

**ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 06/11/14
ITEM FROM FINANCE COMMITTEE MEETING OF 06/02/14**

ISSUE:

23. CIP No. 823 – DeFouri Street and Guadalupe Street Bridges Improvements Project.

A. Request for Approval of a Resolution Supporting a Time Extension for the DeFouri Street and Guadalupe Street Bridges Project Municipal Arterial Program Cooperative Agreement with the New Mexico Department of Transportation. (Councilor Maestas) (Desirae Lujan)

Committee Review:

Public Works Committee (approved) 05/27/14
City Council (scheduled) 06/11/14

Fiscal Impact – No

B. Request for Approval of Budget Transfer – Project Fund

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

SPECIAL CONDITIONS OR AMENDMENTS

Subject to approval of CIP Funding.

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	Excused		
CHAIRPERSON DOMINGUEZ			

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
TUESDAY, MAY 27, 2014**

ITEM 9

- CIP NO. 823 – DEFOURI STREET AND GUADALUPE STREET BRIDGES IMPROVEMENTS PROJECT
- REQUEST FOR APPROVAL OF A RESOLUTION SUPPORTING A TIME EXTENSION FOR THE DEFOURI STREET AND GUADALUPE STREET BRIDGES PROJECT MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION
 - REQUEST FOR APPROVAL OF A BUDGET ADJUSTMENT REQUEST (BAR) (COUNCILOR MAESTAS) (DESIRAE LUJAN)

PUBLIC WORKS COMMITTEE ACTION: Approved

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: May 19, 2014

TO: Public Works Committee

VIA: 
Isaac J. Pino, P.E., Public Works Department Director
Eric Martinez, P.E., Roadway & Trails Engineering Division Director 

FROM: Desirae Lujan, P.E., Engineer Associate 

ITEM AND ISSUE:

CIP NO. 823 – DEFOURI STREET AND GUADALUPE STREET BRIDGE IMPROVEMENTS PROJECT

ITEM A.) A RESOLUTION SUPPORTING A TIME EXTENSION FOR THE DEFOURI STREET AND GUADALUPE STREET BRIDGES PROJECT MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION.

ITEM B.) REQUEST FOR APPROVAL OF A BUDGET ADJUSTMENT REQUEST (BAR).

BACKGROUND & SUMMARY:

On November 1, 2012 the City executed a Municipal Arterial Program Cooperative Agreement with the New Mexico Department of Transportation (NMDOT) in the amount of \$200,000.00 for “Planning and Design of Guadalupe Street Bridge and Defouri Street Bridge-at intersection of Defouri Street and Alameda and intersection of Guadalupe Street and Alameda.”

Funding from this agreement was made available through the NMDOT’s Fiscal Year 2012/2013 Municipal Arterial Program (MAP) comprised of state local government road funds. The executed Cooperative Agreement grants a 75% State Share of \$150,000 to the city, and required a 25% City Match of \$50,000. City funds in the amount of \$500,000 previously allotted to this project though 2012 CIP Bonds are being utilized to fulfill the state match requirements and complete the design.

The current agreement expires on June 30, 2014. Unforeseen delays during the early stages of project development regarding the historic status of the Defouri St. bridge required the City request additional time to complete the design of the project to ensure all state funds granted are utilized. As of March 26th, 2014, the historic issues were

resolved and the design is ongoing with completion scheduled for the end of August 2014 primarily for the replacement of the Defouri St. bridge. A structural investigation of Guadalupe St. bridge revealed the bridge is more structurally sound than originally reported in the NMDOT bridge inspection report. Therefore, only maintenance repair of the Guadalupe St. bridge is recommended. NMDOT granted the City's request and drafted an amendment to Cooperative Agreement requiring the city council approve a written resolution in support of the time extension. The amendment will be sent for City Manager approval upon approval of the resolution.

Project Costs & Funding

The aforementioned funds for the project are budgeted in project Business Unit 32768. The following is a summary of current design costs, estimated construction costs, total funds available and additional funds required for construction pursuant to the proposed budget adjustment request.

ITEM	Bid Amount
Study & Engineering Design Services	\$ 229,559.83
Defouri Bridge Construction Estimate	\$ 822,467.55
Guadalupe Bridge Maintenance Estimate	\$ 278,894.62
TOTAL COSTS	= \$ 1,330,922.00
2012 City CIP Bonds (BU 32768)	\$ 500,000.00
FY 2012/2013 State MAP Funds (BU 32768)	\$ 150,000.00
<i>Proposed</i> BAR from BU 32398 (Project Savings)	\$ 220,000.00
<i>Proposed</i> BAR from BU 32816 (Project Savings)	\$ 160,922.00
<i>Proposed</i> 2014 CIP Bond Fund Request	\$ 300,000.00
TOTAL FUNDING	= \$ 1,330,922.00

The proposed budget adjustment request utilizes project savings from completed projects will result in a reduction of the original 2014 CIP Bond request for the project from \$500K to \$300K.

RECOMMENDED ACTION:

The Public Works Department recommends the following:

- Approval of the Resolution supporting a time extension to the NMDOT MAP Cooperative Agreement for the project;
- Approval of a Budget Adjustment Request (BAR) for a budget transfer to BU 32768, Line Item 572970 WIP Construction from the following:
 - \$220,000 from Business Unit 32398, Line Item 572960
 - \$ 20,000 from Business Unit 32816, Line Item 500110
 - \$140,922 from Business Unit 32816, Line Item 572970

- Attachments:
- Item A
 - Resolution
 - FIR
 - Executed MAP Agreement
 - Draft amendment #1
 - Item B
 - BAR

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2014-_____

3 INTRODUCED BY:

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6 Councilor Joseph Maestas

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10 A RESOLUTION

11 SUPPORTING A TIME EXTENSION FOR THE DEFOURI STREET AND GUADALUPE
12 STREET BRIDGES PROJECT MUNICIPAL ARTERIAL PROGRAM COOPERATIVE
13 AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION.
14

15 WHEREAS, on October 10, 2012, the Governing Body adopted Resolution No. 2012-80 in
16 support of the City entering into a Cooperative Agreement with the New Mexico Department of
17 Transportation for funding for the planning and design of the Guadalupe Street Bridge and Defouri
18 Street bridge improvements; and

19 WHEREAS, the New Mexico Department of Transportation and the City of Santa Fe entered
20 into a Cooperative Agreement November 1, 2012 for funding in the amount of \$200,000 to be funded
21 75% by the New Mexico Department of Transportation and 25% by the City for the planning and
22 design of Guadalupe Street Bridge and Defouri Street Bridge – at the intersection of Defouri Street
23 and Alameda and intersection of Guadalupe Street and Alameda; and

24 WHEREAS, this agreement expires on June 30, 2014; and

25 WHEREAS, the City requires six additional months to complete the project and requests the

1 cooperative agreement be extended to December 31, 2014.

2 **NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
3 **CITY OF SANTA FE** that the Governing Body supports the request to extend the Cooperative
4 Agreement with the New Mexico Department of Transportation until December 31, 2014.

5 PASSED, APPROVED and ADOPTED this ____ day of _____, 2014.

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JAVIER M. GONZALES, MAYOR

10 ATTEST:

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YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:

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18 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

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25 *M/Melissa/Resolutions 2014/Defouri Time Extension*

**City of Santa Fe
Fiscal Impact Report (FIR)**

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: _____ Resolution: X

(A single FIR may be used for related bills and/or resolutions)

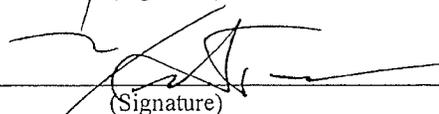
Short Title(s): **A RESOLUTION SUPPORTING A TIME EXTENSION FOR THE DEFOURI STREET AND GUADALUPE STREET BRIDGES PROJECT MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION.**

Sponsor(s): Councilor Maestas

Reviewing Department(s): Public Works

Persons Completing FIR: Desirae Lujan Date: 5/20/14 Phone: 955-6672

Reviewed by City Attorney:  Date: 5/28/14
(Signature)

Reviewed by Finance Director:  Date: 5/29/14
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

In 2012 the NMDOT awarded a Cooperative Agreement for Municipal Arterial Program funding in the amount of \$150,000 with a \$50,000 City match to plan and design CIP 823-Defouri St. and Guadalupe St. Bridges Project. The design is anticipated to be completed in August 2014, however, the Cooperative Agreement expires on June 30, 2014. The City has requested a time extension from the NMDOT. This resolution is in support of that extension.

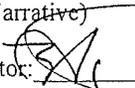
Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: 

X Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY <u>14/15</u>	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY <u>15/16</u>	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The City received \$150,000 in funding from the State of New Mexico in 2012 with a \$50,000 match.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The City will not receive the \$150,000 from the State for the project.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None of which staff is aware.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

This resolution will assist in the funding of bridge improvements.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

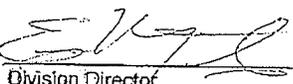
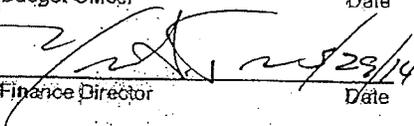
955-6760

5/21/14

City of Santa Fe, New Mexico

BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME				DATE		
ITEM DESCRIPTION	BU / LINE ITEM	FUND SOURCE ONLY		INCREASE	DECREASE	
		SUBJECT / SUBSIDIARY	GR / (CB)			
Operating Transfer Out	32398.700100.	32768.		220,000		
Operating Transfer In	31768.600100.	32768.		(220,000)		
WIP Design	32768.572970			220,000		
✓ ✓	32398.572960				220,000	
Operating Transfer Out	32816.700100.01	32768.		20,000		
✓ ✓ In	31768.600100.01	32768.		(20,000)		
WIP Construction	32768.572970.	32768.		20,000		
SALARIES	32816.500110.01				20,000	
Operating Transfer Out	32816.700100.01	32768.		140,922		
Operating Transfer In	31768.600100.01	32768.		(140,922)		
WIP Construction	32768.572970.			140,922		
✓ ✓	32816.572970				140,922	
JUSTIFICATION: (use additional page if needed) -Attach supporting documentation/memo				TOTAL	\$ 380,922 -	\$ 380,922 -

Prepared By  Division Director	Date 5/21/14	CITY COUNCIL APPROVAL		Budget Officer All for CP 5/29/14
Department Director	Date	City Council Approval Required <input type="checkbox"/>	City Council Approval Date	Finance Director  5/23/14
	Date	Agenda Item #:		City Manager

Contract No.	<u>D13978/1</u>
Vendor No.	<u>54360</u>
Project No.	<u>MAP-7649(901)</u>
Control No.	<u>L500056</u>

**FIRST AMENDMENT TO
MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT**

This FIRST AMENDMENT to Municipal Arterial Program Cooperative Agreement ("MAP") is entered into this _____ day of _____, 2014 between the NEW MEXICO DEPARTMENT OF TRANSPORTATION ("Department") and the CITY OF SANTA FE ("City").

RECITALS

Whereas, the Department and the Public Entity entered into a MAP, Contract No. D13978, on November 1, 2012, attached as Exhibit "A" and made a part of this Amendment; and,

Whereas, Section Nineteen, "Amendment" allows the parties to alter the MAP by written consent of the parties; and

Whereas, the Department and the City want to extend the expiration date of the MAP to December 31, 2014 to allow completion of the project; and

Now, therefore, the Department and the City agree as follows:

1. Page 4, Section Three, Paragraph 19, delete in its entirety and insert the following:

The CITY shall complete the project by December 31, 2014. Should this condition not be met, this Agreement shall automatically terminate. Should such termination occur, the DEPARTMENT may claim reimbursement from the CITY of all unexpended funds disbursed in the performance of this Agreement.

2. Page 8, Section Seventeen, Paragraph 1, delete in its entirety and insert the following:

1. This agreement terminates on **December 31, 2014**. Neither party shall have any obligation under this Agreement after said date.

All other obligations set forth in the Original Agreement shall remain in full force and effect unless expressly amended or modified by this First Amendment.

In witness whereof, the parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

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

By: _____
Assistant General Counsel

Date: _____

CITY OF SANTA FE

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

Approved as to form and legal sufficiency by the City of Santa Fe Attorney's Office

By: _____

Date: _____

City Attorney

By: _____

Date: _____

City Finance Director

PO# 160150

ITEM # 12-0887

Contract No. D13978

Vendor No. 54360

Project No. MAP-7649(901)

Control No. L500056

MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT

THIS AGREEMENT made and entered into this 1st day of November, 2012, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, herein referred to as "DEPARTMENT" and the **CITY OF SANTA FE**, herein referred to as "CITY". These entities shall be referred to collectively as the "PARTIES".

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

SECTION ONE -- PURPOSE:

The purpose of this Agreement is for the **Planning and Design of Guadalupe Street Bridge and Defouri Street Bridge— at intersection of Defouri Street and Alameda and intersection of Guadalupe Street and Alameda**. This Project shall hereafter be referred to interchangeably as "Project" **MAP-7649(901)** or "Project Control No. **L500056**". The Project is a joint and coordinated effort for which **DEPARTMENT** and the **CITY** 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 total estimated cost for Project Control No. **L500056** is **Two Hundred Thousand Dollars (\$200,000.00)** to be funded in proportional share by the Parties as follows:

- a. **DEPARTMENT'S 75% share shall be** \$ 150,000.00.

"Planning and Design of Guadalupe Street Bridge and Defouri Street Bridge-at

Exhibit "A"

intersection of Defouri Street and Alameda and intersection of Guadalupe Street and Alameda.”

- b. The CITY'S 25% match share shall be \$ 50,000.00.
For the purpose stated in Section One.
 - c. The Total Estimated Project Cost \$ 200,000.00.
2. The CITY shall pay all Project costs, which exceeds **Two Hundred Thousand Dollars (\$200,000.00)**.

SECTION THREE -- CITY SHALL:

- 1. Act in the capacity of lead agency for the purpose as described in Section One.
- 2. Pay all costs, 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 plans developed for Project Control No. **L500056**.
- 3. Adopt a written Resolution of support for the Project, including as assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
- 4. Initiate the preliminary engineering, survey, and all design activities, and coordinate Project construction.
- 5. Be responsible for performing or directing the performance of all design and pre-construction activity, including, but not limited to, the following:
 - a. Utility relocation;
 - b. Drainage and storm drain design;
 - c. Geotechnical design;
 - d. Pavement design;
 - e. Traffic design;
 - f. Structural design;
 - g. Environmental and archeological clearances;
 - h. Right-of-way maps; and
 - i. Hazardous substance/waste site(s) contamination investigations.
- 6. Initiate and cause to be prepared the necessary Plans, Specifications, and Estimates

(PS&E) for this Project.

7. Cause all designs and PS&E's to be performed under the direct supervision of a Registered New Mexico Professional Engineer.
8. Design the Project in accordance with **Appendix A**, "Minimum Design Standards", which is hereby incorporated into this Agreement.
9. Adhere to **Appendix B**, "Minimum Survey and Right of Way Acquisition Requirements", which is hereby incorporated into this Agreement.
10. Comply with **Appendix C**, "Construction Phase Duties and Obligations", which is hereby incorporated into this Agreement.
11. Furnish the **DEPARTMENT'S** District Five Office written "**Certification of the Pre-Construction Contract Phase**," prior to Project construction, and "**Certification of the Construction Phase**," upon Project completion, (See Certification No. 1 and No. 2, which are hereby incorporated by reference into this Agreement). The **CITY** shall also furnish the **DEPARTMENT** upon completion of Project, an "AS BUILT" summary of costs and quantities, attached to Certification No. 2 submitted as "AS BUILT Summary of Costs and Quantities," which shall reflect the total cost of Project as stated in Certification No. 2. The Mayor or his/her designee shall execute both these certifications and this Agreement. Failure of the **CITY** to furnish the above certification to the **DEPARTMENT** within thirty (30) days of Project completion 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. If Certification No. 1 is not furnished prior to Project construction and Certification No. 2 and "AS BUILT Summary of Costs and Quantities" are not furnished to the **DEPARTMENT** within thirty (30) days of Project completion, the **CITY** shall reimburse to the **DEPARTMENT** all funds disbursed in accordance with this Agreement.
12. Obtain all required written Agreements or permits relating to any realignment of **CITY** roads, when applicable, from all public and private entities.
13. Advertise, let, and supervise the construction of Project Control No. **L500056**.
14. Agree that the funds identified in Section Two should be contractually committed

between the CITY and a contractor by June 30, 2013

15. Maintain all records and documents relative to this Agreement for a minimum of five (5) years.
16. 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.
17. Maintain all facilities constructed or reconstructed with Project funds.
18. Allow the DEPARTMENT to perform a final inspection of the Project for the purpose of determining if the Project was 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.
19. The CITY shall complete Project by June 30, 2014. Should this condition not be met, this Agreement shall automatically terminate. Should such termination occur, the DEPARTMENT shall claim reimbursement from the CITY of any unexpended funds disbursed in the performance of this Agreement.

SECTION FOUR -- 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 CITY 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 Section NMSA 1978 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 FIVE -- PROJECT RESPONSIBILITY:

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

SECTION SIX -- CITY SOLE 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 or liability for participation in this Project.

SECTION SEVEN -- PEDESTRIAN, BICYCLE, & EQUESTRIAN FACILITIES:

In accordance with NMSA 1978, Section 67-3-62, construction of highways along new alignments or for purposes of substantially widening highways along existing alignments shall consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the Project.

SECTION EIGHT -- EQUAL OPPORTUNITY COMPLIANCE:

The CITY 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 CITY agrees to assure that no person in the United States shall, on the grounds of race, religion, 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 CITY is found to be not in compliance with these requirements during the life of this Agreement, the CITY agrees to take appropriate steps to correct these deficiencies.

SECTION NINE – LEGAL COMPLIANCE

The CITY 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 CITY shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

SECTION TEN -- THIRD PARTY BENEFICIARY:

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 ELEVEN -- NEW MEXICO TORT CLAIMS ACT:

No Provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the DEPARTMENT or the CITY arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claim Act, NMSA 1978. Section 41-4-11 et seq.

SECTION TWELVE – CONTRACTORS:

The CITY shall require of any contractor hired for the Project to have insurance and to name the DEPARTMENT as an additional insured on its insurance policy. To the fullest extent permitted by law, the CITY shall require the contractor to defend, indemnify and hold harmless the DEPARTMENT 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 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.

SECTION THIRTEEN -- ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating hereto. The CITY shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The CITY 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 CITY 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 FOURTEEN -- 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. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement shall terminate upon written notice given by the DEPARTMENT to the CITY. The DEPARTMENT is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the DEPARTMENT. The DEPARTMENT'S decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

SECTION FIFTEEN -- DISBURSEMENT OF FUNDS:

Disbursement(s) to the CITY shall be made after receipt of a cover letter requesting disbursement of funds, Notice of Award/Work Order, Notice to Proceed, Planned Summary of Costs and Quantities, and verification of available funds. All required documents shall include DEPARTMENT Project and control numbers.

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 -- TERMINATION:

1. This Agreement terminates on **June 30, 2014**. Neither party shall have any obligation under this Agreement after said date.
2. The **DEPARTMENT** has the option to terminate this Agreement if the **CITY** fails to comply with any provisions of this Agreement.

SECTION EIGHTEEN – SEVERABILITY:

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

SECTION NINETEEN – 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 seal this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: *Paul W. Gray*
Cabinet Secretary or Designee

Date: 11-1-12

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

By: *Cynthia A. Christ*
Assistant General Counsel

Date: 8-6-12

CITY OF SANTA FE

By: *David Cross*
Mayor

Date: 10-11-12

ATTEST:

By: *Yocanda G. Lopez*
CITY Clerk *10-10-12*

Date: 10-12-12

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: *Judith Arner for*
CITY Attorney

Date: 8/31/12

APPROVED: *Nick Miller*
Finance Director

Date: 10/11/12

APPENDIX A

Minimum Design Standards

1. The design shall provide for all facilities as required by law (ADA compliance, bicycle paths, etc.).
2. The pavement shall be designed for a 20-year life as a minimum for new construction or reconstruction, or for a 10-year life as a minimum for rehabilitation.
3. The following documents shall be used as a minimum in the design of this Project:
 - a. FHWA Manual of Uniform Traffic Control Devices, Current Edition as amended;
 - b. AASHTO A Policy on Geometric Design of Highways and Streets, Current Edition ("Green Book");
 - c. AASHTO Guide for the Development of Bicycle Facilities, Current Edition;
 - d. DEPARTMENT'S Regulations for Driveway and Median Opening on Non-Access Controlled Highways, Current Update;
 - e. DEPARTMENT'S Urban Drainage Design Criteria;
 - f. DEPARTMENT'S Geotechnical Manual, Current Update;
 - g. DEPARTMENT'S Action Plan;
 - h. DEPARTMENT'S Local Government Road Fund Project Handbook; Current Edition;
 - i. DEPARTMENT'S Handbook of Hazardous Waste Management, Current Edition;
 - j. DEPARTMENT'S Location Study Procedures;
 - k. AASHTO Guide to Design of Pavement Structures, Current Edition, and;
 - l. Other design publications as outlined in the DEPARTMENT'S Local Government Road Fund Project Handbook.
 - m. The CITY may use the CITY'S established local design standards if approved by the District Engineer, for each Project.

APPENDIX B

Minimum Survey and Right of Way Acquisition Requirements

1. Establish and permanently reference stations and monuments.
2. Determine and record sufficient topography to assure all relevant landmarks are shown. Include items such as buildings, sidewalks, driveways, walls, trees, etc.
3. Obtain and plot existing profile grade and cross-sections where necessary. Plot curb profiles as needed.
4. All utilities above and below ground and their owners shall be shown.
5. The surveyor shall verify, ascertain, and certify the right-of-way design plans.
6. All surveying and right-of-way mapping is to be performed in accordance with the DEPARTMENT'S Surveying Requirements, Current Edition, and Minimum Standards for Surveying, NMSA 1978, Sections 61-23-1 to 61-23-32.
7. All DEPARTMENT Right of Way Handbooks, particularly Right of Way Handbook (Current Edition. Local Public Agencies), shall be adhered to for all R/W operations, including Title Search, Property Survey, Right of Way Mapping, Appraisal, Appraisal Review, Acquisition (including donations), Relocation, and Right of Way Certification. Only qualified personnel may undertake Right of Way functions. CITY staff or consultants may not be used to perform any R/W functions unless the CITY certifies that each individual is qualified to perform each individual right of way activity, such as Title search, property survey, mapping, appraisal, etc. Right of Way operations shall conform to State statutes and Federal regulations. Future Federal funding for Project shall be jeopardized if right of way operations do not conform to State statutes and Federal regulations.
8. Obtain and prepare Title Reports that meet DEPARTMENT format and standards, for all affected R/W parcels.
9. Right of Way mapping shall be done in accordance with the "Attachment 2" checklist of the DEPARTMENT'S Right of Way Mapping Development Procedures Current Update. The surveyor shall verify and certify the checklist and the Right of Way maps.

10. Appraisals shall not begin until the CITY has 100% complete R/W maps. CITY or contracted (fee) appraisers shall not be used unless fully qualified.
11. Appraisal Reports shall be prepared in conformance with Federal and State Statutes and regulations. In no event shall the appraisal review function be contracted to a consultant. One purpose of appraisal review is to assure that the appraisal meets DEPARTMENT requirements prior to the initiation of acquisition.
12. CITY or contracted (fee) negotiators shall not be used unless fully qualified.
13. The CITY shall maintain all records and documents relating to the Right of Way acquisition for a minimum of five (5) years, and shall record all transfer of ownership documents with the County Clerk. DEPARTMENT personnel shall be provided access to Project R/W files upon reasonable notice.
14. The CITY shall furnish the DEPARTMENT with a written certification (R/W Certification) stating that Right of Way acquisition (and relocations, if applicable) has been performed in compliance with Federal and State laws and regulations.

APPENDIX C

Construction Phase Duties and Obligations

1. The CITY shall be responsible for all construction engineering, including Project supervision, surveying, inspection and testing when surveying and testing are not contracting items.
2. The CITY'S general conditions, standard drawings and specifications may be used if approved by the DEPARTMENT'S District Engineer.

CERTIFICATION NO. 1

CERTIFICATION OF THE PRE-CONSTRUCTION CONTRACT PHASE

Control No. L500056

Project No. MAP-7649(901)

I, _____, in my capacity as _____ of _____ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the CITY has complied with the terms and conditions of the pre-construction phase requirements set forth in this Agreement.
2. That the design for this Project is in compliance with all state laws, rules, regulations, and local ordinances and in the rules and regulations of the DEPARTMENT.
3. The CITY (including, but not limited to, Temporary Construction Permits and Construction Maintenance Easements) has acquired that all necessary right(s)-of-way for the construction or reconstruction of this Project in compliance with the DEPARTMENT'S Right of Way Handbook (Current Edition) Local Public Agencies, and Appendix B.
4. That all utilities within the location of this construction Project (check one or both of the following conditions):
 - ___ a. have been relocated
 - ___ b. are scheduled for relocation prior to or concurrent with construction of this Project and have been coordinated with the appropriate utility.
5. That the CITY has encumbered the necessary funds to complete the Project.
6. That the CITY has fully complied with the requirements of NMSA 67-3-62.
7. That roadway(s) and intersection(s) shall operate at a minimum Level of Service of C or D (LOS C or D) for the Projected 20 year design traffic volumes as specified in A Policy on Geometric Design of Highways and Streets, (Current Edition).
8. That traffic data collection, traffic Projections, and traffic impact studies on this Project have

been developed in conformance with the **DEPARTMENT'S** New Mexico Traffic Survey and Standards, (Current Edition).

9. That no angle parking has been provided in this Project.
10. That the **CITY** has completed a (check, which of the following conditions exists):
 - _____ a. 20 year pavement design; or
 - _____ b. 10 year pavement design with provision for extending the pavement life to 20 years, and has incorporated it in the plans and specifications for this Project.
11. That the **CITY** has completed a Project drainage report, which meets the **DEPARTMENT'S** minimum drainage criteria as referenced in the **DEPARTMENT'S** Drainage Manual.
12. All drainage costs have been prorated between the **DEPARTMENT** and the **CITY** if applicable, according to the **DEPARTMENT'S** Drainage Policy and Administrative Memorandum (Current Update) and prorated calculations have been approved in writing by the **DEPARTMENT'S** Drainage Section.
13. That the **CITY** has completed all required Environmental Documentation and clearances for this Project using guidance contained in the **DEPARTMENT'S** Action Plan, (Current Edition).
14. That the **CITY** has completed all required Archaeological Documentation and clearances for this Project using guidance contained in the **DEPARTMENT'S** Action Plan, (Current Edition).
15. That the following attached Agreement(s) have been executed, when required, for construction or reconstruction of this Project (attach copies to this certification):
 - a. Lighting;
 - b. signalization;
 - c. storm sewer and lift station;
 - d. landscape;
 - e. road exchange; and
 - f. any other applicable Agreements.
16. That the **CITY** has complied with and certifies compliance with all applicable provisions of

Appendix A.

17. That this certification procedure has been executed prior to advertisements for contract bids or commencement of this Project.

IN WITNESS WHEREOF, _____ in his/her capacity as _____ of _____ does hereby certify that the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

CITY OF SANTA FE

By: _____ Date: _____
Mayor

ATTEST:

By: _____ Date: _____
CITY Clerk

When completed, send Certification No. 1 to:

**District Five LGRF Coordinator
New Mexico Department of Transportation**

CERTIFICATION NO. 2

CERTIFICATION OF THE CONSTRUCTION PHASE

Control No. L500056

Project No. MAP-7649(901)

I, _____, in my capacity as _____ of _____ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the CITY has complied with the terms and conditions of the construction phase requirements under this Agreement.
2. That the CITY has complied with and certifies that the Project plan complies with all publications identified in Appendix A.
3. That all work in Control No. L500056 was performed in accordance with the Agreement.
4. That the total Project cost of _____, with New Mexico Department of Transportation "DEPARTMENT" 75% share of _____ and the CITY share of _____ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the Project.
5. That the construction of the Project was completed on _____ of _____, 20_____

IN WITNESS WHEREOF, _____ in his/her capacity as _____ of _____ does hereby certify the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

CITY OF SANTA FE

By: _____ Date: _____
Mayor

ATTEST:

By: _____ Date: _____
CITY Clerk

When completed, send Certification No. 2 to:

District Five LGRF Coordinator, New Mexico Department of Transportation