

**CITY OF FARMINGTON
CITY COUNCIL WORK SESSION AGENDA
June 3, 2014 – 9:00 a.m.**

DEPARTMENT HEAD REPORTS

1. Employee of the Month Program award (Employee Council President Kathy Farley)
2. Proclamation declaring June 3, 2014 as "Valedictorian and Salutatorian Recognition Day." (Mayor)
3. Presentation of the Mancos Gallup RMP Amendments (Lindsey Eoff, Project Manager for the Bureau of Land Management)
4. Presentation and staff report on the Convention Center Financing Act (Rob Mayes)

Action Requested of Council:

Direct staff to proceed with hiring a consultant.

Background/Rationale:

Legislation has authorized local governments to impose Convention Center fees.

Staff Recommendation:

Proceed with hiring a consultant.

Budgetary Impact:

\$50,000 to \$60,000 will be utilized from the Lodger's Tax account.

5. Resolution No. 2014-1509 adopting an official final budget for the City of Farmington, New Mexico for Fiscal Year 2015 and requesting state approval (Rob Mayes) ----- 1

Action Requested of Council:

Adopt Resolution No. 2014-1509.

Background/Rationale:

The attached resolution and DFA (Department of Finance and Administration) recap sheet summarize the City of Farmington's final budget for Fiscal Year 2014-2015.

Staff Recommendation:

Adopt Resolution No. 2014-1509.

Instructions Upon Approval:

The FY2015 final budget will be submitted to DFA for review and approval.

Budgetary Impact:

Once approved by the Council, the final budget will become the City of Farmington FY2015 operating budget effective July 1, 2014 thru June 30, 2015.

6. Resolution No. 2014-1510 approving the San Juan Boulevard/Scott Avenue intersection Safety Improvement Project and accepting funds from the FFY 2014 Highway Safety Improvement Program for design work for such project (Nica Westerling) ----- 2

Action Requested of Council:

Adopt Resolution No. 2014-1510 and authorize the mayor to sign the Cooperative Project Agreement.

Background/Rationale:

The attached resolution is required to accept funds from the New Mexico Department of Transportation, Federal Highway Safety Improvement Program ("HSIP"). An application for safety improvements at the intersection of San Juan Boulevard and Scott Avenue was submitted. The project was accepted by the New Mexico Department of Transportation ("NMDOT) and a Cooperative Project Agreement (Control No. F100200) was received for the design work only in the amount of \$20,000 (\$18,528 HSIP and \$1,472 NMDOT). Work will be scheduled as soon as possible after receiving a fully-executed contract from NMDOT.

Staff Recommendation:

Adopt Resolution No. 2014-1510 and authorize the mayor to sign the Cooperative Project Agreement.

Instructions Upon Approval:

Authorize Mayor to sign resolution and agreement.

7. Bid for demolition of Fire Station One (Eddie Smylie)----- 3

Action Requested of Council:

Approve recommendation for award.

Background/Rationale:

Bids opened May 13, 2014 for the demolition of Fire Station One (Fire) with two bidders participating.

Staff Recommendation:

Award the bid to Young Environmental Services, Inc., doing business as Envirotech, Inc., as the lowest and best bidder meeting specifications after application of five percent in-state preference (\$73,108.12).

Instructions Upon Approval:

Award the contract.

8. Bid for construction of Fire Station One and a Fire Administration building (Eddie Smylie) ----- 4

Action Requested of Council:

Approve recommendation for award.

Background/Rationale:

Bids opened May 28, 2014 for the construction of Fire Station One and a Fire Administration building (Fire) with five bidders participating.

Staff Recommendation:

Award the base bid plus alternates one and two to B & M Cillessen Construction Company, Inc. as the lowest and best bidder meeting specifications after application of five percent in-state preference and the resident veteran's preference (\$2,952,600).

Instructions Upon Approval:

Award the contract.

COUNCIL BUSINESS

CLOSED MEETING

9. To discuss acquisition of real properties (riverine trail system and MRA district) pursuant to Section 10-15-1H(8) NMSA 1978.

AGENDA ITEM SUPPORT MATERIALS ARE AVAILABLE FOR INSPECTION AND/OR PURCHASE AT THE OFFICE OF THE CITY CLERK, 800 MUNICIPAL DRIVE, FARMINGTON, NEW MEXICO.

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 599-1106 or 599-1101 prior to the meeting so that arrangements can be made.

RESOLUTION NO. 2014-1509

A RESOLUTION ADOPTING AN OFFICIAL FINAL BUDGET FOR THE CITY OF FARMINGTON, NEW MEXICO FOR THE FISCAL YEAR 2015 AND REQUESTING STATE APPROVAL

WHEREAS, the Governing Body of the City of Farmington, a municipal corporation and political subdivision formed and existing under the laws of the State of New Mexico, has developed a Final Budget for Fiscal Year 2015; and

WHEREAS, said budget was developed on the basis of need, with cooperation from all user departments and elected officials, and with public input accepted at two separate open forum meetings; and

WHEREAS, the official meetings for the review of said documents were duly published and held in compliance with the State Open Meetings Act; and

WHEREAS, it is the majority opinion of the City Council of the City of Farmington that the proposed Final Budget, containing an estimated beginning cash balance of \$108,126,660 with a total revenue projection of \$215,087,378, a total expenditure projection of \$252,924,428 and an ending cash balance of \$70,289,610 meets the City's budgetary requirements as preliminarily determined for Fiscal Year 2015; and

WHEREAS, it is necessary to submit this budget to the New Mexico Department of Finance and Administration by July 30, 2014 for review and approval;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the City of Farmington, State of New Mexico, hereby adopts the FY15 Final Budget herein above described and requests approval from the Local Government Division of the Department of Finance and Administration.

PASSED, SIGNED, APPROVED, AND ADOPTED this 3rd day of June, 2014.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Smylie, City Clerk

INTER

OFFICE

MEMO

To: Mayor and City Council
From: Nica Westerling, PE
City Engineer
Date: May 22, 2014
Subject: Resolution for San Juan/ Scott Intersection Improvements

The intersection of San Juan Boulevard and Scott Avenue appeared on the NMDOT Fiscal Year 2012 Transparency Report listing of severe crash locations at urban intersections (Table IV-1A). This signalized intersection was constructed in the 1970's. The traffic signal head placements in relation to the driving lanes do not meet current standards; existing signal standard mast arms are too short to facilitate the correct mounting locations; and, there are no pedestrian indicators.

An application for safety improvements at the intersection was submitted in December 2012 to reconstruct a new traffic signal system to meet current NMDOT standards and will include ADA accessible ramps, durable crosswalk and lane line markings and symbols. The project was approved by NMDOT; funding will be in two fiscal years: FY14 for design and FY15 for construction.

The first contract, a Cooperative Project Agreement – Design Work, Control No F100200, has been received for engineering in the amount of \$20,000.00 (\$18,528 HSIP funds and \$1,472 NMDOT participation). The attached resolution is required to accept funds from the New Mexico Department of Transportation, federal Highway Safety Improvement Program (HSIP).

Once design work is completed and all clearances from NMDOT are received, another contract will be forthcoming for the construction portion of the project. There is no local match required for these funds, it is 100% funded with HSIP funds.

RESOLUTION NO. 2014-1510

A RESOLUTION APPROVING THE SAN JUAN/SCOTT AVENUE INTERSECTION SAFETY IMPROVEMENT PROJECT AND ACCEPTING FUNDS FROM THE FFY 2014 HIGHWAY SAFETY IMPROVEMENT PROGRAM FOR DESIGN WORK FOR SUCH PROJECT.

WHEREAS, the New Mexico Department of Transportation's Statewide Transportation Improvement Program (STIP) designated the San Juan/Scott Intersection Safety Improvement project for funding under the Federal Highway Safety Improvement Program (HISP) for Federal Fiscal Year 2014; and

WHEREAS, the Director of the Public Works Department and the City Engineer recommended and submitted the San Juan/Scott Avenue Intersection Safety Improvements Project to the New Mexico Department of Transportation for funding under the Highway Safety Improvement Program (HSIP) for Fiscal Year 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FARMINGTON:

SECTION 1:

That the City Council of the City of Farmington does hereby approve the "San Juan/Scott Avenue Intersection Safety Improvement Project" located in the City of Farmington.

SECTION 2:

That the City Council of the City of Farmington does further approve the estimated cost of the "Design Work" for the San Juan/Scott Avenue Intersection Safety Improvements Project, budgeting the sum of Twenty Thousand Six Dollars (\$20,000) in Fiscal Year 2014 for such project upon the understanding that Eighteen Thousand Five Hundred Twenty Eight Dollars (\$18,528) shall be paid for by funds from the Federal Highway Safety Improvement Program and that One Thousand Four Hundred Seventy Two Dollars (\$1,472) shall be paid for by funds from the New Mexico Department of Transportation's Cooperative Agreement Program (CO-OP) for Fiscal Year 2014.

SECTION 3:

That the City Council of the City of Farmington does further represent that funds representing the total cost of the "design work" for the proposed project was budgeted in Fiscal Year 2014 and will be available when the agreement for such project becomes effective.

SECTION 4:

That the City Council of the City of Farmington does further authorize the Mayor of the City of Farmington to enter into appropriate contracts with the New Mexico Department of Transportation for construction of any portion or all of the project described in this resolution under the Cooperative Agreement Program (CO-OP) of the State of New Mexico.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS 3rd day of June, 2014.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Smylie, City Clerk

| | |
|-----------------|-------------------|
| Contract Number | |
| Vendor Number | <u>0000054331</u> |
| Control Number | <u>F100200</u> |

COOPERATIVE PROJECT AGREEMENT – DESIGN WORK

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (“Department”), and the City of Farmington (“Public Entity”), collectively referred to as the “Parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

In consideration of the covenants contained herein and pursuant to NMSA 1978, Section 67-3-28, the Parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the Public Entity for the preliminary and final design, project development and certification, and production of a Plans Specifications and Estimate (PS&E) Certification Package for a transportation project described in the Public Entity’s Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). The deliverables under this Agreement may be referred to as the “Design Work” is referred to interchangeably as “Project” or “Project Control No. F100200.” The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction.

2. Funding.

- a. The total funding for Project Control No. F100200, is Twenty Thousand Dollars (\$20,000) which will be shared by the Parties as follows:

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1. <u>FFY 2014 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) Funds</u> | |
| <u>Department’s 92.64% share</u> | \$18,528 |
| For intersection safety improvements and traffic signal reconstruction on San Juan Blvd/Scott Ave intersection in Farmington. (Description as per STIP database and Agreement Request Form, this agreement only pertains to the design portion of Project Control No. F100200.) | |
| 2. <u>State’s matching 7.36% share</u> | \$1,472 |
| For the purpose stated above. | |
| 3. <u>The Total Project (Design Work) Funding</u> | \$20,000 |

- b. The Public Entity shall pay all Project costs that exceed the total funding amount specified in this section.
- c. FHWA’s obligation of federal funds shall be supported by a certified cost estimate based on the Public Entity’s Engineer’s Opinion of Probable Cost (EOPC). The EOPC shall be submitted to the Department’s North Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.

- d. The amount of federal funds obligated by the FHWA for the Project will be reviewed, after the Project is advertised. The Department's North Region T/LPA Coordinator will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106.

3. Method of Payment -- Reimbursement.

The Department's District T/LPA coordinator shall reimburse the Public Entity upon receipt of payment requests for the purposes stated in Section 2 above, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Invoices will be accepted monthly, but must be submitted at a minimum quarterly to the Department's District T/LPA coordinator. Payment requests shall be identified by the project control number and certified that the requests accurately reflect work completed, amount due and the remaining Agreement balance. All expenses must be actual, rather than estimated, and listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed. Incomplete submittals will be returned to the Public Entity for corrections.

The Department's District T/LPA coordinator will not reimburse the Public Entity for costs incurred prior to obligation of federal funding and the full execution of this Agreement, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. The Project request for reimbursement shall be submitted to the Department's District T/LPA coordinator within thirty (30) calendar days of completion of the Project and prior to the termination date identified within Section 20.

4. Public Entity Shall:

- a. Act in the capacity of the lead agency for the Project.
- b. Use the Project Control Number in all correspondence and submittals to the Department.
- c. Pay all costs, perform all labor, and supply all material for the Project.
- d. Identify a single point of contact for the Project who may be either a Public Entity employee or consultant, for all communications to or from the Department.
- e. Adopt a written resolution of support for the Project, including, as appropriate, an assumption of ownership, liability, maintenance, related amenities, and the availability of required matching funds.
- f. Complete all necessary Design Work, including preliminary engineering, environmental clearance documentation, right-of-way clearance, project development, and utility clearance.
- g. Obtain written authorization from the Department's North Region T/LPA Coordinator prior to issuing a solicitation for design or certification services and provide verification that the solicitation is in conformance with governing federal, state and local procurement requirements.
- h. Obtain concurrence from the Department's North Region T/LPA Coordinator prior to award of the design contract.
- i. Submit to the Department's North Region T/LPA Coordinator for concurrence, as a deliverable of this Agreement, a proposed PS&E Certification Package which includes the following:
 1. Construction Plans;

2. Engineer's Opinion of Probable Cost;
3. Specifications;
4. Contract Book;
5. Proposed Invitation for Bid; and
6. Project PS&E Certification Package, shall also contain the following documents:
 - Signed Certification of Pre-Construction Phase (**Appendix E**);
 - Environmental clearance and certification documentation;
 - The State Historic Preservation Officer's concurrence;
 - Right of Way certification documentation;
 - Utility certification documentation;
 - Work Zone Checklist, Sections J and K;
 - Intelligent Transportation Systems (ITS) certification documentation; and,
 - Railroad certification documentation.
- j. Develop and execute the Project in accordance with the Department's current Tribal/Local Public Agency Handbook, Construction Procedures Handbook for Federal Aid Local Government Lead Projects, Right of Way Handbook, Volume VII, and the New Mexico Transportation Department's Office Procedures Manual.
- k. Insure all designs comply with **Appendix A**, "Preliminary Engineering/Construction Engineering" and are performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, Sections 61-23-21 and 61-15-1.
- l. Design the Project in accordance with **Appendix C**, "Design Standards."
- m. Comply with **Appendix D**, "Survey and Right of Way Acquisition Requirements."
- n. Warrant, covenant, and agree that they will comply with conditions and terms contained in all appendices attached hereto. They will perform any and all applicable obligations contained herein.
- o. Complete the environmental process as described in the Department's Tribal/Local Public Agency Handbook and in accordance with state and federal guidelines and regulations including the National Environmental Policy Act (NEPA), FHWA Technical Advisory T 6640.8, 23 CFR Part 771, and guidance for preparing environmental documents. This effort includes, but is not be limited to:
 1. Completion of a Location Corridor Study, if applicable, as described in **Appendix B**. Initiate and cause to be prepared an Initial Corridor Analysis Report "Phase A Report," a Location Study Report "Phase B Report," and the appropriate level of environmental documentation "Phase C";
 2. Submit a scope of work to the Department's North Region T/LPA Coordinator for concurrence with the determination of the level of effort needed for completing the environmental certification process;
 3. Conduct a cultural resources survey, if required, and submit the cultural resources survey report to the Department's North Region T/LPA Coordinator for review and assistance with making the submittal to the State Historic Preservation Office (SHPO). The survey shall be conducted and the report shall be prepared in accordance with the Department's Guidelines for Cultural Resource Investigations;
 4. Conduct and document hazardous materials investigations according to the Department's Environmental Geology Bureau's Hazardous Materials Assessment Handbook. The appropriate environmental documents shall be prepared by a qualified

- environmental professional, as defined in 40 CFR Part 312, and submitted to the Department's North Region T/LPA Coordinator for review;
5. Conduct and document appropriate public notifications and public involvement activities;
 6. Submit appropriate and acceptable NEPA documents, prepared by a qualified environmental professional, to the Department's North Region T/LPA Coordinator for review and concurrence. "Acceptable" means documents that meet the criteria specified in the Department's Tribal/Local Public Agency Handbook; and,
 7. Produce and distribute an appropriate number of copies of environmental documents to regulatory agencies and interested parties.
- p. Comply with **Appendix G** if the Project involves lighting and/or highway lighting.
 - q. Comply with **Appendix H** if the Project involves signal(s) and/or highway signal(s).
 - r. Register with www.ccr.gov and DUNS and provide such information to the Department as well as the total compensation and names of the Public Entity's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
 - s. If the Public Entity receives a combined \$500,000 in Federal Funding, which would require an audit pursuant to OMB Circular A-133, it must provide the Department a copy of the most recent completed audit report before the start of work.
 - t. Ensure all design and Project plans require that all construction materials, including those associated with utility facilities and relocations, are in accordance with "Buy America" requirements (23 CFR Section 635.410), which require proof of origin and place of manufacture of iron and steel products and materials to be made in America. Additional information is available at: <http://www.fhwa.dot.gov/construction/cquit/buyam.cfm>; <http://www.fhwa.dot.gov/utilities/buyam.cfm>.
 - u. Ensure all design and Project plans fully comply with Title II of the Americans with Disabilities Act of 1990 (ADA), implemented by 28 CFR 35, Section 504 of the 1973 Rehabilitation Act, implemented by 49 CFR 27, United States Access Board *Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way* a.k.a. Public Right-of-Way Accessibility Guidelines (PROWAG) section 300R.

5. The Department Shall:

- a. Assign the Department's North Region T/LPA Coordinator as the single point of contact to provide technical assistance for the development of the Project and to monitor and oversee progress under this Agreement.
- b. Ensure the Department's Environmental Development and Environmental Geology Sections timely reviews and concurs with Public Entity's:
 1. NEPA and related environmental documentation for appropriate level of effort and completeness, and timely assists the Public Entity by transmitting the Public Entity's NEPA documents to the FHWA for review and concurrence.
 2. Cultural resource technical reports and timely assists the Public Entity by transmitting the reports to FHWA and the SHPO officer for review and concurrence.
- c. Review the Public Entity's hazardous material investigation deliverables to concur Public Entity has certified each is compliant with American Society for Testing and Materials (ASTM) and Department standards.
- d. Review required certification documents and deliverables submitted by Public Entity for Acceptability, as that term is defined in the Department's current Standard Specifications

for Highway and Bridge Construction, as a prerequisite to obligating the remainder of the Project's federal funding for construction.

6. Both Parties Agree:

Review of documents by the Department does not relieve the Public Entity, or its consultants, of its responsibility for errors and omissions.

7. Project Responsibility.

The Public Entity is solely responsible for ensuring that the Project is carried out to completion. The services required under this Agreement shall remain the full responsibility of the Public Entity, unless stated otherwise in the Agreement.

8. Public Entity Sole Jurisdiction.

After the completion of this Agreement, ownership of the Project design and development documentation shall remain solely with the Public Entity.

9. Legal Compliance.

The Public Entity shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies including Design Directives in the performance of this Agreement. These laws include, but are not limited to: FHWA memorandums; Authorization to proceed and project monitoring at 23 CFR Part 630.106; Agreement provisions at 23 CFR Part 630.112; Project approval and oversight at 23 U.S.C. § 106 [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; applicable provisions of the Disadvantaged Business Enterprise Program, 49 CFR Part 26; the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, Executive Order 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375; the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252; 2 CFR Part 170; and 2 CFR Part 25; the NMAC 17.4.2; Public Utilities and Utility Services, Utility right of Way and Easements, Requirements for Occupancy of State Highway System Right-of-Way by Utility Facilities.

Additionally, the Public Entity shall comply with all applicable federal, state and local laws and regulations governing environmental issues, workplace safety, employer-employee relations and all other laws and regulations governing operation of the workplace. The Public Entity shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

10. Federal Grant Reporting Requirements.

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This

information will be made available to the public on www.USASpending.gov . For this reporting, Public Entity is the “subgrantee.”

The type of information the Department is required to report includes:

- a. Name of subgrantee receiving the award;
- b. Amount of award;
- c. Funding Agency;
- d. NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants;
- e. Program source;
- f. Award title descriptive of the purpose of the funding action;
- g. Location of the subgrantee, which includes the Congressional District;
- h. Place of performance of the program or activity, which includes the Congressional District;
- i. Unique identifier – DUNS -- of the subgrantee and its parent organization, if one exists; and,
- j. Total compensation and names of the top five executives of the subgrantee. This information is required, if the subgrantee in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Public Entity’s grant application and standard reports. As specified in Section 4, Paragraph r, the Public Entity will be required to provide the total compensation and names of the Public Entity top five executives, if applicable, and shall register with www.ccr.gov and DUNS and provide that information to the Department.

More information on the Transparency Act may be located via the following links: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>; and, <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

11. Disadvantaged Business Enterprise (DBE) Program.

- a. **Required Contract Assurance:** Each contract the Department signs with the Public Entity and each subcontract the Public Entity signs with a consultant or subconsultant must include the following assurance: “The contractor, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of U.S. Department of Transportation-assisted contracts”. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Department deems appropriate.
- b. **DBE Program Obligations:** The portion of the Department’s tri-annual state DBE goal applicable to federal-aid design projects is 7.69%, which shall be attained through race neutral measures. Accordingly, even though design and other consultant contracts do not

have contract specific DBE goals assigned to them, the Department encourages the Public Entity and its consultants and contractors to facilitate small business and DBE participation on this Project and to take all reasonable steps to eliminate obstacles that may preclude such participation.

- c. Provision of DBE Program Information: The Public Entity shall provide any DBE related information or data to the Department's North Region T/LPA Coordinator or the Department's Office of Equal Opportunity Programs, including but not limited to lists of quoters and DBE monthly participation forms, as required or upon request.

12. Title VI Program Obligations.

- a. Public Entity Assurances – Each contract the Public Entity enters into with a design consultant, other consultant or recipient on a project assisted by the United States Department of Transportation (USDOT), and any subcontract thereto, shall include the assurances contained in **Appendix F** as applicable:
- b. The Public Entity shall sign and submit the attached Appendix F (Title VI Nondiscrimination Assurances For FHWA Recipients) to the Department's Office of Equal Opportunity Programs. By signing **Appendix F**, assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Public Entity.
- c. The Public Entity shall require sub-recipients to sign and submit the attached Appendix F (Title VI Nondiscrimination Assurances For FHWA Recipients) to the Department's Office of Equal Opportunity Programs for each contract the Public Entity enters into with a design consultant, other consultant or sub-recipient on a USDOT-assisted project, and any subcontract thereto.

13. 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 thereof 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.

14. 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. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

15. Office of Inspector General Reviews.

The Public Entity shall provide to all firms or individuals seeking a services contract related to this Agreement the reporting and oversight requirements that each will be bound to from the time of bid or proposal submission. The following provisions must be included in all contracts or subcontracts for services for a federally-funded project.

- a. Inspector General Reviews. Any Inspector General of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific

investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned.

- b. Access of Offices of Inspector General to Certain Records and Employees. With respect to each contract or grant awarded using federal funds, any representative of an appropriate Inspector General appointed under the Inspector General Act of 1978, 5 U.S.C. App. §§ 3 or 8G, is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub-grant; and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.
1. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the contractor or any of contractor's subcontractors, or any state or local agency administering such contract that directly pertain to, and involve transactions relating to, the contract or subcontract.
 2. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of contractor's subcontractors, or of any state or local government agency administering the contract, regarding such transactions.
 3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
- c. New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), current as of the date of execution of this Agreement, has the authority to carry out all duties required, which are the same as those specified in federal law: Office of Inspector General, 23 U.S.C. §302 (the capability to carry out the duties required by law); 23 U.S.C. §112 (contracting for engineering and design services); the review of Federal-aid construction contracts references; 23 U.S.C. § 106 (project approval); 23 U.S.C. § 112 (letting of contracts); 23 U.S.C. § 113 (prevailing rate of wage); 23 U.S.C. § 114 (construction); 23 CFR Parts 635 and 636 (design build); 23 CFR Part 637 (construction inspection approval); the State Departments of Transportation are responsible for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. § 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

16. Access to Records, Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Public Entity shall maintain all records and documents relative to the Project for five (5) years after completion of the Project or termination of this Agreement. The Public Entity shall furnish the Department, State Auditor, or appropriate federal auditors, upon demand, any and all records relevant to this Agreement for auditing purposes. If an audit determines that a specific expense 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 identified shall be reimbursed to the Department within thirty (30) days of written notification.

17. Appropriation.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the State Legislature, or the Congress of the United States, if federal funds are involved. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice given by the Department to the Public Entity. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, obligated by FHWA, 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.

18. Scope 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.

19. 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.

20. Term.

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date except as stated in Sections 7 and 16 above.

21. Termination.

- a. The Department may terminate this Agreement if the funds identified in Section 2 above have not been contractually committed between the Public Entity and a contractor within three (3) months from the date this Agreement is effective.
- b. The Department will review inactive projects on a quarterly basis. An inactive project is a project for which no expenditures have been charged against federal funds for the past 12 months. If the Department determines a project to be inactive, the Department may, as directed by FHWA, terminate the agreement and redirect the unexpended balance pursuant to 23 CFR Part 630.106.
- c. The Department may, at its option, terminate this Agreement if the Public Entity fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

22. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

North Region T/LPA Coordinator

Yolanda M. Roybal, P.E.
North Region Design T/LPA Coordinator
New Mexico Department of Transportation
P.O. Box 1149, Room 203
Santa Fe, NM 87504
Office: 505-827-9734
E-mail: Yolanda.Roybal@state.nm.us

District T/LPA Coordinator

David Quintana, P.E.
TSE
New Mexico Department of Transportation
P.O. Box 4127
Santa Fe, NM 87502
Office: 1-800-388-6630

Public Entity

Nica Westerling
City Engineer
City of Farmington
800 Municipal Dr.
Farmington, New Mexico 87401-2663
Office: 505-599-1316
E-mail: nwesterling@fmtn.org

23. Amendment.

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

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Kathryn E. Bender, Deputy Secretary
Programs & Infrastructure

Date: _____

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

By: Cynthia A. Chest
Assistant General Counsel

Date: 4-10-14

CITY OF FARMINGTON

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

Date: _____

Approved as to form and legal sufficiency by the City's Attorney

By: [Signature]
City Attorney

Date: 5/14/14