

Contract No.: _____
Vendor No.: _____

COOPERATIVE USE, MAINTENANCE AND LIGHTING AGREEMENT

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (“Department”), and **THE INCORPORATED COUNTY OF LOS ALAMOS** (“County”), collectively herein as “the Parties”. This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, County contemplates the construction of a dedicated public use trail within its boundaries, identified as PN: 5101310, CN: 5101310 (“Project”); and,

Whereas, the public use trail, named the Canyon Rim Trail (“Trail”), would go through a Department Right-Of-Way (“ROW”) via a tunnel built underneath NM 502, near milepost 3.43, as shown on **Exhibit A** attached hereto and incorporated by reference; and,

Whereas, County wishes to use the Department ROW for the Trail in a manner not inconsistent with or detrimental to the Department’s statutory obligations for highway control and maintenance and in compliance with municipal or county customs, ordinances, zoning and agreements; and,

Whereas, the Parties agree with the installation of Trail lighting in the tunnel, wayfinding signs and safety barriers on NM502 at milepost 3.43; and,

Whereas, the Parties set forth herein their responsibilities on operation and maintenance of the Trail, ROW, wayfaring signs and safety barriers.

Now therefore, pursuant to NMSA 1978, Section 67-3-28, the Parties agree as follows:

1. The Department Shall:

- a. Allow the Trail to be located within the Department ROW. See **Exhibit A**.
- b. Allow County to enter into the Department’s ROW to perform maintenance as detailed in Section 2 below.
- c. Reserve the right to remove the Trail and related facilities or require County to relocate the Trail and related facilities, in the event the Department needs to make changes and improvements to NM502 which conflict with the Trail and its related facilities, at no expense to the Department. This reservation of the right to remove the trail shall involve consultation with the County and consideration of the impact to the County for federal TAP (Transportation Alternative Program) funds dispersed to the County, and related restrictions that may encumber the Trail.
- d. Not incorporate the Trail or related facilities into the State Highway System, nor is the Department assuming maintenance responsibility or liability for the Trail, or any of its components.
- e. Provide annual structure inspections and reports as may be required.

2. County Shall:

- a. Use the Trail in a manner not inconsistent with or detrimental to the Department's statutory obligations for highway control and maintenance and in compliance with municipal or county customs, ordinances, zoning and agreements. This includes prohibiting:
 - 1. Trail use by motor vehicles, unless needed for maintenance.
 - 2. Placement of any wet or dry utilities beyond the scope of the Trail.
 - 3. Vending.
 - 4. Habitation by persons.
- b. Provide all maintenance and electrical energy for the Trail, the tunnel lights, wayfinding signs and NM502 safety barriers at its sole cost and expense.
- c. Provide for maintenance of the Trail lighting system, which includes:
 - 1. Approximately eight (8), twenty-five (25) watt LED luminaires with full cutoff fixtures, at mile post 3.43, for a fully operational lighting system.
 - 2. Luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
 - 3. All parts and components, including but not limited to, poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Maintain wayfinding signs within the Department's ROW, complying with Department specifications. Maintenance includes upkeep and replacement.
- e. Provide perpetual maintenance and general up-keep of the Trail located within the right-of-way of NM 502.
- f. Provide forty-eight (48) hour notice and the traffic control plans to the Department's District 5 office of any maintenance activity on NM502 within the Trail prism.
- g. After construction is completed, provide the Department as-built drawings of the Trail within its ROW, and a complete list of all parts and components used including the brands and specifications for the lights, wayfinding signs and safety barriers.
- h. Do one of the following: (1) procure and maintain insurance or performance bond, or (2) provide to the Department, annually, a maintenance program document that identifies the budget and staffing for the Trail maintenance. The purpose of this requirement is to ensure that that all maintenance requirements, as listed in this Section 2, are performed.
- i. Reimburse the Department within thirty (30) days of receipt of invoice for any and all costs the Department incurs for any maintenance on the safety barriers, the wayfinding signs, the Trail or light system within the Department's ROW.
- j. Not change the established drainage pattern, except as described in **Exhibit A**. County shall be responsible for additional flow resulting from County's development of the site.
- k. County shall be solely liable for contamination of soils and/or ground water resulting from County's activities on the property included within this Agreement. Such liability includes, but is not limited to, costs of response, costs of site investigation and remediation, damages for injury to, destruction of, or loss of natural resources including the costs of assessing such injury, destruction or loss and/or the costs of any health assessments or health effects study. County shall not cause or permit the escape, disposal

release of any biologically or chemically active or other hazardous substances or materials on or about the property. Hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, codified as 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act, codified as 42 U.S.C. §§ 6901, et seq., and any applicable state or local laws and regulations. If, during the term of this Agreement, or any extension thereof, the Department requests or requires testing to ascertain whether or not there has been any escape, disposal or release of hazardous substances or materials, the costs of such testing shall be paid solely by County. County's refusal to pay such costs shall be grounds for termination by Department of this Agreement.

- l. Allow entry by authorized NMDOT or Federal Highway Administration ("FHWA") representatives when deemed necessary by the NMDOT for purposes of inspection, maintenance, reconstruction, replacement of permanent structures, facilities and improvements above, on or below the ROW grade line, or for the purpose of insuring compliance with all provisions of the Agreement.
- m. Allow access to the property described herein at any and all times to utility companies for maintenance of any existing and future utilities that include, but are not limited to, installation, operation, monitoring, maintenance, and remediation activities.
- n. Not modify the Trail alignment, amenities, or uses without prior written approval of the Department.

3. 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.

4. Duration.

This Agreement shall last as long as the Trail is used and maintained according to the terms of this Agreement, and may only be terminated or revoked upon the mutual agreement of the Parties. Upon any such termination or revocation, County shall remove any improvements requested to be removed by the Department. The Department shall provide reasonable notice of any termination or revocation and shall allow a reasonable opportunity for County to remove any improvements, if the Department makes such request.

5. Third Party Beneficiaries.

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.

6. New Mexico Tort Claims Act.

As between the Department and County, 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.

7. Scope of Agreement.

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

8. Terms of this Agreement.

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

9. Appropriations and Authorizations.

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

10. Assignment.

This Agreement may not be transferred, assigned or conveyed to another party except by written agreement with the Department. Any attempt by County to transfer or assign this Agreement otherwise will cause the Agreement to immediately terminate and to be of no further force or effect.

11. Relocation.

The Parties agree that relocation benefits under the New Mexico Relocation Assistance Act, NMSA 1978, §§ 42-3-1 through 42-3-15, are not applicable.

12. Severability.

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

13. 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 NMSA 1978, Section 38-3-1(G).

14. Principal Contacts and Notices.

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

Contact information for the Department is:

Paul Brasher, P.E.,
Acting District Engineer,
Box 4127, Coronado Santa Fe, NM 87502-4127,
505-795-0533
Email: paul.brasher@state.nm.us

and

New Mexico Department of Transportation
Property Management Unit
P.O. Box 1149
Santa Fe, NM 87504-1149
505-660-2034
Email: jeremy.lujan@state.nm.us

Contact information for County is:

Public Works Department Director
Los Alamos County
Address: 1000 Central Avenue, Suite 160 Los Alamos, NM 87544
Office: 505-662-8150
Email: lacpw@lacnm.us

15. Amendment

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

16. Exhibit A Plans and Revisions

The Parties agree the Exhibit A, Vicinity Map and Roadway Plan and Profile for the Canyon Rim Trail Underpass may be further revised in ways which do not impact either party's respective rights and responsibilities, by duplicate plans attached to the Agreement with a delineated revision date, endorsed by authorized party representatives and copies provided to both parties.

The remainder of this page is intentionally left blank.

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
State Traffic Engineer

Date: _____

By: _____
District Engineer

Date: _____

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

By: _____
Assistant General Counsel

Date: _____

LOS ALAMOS COUNTY

By: _____

Date: _____

Title: _____

Attest: _____
LOS ALAMOS COUNTY Clerk

Date: _____

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

By: _____
LOS ALAMOS COUNTY Attorney

Date: _____

EXHIBIT A

(design/construction drawings/maps)