

MAINTENANCE AGREEMENT

PEDESTRIAN HYBRID BEACON AND ROADWAY LIGHTING

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (Department), and the **INCORPORATED COUNTY OF LOS ALAMOS**, (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, the Public Entity contemplates the construction of a highway project within the boundaries of the Department, identified as PN:5101730, and CN:5101730 (Project);

Whereas, the Department and Public Entity agree with the need for installation of a roadway lighting system (Lighting) and Pedestrian Hybrid Beacon System (Beacon) at the following location(s): NM4 at milepost 63.35;

Whereas, the installation, operation, and maintenance of the Lighting and Beacon will promote traffic safety;

Whereas, the parties want to set forth their responsibilities on the installation, operation and maintenance of the Lighting and Beacon.

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

1. Pedestrian Hybrid Beacons:

a. The Department Shall:

1. Allow the Public Entity to enter into the Department's right of way to perform installation, maintenance and operation as detailed in Section 1.b below.

b. The Public Entity Shall:

1. Provide the necessary plans, designs and estimates and documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
2. Determine the design, provide and install new Pedestrian Hybrid Beacon equipment with concrete foundations, poles, signal heads, signing, underground conduit, and conductor for complete assembly.
3. Provide and install Pedestrian Hybrid Beacon(s), on type I or II standards on NM4 at milepost 63.35 for a fully operational Beacon.
4. Provide at its own expense all electrical energy necessary for the operation of the Beacons.
5. Perform any and all maintenance to keep the Beacon operating, which includes signal head replacement, if solar is used: solar batteries and panels replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
6. Perform maintenance as detailed in this Section 1.b, to all parts and components, which includes and is not limited to poles or fixtures, underground conduits, cables,

communication lines, wires, pull boxes, signal heads, and as provided by as-built drawings.

7. Make replacement of all parts and components with the same kind or brand for continued satisfactory operation of the Beacon.
8. After construction is completed, provide the Department with as-built drawings of the Beacon and a complete list of all parts and components, used including the brands and specifications.

2. Roadway Lighting:

a. The Department Shall:

1. Allow the Public Entity to enter into the Department's right of way to perform maintenance and operation as detailed in Section 2.b below.

b. The Public Entity Shall:

1. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
2. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
3. Provide and install approximately 2, LED luminaires with full cutoff fixtures, on type III standards at milepost 63.35 for a fully operational lighting system.
4. Provide at its sole cost and expense all electrical energy necessary for the operation of the Lighting.
5. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes 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.
6. Perform maintenance as detailed in this Section 2.b, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
7. Replace all parts and components with the same kind, brand or performance for continued satisfactory operation of the Lighting.
8. After construction is completed, provide the Department with as-built drawings of the Lighting and a complete list of all parts and components, used including the brands and specifications.

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. 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.

5. 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, Sections 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.

6. 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.

7. 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.

8. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

9. Appropriations and Authorizations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, 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 the Public Entity, 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 Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

10. 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.

11. Contingent on Project Being Let.

In the event that the Project is not let for any reason, this Agreement shall become null and void and shall create no obligation on any of the parties.

12. 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 in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

13. 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.

Name: Rhonda Lopez, PE
Title: District 5 Engineer
New Mexico Department of Transportation
Address: P.O. Box 4127, Santa Fe, NM
87502 Office: 505-795-0533
E-mail: rhonda.lopez@dot.nm.gov

Name: Keith Wilson, PTP
Title: Deputy Public Works Director
Public Entity: Incorporated County of Los Alamos
Address: 1000 Central Avenue, Suite #160, Los Alamos, NM
87544 Office: 505-662-8150
E-mail: keith.wilson@losalamosnm.gov

14. Amendment.

This Agreement shall not be altered, modified, 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 that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Cabinet Secretary or Designee

Recommended by:

By: _____ Date: _____
State Traffic Engineer

By: _____ Date: _____
District Engineer

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

By: _____ Date: _____
Assistant General Counsel

INCORPORATED COUNTY OF LOS ALAMOS

By: _____ Date: _____
Anne W. Laurent,
County Manager

Approved as to Form:

By: _____ Date: _____
Alvin J. Leaphart,
County Attorney

Attest: Michael D. Redondo,
County Clerk