

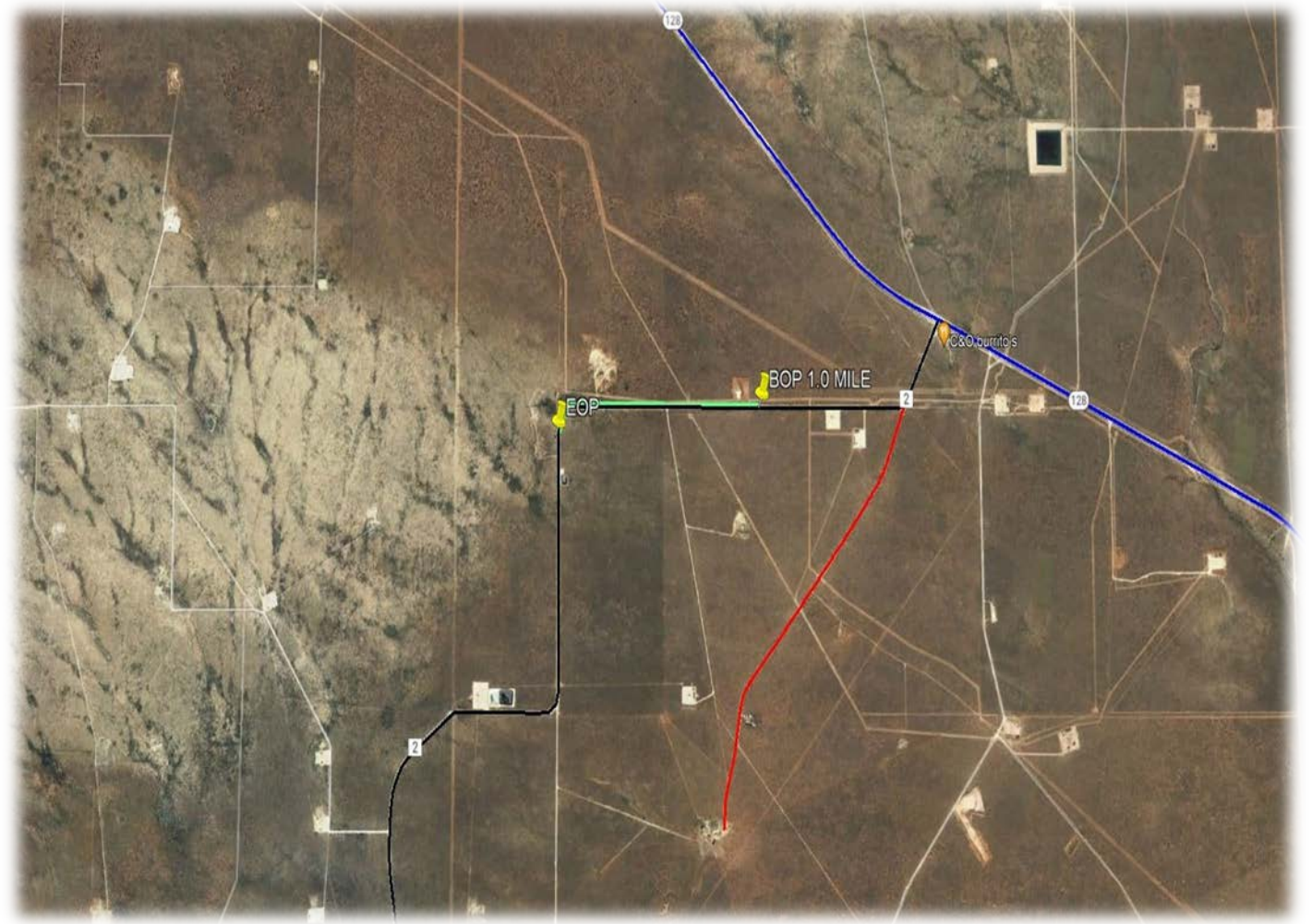


Consideration of Lea County Resolution No. 22-AUG-178R Authorizing a County Arterial Program Agreement between Lea County and the New Mexico Department of Transportation for the Local Government Road Fund Project No. 54388 Control No. L200583 (CAP Grant) for Fiscal Year 2022 – 2023

NMDOT and Lea County request to enter into an agreement to fund a portion of the Pavement Rehabilitation/Improvements

Overlay with PMBP on Battle Axe Road within Lea County. The CAP Grant Project would fund up to \$335,415.00

Proportional Shares are as follows:
NMDOT- 75%= \$251,561.00
Lea County- 25%= \$83,854.00





LEA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY FORM 18

LCBCC Meeting Date: Thursday, August 11, 2022

Submit this summary form & all attachments to the Finance Director clow@leacounty.net & cc the Community Engagement Manager ssout@leacounty.net; Public Information Officer mrussell@leacounty.net and County Manager mgallagher@leacounty.net by: Wednesday, August 3, 2022

County Manager Approval required for all time sensitive issues that do not meet the above deadline.

DATE SUBMITTED mm-dd-yyyy: 07/18/2022		SUBMITTED BY Name, Title, Dept: Corey Needham, ACOMO	
SUBJECT: Approving an agreement between Lea County and NMDOT for the Project Control #L200583 (CAP) LGRF Grant		ATTACHMENT(S): Resolution, Agreement	
NO. OF ORIGINALS FOR SIGNATURE: 3 Agreements, 1 Resolution		ACTION REQUESTED: Action Item	
BUDGET LINE ITEM NUMBER: 402-10-4764		FISCAL BUDGET YEAR: FY 22/23	
STRATEGIC PLAN Implementation of 5 Year Strategic Plan: 1. % of chipseal county roads VS. caliche roads (goal: each year chip seal more roads)			
<p>SUMMARY: NMDOT and Lea County request to enter into an agreement to fund a portion of the Pavement Rehabilitation/Improvements - Overlay with PMBP on Battle Axe Road within Lea County. The CAP Grant Project would fund up to \$335,415.00</p> <p>Proportional shares as follows: NMDOT- 75%= \$251,561.00 Lea County- 25%= \$83,854.00</p>			
Requested Items Needed for Presentation Easels/Laptop/Projector/Etc.:		See Additional Summary Attached <input type="checkbox"/>	
Easel <input type="checkbox"/> Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: _____ <small>If checked; how many:</small>			
SUBMITTER'S RECOMMENDATION(S): Staff recommends the LCBS accept and sign agreement as presented and allow staff to execute all documents related to completing the project.		Submitter's Signature Department Director, Etc.	
FINANCE REVIEW Fiscal Impact/Cost: The financial impact to Lea County will be expenditures from the Road Fund of \$335,415.00. NMDOT will pay \$251,561 (75%) of the cost and Lea County will be responsible for \$83,854.00 (25%) of the cost. Funds are budgeted and available in 402-10-4764 and 402-10-4765.		Reviewed by Finance Director Henry C Low Jr Digitally signed by Henry C Low Jr Date: 2022.07.28 16:04:21 -06'00'	
LEGAL REVIEW: (Note: Travel does not need legal review)		Reviewed by County Attorney	
COUNTY MANAGER REVIEW:		Approved by County Manager to be Placed on Agenda <i>Mike Collopy</i>	
Item No. <u>0204</u> RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN			
Approved: _____		Denied: _____	
Resolution No. <u>22-AUG-178R</u>		Policy No. _____	
Continued To: _____		Referred To: _____	
		Other: _____	
		Ordinance No. _____	
		Comments: _____	

STATE OF NEW MEXICO
COUNTY OF LEA
RESOLUTION NO. 2-AUG-178R

A RESOLUTION AUTHORIZING A COUNTY ARTERIAL PROGRAM AGREEMENT BETWEEN LEA COUNTY AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE LOCAL GOVERNMENT ROAD FUND PROJECT NO. 54388 CONTROL NO. L200583 (CAP GRANT) FOR FISCAL YEAR 2022 – 2023

WHEREAS, Lea County and the New Mexico Department of Transportation enter into a County Arterial Agreement; *and*

WHEREAS, the total cost of the project will be \$335,415.00 to be funded in proportional share by the parties hereto as follows;

a) *New Mexico Department of Transportation's share shall be 75% or \$251,561.00*

b) *Lea County's required proportional matching share shall be 25% or \$83,854.00*

Total Project Cost = \$335,415.00

WHEREAS, Lea County shall pay all costs which exceed the total amount of three hundred thirty-five thousand four hundred fifteen dollars and zero cents (**\$335,415.00**).

NOW, THEREFORE, BE IT HEREBY RESOLVED, in official session that Lea County determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing. The agreement terminates on December 31, 2023 and Lea County incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the Lea County to enter into the County Arterial Agreement Project Number: **54388** Control Number: **L200583** with the New Mexico Department of Transportation for the LGRF Project for year 2021-2022 to perform a Pavement Rehabilitation/Improvements- Overlay with PMBP in southern Lea County starting at **Battle Axe Road**, starting at 1.0 mile south from NM HWY 128, going south approximately 1.0 mile within the control of Lea County in Jal/Lea, New Mexico.

BE IT FURTHER RESOLVED that the Commission Chair and/or County Manager may finalize and sign any agreements consistent with the terms of this resolution.

PASSED, APPROVED AND ADOPTED on this 18th day of August, 2022, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Dean Jackson (District 1), Chair
Voted: Yes No Abstain

Gary G. Eidson (District 3), Vice Chair
Voted: Yes No Abstain

Rebecca Long (District 2), Member
Voted: Yes No Abstain

Jonathan Sena (District 4), Member
Voted: Yes No Abstain

Pat Sims (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By: _____
Teri Davis, Deputy Clerk

John W. Caldwell, County Attorney

Contract No. _____
Vendor No. 54388
Control No. L200583

**LOCAL GOVERNMENT ROAD FUND
COOPERATIVE AGREEMENT**

This Agreement is between the **New Mexico Department of Transportation** (Department) and **Lea County** (Public Entity), collectively referred as the “parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2, and State Transportation Commission Policy No. 44, the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the **pavement rehabilitation / improvements, overlay with PMBP (TOM)** as described in Control No. **L200583**, and the Public Entity’s resolution attached as **Exhibit C** (Project). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

2. Project Funding.

- a. For purpose stated above, the estimated total cost for the Project is **Three hundred thirty five thousand four hundred fifteen dollars (335,415.00)** to be funded in proportional share by the parties as follows:

- 1. Department’s share shall be 75%: **\$251,561**

- pavement rehabilitation / improvements, overlay with PMBP (TOM)**

- 2. Public Entity’s required proportional matching share shall be 25%: **\$83,854**

- 3. Total Project Cost: **\$335,415**

- b. The Public Entity shall pay all Project costs, which exceed the total amount of **Three hundred thirty five thousand four hundred fifteen dollars (335,415.00)**.

- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

3. The Department Shall:

Pay project funds as identified in Section 2, Paragraph a1, to the Public Entity in a single lump sum payment after:

- a. Receipt of a cover letter requesting funds;
- b. Receipt of a Notice of Award and Notice to Proceed;
- c. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a2; and
- d. All required documents must include Department Project and Control Number.

4. The Public Entity Shall:

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) calendar days of execution of this Agreement, or as otherwise agreed to in writing by the parties.
- c. Be solely responsible for all local matching funds identified in Section 2. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- f. In accordance with project parameters, assume the lead planning and implementation role and sole responsibility for providing local matching funds; environmental, archaeological, utility clearances; railroad and Intelligent Transportation System (ITS) clearances; right-of-way acquisition; project development and design; and project construction and management.
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
- h. Obtain all required written agreements or permits, when applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to determine that the Project is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, will result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) calendar days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, which is attached as Exhibit A.
- l. Within thirty (30) calendar days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, which is attached as Exhibit B. The report should

reflect the total cost of project as stated in **Project Certification of Design, Construction, and Cost** form.

- m. Failure to provide the **Project Certification of Design, Construction, and Cost** form and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) calendar days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this Agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

5. Both Parties Agree:

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) calendar days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision can not be used by the Public Entity to meet a required match under any other program.
- e. The provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

6. 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 terminates on December 31, 2023. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) calendar days prior to the expiration date to ensure timely processing of an Amendment.

7. Termination.

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) calendar days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
- c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4n and 5.

8. 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 of the public 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.

9. Liability.

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.*, and any other applicable law.

10. Contractors Insurance Requirements.

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify 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 and subcontractor 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.

11. 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 will be valid or enforceable unless included in this Agreement.

12. Terms of this Agreement.

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

13. Legal Compliance.

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

14. 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 will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the Public Entity is 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, subject to Section 7 above.

15. 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 will 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.

16. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) calendar days. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

17. 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.

18. Applicable Law.

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

19. Amendment.

This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

<<Add below sentence if page is quarter or more blank>>
The remainder of this page in intentionally left blank.

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

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

By: _____ Date: _____
Assistant General Counsel

Lea County

By: _____ Date: _____
Title: _____

Attest: _____
<<Insert Name and Title >>

EXHIBIT A
PROJECT CERTIFICATION OF
DESIGN, CONSTRUCTION, AND COST

TO: New Mexico Department of Transportation
District _____ LGRF Coordinator

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

Entity: _____

Scope of Work (Including Routes and Termini):

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

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

and completed on _____, 20____; and
3. That the total project cost of _____, with New Mexico Department of Transportation 75% share of _____ and the Public Entity share of _____ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

Name

Date

Print Name

Title

EXHIBIT B
AS BUILT SUMMARY
OF COSTS AND QUANTITIES

CONTRACT

ENTITY: _____ No.: _____ CN: _____

PROJECT No.: _____

TERMINI: _____

SCOPE OF WORK: _____

ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	FINAL QUANTITY	UNIT COST	FINAL COST