

Contract Number: D16019
Vendor Number: 54331

COOPERATIVE AGREEMENT

This grant agreement is between the New Mexico Department of Transportation (the **Department**) and Farmington Metropolitan Planning Organization (the **Grantee**). The Department and the Grantee (the Parties) agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following project: Farmington Metropolitan Planning Organization (FMPO) Unified Planning Work Program for Federal Fiscal Years 2019-2022.
2. **Scope of Work.** The Grantee shall perform the professional services stated in the FMPO Unified Planning Work Program for the current fiscal year and the Department's Planning Procedures Manual.
3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely, properly prepared reimbursement requests as provided in the Department's Planning Procedures Manual.
 - a. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to the Parties signing the Agreement, after termination of the Agreement, or in excess of the amount of the federal award noted in Section 1.
 - b. Reimbursement requests must be submitted at least quarterly (federal fiscal year) no later than twenty-five (25) days after the last day of the quarter. Each reimbursement request shall reflect the correct federal/local match ratio as applied to the total of costs incurred by the Grantee for the quarter, as noted in Section 1.
 - c. When the Grantee pays more than its share of the total for a particular period, it must be clearly noted in the reimbursement request, and the amount of overpayment (over-match) will not be applied to future reimbursement requests.
 - d. The Department reserves the right to withhold reimbursement if any of the aforementioned requirements are not met.
 - e. The Grantee shall submit its final reimbursement request no later than thirty (30) days after termination of this Agreement.
 - f. If the Grantee fails to submit a reimbursement request for two contiguous quarters, the Grantee shall provide written justification for the lack of activity to the Department within fifteen (15) days of the end of the second contiguous quarter.

4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this Agreement. The Grantee shall record costs incurred, services rendered and payment received, and shall maintain these financial records during the Agreement and for three (3) years from the date of submission of the final reimbursement request pursuant to 2 CFR 200.333 and 1.21.2 NMAC. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the agreement and for three (3) years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty (30) days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty (30) days of written notice from the Department describing the excessive or otherwise erroneous payments.
5. **Officials Not to Benefit.** The parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee, tribal official, tribal council member or tribal employee, in that person's individual capacity, will benefit from this Agreement.
6. **Termination.** The Department may terminate this Agreement for any reason, by giving the Grantee thirty (30) days written notice. The Grantee may only terminate this agreement based on the Department's uncured, material breach of the Agreement. On receipt of a "Notice of Cancellation" from the Department, the Grantee shall suspend work unless otherwise directed by the Department in writing. The Parties acknowledge that termination will not nullify obligations incurred prior to the date of the Notice of Cancellation requiring termination.
7. **Appropriations.** The Grantee acknowledges that:
 - a. this agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;
 - b. if sufficient appropriations and authorizations are not made, this Agreement will terminate upon written notice by the Department to the Grantee; and
 - c. the Department will not expend any funds until they are approved for expenditure, and the Department's determination as to whether approval has been granted will be final.

8. **Compliance with Law.** The Grantee, its employees, agents and contractors, shall comply with the following:
 - a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. part 21.
 - b. all federal and state laws, rules, and regulations, and executive orders of the Governor of the state of New Mexico pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1 *et seq.*, in accordance with the Human Rights Act, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age or handicap, will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this Agreement. If the Grantee it is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation.
 - c. state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, and related regulations.
9. **Notices.** For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail return receipt requested and postage prepaid, fax or e-mail; and be addressed as follows:

Department

Shannon Glendenning, Planning Liaison
NMDOT Government to Government Unit
PO Box 1149
Santa Fe, NM 87504
505-827-5117
Shannon.Glendenning@state.nm.us

Grantee

Mary Holton, MPO Officer
800 Municipal Dr.
Farmington, NM 87401
505-599-1285
mholton@fmtn.org

10. **Severability.** The parties intend that if any provision of this Agreement is held to be unenforceable, the rest of the Agreement will remain in effect as written.
11. **Tort Claims.** The parties intend that (1) immunity from liability for tortious conduct

under NMSA 1978, Section 41-4-4(A) will apply to all conduct relating to this agreement; (2) only the waivers of immunity from liability under NMSA 1978, Sections 41-4-4 *et seq.* will apply; and (3) this agreement does not waive immunity from liability for tortious conduct relating to this Agreement of any employee of the Department or the Grantee.

12. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this Agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.
13. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in Section 2.
14. **Term.** This agreement takes effect upon signature of all Parties. If the Grantee does not deliver the signed Agreement to the Department within sixty days of the Department's signature, the agreement will be voidable by the Department. The agreement terminates at midnight on September 30, 2022 unless earlier terminated as provided in Section 6 or Section 7.
15. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law principles, govern all adversarial proceedings arising out of this Agreement.
16. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties.
17. **No Third-party Beneficiary.** This Agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.
18. **Merger.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of the Agreement and supersedes all other agreements, whether written or oral, between the parties, except that this Agreement does not supersede the Grantee's rights under any other grant agreement.
19. **Disadvantaged Business Enterprise.** The Grantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

20. **Coordination.** The Department and Grantee agree to cooperatively develop and share information related to the requirements in 23 CFR 450.314(h). Procedural details are outlined in the Department's Planning Procedures Manual.

Requirements in 23 CFR 450.314(h) relate to:

- a. transportation performance data;
- b. the selection of performance targets;
- c. the reporting of performance targets;
- d. the reporting of performance to be used in tracking critical outcomes for the region of the MPO; and
- e. the collection of data for the Department's asset management plan for the National Highway System.

Each party is signing this Agreement on the date stated opposite that party's signature.

Department of Transportation

Date: 9/9/18, 2018

By: [Signature]
Cabinet Secretary or Designee

Farmington Metropolitan Planning Organization

Date: July 26, 2018

By: [Signature]

Title: MPO Officer

Date: July 26, 2018

By: [Signature]

Title: Fiscal Agent Representative
City of Farmington, Assistant City Manager

Approved as to form and legal sufficiency.

Date: June 21, 2018

By: [Signature]
Assistant General Counsel
Department of Transportation

Approved as to form and legal sufficiency.

Date: July 2nd, 2018

By: [Signature]
Counsel for Farmington Metropolitan Planning Organization