



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

Tribal/Local Public Agency Handbook

2014

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INTRODUCTION

The *Tribal/Local Public Agency (T/LPA) Handbook* is published by the New Mexico Department of Transportation (NMDOT). This handbook provides guidance to Tribal and Local Public Agencies working to develop and construct highway, street, road, and other multi modal transportation related projects, funded by the NMDOT with federal and/or state funds. This supersedes the *Tribal/Local Public Agency Handbook* dated April 2007.

WHO SHOULD USE THIS HANDBOOK?

T/LPA's having a Cooperative Project Agreement with the NMDOT for state funds such as Severance Tax, General Fund or Federal Aid Highway funds are responsible for following the procedures identified in this handbook and in the Cooperative Project Agreement.

When federal and/or state funds are to be used for local or tribal transportation projects, standard procedures, developed by the NMDOT and/or the Federal Highway Administration (FHWA), govern project development and implementation activities. This handbook provides a step-by-step guide through the project development, from the planning and programming process (i.e., the project's inclusion into the STIP ~ Statewide Transportation Improvement Program) guiding through the beginning of a project to the project's construction completion.

Early and accurate scoping of a project is critical for success in developing projects within schedule and budgetary limitations; the NMDOT has Region T/LPA Coordinators at the North, Central and South Region Design Divisions and District T/LPA Coordinators at the District offices to assist with project scoping, development, construction and project close out.

Project Certification:

For projects using federal funds, the T/LPA must submit the appropriate Certification Package to the T/LPA Region Coordinator for the fiscal year in which the project is programmed to have federal funding authorized. The Package for construction projects funded with federal aid must include the required documents included in the Production Submittal Checklist. The NMDOT will approve the package before requesting FHWA's authorization to obligate federal funds. Please note expenses incurred before project funds are authorized will not be reimbursed. T/LPAs will receive a written notification once the funds are obligated.

It is in the T/LPA's best interest to ensure that obligated funds are efficiently and effectively expended to avoid an "inactive project." [23 CFR 630.106](#) defines inactive projects as "a project for which no expenditures have been charged against Federal funds for the past 12 months." The NMDOT will review projects on a quarterly basis to identify inactive projects. If the NMDOT determines a project to be inactive, the NMDOT may, as directed by FHWA, de-obligate the funds and redirect the unexpended balance to other projects. Stagnant funds limit the availability of obligation authority that can be used on other projects. T/LPA's are urged to read 23 CFR 630.106, as inactive funds may be re-directed for expenditure.

See the following handbooks for guidance in these areas: the *NMDOT Planning Procedures Manual (PPM)*.

The PPM outlines the planning responsibilities of the Regional Transportation Planning Organizations (RTPOs) and Metropolitan Planning Organizations (MPOs), as well as the planning procedures for local lead projects to be included in the STIP. To obtain a copy of the PPM contact the Government to Government Unit (GTG), Statewide Planning Bureau, P.O. Box 1149, Santa Fe, NM 87504-1149; or access the PPM online at

http://dot.state.nm.us/content/dam/nmdot/planning/Planning_Procedures_Manual_2013.pdf

Community Development Block Grant (CDBG) projects are administered by the Local Government Division of the New Mexico Department of Finance and Administration (DFA). Co-op, School Bus Route, Municipal Arterial Program (MAP), and County Arterial Program (CAP) projects financed through the Local Government Road Fund (LGRF) continue to be administered by the six NMDOT District Offices and the NMDOT's Programs and Infrastructure Finance (PINF Finance) Division. *The Local Government Road Fund Project Handbook* gives details on these types of projects. Copies of the LGRF Handbook may be obtained from the LGRF coordinators at the District Offices, also at the following link http://dot.state.nm.us/content/dam/nmdot/planning/2014_Handbook.pdf, inquiries can also be made at 505-827-1615.

State funded projects covered by this handbook include Severance Tax Bond (ST) projects and General Fund (GF) projects. Federal aid projects covered by this handbook include Surface Transportation Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and Air Quality (CMAQ), Bridge Replacement (BR), Transportation Alternatives Program (TAP), National Highway Performance Program (NHPP) and special federal earmark program projects.

Questions and comments concerning this *T/LPA Handbook* should be directed to the T/LPA Manager, PINF Finance Division, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, NM 87504-1149, 505-476-3784.

The *T/LPA Handbook* is intended only to provide information for the project development and construction process. If material included in the handbook conflicts with state or federal law or regulation(s); the state or federal law or regulation(s) takes precedence. The provisions of the handbook are subject to change, as the NMDOT deems necessary.

Additional Resources

- 23 CFR 630, Subpart B-Plans, Specifications, and Estimate
- 23 CFR 633, Subpart A-Required Contract Provisions-Federal-aid Constructions Contracts (Other than Appalachian Contracts)
- Construction Program Guide
 - <http://www.fhwa.dot.gov/construction/cqit/>
- Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation
 - <http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>
- Contract Administration Core Curriculum Manual and Reference Guide
 - <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- Development and Review of Specifications
 - <http://www.fhwa.dot.gov/construction/specreview.cfm>
- Also refer to the Financial Management Checklists:
 - Local Project Administration Policies and Procedures
 - Billing/Payment Process of State and Local Governments
 - Indirect Costs of State and Local Governments

CHAPTER 1

FUNDING PROCESS & TIMING CONSTRAINTS

GENERAL

For any local lead T/LPA project, whether it is a study, engineering, or construction the objectives are to get projects funded and under contract, to complete the work, to expend the available funds, and to seek reimbursement in a timely manner.

In order to prevent loss of funds, T/LPAs must assure that transportation projects are designed, let to contract, and completed on time. T/LPAs will be monitored by the NMDOT to assure completion of project development activities in order to obligate project funding within the year they are programmed as mandated by FHWA to avoid jeopardizing their ability to receive future state and federal funding.

FEDERAL FUNDS PROGRAMMING

Federal funding requirements are more complex than state funding. Depending on the program, funding is annually divided up or apportioned to states based on formulas and procedures prescribed by Federal law. Since federal-aid highway funding authority is available for use for more than one year, new apportionments are added to the unused line of credit remaining in each program. Availability periods are specified in the law for each program. If any part of a specific year's apportionment is unused within the period of availability, funding authority in that amount lapses.

Federal funds are made available to the states in a continuous and cyclical four-step process.

1. Authorization Act by Congress for funds that cover the entire Federal Aid Program. The current Authorization Act is called the Moving Ahead for Progress in the 21st Century Act (MAP-21). It was signed by the President in 2012. MAP-21 creates a streamlined, performance-based, and multimodal program to address the many challenges facing the U.S. transportation system.
2. An Annual Appropriations Act is required to make money available to liquidate prior obligations (i.e., fulfill the promise to pay the federal share) previously incurred by the states. Only when vouchers for completed work are submitted by the state is money actually reimbursed to the state. (T/LPAs receive reimbursement for completed work on federal-aid projects through the NMDOT) This step goes from the budget process to making the funds available for spending.
3. Once both acts are in place FHWA apportions (distributes) most of these funds among the states according to formulas prescribed by law. This is usually done on the first day of the federal fiscal year (October 1). At that time the funds are available for obligation by the State in accordance with the approved State Transportation Improvement Program (STIP). Once apportioned, the funds are available for a set period of time. Most are available for approximately four years (specifically, the year of obligation plus three years). This is equivalent to breaking out the budget into categories for the states.
4. Obligation Authority is how much of the total unused program apportionments may be obligated during a given year. Congress controls the disbursement of funds for the highway program through limitation of obligation authority. The amount of obligation authority granted to states is usually less than the amount of program authority apportioned to them. Obligation is the commitment of a part of a state's total apportionment to a specific project and occurs repeatedly throughout the year as each project is approved. This step commits the spending amount for each project as it becomes ready to let.

Some other terms that are important in understanding the federal program are:

- Allocation - An administrative distribution of funds among the States. Prior to obligation this is like a line of credit.
- Apportionment - This is like issuing a line of credit. With regard to the Highway Trust Fund (HTF), apportionments are a statutory distribution of funds providing certain funding levels to the States based on formulas prescribed in law.
- Appropriation - Legislation to allow the Federal Highway Administration and HTF to make actual cash reimbursements to the States.
- Authorization - An Act which allows a program to be undertaken and establishes a level of funds which may be used for the program.
- Earmarking - Earmarked funds may only be used for special purposes once they are apportioned to the states. For example, two percent of the major categories can only be used for planning and research activities. A more common use of the term Earmarking is when a member of Congress inserts a specific project in the Authorization Act. This requires states to fund the earmarked project out of their obligation authority and does not generate an increase in overall funding.
- Obligation - The Federal Government's legal commitment (promise) to pay or reimburse the States for the Federal share of a project's eligible costs. This is like using a credit card where no cash is involved.
- Obligation Limitation - A restriction, or "ceiling" on the amount of Federal assistance that may be promised (obligated) during a specified time period. This does not affect the apportionment or allocation of funds, rather it controls the rate at which these funds may be used.
- Outlays Expenditures - This is the final actual cash transaction, where money is provided to the States as reimbursement for the Federal share for approved highway program activities.
- Programmed - The inclusion of funds in the STIP for a specific project.
- Trust Funds - Accounts established by law to hold receipts (such as specific taxes or revenues) collected by the Federal Government and earmarked for financing special purposes and programs. To assure the financial soundness of a trust fund, it must be tracked separately to determine that outlays/expenditures do not exceed available revenues.
- Reimbursable Program - The FHWA only reimburses states for costs actually incurred. The States and/or T/LPAs generally start a project with their own funds and receive cash for the federal share of the project as work is completed and bills are submitted to the Districts for payment.

PLANNING AND SCOPING FEDERAL AID PROJECTS

1. RTPO/MPO issues call for projects from October through December (either on an annual or biannual basis).
2. T/LPA project included in RTPO planning areas will complete a Project Feasibility Form (PFF) and submit that form to the appropriate RTPO to begin the project feasibility assessment process.
3. The RTPO Planning Program Manager, District T/LPA Coordinator, Region T/LPA Coordinator and GTG Liaison attend the feasibility meeting to review the PFF and assist the T/LPA with completing the Project Identification Form (PIF) if the project is deemed feasible and ready to move forward. Projects in MPO areas must follow the MPO Transportation Improvement Program (TIP) process.
4. The RTPO/MPO rank projects according to need, or in order of priority and develops the RTIPR/TIP.

5. District reviews RTIPR and begins project evaluation process or District holds STIP meeting.
6. Projects are reviewed for:
 - a. Detail
 - b. Feasibility
 - c. Funding Eligibility
 - d. Match Requirement
 - e. Pavement
 - f. Traffic
 - g. Potential environmental impacts: See Chapter 5 of this Handbook for a complete discussion of certification requirements for environmental, cultural resource, and hazardous materials investigations and documentation
 - h. Drainage
 - i. Right of Way Bureau will provide list of companies that can do quality title work
 - j. Region Design Divisions should insure that T/LPAs are working with a qualified consultant
 - k. Utility Impacts
 - l. Structures
7. STIP approved by the NMDOT, FHWA and FTA.
8. PINF Finance notifies T/LPA of project inclusion and scheduled year. (Copy the Region T/LPA Coordinator, District T/LPA Coordinator).

Location and corridor studies and public information meetings should be conducted as early as possible in the project. If federal funding is used to develop these studies, they would begin when a contract is executed, funding is authorized and a notice to proceed is received.

Federal earmarks and NM Highway Safety Improvement Program (Section 148 FHWA Federal Funds for engineering type roadway safety improvement projects) may not follow the above process; however, once they are included in the STIP they will continue as other federally funded projects.

The specific provisions of the Highway Safety Improvement Program (HSIP) are defined in Section 1112 of MAP-21 which amended Section 148 of Title 23, United States Code (23 USC 148) to incorporate these provisions. The purpose of this program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land. The objective of the Highway Safety Improvement Program (HSIP) in New Mexico is, via discretionary funding, to identify, implement, and evaluate cost effective construction safety projects or non-construction safety programs that will assist in this effort of making New Mexico's roadways safer. It is a voluntary program to assist state and local agencies with studying hazardous traffic conditions and funding stand-alone engineering type safety improvements to transportation facilities or non-construction traffic safety enforcement, education, or emergency medical services related programs to reduce risks of future severe crashes on New Mexico's surface transportation mode network. Periodically, the NM HSIP is looking for applications from eligible T/LPA's for which action can be taken to achieve programming

and obligation for HSIP federal safety funding. Approved projects or programs are eligible to use safety funds for funding all components needed for implementation, including right of way acquisition, project development costs (such as environmental clearance), project design, project construction and non-construction safety program operation.

Submittals from cities, counties, tribal governments, and other local agencies must be sent first to their respective Metropolitan Planning Organization (MPO) or Regional Transportation Planning Organization (RTPO) for initial review, processing, and approval and then have the MPO or RPO submit the safety project applications to the NMDOT General Office for final review and action. The NMDOT General Office will not communicate directly with T/LPA's but only through their respective MPO or RTPO during the safety project or program application solicitation and review phases. All city streets, county roads, and tribal roads, and other local government jurisdiction surface transportation mode facilities, such as trails, are eligible.

All proposed safety projects or non-construction safety programs will be reviewed continuously throughout the program year by the NMDOT General Office, Traffic Technical Support Bureau. Quarterly, these project or program applications will be forwarded to the NM Safety Project Selection Committee for final review and action. All funding is discretionary and all applications compete statewide for funding.

Each application requires an estimate of time to fully implement the project or program, listed as the forecasted federal fiscal year, in order to provide project programming guidance in case the application is approved. Once a project or program application is approved and programmed for implementation in the STIP, the NMDOT reserves the right to cancel the safety funding approval if actual project or program implementation progress does not achieve 80% or more of total implementation to complete the project or operate the program by the forecast federal fiscal year.

Local government lead agency projects must estimate up to six months or even more additional time to accomplish the process of achieving a contract agreement between that T/LPA's and NMDOT via the PINF Finance Division. Time estimate must include all proposed phases of project implementation, including right of way acquisition, design, environmental and utility clearance approvals, and construction.

Federal Highway Administration HSIP regulations require that justification for all HSIP funded safety projects be data driven and evidence based regarding forecasted safety improvements. The most successful proposed engineering type safety projects receiving approval will likely be prioritized based on: crash data showing fatal, incapacitating, or visible injury crash history, or crash data showing evidence of crash history of a particular type that can be corrected by the proposed safety project, or a traffic conflicts study (engineering safety study) with results showing a traffic hazard with the proposed safety project generating countermeasures to reduce the identified traffic hazard.

STATE FUNDED PROJECTS

Projects funded with Severance Tax and General Funds are awarded during the State Legislature. Severance Tax Bond Sales occur biannually in June and December of each Fiscal Year. Before each bond sale occurs, a web based questionnaire must be filled out by T/LPA's. Questionnaires will automatically be forwarded to the State Board of Finance through the web based system. Funds will not be disbursed if questionnaire is not completed.

Severance Tax Projects are subject to the following:

1. Severance Tax Bond revenues are appropriated for a fixed length of time, as stated in the legislation;

2. If the need for the bonds has not been certified in that time, the authorization is void and any balance returned to the Severance Tax Bonding Fund;
3. Due to Internal Revenue Service regulations, bonds may not be sold without certification that the project will be under contract or otherwise implemented within six months of the sale of the bonds; and
4. Bonds require at least 85% of project funds expended within three years from the sale of the bonds.

General Fund Projects:

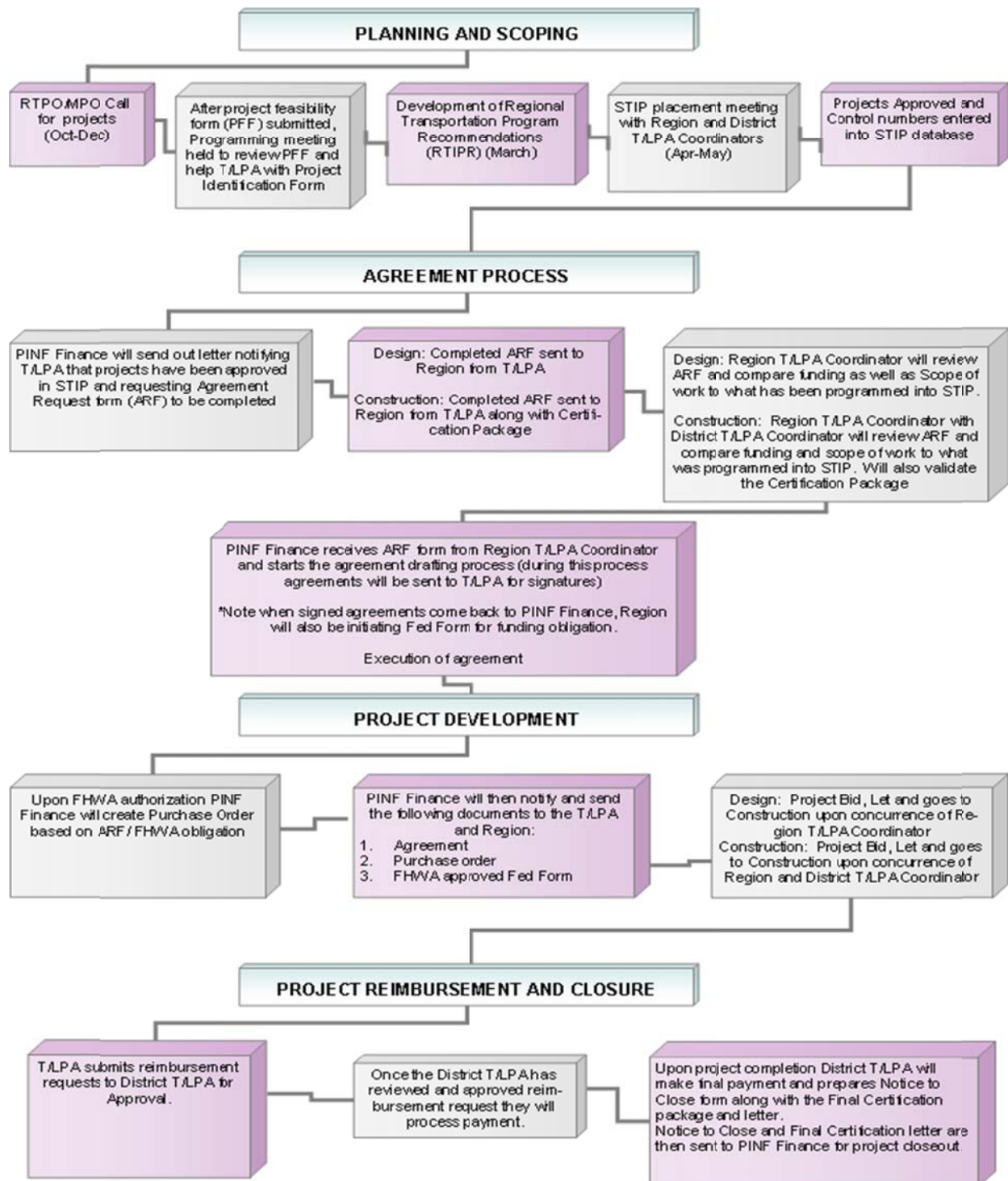
1. General Fund awards are available as soon as the state budget is set up by the funding bill; and
2. If there is an emergency clause in the bill, the funds become available as soon as the Governor signs it. If there is no emergency clause then a General Fund award is available at the beginning of the State fiscal year (July 1st).

Capital Cooperative Agreements for Severance Tax and General Fund projects specify that construction must be complete and a reimbursement request submitted to the District Office during the period specified in the funding bill. This is usually a four year period.

Local Government Road Fund projects are awarded annually at the beginning of the State fiscal year. Co-op, School Bus Route, and County Arterial Program Agreements specify that construction must be complete by the end of the calendar year following the award. Municipal Arterial Program agreements require that the project be under contract by the date stipulated in the Project Agreement. More information on the Local Government Road Fund can be obtained from the PINF Finance Division, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, NM 87504-1149; 505-827-1614.

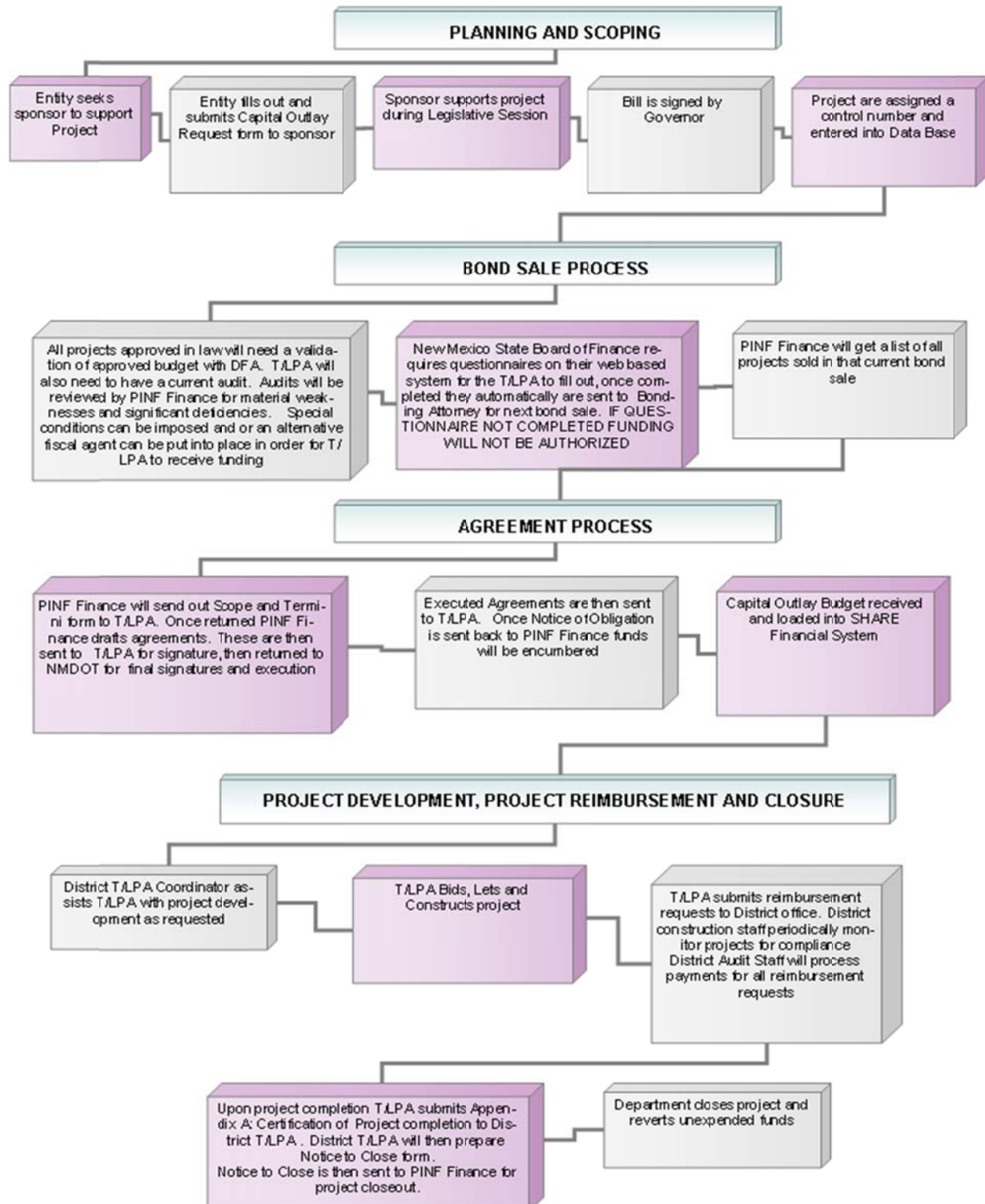
PROCEDURES FOR FEDERALLY FUNDED T/LPA PROJECTS

Note: For the NMDOT and the Metropolitan Planning Organizations, STIP development is every four years with quarterly amendments as needed. The Regional Transportation Planning Organizations (RTPOs) continue to use an annual STIP development cycle. RTPO Planners assist with STIP Amendments as needed on an ongoing basis.



PROCEDURE FOR STATE FUNDED T/LPA PROJECTS

Note: State Funded Projects are requested through the New Mexico Legislature annually. RTPOs and MPOs should work with T/LPA to develop scope of project when possible. Severance Tax Bond projects must be contractually committed with-in six months after bond is sold.



CHAPTER 2

CONTRACTS / AGREEMENTS / REIMBURSEMENTS

GENERAL

The NMDOT enters into cooperative agreements (contracts with T/LPAs) in order to clearly specify and delineate the rights and duties of the parties in the design, development, or construction of a state or federally funded project.

Cooperative Project Agreements can only be executed for federally funded projects that are in the STIP and approved by FHWA and FTA. When FHWA and FTA have approved the STIP, the NMDOT's PINF Finance will notify T/LPAs that they have an approved project in the STIP. A list of approved projects is also available through the RTPO for that regional area. Also included in the notification to the T/LPA will be a request to complete an Agreement Request Form (ARF) requesting that an agreement be prepared. The termini/ project description section must match the purpose as identified in the STIP also known as the scope. This will be used to populate the description field on the agreement. Upon PINF Finance receipt of the completed ARF from the Region T/LPA Coordinator, the PINF Finance Division will draft the agreement. If a project is programmed in the STIP to receive federal funds for Design, Right of Way, studies or any phase other than construction, the T/LPA should work with the Region T/LPA Coordinator to request funding authorization through FHWA. The T/LPA must meet applicable certification requirements and receive a notice to proceed and a copy of the funding authorization from FHWA and executed agreement before they can begin work on the phase.

The T/LPA may select design consultants for studies and Preliminary Engineering (PE). These costs are reimbursed only if included in the STIP or state legislation and specified by the Project Agreement, and only if appropriate procurement requirements were fulfilled as outlined in Chapter 4, Consultant Section. Costs incurred for P/E prior to the execution of the Project Agreement, or prior to authorization of funds by FHWA, shall be borne by the T/LPA and are not reimbursable.

Capital Cooperative Project Agreements can only be executed for General Fund and Severance Tax projects listed in a funding bill that has passed through the New Mexico State Legislature and signed by the Governor and applicable bonds have been sold. Projects must be done in accordance with the language listed in the funding bill. If the T/LPA is unclear what phases can be performed they are encouraged to seek clarification with the District T/LPA Coordinator. Additional guidance may be obtained from the Title 2 Public Finance Law [2.61.6 NMAC-N 02-28-02].

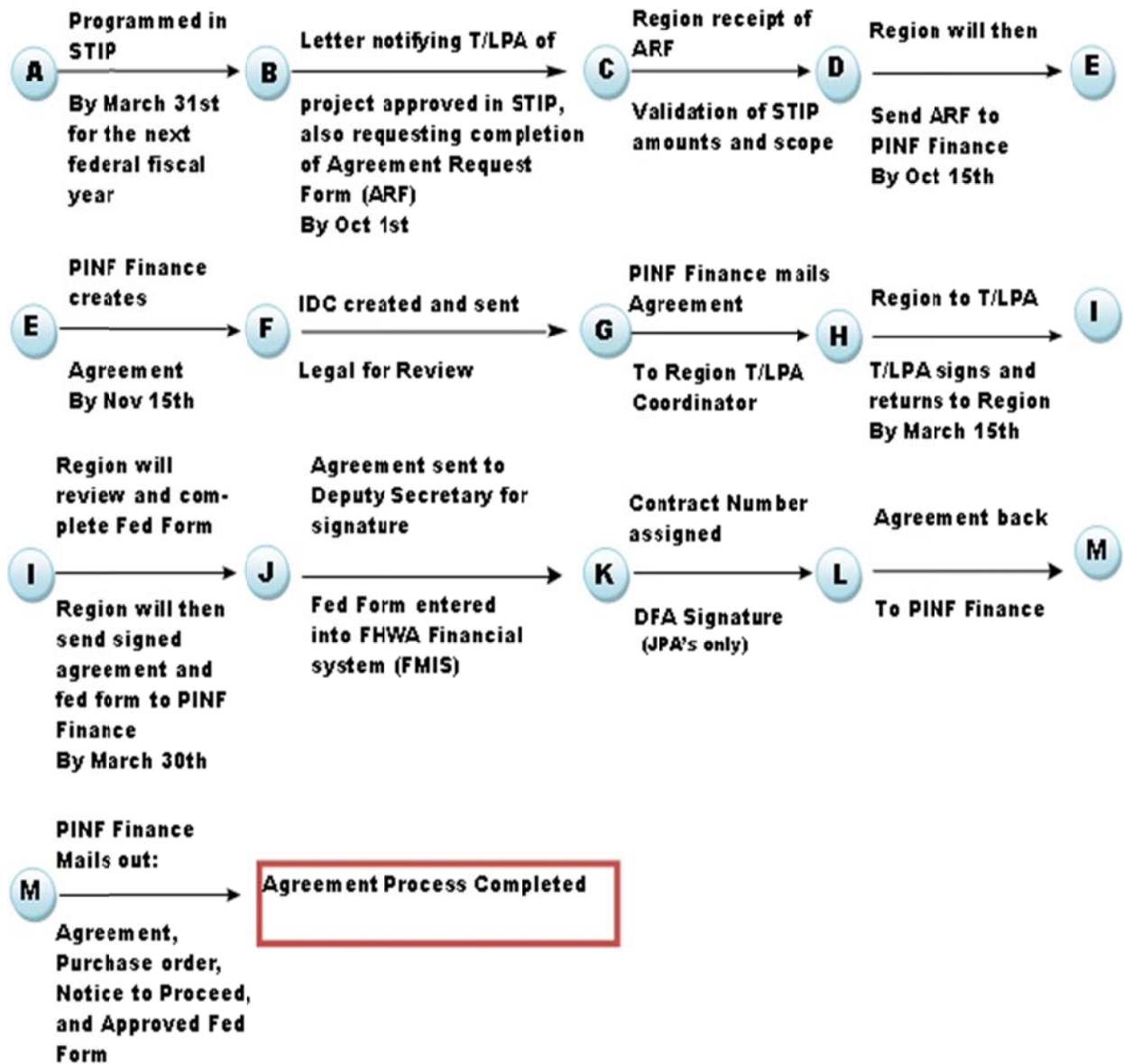
It should be noted that in past experience, project agreements, amendments and novation have taken a minimum of six weeks from the initial draft stage through final execution. However the average time frame is normally three to four months.

AGREEMENT PROCESS

The chart entitled "Typical Flow of Project Agreements", below, is a schematic representation of how an agreement is developed and approved by the NMDOT.

TYPICAL FLOW OF PROJECT AGREEMENTS

(estimated project flow for design projects in business days)



Note: The creation of Construction Agreements will begin once the Region T/LPA Coordinator receives the Certification package along with the Agreement Request Form.

Once the Plans, Specifications, and Estimate (PS&E) package is complete, the T/LPA submits the package to the Region T/LPA Coordinator. The Region T/LPA Coordinator in coordination with the District T/LPA Coordinator will identify approval by assuring the check box for the Construction Certification package is marked on the ARF, and then the form is forwarded to PINF Finance. The T/LPA shall submit the Certification of the Pre-construction phase and the Request for Coop/JPA Funding forms to the Region T/LPA Coordinator. The PINF Finance Division will request FHWA authorization of federal funding. Upon FHWA authorization, PINF Finance will notify T/LPA and Region T/LPA Coordinator in writing, which will also include a copy of the authorization from FHWA and purchase document.

AMENDMENTS / NOVATIONS

Amendments are required for reasons such as time extensions, funding changes, and changes in criteria or requirements. Funding beyond the amount set forth in the original agreement will require the execution of an amendment or supplemental agreement. If the T/LPA becomes aware that costs are going to exceed the agreement amount for any project phase, it should immediately contact the Region T/LPA Coordinator. If it is determined that additional funds are available the NMDOT will prepare an amendment or supplemental agreement for the overrun. Should an amendment become necessary for any changes, preparation and execution of the amendment will follow the same process as the original agreement. Novation agreements are prepared when numerous changes are needed to the agreement language. A novation agreement will replace the previous agreement and amendments.

A Change Order- A written order issued to the Contractor/Entity by the Department covering contingencies, Extra Work, increases or decreases in Contract quantities, payments for items for which there is no Bid Item Unit Price, additions or alterations to the Plans or Specifications within the scope of the Contract, and establishing the Basis of Payment and time adjustments for the Work affected by the changes, or adjustments to the original Contract. A Change Order may consist of a Supplemental Agreement or Field Sheet. A Change Order is the only method authorized for changing the Contract.

A Field Sheet- A type of Change Order that does not require a Contractor's signature.

A Supplemental Agreement- A type of Change Order that may require Contractor signature

Funding Participation- Participating when shared if the approved amount is manageable and approved by all levels applicable up to FHWA or designee. Non-Participating if deemed an allowable change and approved by all levels applicable and up to FHWA depending on circumstances.

REIMBURSEMENTS

Progress billings shall be submitted to the District T/LPA Coordinators for approval and reimbursement in accordance with the terms of the Agreement. Any invoice for work that was performed before execution of the Project Agreement will not qualify for NMDOT or FHWA reimbursement and will not be processed without the proper documentation as identified in the Project Agreement, unless otherwise specified in the Project Agreement.

Progress billings shall be submitted for each phase of work to the respective District Office. The District T/LPA Coordinators shall approve preliminary engineering and Right of Way invoices for payment. Progress billings shall be numbered sequentially and submitted not more frequently than once per month. The following documentation is required by the NMDOT for reimbursement:

1. An original detailed invoice clearly describing the work or services performed;
2. A certification from the T/LPA that the work or services have been performed, and further certification that the billing is the first and final, i.e. that the T/LPA has not been reimbursed for the same work previously; and
3. The project's Control Number (CN) and the project's Contract Number. These can be found on the cover sheet of the Project Agreement.

Preliminary Engineering (PE) costs are generally incurred through the date of PS&E approval. The date of the construction contract award is the cut-off for charging to PE. Construction reimbursements shall be submitted to the appropriate District Office.

CHAPTER 3

PROJECT DEVELOPMENT

DEFINITION

Project Development is defined as the process of assessing needs, preparing a Scoping Report, assessing alternatives and impacts, preparing the environmental and cultural resource documents, producing the plans and specifications, acquiring and certifying right of way, coordinating and certifying utility relocations, coordinating with the public and all affected agencies, and complying with all laws and regulations required to execute a contract for construction. While several of the tasks are going to be coordinated by various NMDOT functional groups, T/LPA's are required to coordinate all activities with the Region T/LPA Coordinator before seeking clearances.

PROJECT DEVELOPMENT PROCESS

PRELIMINARY FIELD REVIEW (PFR)

The T/LPA works with the Region T/LPA Coordinator and the District to review information provided in the PIF and Scoping Report at the project site

FINAL (APPROVED) SCOPING REPORT

- Update the Scoping Report with information from field review, location, corridor and preliminary studies
- Refine and finalize the Scoping Report
- T/LPA and District approve Final Scoping Report

PRELIMINARY ENGINEERING (P/E)

The T/LPA works with the Region T/LPA Coordinators for assistance with preliminary design and conducts the following tasks:

1. Complete location survey
2. Perform geotechnical investigations
3. Perform environmental, cultural resource, and hazardous materials investigations, as appropriate
4. Public information meetings, as required

30% DESIGN COMPLETION STAGE

- Design 30% complete with established project limits of impact (slope limits) will be reviewed by Region T/LPA Coordinator and District T/LPA Coordinator
- Initiate and complete Property Survey
- Begin Title Search and Title Reports; coordinate with NMDOT Right-of-Way Bureau, including the Relocation/Specialty Unit

- Begin Utility and Railroad coordination with the: NMDOT Right of Way Bureaus; begin ITS coordination/ certification with the Intelligent Transportation Systems Bureau
- Hold Public Information Meetings/Public Hearings, as required
- Complete documentation for environmental, cultural resource, and hazardous materials investigations, and obtain approvals through the NMDOT Environmental Section, State Historic Preservation Officer and FHWA as necessary
- Complete Drainage Report
- Complete Pavement Design
- Complete Preliminary Bridge/Structure Plans
- Update Preliminary Cost Estimates

60% DESIGN COMPLETION STAGE

- The T/LPA works with the Region T/LPA Coordinator and District T/LPA Coordinators to conduct a review at the end of "Preliminary Design" and beginning of "Final Design"
- Ongoing Public Involvement.
- Complete Right of Way Mapping & Appraisals
- Work with Region T/LPA Coordinator to begin Right of Way acquisition, and relocations if applicable
- Work with Region T/LPA Coordinator to begin Utility Relocation. *If applicable*
- Update Preliminary Cost Estimates

90% COMPLETION STAGE

- Design 90% Complete (including quantities)
- Complete Right of Way coordination/certification
- Complete Utilities coordination/certification
- Complete ITS coordination/certification
- Complete Railroad coordination/certification
- Complete Work Zone checklists J & K
- Place environmental, cultural resource and hazardous materials commitments in construction contract documents, as appropriate
- Finalize Detailed Cost Estimate
- Finalize Project Specifications

PLANS, SPECIFICATIONS & ESTIMATE REVIEW (PS&E)

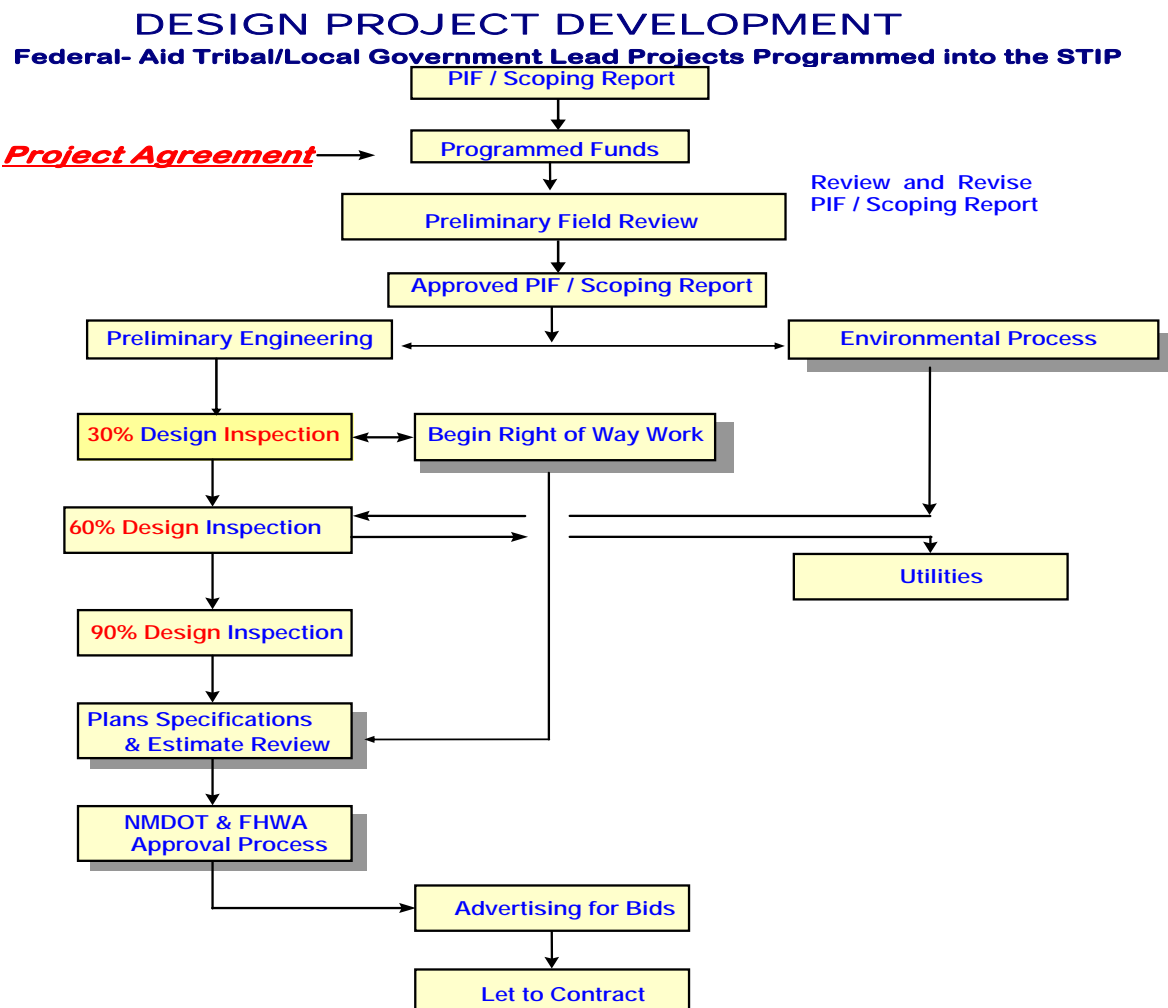
In accordance with 23 CFR 630 Subpart B

- Design 100% Complete

- Complete Project Specifications
- Detailed Estimate finalized
- Complete Construction Contract Documents (Boilerplate language available from NMDOT's PS&E Bureau).
- Complete and certify Right of Way acquisition
- Complete and certify Utility work
- Complete and certify ITS work
- Complete and certify Railroad work
- Project ready to advertise for construction upon authorization from Region T/LPA Coordinator.

The T/LPA is responsible for coordinating and inviting the necessary personnel to all design reviews.

The T/LPA shall invite the FHWA Area Engineer, NMDOT's Region T/LPA Coordinator, District Office representative, and Construction Liaison Engineer (CLE) to participate in any design reviews of state or federally funded projects on state or federal highways. The Region T/LPA Coordinators will serve as a resource to the T/LPA in terms of guidance on the Project Development process.



The following is a simplified checklist of the project development process. This is included to assist T/LPAs in keeping track of items completed and those remaining. More detailed descriptions of the specific activities can be found throughout the handbook. **Note the difference between federally funded projects and state funded projects.**

PROJECT DEVELOPMENT – CHECKLIST FEDERAL FUNDS

- ☐ Project is programmed into the STIP
- ☐ T/LPA receives notification project has been entered into the STIP along with an Agreement Request Form (ARF) from PINF Finance which is to be completed and submitted to Region T/LPA Coordinator
- ☐ T/LPA submits Final Scoping Report
- ☐ PINF Finance receives completed ARF from Region T/LPA Coordinator and prepares Project Agreement
- ☐ Project Agreement executed
- ☐ Region T/LPA coordinator submits a project scope from the NMDOT Environmental Development Section and obtains guidance on the level of effort for Environmental certification
- ☐ Region T/LPA coordinator obtains guidance from the NMDOT Environmental Geology Section on hazardous material investigation level of effort
- ☐ T/LPA holds 30% Design Inspection
- ☐ Request ADA Coordination with NMDOT Region T/LPA Coordinator
- ☐ T/LPA initiates or continues public involvement
- ☐ T/LPA prepares appropriate Environmental, Cultural Resource and Hazardous Materials investigation documentation as required
- ☐ T/LPA requests review of documentation from regulatory agencies, and submits documentation to the NMDOT Environmental Development Section
- ☐ T/LPA begins Right of Way maps
- ☐ Region T/LPA coordinator Environmental Geology Section acceptance of the hazardous materials investigation report
- ☐ T/LPA obtains Environmental certification
- ☐ T/LPA holds 60% Design Inspection
- ☐ T/LPA makes 60% Design Inspection revisions & prepares 90% Complete plans
- ☐ R/W maps approved by Right of Way Bureau for projects on state system

Coordinate through T/LPA Region Coordinator:

- ☐ T/LPA coordination regarding Right of Way
- ☐ T/LPA Right of Way appraisals
- ☐ T/LPA Right of Way acquisition and relocations, if necessary

- ☐ T/LPA certifies Right of Way to the NMDOT Right of Way Bureau
- ☐ T/LPA Utility relocations if needed
- ☐ T/LPA certifies Utilities to NMDOT's Utilities Section
- ☐ T/LPA certifies Utilities to NMDOT's Railroad Section
- ☐ T/LPA holds 90% Design Inspection
- ☐ T/LPA makes 90% Complete Design Inspection corrections
- ☐ T/LPA requests Disadvantaged Business Enterprise (DBE) goals from their Region T/LPA Coordinator
- ☐ T/LPA holds PS&E Review (100% Complete)
- ☐ T/LPA makes corrections and certifies project pre-construction phase to Region T/LPA Coordinator
- ☐ Region T/LPA Coordinator prepares the Federal Form
- ☐ PINF Finance requests authorization of Federal funding
- ☐ FHWA authorizes project funds
- ☐ NMDOT requests Federal Project Agreement with FHWA and encumbers funds
- ☐ Notice to Proceed sent to T/LPA, Region, and District T/LPA Coordinators authorizing project to be sent out to advertise for bids
- ☐ T/LPA advertises & receives bids
- ☐ T/LPA submits bid package for approval from Region T/LPA Coordinators
- ☐ Upon concurrence from the NMDOT, T/LPA awards project to Construction Contractor and informs Region T/LPA Coordinator
- ☐ T/LPA issues Notice to proceed to contractor and distributes final plans, contract, and final estimate
- ☐ Hold Pre-con prior to start of construction
- ☐ Construction begins
- ☐ Construction Inspection by District and Construction Liaison Engineers
- ☐ T/LPA requests reimbursement from District Office

PROJECT DEVELOPMENT – CHECKLIST STATE FUNDS

- ☐ Project is funded through Legislature
- ☐ T/LPA prepares Scoping Report as applicable or as directed by District T/LPA Coordinator
- ☐ PINF Finance prepares Project Agreement
- ☐ Project Agreement executed
- ☐ State funds are encumbered by the NMDOT

- ☐ T/LPA submits a project scope to the District T/LPA Coordinator and obtains guidance on the level of effort for environmental certification
- ☐ T/LPA obtains guidance from District T/LPA Coordinator on hazardous material investigation level of effort
- ☐ T/LPA holds 30% Design Inspection
- ☐ T/LPA initiates or continues public involvement
- ☐ T/LPA prepares Environmental, Cultural Resource and Hazardous Materials investigation documentation as required
- ☐ T/LPA requests review of documentation from regulatory agencies, and submits documentation to District T/LPA Coordinator
- ☐ T/LPA obtains District T/LPA Coordinator acceptance hazardous material investigation report
- ☐ T/LPA begins Right of Way maps
- ☐ T/LPA obtains Environmental certification
- ☐ T/LPA holds 60% Design Inspection
- ☐ T/LPA makes 60% Design Inspection revisions & prepares 90% complete Plans
- ☐ Right of Way maps approved by Right of Way Bureau for projects on state system
- ☐ T/LPA coordination with District T/LPA Coordinator
- ☐ T/LPA Right of Way appraisals
- ☐ T/LPA Right of Way acquisition and relocations if necessary
- ☐ T/LPA certifies Right of Way to the NMDOT Right of Way Division
- ☐ T/LPA Utility relocations
- ☐ T/LPA certifies Utilities to the NMDOT Utilities Section
- ☐ T/LPA certifies Utilities to the NMDOT Rail Section
- ☐ T/LPA holds 90% Design Inspection
- ☐ T/LPA makes 90% Complete design inspection corrections
- ☐ T/LPA holds PS&E Review (100% Complete)
- ☐ T/LPA Submits Executed Project Final Detail Estimate for determination of DBE goal
- ☐ T/LPA makes corrections and certifies project pre-construction phase to North, Central, and South Region Design Divisions and PINF Finance
- ☐ Region T/LPA Coordinator authorizes T/LPA to advertise for bids
- ☐ T/LPA advertises & receives bids
- ☐ T/LPA submits bid package for approval from Region T/LPA Coordinators

- ☐ T/LPA awards project to construction contractor
- ☐ T/LPA issues Notice to Proceed to contractor and distributes Final Plans, Contract, and Final Estimate
- ☐ Hold Pre-con prior to start of construction
- ☐ Construction begins
- ☐ Construction Oversight by District and Construction Liaison Engineers
- ☐ T/LPA requests reimbursement from District
- ☐ T/LPA completes and submits the Certification of Capital Cooperative Agreement Compliance/Completion Form (Appendix A) to the District Engineer

CHAPTER 4

PRELIMINARY ENGINEERING

CONSULTANT SELECTION

The T/LPA may select design consultants for studies and Preliminary Engineering (P/E), which are subject review and approval by the Region T/LPA Coordinator. These costs are reimbursed only if included in the STIP or state legislation and specified by the Project Agreement, and only if appropriate procurement requirements were fulfilled. Costs incurred for P/E prior to the execution of the Project Agreement, or prior to authorization of funds by FHWA, shall be borne by the T/LPA and are not reimbursable.

For both federally and state funded preliminary engineering projects, consultant selection procedures must be in accordance with federal regulations and the State Procurement Code, unless the T/LPA is a Home Rule City, in which case its Procurement Code must be followed. When using federal funds, Tribal entities must follow appropriate federal regulations. PLEASE NOTE THAT THE STATE AND FEDERAL PROCURMENT CODES DIFFER.

Costs incurred by a T/LPA, whether by in-house forces or consultant, for P/E may not be used as in-kind match for the construction phase unless approved in advance. Each phase of work, whether PE or Construction (assuming these phases are programmed into the STIP), carries its own mutually exclusive match requirements that must be met separately.

PROFESSIONAL REQUIREMENTS

All designs shall be prepared in accordance with applicable state statutes, i.e., Chapter 61, Article 23 NMSA 1978 (The Engineering and Surveying Practice Act), Chapter 61, Article 15 NMSA (The Architectural Act), and Chapter 61, Articles 24B-1 to 24B-17 NMSA 1978 (The Landscape Architects Act).

If a project's contemplated construction cost is under \$100,000 a Registered Architect may certify a set of plans in which engineering is an incidental component of an overall architectural project. A landscape architect is not, by statute, afforded this privilege. If construction of a landscaping project involves any architecture or engineering, the designs shall be prepared in accordance with the Engineering and Survey Practice Act or the Architectural Act.

Any public works project whose contemplated construction cost is over \$100,000, involving any engineering, must be certified by a Registered New Mexico Professional Engineer, even if engineering is only a minor component of a larger architectural contract. Any public works project whose contemplated construction cost is under \$100,000 does not need to be certified by a New Mexico Registered Professional Engineer, unless there is structural design or modifications involved.

DESIGN STANDARDS

Design standards are established for state and federal-aid transportation projects to ensure that they provide safe, durable, economical, maintainable, and fully functional transportation facilities. AASHTO and FHWA publications and policies shall be used as design standards for federally funded projects on the National Highway System and as guidelines for non-National Highway System and state funded certification projects. Statutory language for federally funded projects is identified within 23CFR Part 625. These are listed in the Publications and Design Standards section of this handbook. NMDOT has also established specific criteria for ADA compliant pedestrian access facilities that follow the federal Public Right of way Accessibility Guidelines (PROWAG) section 300r. If any required design standards cannot be met, the T/LPA must provide justification, document, and obtain approval by the NMDOT and the FHWA for any Design Exceptions or Variances on National Highway System projects. Design

modifications on other state maintained facilities require the approval of the appropriate Region T/LPA Coordinator and the NMDOT's Chief Engineer. A project's required standards or guidelines will be established and stipulated in the Project Agreement.

INTERAGENCY COORDINATION

Projects frequently require the T/LPA to negotiate agreements, obtain permits, or otherwise coordinate with other agencies. Acquiring easements/government land transfers requires much coordination and can be very time-consuming, requiring up to 6 months in the right of way process. Interagency coordination is usually necessary when a project is located on land administered by another agency or when it might have social or environmental impacts regulated by another agency. The following are some examples:

Issues

1. Federal Aviation Administration (FAA) Airport/Roadway Clearance
2. Utilities
3. Water Rights
4. Wetlands
5. Irrigation
6. Railroads
7. Parks

Agencies

1. US Army Corps of Engineers
2. US Department. of the Interior National Park Service
3. US Department of the Interior Bureau of Land Management
4. US Department of Agriculture US Forest Service
5. US Department of the Interior Bureau of Indian Affairs
6. State Land Office
7. State Parks Division
8. Local Irrigation Districts
9. State Engineers Office

VALUE ENGINEERING

Definition: Value Engineering (VE) is the systematic application of recognized techniques, by multi-disciplined team(s), which:

1. Identify a product's function or service;
2. Establish a function's monetary value or worth; and

3. Provide alternate ways, using creative techniques, to reliably accomplish necessary functions at the lowest overall cost.

It is the NMDOT's policy to strongly encourage the use of value engineering throughout highway project development, construction, operation, and maintenance. FHWA, through the New Mexico Division Office, requests that value engineering analysis be performed on those features of federal-aid projects where its employment has high potential for public benefit.

VE should be considered on high cost and major projects as well as standard details that are used repetitively on many projects. A value engineering study is justified when the value of potential savings is higher than the cost of the study. In fact, a VE study is mandatory for any project of \$25 million or more on the National Highway System.

Reducing the scope of a project, compromising the performance of an element, or simply substituting less expensive options is not VE. VE is not just "good engineering." It is not a suggestion program, and it is not routine project or plan review. It is not typical cost reduction, in that it does not "cheapen" the product or service, nor does it "cut corners". It simply answers the question, "What else will accomplish the purpose of the product, service, or process we are studying?" All costs are taken into account over the entire life of the project.

The costs of highway and transportation needs far exceed the funds available for improvements. As the cost of transportation construction increases, more emphasis is being placed on the preservation and rehabilitation of existing facilities to maximize available funds. VE is a tool that can counteract these growing problems by providing:

1. Cost reduction;
2. Product or process improvement; and,
3. Alternative means and materials for highway construction and maintenance.

CHECKLIST FOR PRELIMINARY ENGINEERING PROJECTS

The next page contains a simplified checklist of the activities required for preliminary engineering projects, both federally funded and state funded projects.

PRELIMINARY ENGINEERING PROJECT - CHECKLIST FEDERAL FUNDS

- ☐ Project is programmed into the STIP
- ☐ T/LPA prepare Scoping Report with Region T/LPA Coordinator
- ☐ T/LPA requests Project Agreement
- ☐ PINF Finance prepares Project Agreement
- ☐ T/LPA follows federal selection procedures, or their own if home rule or tribe
- ☐ Once RFP is certified by T/LPA to conform w/ federal requirements, the PINF Finance requests authorization of funding
- ☐ FHWA authorizes project funds
- ☐ NMDOT requests federal project obligation with FHWA, and encumbers funds
- ☐ Region T/LPA Coordinator authorizes T/LPA to advertise the RFP

- ☐ T/LPA selects consultant with assistance from Region T/LPA Coordinator
- ☐ T/LPA conducts consultant negotiations with assistance from Region T/LPA Coordinator
- ☐ T/LPA and Consultant begin design with concurrence from Region T/LPA Coordinator
- ☐ T/LPA seeks reimbursement from District with concurrence from Region T/LPA Coordinator

PRELIMINARY ENGINEERING PROJECT - CHECKLIST STATE FUNDS

- ☐ Project is assigned Control Number (regionally significant projects must be programmed into the STIP)
- ☐ T/LPA prepares Scoping Report with Region T/LPA Coordinator
- ☐ PINF Finance prepares Project Agreement
- ☐ Once agreement is executed, PINF Finance requests funding
- ☐ T/LPA uses their selection procedures in accordance with the State Procurement Code or their own, if home rule or tribe
- ☐ Once RFP is certified by T/LPA to conform w/ state requirements, the PINF Finance will receive concurrence by Region T/LPA Coordinator to advertise the RFP
- ☐ T/LPA selects consultant with assistance from Region T/LPA Coordinator
- ☐ T/LPA conducts consultant negotiations with assistance from Region T/LPA Coordinator
- ☐ T/LPA and Consultant begin design
- ☐ T/LPA seeks reimbursement from District with concurrence from Region T/LPA Coordinator

CHAPTER 5

ENVIRONMENTAL PROCESS

INTRODUCTION

This chapter of the handbook has been prepared to provide guidance for compliance with federal and state environmental laws and regulations. Following the procedures described herein will provide uniformity and consistency in the project development process.

Three distinct approvals or concurrences are needed from the NMDOT to complete the environmental certifications process for every project. These include:

- General environmental approval pursuant to the National Environmental Policy Act (NEPA) and 23 CFR 771
- Cultural Resources concurrence for archaeological and historic resources pursuant to the National Historic Preservation Act (NHPA) and New Mexico state statutes
- Hazardous Materials investigation approvals pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

The T/LPA is responsible for obtaining all of the environmental approvals or concurrences necessary to fulfill the certification requirements. For guidance on the NEPA requirements, see subsection D of this chapter. For guidance on the Cultural Resource requirements, see subsection E of this chapter. For guidance on the Hazardous Materials investigation requirements, see subsection F of this chapter.

The NMDOT Region T/LPA Coordinators and the Environmental Section Manager will assist the T/LPAs early in the project development process to determine the environmental level of effort. If environmental investigations are required, these need to be conducted by an interdisciplinary team including, as necessary, qualified environmental, cultural and natural resource specialists, and hazardous materials specialists. A T/LPA may use any department or subdivision under its jurisdiction as a resource in applicable areas of expertise.

T/LPAs that do not have staff qualified to carry out the required activities will need to hire qualified consultants. For both federal and state funded projects, T/LPA consultant selection procedures must be in accordance with federal regulations and with the State Procurement Code. If the T/LPA is a Home Rule City, its own procurement code must be followed. When using federal funds, Tribal agencies must follow appropriate federal regulations.

LOCATION / DESIGN APPROVAL

Authorization to proceed with final project design will not be granted until all environmental approvals or concurrences have been obtained by the T/LPA. All projects with federal funding require authorization by the Federal Highway Administration (FHWA).

Large or complex projects should follow a multiphase process to develop and evaluate alternatives and ensure ongoing, cooperative public and agency input in the project development process. The alternatives analysis process typically involves three phases. Each phase is intended to evaluate alternatives at the appropriate level of detail. In some instances, when the number of alternatives is limited, Phase A – Initial Evaluation of Alternatives and Phase B – Detailed Evaluation of Alternatives might be combined. Phase C is Environmental Documentation and Processing. More detail on corridor and alignment studies can be found in the *Location Study Procedures Guidebook (August 2000)* or <http://www.nmshtd.state.nm.us/main.asp?secid=11182>.

BACKGROUND AND LEGISLATION

All transportation related projects utilizing federal funds in any phase of the project must obtain environmental approval by FHWA. In addition, all state funded projects require environmental approval by the NMDOT. This includes Severance Tax bond (ST) projects; General Fund (GA) projects; 100% State Road Fund (SP) projects, County Arterial Program (CAP), Cooperative Program (SP), School Bus Route Program (SB), and Municipal Arterial Program (MAP) projects. All projects, regardless of funding source are required to follow all appropriate environmental laws and regulations.

State and federal-aid funded projects that involve Federal lands also require compliance with applicable laws and regulations of the land management agency. Projects on US Forest Service, Bureau of Land Management, National Park Service, State Parks Division, or Tribal property must meet the appropriate land managing agencies' requirements.

The Administrative Record documents the purpose and need, the alternative analysis, environmental impacts associated with alternatives, public issues and concerns, agency coordination, and mitigation commitments. The Administrative Record consists of all the files, surveys, investigations, considerations, meetings, agency contacts, and other planning and project development activities.

A synopsis of some of the more important legislation and regulation is presented below.

The National Environmental Policy Act of 1969 (NEPA) established a framework for systematically evaluating federal actions. It requires an open, interdisciplinary approach to planning and project implementation. NEPA requires that all federal-aid projects assess the potential for environmental impacts as part of the decision making process.

The Council on Environmental Quality (CEQ) has published criteria for environmental consideration under NEPA. This guidance has the force of regulation and is codified in 40 CFR Parts 1500-1508. The CEQ has also issued several guidance publications on NEPA and its regulations.

The FHWA has adopted the CEQ regulations and issued their interpretation in 23 CFR Part 771 Environmental Impacts and Related Procedures.

The FHWA has also issued Technical Advisory T 6640.8A "Guidance for Preparing and Processing Environmental and Section 4(f) Documents". This advisory serves to clarify the implementation of NEPA, CEQ regulations and 23 CFR Part 771.

Another important legislative action is the Department of Transportation Act of 1966 (DOT) which contains the requirements for Section 4(f) Evaluations. A Section 4(f) Evaluation may be required for FHWA authorization on projects that impact publicly owned parks, recreation areas, wildlife refuges or significant historic sites. The Clean Water Act of 1970 (CWA) requires permits for the placement of fill or dredged material, and other activities, in Waters of the United States. A Section 404 permit, pursuant to the Section 404 (b) (1) Guidelines, may be required from the US Army Corps of Engineers (USACE). Section 401 Water Quality Certification will be required from the New Mexico Environment Department for work in live streams.

The National Historic Preservation Act of 1966 (NHPA), as amended, is the primary federal legislation that governs the identification and management of historic and archaeological properties in the United States. Section 106 of the Act requires federal agencies to consider the effects of undertakings they sponsor or authorize on historic properties. The implementing regulations are detailed in 36 CFR Part 800.

The NHPA regulations require federal agencies to identify historic properties within the project area of effect and to assess the effect of the project on properties on, or eligible to be listed on, the National Register of Historic Places. The FHWA must also provide the State Historic Preservation Officer (SHPO),

Tribal Historic Preservation Officers (THPOs), and, if necessary, the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on the undertaking.

In addition to the federal laws, there are two state laws that apply to proposed undertakings. They are the Cultural Properties Act (CPA) and the New Mexico Prehistoric and Historic Sites Preservation Act (NMPHSPA). The state CPA is similar to the Federal NHPA. The NMPHSPA requirements are similar to the Federal Section 4(f) Evaluation.

The EPA has established federal standards and practices for conducting “all appropriate inquiries” as required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The NMDOT has adopted the American Society of Testing Materials (ASTM) standard practice E 1527 for environmental site assessments. All hazardous material Initial Site Assessments (ISAs) must conform to the most current version of this standard practice.

ASTM Standard E 1903-97 provides practical procedural guidance for the continuance of an assessment performed in accordance with the most recent version of ASTM E 1527. It provides the framework on which preliminary and detailed site investigations are based.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

I. Proposed Action and Level of Effort

It is important to develop logical and methodical procedures for addressing social, economic and environmental factors in planning and project development. Compliance with the National Environmental Policy Act of 1969 (NEPA) requires implementation of an open, collaborative decision process and documentation of that process. Timely and thorough consideration of the social, economic, and environmental factors during project development and proper environmental documentation leads to better decisions and an accurate, complete Administrative Record.

Environmental documentation consistent with applicable laws and regulations is required on all proposed projects. In order to determine the level of effort for environmental certification, the T/LPA will need to contact the Environmental Section for assistance. A scope of work will be submitted to the Environmental Design Section's T/LPA's liaison. Any changes in project scope after the initial submittal, or after the environmental certification is issued, will necessitate additional consultation with the Environmental Section.

The proposed action must meet the definition of a "transportation project." A transportation project is an undertaking to implement or modify a highway facility or is a highway-related program. Such undertakings consist of all required activities necessary for implementation under the provisions of 23 CFR and related regulations. For analytical purposes, the highway project must:

- Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
- The proposed action must also have a clearly stated purpose and need. The need may be to provide system continuity, increase roadway capacity, correct roadway deficiencies, improve safety, respond to legislative mandate, or support economic development, inter-modal relationships, or enhancement projects.

- The project lead, or its consultant, must identify and evaluate all project implementation activities and impacts. The evaluation must address the area affected by the project, which often extends beyond the proposed construction limits.

The interdisciplinary investigation, interagency coordination and public involvement approach to the project are all designed to provide an ongoing and thorough social, economic, and environmental analysis. The process for evaluating social, economic, and environmental effects during project development falls into one of three levels of effort. The level of effort is continually evaluated to assure that the environmental process is sufficiently comprehensive.

The appropriate environmental level of effort is based on two factors: context and intensity.

- Context is determined by the location of the project.
- Intensity is determined by the activities associated with the proposed action.

The environmental level of effort and corresponding environmental documentation will result in one of the following certifications:

- Programmatic Categorical Exclusion (PCE);
- Categorical Exclusion (CE);
- Environmental Assessment (EA); or
- Environmental Impact Statement (EIS).

The appropriate environmental level of effort should be determined early in project development to ensure efficient and timely completion of the process.

Attached to the environmental document may be other evaluations and investigations such as Section 4(f) Evaluations, NHPA Section 106 consultations, Wetland Delineations, Clean Water Act Section 404 Permits, etc.

II. Project Development and Design

Environmental documentation must be reviewed and approved by the NMDOT and FHWA for all federal-aid transportation projects. The environmental documentation must address a "transportation project" as defined in the preceding subsection entitled "Proposed Action and Level of Effort."

Until a final environmental document is approved by the NMDOT and FHWA, actions that could potentially result in adverse environmental impacts or that could limit the choices of reasonable alternatives will not be authorized or funded. This applies to final design, property acquisition, and construction activities. If a project will be constructed in phases, the entire proposal must be approved before any portion or phase may advance to final design, property acquisition, or construction.

Environmental documents should be clear and concise. Discussions should focus on relevant issues and provide evidence that necessary analyses, public involvement, and agency coordination have been conducted. Less important issues should be only briefly discussed.

Changes in project scope – including changes in project termini and funding sources as reflected in the STIP– after NMDOT and FHWA approval of the environmental document will necessitate a new or amended document. Changes in scope usually result in project delays.

The environmental document must include a description of the proposed action, a discussion of specific areas of environmental concern, and documentation of public input and agency coordination. A list of the factors that must be considered and adequately addressed is given below. The level of analysis and discussion for each of these areas must be commensurate with the potential for impact. In other words, if

farmland is not impacted by the project, its consideration should be minimal in the environmental document.

A brief discussion of these environmental factors follows. The discussion and list are not intended to be all-inclusive, and they do not include many of the requirements of state and federal laws and regulations. Some of the additional requirements will become apparent upon review of the documents and regulations listed at the end of this chapter.

III. NEPA Factors for Consideration

Planning requirements of MAP-21

Consistency with land use plans

Farmland

Social issues

Economic issues

Right of way, land transfer, and relocation

Pedestrians, equestrians, and bicyclists

Air quality

Noise

Water quality and stream modifications

Permit applications and requirements

Wetlands

Floodplains

Wildlife resources and vegetation

Threatened and endangered species (T&E)

Cultural resources

Section 4(f) and Section 6(f) Properties

Hazardous Materials

Natural, scenic, and visual resources

Construction activities

Cumulative and secondary impacts

Public involvement

Agency coordination

Mitigation measures and commitments

1. Planning Requirements of MAP-21

The planning requirements of MAP-21 afford an integrated project selection procedure with local planning organizations. The regional and metropolitan planning organizations (RTPOs/MPOs) have established a process for planning and project selection that is consistent with the requirements of 23 CFR Part 450. The T/LPA must submit its proposed project request to the appropriate RTPO/MPO for inclusion in the RTIPR or TIP.

2. Consistency with Land Use Plans

It is necessary to demonstrate that the project is consistent with the area's comprehensive development plan. A consideration of land use, transportation, public facilities, housing, and community services may be appropriate. Land use planning and control are relevant to environmental issues such as air quality, floodplain management, farmland protection, hazardous materials, and high-noise impact areas.

3. Farmland

The project must address potential impacts on farmland of prime, unique, local, or statewide importance. If farmlands may be impacted the T/LPA must contact the Natural Resource Conservation Service, US Department of Agriculture, and complete a Form AD 1006 (Farmland Conversion Impact Rating). If the rating on this form exceeds 160 points, the T/LPA must consider alternatives that avoid or minimize farmland impacts.

4. Social Issues

Social impacts relevant to the environmental investigation include changes in neighborhoods, community cohesion, new development, changing property values, travel patterns, and safety. Effects of the project on the elderly, handicapped, and minority or ethnic groups are of particular concern. Project impacts should also be evaluated with respect to the Executive Order on Environmental Justice.

5. Economic Issues

Economic impacts may include effects on development, tax revenues, public expenditures, employment, and multimodal-dependent businesses. Foreseeable impacts should be discussed commensurate with the anticipated level of impact. The discussion should involve views of the affected citizens and officials.

6. Rights of Way, Land Transfers, and Relocations

An estimate of the amount of new highway or multi modal right of way required must be included in the environmental document. If relocations are involved, the impacts on residences and businesses and the availability of replacement property must be analyzed by the Right of Way Bureau, Relocation/Specialty Unit. Early coordination with the Relocation/Specialty Unit is critical when relocations are required. If relocation is required, it is unlikely that a CE is the appropriate level of environmental documentation. If an easement or land transfer from a land managing agency is required, early coordination is critical. The environmental requirements of that agency must also be addressed by the T/LPA.

7. Pedestrians, Bicyclists, and Equestrians

If facilities for pedestrians, bicyclists, and/or equestrians exist within the project limits, the impacts associated with the current proposal must be examined. If such facilities are not available, their inclusion in the proposal should be analyzed. The T/LPA must reference any proposed trails or applicable trail planning documents.

8. Air Quality

The evaluation must include a brief discussion of the transportation related air quality concerns in the project area. An analysis of the proposed project is required to ensure that the project does not contribute to violations of any National Ambient Air Quality Standards (NAAQS), pursuant to the Clean Air Act. Air quality requirements are stricter in non-attainment areas that exceed the NAAQS for a regulated

pollutant. Projects in non-attainment areas must be coordinated with the local MPO, air quality agencies, and the New Mexico Environment Department which creates the State Implementation Plan.

9. Noise

If noise impacts of the proposed project approach or exceed the Noise Abatement Criteria in 23 CFR Part 772, noise mitigation must be evaluated. Noise levels must not be in conflict with existing state or local regulations. Abatement efforts must also be consistent with the NMDOT Design Directive on Noise Abatement. If noise impacts are anticipated, an in-depth noise analysis must be conducted. Noise analysis must be based on current and projected traffic volumes using up-to-date traffic data.

10. Water Quality and Stream Modifications

Projects located in arroyos, live streams, water impoundments, or irrigation systems, and are considered Jurisdictional Waters of the US by the US Army Corps of Engineers (USACE), must comply with the provisions of the Clean Water Act (Sections 401 and 404) and the New Mexico Water Quality Act. Standards and permit requirements are available from the (USACE) and New Mexico Environment Department (NMED). Both surface and ground water quality must be addressed in the environmental document. If the project is on tribal land, and if the tribe has a Water Quality Certification Program, then the T/LPA will need to obtain a permit from the tribe.

11. Agency Permit Applications or Requirements

There may be several applicable permit requirements on transportation projects. Land managing agency permits may be required for easements, construction activities, and archaeological investigations. The T/LPA must identify and apply for any required permits.

12. Wetlands

The T/LPA must address any potential impacts to wetlands. The USACE has specific regulations and requirements for working in jurisdictional wetlands. Permitting actions with the USACE and NMED, and coordination with the New Mexico Department of Game and Fish (NMDGF) and the US Fish and Wildlife Service (USFWS) may also be required. Compliance with Executive Order 11990, Protection of Wetlands, must be demonstrated. A finding that includes an "Only Practicable Alternative" will be required if wetland impacts are identified. Efforts to minimize harm must be followed by a mitigation plan that results in "no net loss" of wetlands.

13. Floodplains

Any work in a floodplain, such as drainage improvements or channelization, must be based on accepted hydrologic and engineering studies. These activities must not result in floodplain damage in the project area. If the project involves a floodway or floodplain the environmental document must include a statement that the project is consistent with Executive Order 11988, Protection of Floodplains, and Federal Highway Program Manual (FHPM) 6-7-3-2, Location and Hydraulic Design of Encroachments on Floodplains, and does not include a "significant encroachment" on a floodplain.

14. Wildlife Resources and Vegetation

Projects that disturb habitat such as rock outcrops, stream courses, riparian areas, and large roosting trees may impact wildlife species. The Migratory Bird Treaty Act and the New Mexico Wildlife Conservation Act may apply in such situations. The environmental document must investigate and address wildlife impacts when appropriate. Native vegetation must be described and re-vegetation efforts programmed for disturbed areas.

15. Threatened or Endangered Species

Potential impacts to threatened or endangered species and critical habitat must be addressed. This will require coordination with the New Mexico Department of Game and Fish, US Fish and Wildlife Service,

and NM Department of Energy, Minerals and Natural Resources. A field survey by qualified biologists/botanists may also be required to analyze project impacts. The environmental document must detail investigations or support the statement that "there are no proposed or listed threatened or endangered species or critical habitat within the project limits."

Under the Federal Endangered Species Act, one of the following determinations is required:

1. No effect
2. May affect, not likely to adversely affect
3. May affect, likely to adversely affect

In cases of a "may affect" additional documentation and consultation with the US Fish and Wildlife Service is required, conducted between FHWA and the US Fish and Wildlife Service.

16. Cultural Resources

See subsection Cultural Resource Requirements of this chapter for a full discussion of Cultural Resource requirements, including archaeological and historic resources.

17. Section 4(f) and Section 6(f) Properties

Section 4(f) of the Department of Transportation Act states that the FHWA may not approve the use of land from a significant publicly owned park, recreation area or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that there is no feasible and prudent alternative and efforts to minimize harm are included. The NMDOT should always be contacted when any of these described properties may be in the vicinity of a proposed project.

Section 6(f) of the Land and Water Conservation Fund Act (LWCF Act) states that no property acquired or developed with the assistance of LWCA funds shall be converted to other than outdoor recreation uses without replacement in kind and the approval of the Parks and Recreation Division of the NM Energy, Minerals, and Natural Resources Department .

18. Hazardous Materials Investigations

See subsection Hazardous Materials Investigation of this chapter for a complete discussion of Hazardous Materials Investigation requirements.

19. Natural, Scenic and Visual Resources

Natural landforms, recognized scenic areas, and wildlife or nature preserves must be considered in the evaluation. Impacts to visual resources created by the proposed action must be systematically investigated and mitigated as appropriate.

20. Construction Activities

Construction impacts are usually of short duration and covered by contractual controls during construction. However, issues such as detours and changes of access may require special consideration and discussion.

21 Cumulative and Secondary Effects

The environmental document must address the individual and cumulative environmental impacts of all phases or stages of project implementation. It must include, by reference, documents prepared before previous related actions were undertaken. It must also address the role of the project on anticipated development and identify anticipated impacts. Other reasonably foreseeable actions within the project's area of effect must be included in the document and impact analysis.

22. Public Involvement

The T/LPA must provide a summary of public involvement activities associated with the proposed project. Affected property owners, neighborhood groups and other interested entities must be consulted. A summary discussion of public concerns regarding the project and responses to those concerns must be included in the environmental document. Any substantial controversy on environmental grounds must also be addressed.

23. Agency Coordination

Early in project development, the appropriate regulatory agencies should be identified and contacted. The environmental documentation must reflect these coordination efforts and any agency recommendations or requirements.

24. Mitigation Measures and Commitments

Appropriate measures necessary to mitigate adverse impacts must be incorporated into the proposed action. Appropriate mitigation measures must address impacts that actually result from project implementation. The proposed mitigation must also represent a reasonable public expenditure based on the magnitude of the impacts and the benefit of the proposed mitigation measures.

The Council on Environmental Quality has defined mitigation to include:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- Compensating for the impact by replacing or providing substitute resources or improvements.

The T/LPA will establish and maintain on file an administrative record consisting of proposed environmental commitments such as mitigation measures, commitments made to resource or permitting agencies, and commitments to citizens or interest groups. The T/LPA file may also include other documentation such as right of way, access, and maintenance permits, and other agreements.

IV. Environmental Level of Effort and Documentation

CATEGORICAL EXCLUSION (CE)

It is anticipated that most projects proposed by a T/LPA will receive environmental approval through a CE. A CE type of project is an action that does not individually or cumulatively have a significant environmental effect and is excluded from the requirement to prepare an EA or EIS (as per 23 CFR Part 771.115 and 40 CFR Part 1508.4). These actions do not induce significant impacts to planned growth or land use for the area; do not require residential or commercial relocation; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

The CE level of effort should be conducted by an interdisciplinary team including qualified environmental, cultural and natural resource specialists. It must also include appropriate agency coordination, public involvement, environmental studies, and a summary description of the cultural resource inventory. The CE level of effort must be documented on a "CE Checklist" form, which may be obtained electronically on the NMDOT website: <http://dot.state.nm.us/en/PSE/DesignDirectives.html>.

Preparation of the CE Checklist is the responsibility of the T/LPA. CE Checklist submittals must be accompanied by an area map, vicinity map, site plan, and other exhibits, as appropriate. CE documents must be submitted to the NMDOT Environmental Section, who will then consult with FHWA for concurrence. The Environmental Section and FHWA will review and determine if additional environmental investigations are required. If the CE Checklist is complete and FHWA determines that the project can be authorized with a CE, no further investigations will be required and the NMDOT and FHWA will approve the CE Checklist.

ENVIRONMENTAL ASSESSMENT (EA)

An EA is the level of effort required for projects with a substantial scope of work, such as increasing the number of driving lanes. Even with projects of less magnitude, if it is unclear whether significant impacts will occur, or if there is substantial public controversy, an EA must be prepared by the T/LPA. If an EA is required, the T/LPA would need to hire a qualified environmental consultant, preferably one that is familiar with transportation projects and the FHWA and NMDOT process.

For an EA level of effort, the T/LPA must coordinate with affected federal, state, and local agencies, Native Americans, and the public in determining the scope of the action, alternatives to be considered, and significant issues to be addressed.

A range of reasonable transportation alternatives must be evaluated. This range will always include the no-build option and may include transportation system management options, demand management strategies, improvements to the existing system, and other transportation modal alternatives.

An EA serves three basic purposes:

1. Identification of alternatives, impacts, mitigation measures;
2. Determination of the need for an EIS; and
3. Through the issuance of a Finding of No Significant Impact (FONSI), approval for final design, right of way acquisition, and construction.
4. The EA and its supporting documentation is the result of an interdisciplinary investigation that includes qualified analysis in environmental factors to include: planning requirements of MAP-21, consistency with land use plans, farmland, social issues, economic issues, right of way, land transfer, and relocation, pedestrians, equestrians, and bicyclists, air quality, noise, water quality and stream modifications, permit applications and requirements, wetlands, floodplains, wildlife resources and vegetation, Threatened and endangered species, cultural resources, Section 4(f) and Section 6(f) Properties, hazardous materials, natural, scenic, and visual resources, construction activities, cumulative and secondary impacts, public involvement, agency coordination, and mitigation measures and commitments.

The EA must address the environmental factors identified above at a level of detail commensurate with the undertaking.

The EA must include the results of agency coordination. Permitted actions, land transfers/easements, from regulatory or land managing agencies are almost always required. Early coordination with the Right of Way Bureau Relocation/Specialty Unit, as much as six months before letting/advertising for construction bids, is critical to successful project implementation.

On complex projects in areas with multiple agency jurisdictions, it is important to establish a Project Management Team and a Project Study Team. The Project Management Team is a core team of engineers, environmentalists, consultants, and agency officials directly responsible for project development. The Project Study Team is a larger group that includes all or some members of the Management Team and interested agencies, citizen groups, city/county officials, etc.

Permits are required for easements on federal and state lands. For work in the Waters of the US, permits are required from the US Army Corps of Engineers pursuant to the Clean Water Act. The NMED issues Section 401 water quality certifications for work in live streams.

A Cultural Resource Inventory might be required by the NMDOT/FHWA or by other funding or permitting agencies. The T/LPA is responsible for obtaining archaeological clearances and for insuring that the necessary consultations with SHPO/THPO and other consulting or interested parties are completed. See subsection E of this chapter, entitled "Cultural Resource Requirements," for more information.

The EA should not elaborate on issues that are not relevant to the project. Background data and technical analyses to support concise discussions should be incorporated by reference.

Public involvement and agency coordination are often critical to the EA process. The T/LPA will distribute copies of the signed EA to agencies, local officials, and interested citizens identified during document preparation. Once the EA is finalized and signed, the T/LPA will make the document available to the public for review and comment for 30 days.

At the end of 30 days, if there are no comments, the T/LPA may request a Finding of No Significant Impact (FONSI). The elements for a FONSI request are outlined below in the subsections entitled "Input Synopsis" and "Finding of No Significant Impact."

EA Format and Content

1. Signature Page and Table of Contents

The T/LPA should consult with the Environmental Section for the currently required signatures and format for the signature page.

2. Purpose of and Need for Action

The EA submitted by the T/LPA to the Environmental Section must include a clear statement of the purpose and need for the project. The EA must identify and describe transportation or other needs which the project proposes to address. The purpose of the project may be to provide system continuity, increase roadway capacity, correct roadway deficiencies, address safety, satisfy a legislative mandate, facilitate economic development, etc. The need might be demonstrated through congestion, miss-aligned intersections, high number of traffic accidents, inaccessibility to businesses, etc.

The project description includes project location, length, termini, and depth of ground disturbance for the proposed improvements. The project must match the definition of a "transportation project" and be on the STIP if funded through FHWA.

For projects that are governed by the aforementioned regulations, the project need must be very specific in order to determine if the "No Build" alternative would still meet the stated project purpose. The purpose and need should be as specific as possible and be reviewed throughout project development.

3. Alternatives

There are several laws, regulations, and Executive Orders that mandate an evaluation of avoidance alternatives. These include Section 4(f), Executive Order 11990, Executive Order 11988, Section 404 (b) (1) Guidelines, the Farmland Protection Policy Act (FPPA), and the New Mexico Prehistoric and Historic Sites Preservation Act (NMPHSPA).

The EA must discuss all alternatives considered for the proposed action and must include the no-build alternative. The range of reasonable alternatives considered will be determined by the project scope, location, and potential for controversy or significant impacts. The EA may include one or more build alternatives. Alternatives eliminated in previous phases should be briefly summarized with reasons given for their elimination from further consideration.

An alternative does not need to be identified as the preferred alternative in the EA; however, if one alternative is clearly preferred over others, identification of this alternative in the document is recommended.

On projects such as minor improvements to an existing alignment, the EA may discuss the build alternative and the no-build alternative. Other alternatives that were considered but not carried forward should be included in the documentation, but require only minimal discussion.

On complex projects, such as major reconstruction of existing alignments or construction of a new alignment, the EA will address all the alternatives under consideration. This will include the range of reasonable alternatives, the preferred alternative, and the no-build alternative.

4. Impacts

The EA will discuss the social, economic and environmental impacts for each alternative. The level of analysis must be sufficient to identify any potential impacts to a resource and to include appropriate mitigation measures.

Public involvement and agency coordination must identify known or foreseeable concerns and any responses to those concerns. The EA must also identify and discuss any reasonable possibilities for individual or cumulative impacts.

The EA will need to describe why any identified social, economic, and environmental impacts are not considered significant.

5. Comments and Coordination

The T/LPA must conduct the appropriate level of public involvement and agency coordination. A Public Involvement Plan (PIP), submitted to the NMDOT early in project development, will outline appropriate activities, key personnel, and potential stakeholders.

The EA will summarize the key issues and any information received from the public and governmental agencies. Appropriate responses must also be included.

6. Appendices

The appendices should include copies of pertinent agency coordination and determinations. Supporting analytical documentation (e.g., biological report) will be included. Other information should be briefly described, referenced and included in the project file (e.g. noise or air analyses, cultural resource inventories, threatened and endangered species surveys, geologic investigations, etc.).

7. Section 4(f) Evaluation

A Section 4(f) Evaluation under the DOT Act is only applicable to federal-aid projects. The requirements of Section 4(f) (49 U.S.C. 303) are detailed in 23 CFR 771.135. The FHWA may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

There is no feasible and prudent alternative to the use of land from the property; and the action includes all possible planning to minimize harm to the property resulting from such use.

The final decision on applicability of Section 4(f) to a particular type of land is made by the FHWA. Significance determinations are made by the officials having jurisdiction over the land and are subject to review for reasonableness by the FHWA. The NMDOT should always be contacted when any of these described properties may be in the vicinity of a proposed project.

As with other environmental impacts, the discussion of the project's impacts on the Section 4(f) property must include direct and indirect impacts and cumulative impacts. These are the impacts of the proposed

project augmented by the impact of other reasonably foreseeable actions within the project's area of effect.

The Section 4(f) Evaluation must include:

- Description and need for the proposed action;
- Description of the Section 4(f) property;
- Impacts on the resource by each alternative;
- Alternatives that avoid Section 4(f) properties and their impacts;
- Measures to minimize harm; and
- Coordination with appropriate agencies.

If the T/LPA suspects that Section 4(f) properties may be impacted, a review by the NMDOT/FHWA must be scheduled. Guidance will be provided by the NMDOT/FHWA on preparation and circulation of the Section 4(f) Evaluation

The New Mexico Prehistoric and Historic Sites Preservation Act (NMPHSPA) may apply to some historic properties when proposed projects use state funding. This Act may apply even if Section 4(f) does not apply. The provisions and procedures of the NMPHSPA are similar to Section 4(f).

The use of any Section 4(f) property will require a specific evaluation. An individual Section 4(f) Evaluation can be included with the EA or issued separately. It must be circulated to the appropriate agencies for coordination (23 CFR 771.135(i)). In some cases a programmatic Section 4(f) evaluation is appropriate and the EA must identify the 4(f) resource and reference the evaluation. The EA does not need to repeat the avoidance alternatives evaluation in the programmatic 4(f) Evaluation. The avoidance alternatives evaluation will be part of the FHWA file documentation.

The applicability and findings of the Section 4(f) Evaluations are discussed in greater detail in reference sources listed at the end of this chapter.

EA Approval and Distribution

When the document is complete, the FHWA will provide signature approval for public and agency distribution and comment, and scheduling of the Public Hearing.

The T/LPA will provide a cover letter for circulation of the EA. The cover letter will solicit comments, give the close of comment date, and reference any public meetings. A display ad announcing the availability of the EA must be published by the T/LPA in a newspaper(s) of general circulation. The display ad will announce a Public Hearing if one is scheduled or offer the Opportunity for a Public Hearing. All public announcements and advertisements are submitted to the NMDOT/FHWA for review prior to release.

The notice will advise the public of where the EA is available for review and the comment period. The public review and comment period for an EA is 30 days.

If a Section 4(f) Evaluation or the NMPHSPA requirements apply, a 45-day public review and comment period is required.

Public Involvement

It is recommended that the T/LPA prepare a Public Involvement Plan when it is determined that an EA will be prepared.

One or more Public Information Meetings are typically held before circulation of the EA. These meetings gather citizen input for selection of alternatives for inclusion in the EA. Meetings are informal and may include a presentation on the purpose and need of the project, the project scope, and the opportunity for discussion. These meeting should include a NEPA representative as part of the NEPA process. No transcripts are required for Public Information Meetings, but comments must be summarized and included in the EA.

A Public Hearing is required if:

- There is a potential for substantial controversy;
- The T/LPA wants a hearing; and
- An agency with jurisdiction requests one.

If a Public Hearing is not necessary, the T/LPA will offer the Opportunity for a Public Hearing in the EA notice of availability published in the local press. Requests for a hearing will result, initially, in a meeting between the T/LPA and the requesting party. If concerns expressed can be settled in the informal meeting, then no hearing is required. If there is a substantial change in scope, such as a change in access or a change in capacity, then a Public Hearing is highly recommended. Further, if the public demonstrates substantial interest during the Public Information Meetings, a Public Hearing should be held.

The Public Hearing includes a formal presentation by the T/LPA's representative in addition to informal discussions. A transcript of the recorded proceedings and comments must be compiled after the meeting. The T/LPA will also summarize the hearing and comments and prepare appropriate responses. The T/LPA will coordinate the advertising, scheduling, exhibits, handouts, and meeting agenda.

Input Synopsis

An Input Synopsis is attached to the FONSI and FONSI Request, and submitted along with the FONSI document to FHWA.

I. INTRODUCTION AND PURPOSE

- Project description and summary;
- Project purpose and need;
- Summarize each alternative considered;
- Identify alternate selected by the design team; and
- List commitments from the EA/Public involvement.

II. PUBLIC INVOLVEMENT

- Give a brief summary of all public meetings; and
- List each oral comment and provide a comprehensive response.

III. WRITTEN COMMENTS

List each written comment and provide a comprehensive response.

IV. APPENDIX

- EA circulation list;

- Public hearing meeting transcript;
- Copy of hearing handout summary;
- Hearing sign-in sheets; and
- Copies of the display ad and publications.

Finding of No Significant Impact (FONSI) Request and FONSI

After the public availability and comment period for the EA is concluded and no significant impacts have been identified, the T/LPA contacts the NMDOT to request a FONSI. A FONSI must be endorsed by the NMDOT prior to approval by FHWA.

In addition to the Input Synopsis outlined above, the FONSI is accompanied by a FONSI Request letter on T/LPA letterhead, which must contain the following documentation:

- Any changes in the proposed action or mitigation measures as a result of the Public Hearing or EA review and any impacts of the changes;
- Identification of the selected alternative and a statement that "no significant impacts have been identified or are anticipated as a result of project implementation;"
- Total cost of the project, and funding sources and their respective amounts;
- If the project is being phased, the number of phases, timing for completion, anticipated funding
- Any necessary findings, agreements, or determinations required for the proposal (e.g. Wetland Finding, Section 106, Section 4(f), etc.) and not included in the EA; and
- A summary of all comments received on the EA or at the public meetings and appropriate responses to the comments; and a discussion of major issues and how they were resolved.

The FONSI Request, FONSI and Input Synopsis must be submitted to the NMDOT. If the NMDOT and FHWA determine that the proposed action has no significant impacts, a FONSI) will be issued by FHWA. If another regulatory agency requires an EA level of effort and issues their own FONSI, then FHWA usually will accept the agency's findings and will issue a concurrence letter.

The EA/FONSI must document compliance with NEPA and other applicable environmental laws, Executive Orders, and related requirements. This documentation is a part of the Administrative Record and is critical in the event of a legal challenge and is required to ensure funding. Changes in scope or in funding after document preparation may require a revised or new document.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

If it is determined that the proposed action is likely to cause significant impacts to the human or natural environment, then an EIS is required. Significance will vary from project to project and is based on context and intensity. However, the decision to prepare an EIS is not based strictly on a determination of significance and may hinge on other factors. Close cooperation with the NMDOT, FHWA, and other agencies and officials is critical for document preparation. Guidance for preparation of an EIS is available on-line. A study plan for agency coordination, environmental scoping, and public involvement should be submitted to the NMDOT/FHWA for review early in project development. An EIS level of effort is expensive and time consuming. It is strongly recommended that the T/LPA consult with the NMDOT Environmental Section and FHWA before considering such an expensive and labor intensive level of effort.

CULTURAL RESOURCE REQUIREMENTS

The National Historic Preservation Act of 1966 (NHPA), as amended, guides historic and archaeological preservation efforts on federal-aid projects. The Advisory Council on Historic Preservation (ACHP) has issued guidance for implementation of the NHPA in 36 CFR Part 800.

The NHPA and other regulations require consultation with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) during all phases of project development. The State Historic Preservation Officer is under the Historic Preservation Division, of the NM Department of Cultural Affairs. T/LPAs can contact SHPO at the following:

NMDOT of Cultural Affairs, Historic Preservation Division

Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, NM 87501
Phone (505) 827-6320

To assure full compliance with historic preservation regulations, FHWA's procedures in New Mexico require consultation with the SHPO and/or THPO for any FHWA federal-aid project that will require new right of way, or that will result in the disturbance of undisturbed ground within the existing right of way, or that could otherwise have an effect on a property on or eligible for inclusion in the National Register of Historic Places. The New Mexico Prehistoric and Historic Sites Preservation Act and the Cultural Properties Act provide similar protection for significant cultural and historic resources in on all projects.

Although consideration must be given to cultural and historic resources for every project, the level of investigation and documentation is determined by the NMDOT. This may include a Cultural Resource Inventory conducted by qualified individuals (archaeologists and/or historic architects) and coordination of survey results and recommendations with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). The cultural resources investigations should be described in reports that meet the standards established by the NMDOT, the Cultural Properties Review Committee, and any applicable land managing agency. For further guidance, refer to the NMDOT Cultural Resources Section web page: http://dot.state.nm.us/en/Infrastructure/Program_Management.html.

Or the Historic Preservation Division's web page: <http://www.nmhistoricpreservation.org>

Projects may require consultation with Native American tribes regarding traditional cultural properties regardless of land ownership. The T/LPA will need to consult with the NMDOT's Environmental Section to determine the need for tribal consultation as required by NHPA Section 106.

Cultural resource surveys may not be necessary for projects located in areas where no new ground disturbance will take place (such as pavement preservation projects) or that are not in the vicinity of historic buildings. The T/LPA will need to consult with NMDOT's Environmental Section to determine the appropriate level of effort for cultural resource investigation.

The T/LPA is responsible for all required archaeological investigations and for ensuring that the necessary consultations with the SHPO/THPO are complete.. For FHWA funded projects, the T/LPA will prepare the consultation letter on behalf of FHWA. The Environmental Section will review and sign the letter and will submit the letter and cultural resources report to SHPO. For NMDOT state funded projects, the T/LPA will consult directly with SHPO, but only after the Environmental Section has had an opportunity to review the cultural resources report and provide comment.

National Historic Preservation Act (NHPA) Section 106 Consultation Guidance:

For federally (FHWA) funded projects where a cultural resources survey is required by the NMDOT, the T/LPA will submit the cultural resources report along with a consultation letter to the NMDOT's Environmental Section with the following information:

1. Identification of funding (federal/FHWA)

2. Description of the proposed action
3. Area of potential effect
4. Input from consulting parties
5. Public involvement, as appropriate
6. Identification and evaluation of cultural resources
7. Recommendations for treatment of cultural resources (avoidance, mitigation etc.)
8. Determination of effect on National Register, NR eligible, 4(f), etc. properties
9. Assurance of compliance with commitments during construction

The consultation letter prepared by the T/LPA on FHWA will request SHPO/THPO concurrence with eligibility recommendations and a determination of effect. Anticipate 30 days for SHPO review. Include the SHPO/THPO consultation letter along with any comments in the NEPA document. Do not include the cultural resources report with the EA.

HAZARDOUS MATERIALS INVESTIGATION REQUIREMENTS

The T/LPA shall be responsible for all hazardous material investigations and clearances and for ensuring that they comply with NMDOT requirements and industry accepted practices for landowner liability protections. The NMDOT's Hazardous Material Assessment Handbook (HMAH) provides general guidance for all investigation levels of effort.

Hazardous materials investigations must be performed on all projects for which real estate will be acquired, soil will be disturbed, or if there is other evidence of high-risk conditions that may impact the project, construction personnel, or the public. Investigation levels of effort include initial site assessments (ISA) during which potentially contaminated properties are identified, Preliminary Site Investigations (PSI) during which the presence of contamination is confirmed, and Detailed Site Investigations (DSI) in which the extent of contamination is defined. Building material surveys are necessary when structures are affected by the project. Each investigation type is described in greater detail below.

1. Initial Site Assessment (ISA)

Guidance documents for Initial Site Assessments include ASTM Practice E 1527-05 and the NMDOT's Hazardous Materials Assessment Handbook (2010) (HMAH), available at the following link:
<http://dot.state.nm.us/content/dam/nmdot/PM/2010HMAH.pdf>.

In accordance with the ASTM Practice, an ISA must be performed by an Environmental Professional as defined in the EPA's final rule for all appropriate inquiries (known as AAI). The T/LPA shall be responsible for ensuring the hazardous materials investigations conform to the guidelines and the recommended reporting format presented in the HMAH.

The goal of an ISA is to determine the potential presence of hazardous material contamination in soils, groundwater, or structures within an existing or proposed ROW. Contamination may be present due to activities within the project area, or may have migrated into the project area from adjacent or nearby properties. The investigator must consider the nature and scope of the construction project and the degree to which recognized environmental conditions (REC) uncovered during the ISA may impact the project scope.

The assessment consists of four primary components, the first three of which, when used in concert, provide a portrait of property usage from the present time to first development. The four components include:

- Records review (historical and regulatory);
- Site reconnaissance;
- Interviews with persons knowledgeable about the property or properties and the area; and
- Reporting.

The ISA requirements detailed in the HMAH differ slightly from those listed in the ASTM E 1527-05 standard in that the T/LPA must include in the report, the T/LPA project scope and recommendations based on that scope. A more detailed description of the reporting components and a sample report format is available in the ASTM 1527-05 standard and the HMAH.

2. Preliminary Site Investigations (PSI)

ASTM standard guide for Phase II Environmental Assessments (E 1903 – 97, re-approved 2002) provides information which is relevant to the performance of PSIs. Because of the broad range of conditions that may present themselves during a construction project, no single guidance document is likely to include all potential scenarios. The EPA and the NMED have issued numerous guidance documents describing methods for the collection and analysis of environmental data. Due to the prevalence of petroleum hydrocarbons at contaminated sites within ROWs, the NMED Underground Storage Tank Bureau Guidelines for Corrective Action (“NMED Guidelines”) is among the more relevant of these guidance documents. Standard EPA test methods must be used for laboratory analysis of soils. The most common reference for these analytical methods is EPA’s Test Methods for Evaluating Solid Waste (SW-846) which is updated on a regular basis. The NMDOTs PSI protocol and its required reporting format are detailed in the HMAH.

The goal of conducting a PSI is to evaluate the RECs identified in the ISA process, insofar as the REC affects the project. This evaluation is designed to provide sufficient information regarding the nature and extent of contamination to assist the T/LPA in making informed decisions about ROW acquisition and/or the scope and design of the proposed project. It is not necessary to complete the delineation of the nature and extent of each REC identified; only to provide enough information to support the T/LPA decision-making process. In many cases, the confirmation of presence or absence of contamination and preliminary data regarding the extent and magnitude of contamination may be sufficient for these purposes.

The PSI typically involves intrusive investigation methods (drilling and/or destructive sampling methods), field screening, sampling and laboratory analysis of environmental samples. For this reason, health and safety preparations must be made and appropriate precautions practiced during all field work. Consultants and T/LPA staff participating in the PSI field investigations must be appropriately trained and enrolled in a medical monitoring program. Health and safety requirements required by the NMDOT are provided in the HMAH as are detailed discussion of the four PSI components listed below:

- Developing the scope of work
- Assessment activities
- Evaluation of the data
- Report of findings, conclusions, and recommendations.

3. Detailed Site Investigations (DSI)

The DSI involves all of the PSI components but is more focused on specific areas of contamination that were confirmed during the PSI. The reporting elements are identical to those for a PSI and are presented in the HMAH.

4. Building Material Surveys

The T/LPA must survey building materials for lead based paint (LBP) and asbestos containing members (ACBM) on structures that will be acquired, modified and/or removed during the course of construction. These surveys may be performed at any time during the site investigation (ISA, PSI or DSI) process, either separately or in concert, using applicable industry standards. The work plan shall be tailored to address specific on-site conditions at specified locations, including access. The sampling and testing program must be developed with respect to the T/LPA project scope.

FINAL DESIGN AND CONSTRUCTION

Final design, acquisition, and construction activities may proceed upon approval of a final NEPA document signed by FHWA (provided funding is available). The project may be advanced to construction upon approval of the final design and all appropriate certifications.

1. Monitor Commitments

Environmental commitments made during the location study and design phases of project development are to be monitored to assure that they are implemented during the project construction phase. Provisions must also be incorporated that will ensure commitments are properly maintained thereafter.

2. National Pollutant Discharge Elimination System (NPDES)

Projects that will disturb one or more acres of land will need an Environmental Protection Agency (EPA) permit in accordance with the National Pollutant Discharge Elimination System (NPDES). The EPA has approved a general permit for construction activities in New Mexico.

Compliance with the general permit will include filing a Notice of Intent (NOI), preparation of a Pollution Prevention Plan (PPP) to control erosion, and filing a Notice of Termination (NOT). The PPP erosion control plan must be available on-site and be modified if necessary to assure that it is effective. The NMDOT guidelines are contained in Section 211 of the NMDOT's Standard Specifications for Temporary Erosion and Sediment Control Measures. Other federal regulations require measures to prevent erosion and sedimentation of streams and rivers on every project. State laws, including the Water Quality Act, also protect water quality in New Mexico.

3. Reevaluations

The validity of the findings and conclusions of the environmental document is maintained only as long as the conditions surrounding the original analysis remain constant. Since conditions rarely remain constant, the T/LPA must be vigilant in its continuing reassessment of changes in project location and design features and changes in the surrounding area.

A new or supplemental environmental document is required whenever there has been:

- Substantial change in the proposal;
- Substantial unanticipated development in the area affected by the proposal;
- An unusually long lapse of time since the approval of the original document; or
- Identification of significant social, economic, or environmental effects not previously considered in the original document.

CHAPTER 6

INTELLIGENT TRANSPORTATION SYSTEMS

PURPOSE

Intelligent Transportation Systems and the Systems Engineering Process

If your project has any Intelligent Transportation System (ITS) elements, the FHWA requires a system's engineering process to be followed before federal funds will be authorized for use on it. If a project doesn't contain any ITS elements, the submitter needs only to complete Section 1 – namely identifying project location, project type and project contact. It allows us to cross-check with the architecture to determine if needs had been established within the project limits. It doesn't commit the project in any way to include ITS if there are already identified project needs – but it gives us an opportunity to open up the discussion and options that might be available.

How do you know if your project is an “ITS project”?

If your project will include deploying devices that can receive and share information and data, it is considered to include ITS elements. Examples of this include closed loop signal systems, dynamic message signs, video monitoring, road weather information systems, and traffic monitoring devices. Even if it is only a part of the project, in order for an entity to access funds for the project as a whole, the systems engineering process must be followed for those ITS elements.

What is the Systems Engineering Process?

Simply put, it is a method of project development and engineering that ensures a system will do what you want it to do and that what you want it to do is what is needed. The FHWA has a specific methodology that ensures the systems engineering process is correctly implemented. It is defined in 23 CFR 940 and must contain the following elements:

- Identification of the portions of the regional ITS architectures being implemented.
- Identification of the participating agencies roles and responsibilities
- Requirements Definitions
- Analysis of alternative system configurations and technology options to meet requirements.
- Procurement Options.
- Identification of applicable ITS standards and testing procedures
- Procedures and resources necessary for operations and management of the system.

How can you ensure the Systems Engineering Process is being used?

Odds are, a large portion of the SE process is already being used when you've developed your project. Though the processes may have occurred, they must be documented. The local FHWA office with input from the NMDOT staff has created a User's Guide entitled “Using Systems Engineering and Regional ITS Architectures for ITS Projects”. It, along with an on-line presentation on SE is available to local entities for use. For information on accessing that information, you can contact NMDOT's ITS Bureau at (505) 222-6550. These documents will provide assistance on how to comply with the SE process as defined by Rule 940.

Where can you go to get additional assistance?

The User's Guide provides information on where you can go to get additional information and once again, NMDOT's ITS Bureau is a resource you can access when assistance is sought. Our number is (505) 222-6550 or you can reach us at www.itsnmdot.org or www.itsnmdot.net.

CHAPTER 7

RIGHT OF WAY & UTILITIES

PURPOSE

General

The purpose of this handbook is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of the NMDOT staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbooks when conducting right of way business.

This handbook will help to ensure that state and federal laws and regulations pertaining to the right of way program are implemented in a manner that is efficient and cost-effective.

The NMDOT practices for all Right of Way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap. The NMDOT's right of way handbooks are intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the NMDOT implements these regulations in a manner that is efficient and cost-effective.

It is important to recognize early that completing the right of way process can also be time consuming. While the exact time to correctly go through the process is driven by the number of owners, one can generally expect that the time necessary will usually be a minimum of six months and more likely nine or more months. It is not uncommon, however, for the process to take twelve to eighteen months, and T/LPAs need to be cognizant of how this relates to project development process as a whole. Generally, there is no such thing as a one, two, or three-month acquisition process.

FHWA Provisions

The Right of Way Handbooks meet the requirements and are written in compliance with 23 CFR 710 and 49 CFR Part 24 as they relate to the Right of Way program.

The NMDOT follows uniform procedures, as contained in the Right of Way Handbooks, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

References to federal participation are included in this handbook for informational purposes only. The extent of federal participation in the cost for an acquisition should not be confused with the extent of the required compensation for the item under New Mexico State law.

Structure of Handbooks

The Right of Way Handbooks consist of ten volumes and a glossary as follows:

Number	Title
I	Preliminary Right of Way Studies
II	Lands Abstracting
III	Appraisal
IV	Acquisition
V	Relocation Assistance
VI	Property Management
VII	Tribal/Local Public Agency
VIII	Budget and Audit
IX	Office Procedures
X	Water Rights Acquisition
APPENDIX	ROW Handbook Glossary

Each volume is available on the NMDOT's website at <http://dot.state.nm.us/en/Infrastructure.html#e> linked through Divisions and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters, sections and subsections. Forms and sample documentation are available from each unit's supervisor. The main information phone number at Right of Way Bureau is (505) 827-0705.

AUTHORITY

General

The authority for the Right of Way Bureau functions is contained in the following:

New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Transportation Commission.

Executive Order No. 89-15 signed by Governor Garrey Carruthers, 3/30/89.

New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.

New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.

United States Code of Federal Regulations (CFR) Chapters 23 and 49.

Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

New Mexico Eminent Domain Code, with Special Alternative Condemnation Procedures, Sections 42-2-1 through 42-2-4 and 42A-1-1 through 42A-1-33, NMSA, 1978, as applicable.

New Mexico Relocation Assistance Act, Sections 42-3-1 through 42-3-15, NMSA, 1978.

New Mexico Real Estate Appraisers Act, Sections 61-30-1 through 61-30-23, NMSA, 1978.

Administrative Directives as issued by the Office of Inspector General with the New Mexico NMDOT of Transportation.

Uniform Act – Public Law 91-646.

Sections of laws and regulations may be quoted in this handbook for the user's convenience. Although it is the intent of the NMDOT to update this handbook to incorporate amendments to the law or regulations, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date legal foundation of the Right of Way program.

ORGANIZATION

General

PINF Finance prepares cooperative project agreements for T/LPAs receiving funding through the NMDOT.

If during the planning stage a T/LPA anticipates the need for right-of-way, the Right of Way Bureau should be contacted as soon as possible at (505) 827-0705.

T/LPA shall contact the Region T/LPA Coordinator when property must be permanently or temporarily acquired for roadway projects. The Right of Way Bureau Manager authorizes right of way certification. Without this certification, a T/LPA shall not be eligible to receive federal-aid.

Duties

The T/LPA should select a liaison to coordinate activities with the NMDOT. Only qualified personnel or contractors can be assigned right of way work. The appraisal, negotiation, and acquisition of property and relocation assistance processes are subject to many state/federal regulations.

The Right of Way Bureau will monitor, approve and offer guidance through various milestones in the process of acquiring right-of-way for federal-aid projects.

The Right of Way Bureau Manager shall only certify those right of way projects that conform to state/federal regulations.

Conflict of Interest

If the T/LPA liaison has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property, or a participating business association with the owner, or any other party of interest in the property sought, the T/LPA must consult the Right of Way Bureau for guidance.

Forms

Please contact the Right of Way Bureau for any needed form or additional guidance. The Section Manager can be phoned at (505) 827-0705.

PROCEDURES

TRIBAL & LOCAL PUBLIC AGENCY

General

This document was developed specifically for providing guidance to Local Public Agencies (T/LPAs) and New Mexico Department of Transportation ("NMDOT") staff in understanding and working through the right of way process, from project scoping and title search through Right of Way Certification, as it relates

to local government transportation projects funded with federal-aid monies and some state-funded projects. Generally, the procedures outlined herein do not apply to Severance Tax (ST), General Fund (GF), Municipal Arterial (MAP), County Arterial (CAP), School Bus Route (SBR), and Co-op projects.

However, if one or more of these state funding sources is used in conjunction with federal-aid funds, the whole project, including the right of way process, becomes “federalized” and the federal processes must be followed. Additionally, in certain situations, usually when State Road Funds used for a project where a road exchange is involved or the facility to be improved is on the State Highway System, the federal process described herein must be followed. This is also true if future federal-aid funds will be used for the project. The Project Agreement between the NMDOT and the T/LPA will stipulate the federal processes that must be followed.

The primary federal legislation that regulates the right of way process is the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” or the “Uniform Act”. One of its main purposes is to assure that property owners, from whom property is acquired for projects using Federal funds in any phase, are treated fairly, consistently, and equitably. Some provisions of the Uniform Act were amended in 1987. Several regulatory changes have also been made since 1987, as well. Please refer to <http://www.fhwa.dot.gov/realestate/index.htm> and to the NMDOT Right of Way Handbooks for the most current regulations and accepted procedures.

Some oversight and minimal guidance in complying with Uniform Act requirements on T/LPA transportation projects may be provided by the NMDOT’s Right of Way Bureau. Oversight, guidance, and interpretation are provided to the NMDOT by the FHWA New Mexico Division Office, Right of Way Officer. The right of way process is admittedly complex and one that should not be entered into without the availability of an experienced and knowledgeable right of way professional (staff or consultant).

Qualification to Perform Right of Way Activities

Qualification is the process whereby the Right of Way Bureau reviews the T/LPA's staff (or consultants), policies, and procedures to perform right of way activities. Using qualified personnel allows the T/LPA to perform these activities for federal-aid projects. Performing these activities without qualified personnel will jeopardize project funding. Related handbooks shall be used as applicable.

If the project is state funded and involves a road exchange project or a road that will become or remain on the State Highway System or if current or future federal-aid funds will be used for the project, then Right of Way Bureau review of procedures and use of qualified personnel is required, as specified in the project agreement. Use of qualified personnel, however, does not imply that the work product will automatically be acceptable to the NMDOT.

Qualification of the T/LPA should begin when it has become apparent during the scoping stage that right of way might be required on the project.

FHWA requirements concerning state and T/LPA qualifications are based on the following regulations:

23 CFR 1.3 Federal-State cooperation; authority of State Highway Department. “The Administrator shall cooperate with the States, through their respective State highway NMDOTs, in the construction of Federal-aid highways. Each State highway NMDOT, maintained in conformity with 23 U.S.C. 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.”

The NMDOT has overall responsibility for the right of way acquisition and relocation assistance activities on all federal-aid highway systems, even if a T/LPA is the lead agency. (23 CFR 710.201 (b)).

The NMDOT shall have a right of way organization adequately staffed, equipped, and organized to discharge its right of way responsibilities. (23 CFR 710.201(a)).

The NMDOT may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices are in substantial conformity with the NMDOT's accepted procedures or it will follow the NMDOT's procedures. It is the responsibility of the NMDOT to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects. (23 CFR 710.201(h)).

Due to the possible changes of personnel within T/LPAs and various changes in federal and state laws and requirements, a review of all qualified agencies may be made periodically to determine whether T/LPA procedures appear to be adequate to perform in conformance with state and federal requirements. The Right of Way Bureau will make T/LPAs aware of any changes in state and federal policies or procedures.

A T/LPA that has not used its right of way procedures for an extended period will be reviewed prior to starting any new projects. A new or "re" qualification is necessary.

All T/LPAs are required to notify the Right of Way Bureau of any policy or procedure changes that might affect their qualification status.

A T/LPA could lose its status as a qualified agency if discrepancies are brought to its attention but are not immediately corrected. Upon identification of the discrepancy by the NMDOT, an appropriate notice shall be sent to the T/LPA informing it that it may lose its status. Subsequent to the notification, if a T/LPA is still unable or unwilling to correct its procedures, a notice shall be sent to the T/LPA informing it that it is no longer qualified to perform right of way activities for federal-aid funded projects. The T/LPA will be notified that failure to comply will jeopardize funding for its project(s).

Monitoring Process

Monitoring (review) of T/LPA right of way work is the process whereby the NMDOT assures that T/LPA right of way practices are in accordance with applicable state and federal laws and regulations, and provides the necessary documentation for "Right of Way Certification". A Right of Way Certification is an important prerequisite to requesting funding authorization for all federal-aid and some state projects. It should be stressed that failure to conform to accepted policies and procedures will likely result in loss of reimbursement for all or part of a project.

It is the NMDOT practice to monitor right of way work on T/LPA transportation projects whenever federal funding (and certain state funding) is included in any phase of such projects. Monitoring must be sufficient to ensure that federal and state requirements are being met. If the T/LPA obtained qualification based on their own procedures, monitoring will be done to substantiate conformance with those procedures. Monitoring will be performed to ensure that each right of way function is being completed according to state/federal requirements. Monitoring allows corrective action, if necessary, to be performed in a timely manner. If a Right of Way Certification is prepared on the basis of an authorization to enter or right of entry, monitoring may continue until all the property rights have been acquired.

The Right of Way Bureau (ROW) may be contacted by the T/LPA to explain the monitoring program and offer limited guidance to identify and minimize potential problems. Following the initial contact, the T/LPA shall notify the Right of Way Division Bureau at each stage of right of way activity. Monitoring of the Right of Way process will be done according to the T/LPA Right of Way Acceptance Plan, Monitoring Procedure. (See Section 1.3)

Monitoring procedures may cover the following right of way elements:

1. Project Scoping Report (or combined Project Identification Form / Scoping Report.)
2. Title Search and Title Reports

3. Property Survey and Right of Way Mapping
4. Right of Way Map Review
5. Appraisal and Appraisal Review
6. Acquisition
7. Condemnation
8. Relocation
9. Right of Way Certification
10. Property Management
11. Water Acquisition
12. Government Land Transfers/Easements

If an agency has established a good record, and minimum monitoring reveals no significant variance from the regulations, then only minimal monitoring may be required. If minimum monitoring reveals substantial noncompliance or repeated errors, then project funding may be jeopardized.

A compliance check sheet for each right of way function being monitored will be completed by the T/LPA on each parcel that has been selected for review, and shall be retained in the project file. If any work needs to be corrected, the Right of Way Bureau will communicate the proposed corrections to the T/LPA in writing. A follow-up inspection may be performed to ensure that the corrections have been performed.

Training

The NMDOT is responsible for informing the T/LPA of the specific right of way requirements for different types of projects. The T/LPA is responsible for training of T/LPA personnel. The NMDOT also has an obligation to assist and educate the T/LPA in the proper procedures that must be followed during the entire right of way process. The Right of Way Bureau can provide information on any laws and regulations that must be complied with. The ROW may also provide sample forms for the guidance and possible use of the T/LPAs.

Environmental

It is important to recognize the interrelationship, during project development, between environmental documentation and various right of way activities. The Environmental Document, whether it is a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement, must be approved by FHWA prior to acquisition, relocation, and Right of Way Certification. Only under very extenuating circumstances can this requirement be waived.

Once FHWA has approved the Environmental Document, the NMDOT's Region T/LPA Coordinator will notify the Right of Way Bureau, and in turn the T/LPA will be notified that, assuming everything else is in order, right of way acquisition and relocation assistance activities may commence.

T/LPAs must be alert to the possible existence of contaminated soil or hazardous materials within properties that may potentially be acquired, including for use as easements. The early detection of contaminated soil or hazardous materials in the right of way to be acquired is a major issue with regard to project cost and liability that may be potentially incurred. The possibility of soil contamination or the presence of hazardous materials should be addressed as soon as the potential for its existence is discovered during project scoping.

Title Search

The acquiring agency must obtain title information on each project prior to initiating property survey and right of way mapping necessary for right of way acquisition. This is to ensure that all interest holders on a project are identified. The following elements are required:

1. A thirty-three (33) year certified title search (or longer if required) for every parcel affected in the right of way acquisition. This applies to right of way takes and Construction Maintenance Easements (CMEs);
2. A Chain of Title (Index) reflecting all transactions affecting each parcel and copies of all pertinent documents described in the Chain of Title (Index);
3. A five year Tax Search (or computer printout) reflecting the current assessed owner, address, description of property, and the status and amount of taxes for the current assessed year - whether paid or unpaid;
4. Title sheet(s) that show current owner and address of record and description of property being abstracted; and
5. Work map and index identifying each parcel abstracted.

Only mortgages, liens, and judgments that have not been released should be shown. On any probate or district court proceedings, only pertinent proceedings need to be shown. The complete case file is not required. A licensed and bonded title company should prepare all title reports.

For Temporary Construction Permits (TCPs), the Title Sheet should show the current owner and address of record, the description of the property, and the document creating ownership.

Federal regulations provide that expenses incidental to transfer of real property to the agency are reimbursable on federal-aid projects.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for the following:

Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the T/LPA.

Penalty costs and other charges for prepayment of any pre-existing recorded mortgages that were entered into in good faith and are encumbering the real property.

The pro rata portion of any prepaid real property taxes which are allocable to the period after the T/LPA obtains title to the property or effective possession of it, whichever is earlier. (49 CFR 24.106 (a)).

Whenever feasible, the T/LPA should pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the T/LPA. (49 CFR 24.106 (b)).

Property Survey/Right of Way Mapping

The property survey must be done by a licensed surveyor who shall certify (and stamp) the right of way map(s) and legal descriptions. The current version of the NMDOT's "Right of Way Mapping Development Procedures" explains in detail all right of way mapping requirements. A copy of this document may be obtained from the NMDOT's Survey and Lands Engineering Division.

Right of Way Maps shall be submitted by the Region T/LPA Coordinator, who will transmit the maps to the NMDOT's Survey and Lands Engineering Division for review. Lands Engineering will not accept direct submittals from T/LPAs. Once the review is completed, the Survey and Lands Engineering Division will transmit the materials and a memo to the Right of Way Bureau with recommendations and/or a

statement that the maps are reasonable for use in appraisals. The T/LPA will be notified of the review results.

Additionally, if the proposed construction is contained within right of way previously acquired by the T/LPA or within the State Highway System right of way, the T/LPA shall transmit to the Right of Way Bureau the following:

1. Two (2) sets of the construction plans on which the existing right of way lines are clearly shown, labeled, and referenced to centerline of survey. The right of way should be shown crosshatched.
2. Two (2) copies of the documentation substantiating the method (deed, plat, etc.) by which the right of way was acquired. This shall include deed and plat reference dates.
3. For any existing right of way acquired after January 2, 1971, a certification with documentation that this right of way was acquired in conformance with the Federal "Uniform Relocation Assistance and Real Property Acquisition Act of 1970" is necessary.

The requirements of the Uniform Act are very specific. They apply to property acquired after January 2, 1971, on routes eligible for federal-aid funding. T/LPAs contemplating right of way acquisition on or adjacent to such a route are advised to contact the Right of Way Division. Failure to comply will jeopardize the use of federal funds on the project.

Appraisal

Before the initiation of the acquisition process, the fair market value of parcels to be acquired must be determined by a qualified appraiser. T/LPAs (or fee appraisers) must be properly qualified in accordance with the New Mexico Real Estate Appraisers Act. The minimum qualifications for an appraiser, as set forth in the NMDOT's Right of Way Handbook, Volume III, - Appraisal, shall be certified to the Right of Way Bureau. The ROW may review the qualifications of the proposed individual(s). If the T/LPA hires a consultant for the appraisal function, a copy of the contract between the T/LPA and the consultant shall be provided to the Right of Way Bureau.

Establishing "just compensation" is regulated by NMDOT standards and procedures. The T/LPA's staff or fee appraiser must recommend the just compensation in compliance with current NMDOT policy and federal regulations. On request, the Right of Way Appraisal Supervisor may provide guidance of the appraisal function.

The format and level of documentation for an appraisal depend upon the complexity of the appraisal situation. Detailed information on requirements is contained in the NMDOT's Right of Way Handbook, Volume III - Appraisal. The Right of Way Division Appraisal Supervisor may coordinate with a NMDOT Review Appraiser to provide answers to any specific questions or guidance.

The T/LPA shall give the property owner the opportunity, in writing, to accompany the appraiser on a tour of the property.

Under certain conditions the T/LPA may request permission in writing to use the NMDOT's appraisal waiver process. An appraisal may not be required if the property owner is donating the property and releases the T/LPA from this obligation or the T/LPA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LPA determines to use the Appraisal Waiver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the "Donation of Real Property Form", which may be obtained from the NMDOT's Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue Service Code. It is also important to note that even if property is donated, the project's routine environmental requirements must still be met. Additionally, caution must be used to assure that contaminated property will not be donated unless and until appropriate hazardous materials remediation measures are accomplished to the satisfaction of the NMDOT.

Appraisal Review

The NMDOT may conduct the Appraisal Review actions unless specific prior arrangements have been made and documented. The NMDOT's Right of Way Bureau Review Appraiser is responsible for the sufficient review of appraisal reports of real property to be acquired in connection with federal and some state funded transportation projects.

The appraisal review will assure that the appraisal conforms to federal and state statutes and regulations prior to the initiation of acquisition. In no event will the appraisal review function be contracted to a consultant.

Acquisition

While one goal of the T/LPA is the completion of its project in a timely manner, there are no short cuts around the acquisition process. The type of project, its design, and method of construction may vary, but the acquisition process will remain the same. Acquisition is one of the most sensitive aspects of the activities that the T/LPA will be involved with since it involves direct personal contacts with property owners.

The T/LPA's primary goal during the acquisition process is to acquire any property rights required to build the project. The Acquisition Agent should be a person on the T/LPA staff (or their fee negotiator) that is qualified to perform acquisition. In cases where the T/LPA has untrained or insufficient staff to perform the acquisitions, fee negotiators hired under contract may be used, with certain stipulations. The T/LPA will be required to furnish a summary, such as a resume, of the individual(s) being proposed for use by the T/LPA. The Right of Way Bureau may review the person's qualifications.

Fee negotiators must be employed through written contract, a copy of the proposed contract with selected bidder must be supplied for concurrence with the Right of Way Bureau. The amount of the compensation (fees) should be established on a parcel or owner basis and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

Before any offer can be made to a property owner, the Acquisition Agent must have the reviewed and approved appraisal, stating fair market value and including any damages or benefits for the parcel. Right of Entry may not be used prior to presentation of a written offer of fair market value based on a reviewed and approved appraisal.

Any T/LPA utilizing state and/or federal-aid funds for any portion of a transportation project must ensure that owners of property rights to be acquired are treated fairly, equitably, and consistently.

The Acquisition Agent must make all reasonable efforts to personally contact each property owner or their designated representative at a time and place convenient to the property owner. The property owner must receive an explanation of the acquisition process, which should be supplemented by a copy of the acquisition brochure. Copies of the brochure are available from the Right of Way Bureau.

A formal Letter of Offer must be presented to the property owner showing the determination of fair market value for the property. The formal Letter of Offer must contain a Statement of Offer, a description and location of the parcel to be acquired, and a summary statement identifying compensation for fee land, easements, improvements, damages, etc. Identification of any buildings, structures, and improvements being acquired that are considered part of the real property must be included.

The Acquisition Agent must give the property owner the opportunity to present any information that the owner feels might affect the value of the property and was not considered in the appraisal. Any new information must be considered, and the appraisal should be updated if necessary to establish a new offer.

Right of way acquisition by exchange for additional construction features, (turnouts, drainage, access, etc.) may be used in certain cases. This form of compensation must be clearly noted in the contract (contact the Right of Way Bureau for sample forms). Unreasonable exchanges may not qualify for reimbursement and must be approved by the T/LPA, the NMDOT District Technical Services Engineer, and Right of Way Bureau Manager, who shall initial and date the contract.

Under certain conditions, the purchase price for property to be acquired may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and an authorized T/LPA official justifies in writing to the ROW Acquisition Supervisor such "administrative settlement" as being reasonable, prudent, and in the public interest according to the NMDOT's Right of Way Handbook, Volume IV - Acquisition. The T/LPA shall identify to the Right of Way Division the responsible official who has authority to approve administrative settlements. In arriving at a determination whether to approve an administrative settlement, the designated official must give full consideration to all pertinent information and prepare a written justification which indicates that available information (e.g., appraisals, including the owner's appraisal if one is available, recent court awards, estimated trial costs, and valuation problems) support such a settlement. The extent of the written justification is a judgmental determination and should be consistent with the situation, circumstances, and amount of money involved.

Reimbursement of right of way costs will not occur unless all written justifications have been transmitted to the Right of Way Bureau for approval. All counter offers proposed by a property owner shall be made in writing and shall be addressed to the appropriate T/LPA official.

Real property may be donated for project right of way. Property owners who wish to donate all or part of their property, any interest thereof, or the compensation which they could have received for the property must be fully informed by the T/LPA that they may receive just compensation. Property owners must not be coerced or pressured into donating property.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LPA determines to use the Appraisal Waiver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the "Donation of Real Property Form", which may be obtained from the NMDOT's Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue Service Code. It is also important to note that even if property is donated, the project's routine environmental requirements must still be met. Additionally, caution must be used to assure that contaminated property will not be donated unless and until appropriate hazardous materials remediation measures are accomplished to the satisfaction of the NMDOT.

An individual file shall be maintained for each ownership. The Acquisition Agent shall maintain timely, complete, and adequate records of all negotiations, on an ownership basis. The record shall be written in a permanent form and completed within a reasonable time after each contact with the property owner. The need to document each property owner contact and/or any pertinent information concerning every parcel should be emphasized. The finished report shall be signed and dated by the Acquisition Agent. Samples of this "negotiator's log" may be requested from the Right of Way Bureau.

Records shall also be maintained on an individual parcel/project basis. Furthermore, all records shall be kept for at least three (3) years from submittal of the final request for right of way reimbursement by the T/LPA. The parcel file should contain copies of the Title Report, Reviewed and Approved Appraisal, formal Letter of Offer, Right of Way Map, copies of the signed contract, signed and notarized conveyance documents, any loan releases, justification for settlements, and the signed and dated negotiator's log.

NMDOT and FHWA personnel shall be provided access to project right of way files upon reasonable notice.

Relocation

Federal and state laws and regulations mandate specific rights and entitlement of individuals, families, and businesses, farms, and non-profit organizations displaced by transportation projects and required to relocate due to the public acquisition of right of way. Generally speaking, all residential, business, farm and non-profit organizations meeting occupancy requirements on or before the date negotiations began are eligible for relocation assistance. Owners of personal property, including outdoor advertising “billboard” signs may also be eligible for relocation assistance.

Legal requirements for implementing relocation assistance are lengthy and detailed. T/LPAs are required to relocate any persons or businesses displaced by projects that are funded with federal or certain state funds. T/LPAs must contact the Right of Way Relocation/Specialty Unit for guidance and a proposed list of T/LPA staff or fee relocation agents must be submitted to the Right of Way Bureau for review prior to the initiation of relocation activities (See Volume V for Relocation Procedure). Relocation actions are subject to significant, detailed Right of Way oversight and approval. Due to the highly complex, sensitive and time consuming nature of the relocation assistance process, the T/LPA shall first contact the Relocation/Specialty Unit Supervisor to determine the availability of experienced NMDOT personnel to perform the relocation assistance activities prior to contracting out professional Right of Way Relocation Services.

Encroachments

An illegal encroachment is the unauthorized use of public right of way for any purpose other than that of public travel and/or the placing of any type of structure or personal property into public rights of way without the expressed written consent of the NMDOT. Rule 88-5 (L), (18 NMAC 20.5), dated March 30, 1988, defines encroachments as “An intrusion into, under, upon, or over highway right of way by a permanent structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, Christmas displays, and banners.” All encroachments should be noted on project plans so that appropriate action can be taken to remove them. For projects on state and federal highways, contact the Property Asset Management NMDOT Division for guidance.

Right of Way Certification

Following completion of all right of way activities (title search, property survey, right of way mapping, appraisals and review, acquisition, and relocation) and prior to receiving authorization to advertise the physical construction for bids, the T/LPA shall complete a Right of Way Certification and submit it to their Region T/LPA Coordinator.

1. All necessary right of way, including control of access rights (where pertinent); have been acquired, including legal and physical possession. Trial or appeal of cases may be pending in court, but legal possession has been obtained. On parcels that have not been legally obtained and for which negotiations or the legal process is ongoing, right of entry has been granted. There may be some improvements remaining on the right of way, but all occupants have vacated the lands and improvements;
2. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with Title 49 CFR, Part 24, Subpart C - General Relocation Requirements. The T/LPA may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it would be in the public interest. The physical construction may then also proceed, but the acquiring agency shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved

from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the acquiring agency requests authorization to advertise for bids and to proceed with physical construction, where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore, including identification of each parcel, will be set forth in the acquiring agency's request, along with a realistic date when physical and legal occupancy and use is anticipated, as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained;

3. Right of way has been acquired or will be acquired in accordance with current state and FHWA directives covering the acquisition of real property, or that acquisition of real property was not required;
4. The T/LPA certifies either that there are no encroachments on the right of way or that all encroachments have been removed from the right of way on the project; and
5. All steps required for Relocation Assistance have been performed in accordance with federal and state procedures or no relocation assistance was required for the project.

Upon receipt of the Right of Way Certification, the Right of Way Bureau will review it. If the certification letter from the T/LPA is not acceptable, the Right of Way Bureau will inform the T/LPA as to what steps are required for compliance. After review of the Certification, the Right of Way agent will prepare an appropriate certification and submit it to the FHWA if federal-aid funds are being used. If only state funds are involved, the T/LPA will be notified in writing by the Right of Way Bureau that the certification is complete and correct or that changes are required.

Reimbursement for Right of Way Activities

Reimbursement for any of the costs of right of way activities must be specifically addressed in the Joint Powers or Cooperative Project Agreement.

For processing of reimbursements, copies of the following documents shall be submitted:

1. Any contracts between the T/LPA and fee appraisers, fee title examiners, or fee negotiators;
2. All invoices showing specific charges, and proof that payment has been made for the actual parcels;
3. Copies of all appraisals, and;
4. Any settlements above the reviewed and approved amount of the original appraisals, with supporting documents justifying the settlement.

All submittals will be reviewed for accuracy and duplication before payment is made according to Right of Way Monitoring Procedures. The reimbursement must be approved by the Right of Way Division prior to payment being made. The Right of Way Bureau will provide guidance to the T/LPA with any questions or issues concerning the reimbursement process.

When all requirements have been met, the Right of Way Division Bureau Manager will certify the work to the FHWA, as necessary and send a copy to the Region T/LPA Coordinator.

Property Management

Whenever right of way is acquired in the name of the T/LPA, the T/LPA is responsible for control of the right of way and all property management functions. By definition, property management is managing, administering, maintaining, and protecting any property acquired for transportation project purposes so that the public interest is served - property managers are stewards of the public interest. Property management begins when title is vested in the T/LPA.

The T/LPA property inventory should be continually updated for acquisitions and disposals. Rental of airspace, disposals of unneeded property, encroachment agreements, and changes in access control are all part of the management function. The T/LPA shall request state approval prior to any disposals, airspace agreements, changes in access control, or similar activities.

If federal-aid funds are used for any portion of property acquisition or project construction, the T/LPA is required to adhere to the NMDOT's procedures regarding property management as defined in the Right of Way Handbook, Volume VI - Property Management.

Records and Reports

All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance, payment records, and any other data or documents relative to any right of way activities shall be available for inspection at reasonable times by authorized representatives of the NMDOT, FHWA, and other authorized federal representatives. These records shall be kept and maintained for a minimum of three (3) years after completion of project construction.

T/LPA RIGHT OF WAY ACCEPTANCE PLAN

General

1. The T/LPA shall be responsible for certifying that all work has been performed as required according to federal and state statutes, rules, and regulations.
2. The NMDOT's Right of Way Division Bureau will review selected portions of the work to ascertain whether it appears to have been performed according to NMDOT standards.
3. Based on this acceptance plan, a written evaluation of the performance of all Right of Way activities by the T/LPA shall be made by the Right of Way Division Bureau Chief when appropriate statements have been received from the Lands Abstracting, Appraisal Review, and Acquisition Unit Supervisors.
4. When all requirements have been met, the Right of Way Division will certify the work to the FHWA, as necessary.

Land Abstracting

1. The T/LPA shall deliver a copy of the title reports and preliminary ROW maps to the Lands Abstracting Unit of the Right of Way Bureau for review.
2. The Lands Abstracting Unit will review a sufficient number of reports to determine whether the work was performed in conformance with applicable state and federal rules and regulations.
3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LPA.
4. When the work has been determined to be in substantial compliance, the Lands Abstracting Unit will inform the ROW Division Manager in writing that the work is acceptable.

Appraisals

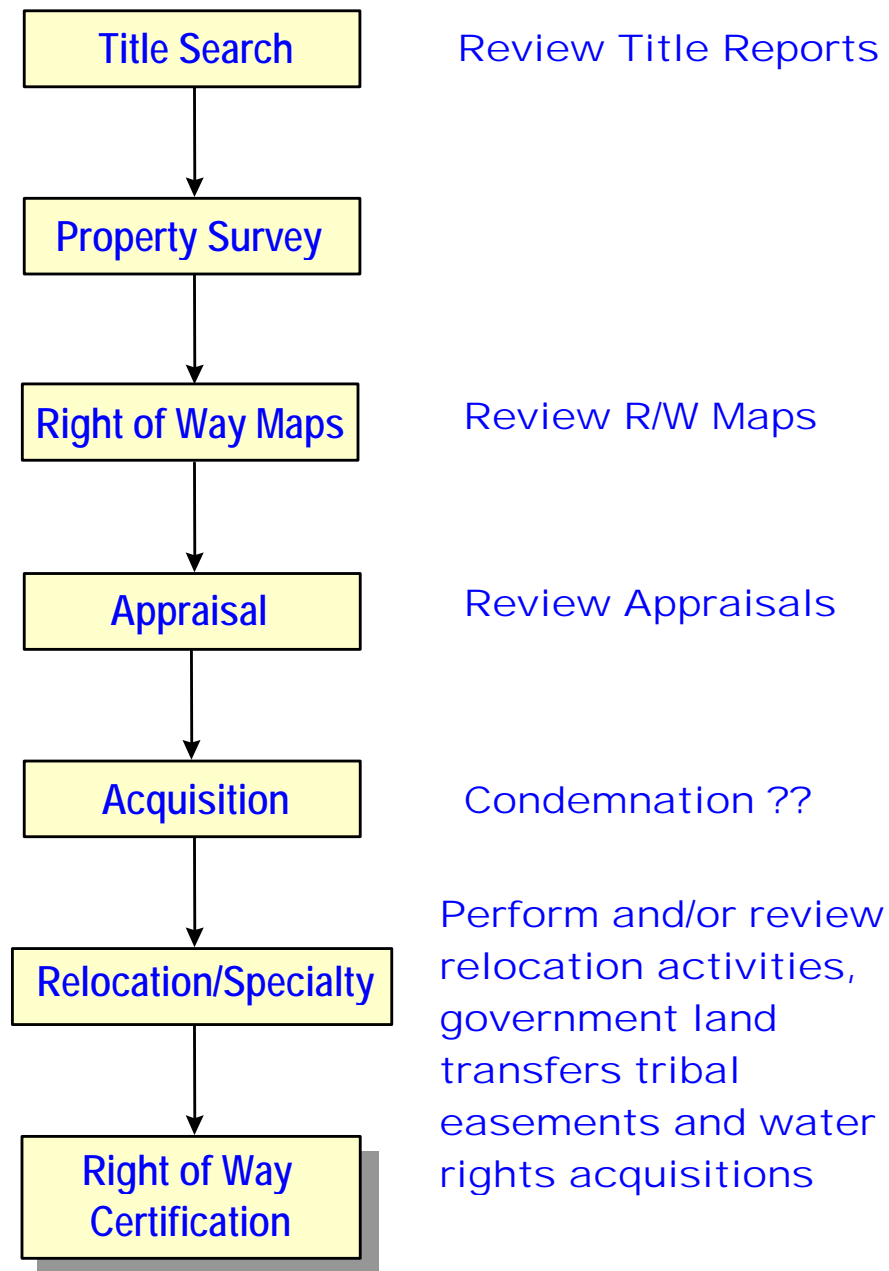
1. Before beginning any acquisition activities, the T/LPA shall deliver all appraisals, including the basic data, to the Appraisal Review Unit of the Right of Way Bureau.
2. The Appraisal Review Unit will review a sufficient number of reports to determine if the work was performed in conformance with applicable state and federal rules and regulations.

3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LPA.
4. The purpose of this appraisal review is to not to determine just compensation, but rather to determine whether the T/LPA appraisals conform to federal and state statutes and regulations.
5. In no event shall the review function be contracted by the T/LPA to a consultant.
6. When the work has been determined to be in substantial compliance, the Appraisal Review Unit will inform the Right of Way Bureau Manager in writing that the appraisals are acceptable.

Acquisition

1. When the appraisals have been sufficiently reviewed and accepted by the Right of Way Bureau Appraisal Review Unit, the T/LPA may begin acquisition activities.
2. When acquisition is complete, the T/LPA shall inform the Acquisition Supervisor of the Right of Way Bureau and schedule an on-site review.
3. The Acquisition Unit will review a sufficient number of payment packages to determine if the work was performed in conformance with the applicable state and federal rules and regulations.
4. All actions and documents relating to the acquisition of any particular parcel are subject to review by the NMDOT and the FHWA. This includes, but is not limited to, offer amounts, settlement agreements, applicable dates (title and/or appraisal), contracts, and signatures. Documentation supporting each acquisition must be maintained in a parcel file in the proper order.
5. In the event that a significant amount of work is found to be unacceptable, all submitted payment packages will be returned to the T/LPA. No approval will be issued for the project until the NMDOT's Right of Way Bureau is satisfied that the work meets federal and state requirements.
6. When the work has been determined to be in substantial compliance, the Acquisition Unit will inform the Right of Way Bureau in writing that acquisition activities are acceptable.

RIGHT OF WAY PROCESS



T/LPA RIGHT OF WAY ACCEPTANCE PLAN MONITORING PROCEDURES

General

All items submitted to the Right of Way Bureau for approval must be made through the Cost Scheduling Manager. The Cost Scheduling Manager will assure that the appropriate Right of Way Bureau receives the submittals sent from the T/LPA.

In order to assure compliance with applicable regulations, and in view of the fact that not all of the work will be reviewed, the following minimum considerations will be included in the assessment made by the appropriate Right of Way Bureau unit prior to certifying the portion of the work relating to their responsibility.

Land Abstracting

1. The qualifications of the firm and of the individual actually doing the research and/or examination will be determined.
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees.
3. The date of the last update relative to the signing of the conveyance documents and approval of the ROW maps will be noted to assure that the update is within the allowed limits.
4. The appropriateness of the type of search to the Right of Way Bureau need will be reviewed.
5. No less than one review of each type of research required will be conducted (Take, CME, and TCP).
6. Is Title Insurance provided?
7. Have all encumbrances been satisfied?

Appraisals

1. The qualifications of the firm and of the individual actually doing the appraisal will be determined (Appraisal Unit Supervisor).
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees (Appraisal Unit Supervisor).
3. If the Waiver of Appraisal was used, was written permission obtained from the NMDOT prior to the initiation of the appraisal process (Appraisal Unit Supervisor)?
4. Were the appraisals begun after the approval of the ROW maps (Contract Coordinator)?
5. Was the owner provided an opportunity to accompany the appraisal (Review Appraiser)?
6. Does the name and date on the Right of Way Bureau map correspond to the title report (Contract Coordinator)?

Acquisition

1. The qualifications of the firm and of the individual actually doing the acquisition will be determined (Acquisition Unit Supervisor).
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees (Acquisition Unit Supervisor).
3. The Letters of Offer will be checked to assure that they were not presented prior to the date of the reviewed and approved appraisal.
4. The process for Legal and Administrative settlements will be reviewed in all cases to assure that procedures were followed.
5. When donated property is involved, the acquisition process will be checked.

Relocation Assistance

1. The qualifications of the firm and of the individual actually performing the relocation assistance activities will be determined by the Relocation/Specialty Unit Supervisor.
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees by the Relocation/Specialty Unit Supervisor.
3. All computations/determination packages of any Relocation entitlement, including all required documentation, shall be reviewed and approved by NMDOT Relocation/Specialty Unit authorized personnel before presentation of that entitlement to the displaced.
4. All official Relocation letters of offer shall be reviewed and approved by NMDOT Relocation/Specialty Unit authorized personnel before presentation of any letter to a displaced.
5. All claims for payment, including all required documentation, shall be reviewed and approved by NMDOT Relocation/Specialty Unit authorized personnel before submittal of that claim package for payment.
6. Any other Relocation letter, document, or package needing an official signature shall be reviewed and approved by NMDOT Relocation/Specialty Unit authorized personnel before presentation of such.
7. Complete parcel file for each relocation performed shall be reviewed and approved by NMDOT Relocation/Specialty Unit authorized personnel before submittal of that parcel file to NMDOT Right of Way Records Unit.

UTILITY CERTIFICATION

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust utilities in order to accommodate the construction effort. For more detailed information on utility considerations, impacts, and guidance, please refer to the NMDOT's current Utilities Manual. A copy of the manual may be obtained from the NMDOT's Utilities Section.

Reimbursable Relocation Costs

NMSA 1978, Sections 62-1-2 and 67-3-12, as amended, provide for use of public right of way by utilities. NMSA, 1978, Sections 67-8-15 and 67-8-21, as amended, provide the authority for the NMDOT to reimburse for utility adjustments under limited circumstances. If the utility can provide the following, then the utility relocation may be compensable:

1. The utility owner must demonstrate a compensable property right, or that the relocation is necessary to accommodate a project on the Interstate System;
2. A pre-existing agreement between the parties, that has been executed and provides for reimbursement.

The T/LPA must send a draft of the proposed agreement to the Region T/LPA Coordinator, which will work with the Utilities Section and will review the agreement or discuss any necessary changes with T/LPA.

All records pertaining to utility relocation on federal-aid or state projects must be retained by the utility and the T/LPA for three (3) full years from the date of the final reimbursement. NMDOT and FHWA personnel shall be provided access to project records upon reasonable notice.

Documentation for Reimbursable Relocations

The minimum documentation required for relocations is listed below:

1. Copies or proof of compensable property interest, such as a private easement, warranty deed, or other property interest documentation;
2. A relocation plan diagrammed on the Highway construction plan and profile sheets showing the existing and proposed roadway features and utility relocation plan. The plan shall be drafted so that the utility relocation plans become a part of the original construction plan assembly, if possible;
3. A detailed estimate of the proposed relocation costs. A format of the detailed estimate is available from the NMDOT's Utilities Section;
4. A contractual agreement with prior approval from the Right of Way Division between the utility owners and the T/LPA addressing the relocations. Forms may be obtained from the NMDOT's Utilities Section;
5. Permit Application and Plans, if required, to install the utility or relocate the utilities within the public right of way;
6. As-built plans of the relocated/installed building utilities; and,
7. If road or street work involving utilities takes place within a railroad's right of way, a railroad agreement and related documents (e.g., railroad permit) may be required;

Other documentation as deemed appropriate by the NMDOT.

Non-Reimbursable Relocations

Non-Reimbursable relocations require that the utility owner pay for the relocations. Items 2, 5 and 8, outlined above, are also applicable in these cases.

T/LPAs must recognize that utility certifications are a critical component in the process of preparing a project for construction bids. This certification is a prerequisite to FHWA authorizing project funding and therefore, must be prepared in a timely manner. The T/LPA must certify that all utility relocation coordination and arrangements have been made. The T/LPA must identify all conflicts caused by the proposed construction and certify that negotiations to resolve these conflicts have been completed. If no relocations are required, the Certification Letter must so state.

The certification letter must be mailed to the NMDOT's Utility Section and Region T/LPA Coordinator at least thirty (30) calendar days prior to the anticipated PS&E Review date. This is to allow sufficient time to coordinate with the FHWA.

The following is required in the certification letter:

1. Identification of the utility owner;
2. Description and scope of relocation work, including the type and size of the facility and the extent of the relocation, including locations of relocations;
3. Who will perform the relocation and when the work will begin and end. If the exact dates are not known, the utility owner shall provide an estimate of time; and,
4. Who will be financially responsible for the relocation; are the costs reimbursable or non-reimbursable (participating or non-participating).

UTILITY SPECIAL PROVISIONS FOR INCLUSION IN HIGHWAY CONTRACTS

On projects that will involve concurrent utility and highway work, the T/LPA must develop and submit a Notice to Contractors that details which utility will perform concurrent utility work, the location(s) where the work will occur, who will perform the work, when it will start and end, a contact person and phone number, and any other details that may impact highway construction and operation. The Notice to Contractors must be submitted in final form along with the Certification Letter.

More information on either of these processes is available from the Utilities Section at NMDOT.

CHAPTER 8 RAILROAD

RAILROADS

Railroad Adjustments

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust railroad facilities, install warning systems, and/or provide new crossings. The state can, in some cases, use an existing railroad NMDOT Master Agreement or the Railroad and state can negotiate a new one. Agreement shall conform to the most current CFR relating to Railroad-Highway Projects.

Railroad Agreements differ from other type agreements for several reasons, the main ones being:

1. Each railroad favors a separate form of agreement;
2. A temporary or permanent use of railroad property may be involved, for which provisions must be made in the agreement;
3. Highway construction is performed on railroad property so that the railroad is interested in the highway construction plans for the proposed work on railroad property and/or rail operations;
4. Construction on railroad property entails certain risk of damage to railroad property and rail traffic. Provisions must be made in the agreement for protective services that provide for railroad flagmen, or other watchmen, and for protection of the railroad by the highway contractor in the form of insurance. The insurance provided by the highway contractor, obtained on behalf of the railroad, shall conform to the most recent CFR relating to, Railroad-Highway Insurance Protection and the NMDOT's current Standard Specifications for Highway and Bridge Construction, Section 107.25, Insurance Requirements, and any modifications thereto. In some cases, the insurance requirements may differ from those previously outlined, in which case such requirements must be handled as per arrangements between the NMDOT and the railroad.

In projects involving railroad right of way, the railroad company shall be furnished plans illustrating a tie from the highway project centerline to a railroad milepost. A proposed project typical section and other appropriate drawings and information shall also be supplied.

If the project involves a roadway crossing the railroad, either at grade or via a grade separation, the railroad USDOT Crossing No. shall also be included in the plans and documents.

The intent of this effort is to provide the railroad as much information as possible so that its engineers may evaluate the impact of the T/LPA's construction project on the railroad's facilities and tracks and also to develop the agreement and cost estimate in a timely fashion. Typically it takes the railroad six to twelve months to process an agreement. If any project changes occur that affect railroad property after the engineering authorization has been provided, the processes will most likely need to begin all over again, and as railroad personnel who reviewed the project plans prior to the change shall review other potential impacts to the railroad due to these changes.

For more detailed information on railroad considerations, impacts, and guidance, please contact the NMDOT Rail Facilities and Permitting Section within the Rail Bureau.

Standard Agreements - The written agreement between the T/LPA and the railroad shall, as a minimum, include the following, where applicable:

1. A reference to the provisions of the 23 CFR, Part 646, Subpart A, and Subpart B, and also 23 CFR, Part 140, Subpart I, as a part of the text;

2. A detailed statement of the work to be performed, including the obligations of both parties;
3. The method of payment, lump sum or actual cost of the work performed;
4. On projects which are not for the elimination of hazards at highway/railroad crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense shall be outlined;
5. The railroad's share of the project cost, if any;
6. An itemized estimate of the cost, and description of the work to be performed by the railroad;
7. Provisions regarding reimbursement record keeping and audits;
8. Method to be used for performing the work, either by the forces of the railroad, or by contract awarded to the lowest qualified bidder, or by a contractor on a continuing contract at reasonable rates;
9. Maintenance responsibilities;
10. Form, duration, and the face amount of the insurance policy(s) required, or certificates of insurance attesting to the adequacy of coverage required for contractor work on railroad property;
11. Appropriate reference to or identification of plans and specifications;
12. Statements defining the conditions under which the railroad will provide or require protective services during the performance of the work, the type of protective services and the method of reimbursement to the railroad;
13. Provisions regarding inspection of any reimbursable work performed; and,
14. The T/LPA must send a draft of the proposed agreement to the Rail Facilities and Permitting Manager. The Rail Facilities and Permitting Section will review the agreement or discuss any necessary changes with the T/LPA.

RAILROAD CERTIFICATION

T/LPAs must recognize that railroad certifications are a critical component in the process of preparing a project for construction bids. This certification is a prerequisite to FHWA authorizing project funding and therefore, must be prepared in a timely manner. The T/LPA must certify that all railroad coordination and arrangements have been made. The T/LPA must identify all conflicts caused by the proposed construction and certify that coordination to resolve these conflicts have been completed. If no coordination is required, the Certification Letter must so state.

The certification letter must be mailed to the NMDOT's Rail Facilities and Permitting Section Manager and Region T/LPA Coordinator at least thirty (30) calendar days prior to the anticipated PS&E Review date. This is to allow sufficient time to coordinate with the FHWA.

The following is required in the certification letter:

1. Identification of the railroad owner;
2. Description and scope of relocation work, including the type and size of the facility and the extent of effort;

3. Location of work in relation to the nearest track, whether or not work will occur within railroad right of way and whether or not work will occur within 25 feet of track. Railroad right of way is typically 100 feet to 200 feet in total width, but may be wider in station or yard areas. Vehicles, equipment and materials shall not be staged or stored within 25 feet of the nearest track.

RAILROAD NOTICES TO CONTRACTOR

On projects involving railroad facilities, it may be necessary to include a notice to contractor so as to include previously unavailable information that may affect bids in the Railroad T/LPA Agreement.

More information on either of these processes is available from the Rail Rail Facilities and Permitting Section within the Rail Bureau.

CHAPTER 9 TRANSIT

PRIMARY FUNCTIONS

The primary objectives of the NMDOT's Transit and Rail Division are as follows:

- Manage the New Mexico [Park and Ride](#) intercity bus service.
- Provide technical and coordination assistance to public and private non-profit transit operators.
- Administer federal transit grants used by the state's larger municipalities for Rideshare programs.
- Administer federal transit planning grants used by Metropolitan Planning Organizations (Metropolitan Planning Program (Section 5303)).
- Administer Congestion Mitigation Air Quality and Surface Transportation Program Urban funds used for transit purposes from the Federal Highway Administration.
- Assist T/LPA's to establish Regional Transit Districts (RTDs) and then assist the RTDs to plan, coordinate and implement service.
- Manage NM Rail Runner Express passenger rail service in partnership with the Rio Metro Regional Transit District.
- Provide support for commuter rail planning and operations for existing and proposed passenger rail service.
- Responsible for preparing and updating the New Mexico State Rail Plan
- Manage the inspection, maintenance and improvement of NMDOT-owned railroad property
- Apply for and administers Federal Railroad Administration grants
- Manage the railroad grade crossing safety improvement program
- Manage the railroad grade crossing permitting process

NEW MEXICO STATE MANAGEMENT PLAN FOR THE ADMINISTRATION OF FEDERAL TRANSIT GRANTS

The Transit and Rail Division assists the State in the establishment and maintenance of public and private, non-profit passenger transportation systems. Federal transit grants administered by the Transit and Rail Division on behalf of the Federal Transit Administration (FTA) is coordinated through a working relationship with the Regional Transportation Planning Organizations (RTPO), Metropolitan Planning Organizations (MPOs), local and tribal governments, private, non-profit organizations, and transit providers.

FTA requires each state to have an approved State Management Plan (SMP) on file with their regional office. The intent of the SMP is to document the State's mission, goals, policies, procedures and administrative guidelines for the FTA 49 U.S.C. Sections (§), 5310 and 5311, programs. The SMP outlines step-by-step application procedures for all FTA grants through NMDOT. Eligibility criteria, selection processes, timelines, and deadlines are explained.

Grant Program	Description
5303	Metropolitan and Statewide Planning Grants support cooperative, continuous, and comprehensive planning for making transportation investment decisions.
5310	Enhanced Mobility of Seniors and Individuals and Individuals with Disabilities Grant funds capital for programs to serve the special needs of transit dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services.

5311	Formula Grants for Rural Areas provides administrative, capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000
5311(c)	Public Transportation on Indian Reservations Grants provides funds directly to Indian tribes for public transportation services on Indian Reservations.
5311(b)(3)	Rural Transit Assistance Program funds transportation research, technical assistance, training and related support services in non-urbanized areas.

The SMP is updated regularly, and can be found on the NMDOT Transit and Rail Division website at http://dot.state.nm.us/en/Transit_Rail.html. For more information please contact 505-827-5435.

CHAPTER 10

ADVERTISING AND AWARD OF CONSTRUCTION PROJECTS

GENERAL

No federal-aid project may be advertised for construction bids until each of the following occurs:

1. The PS&E package has been certified in writing by the T/LPA;
2. FHWA has authorized the project in writing; and,
3. The NMDOT has provided the T/LPA written notification of project authorization.

The T/LPA shall request from their Region T/LPA Coordinator that federal funds be authorized. Upon authorization by FHWA, the PINF Finance will notify the T/LPA in writing that FHWA has authorized the project and that the project may be advertised for bids. After receipt of authorization to advertise, the T/LPA may advertise the project for construction bids.

BID PROCESS

No public agency shall be permitted to bid in competition with, or enter into subcontracts with, private contractors. The T/LPA is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state.

The assurance that prospective bidders meet the proper licensing requirements is the responsibility of the T/LPA.

Any contractor bidding on a project involving the expenditure of federal and/or state funds must be licensed in New Mexico by the Construction Industries Division of the Regulation and Licensing NMDOT. An out-of-state contractor who does not have the appropriate state contractor's license may bid on a federal-aid project. The NMDOT requires licensing before a contract may be executed. The T/LPA shall insure that the bidder has the required licenses and also MUST be on the NMDOT's Approved Contractor List before issuing a notice to proceed. A list of qualified bidders can be obtained from the NMDOT's Office of Inspector General by calling 476-0900 or on the following web site:

http://dot.state.nm.us/content/dam/nmdot/Plans_Specs_Estimates/PREQUALIFIED_CONTRACTORS_2017_14.pdf

Please note: this list is provided for informational purposes only and is not a guarantee that the bidder has the required license.

FEDERAL FUNDS

Federal aid projects previously approved in writing shall be advertised for a minimum of 21 calendar days prior to opening of bids. The advertising period begins when the first advertisement is published. The project advertisement shall achieve the widest possible coverage commensurate with the size of the project.

For all federal-aid projects, bidding opportunities on a nondiscriminatory basis shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin. No in-state resident preference is allowed.

No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

The T/LPA shall advise construction bidders that use of the B2Gnow and LCPtracker software programs is required and shall be considered incidental to the contract, and that failure of a contractor, subcontractor, or other recipient to use the software program will result in withholding future progress payments until such time as compliance with these requirements is achieved.

The T/LPA shall require all construction bidders to include the NMDOT Bidders List of Quoters form BL-DBE in their bid package at the time of bid submittal. The T/LPA shall advise bidders that failure to submit this form accurately and completely will render the bid non-responsive.

The T/LPA shall require all design or other consultant offerors to submit the NMDOT Design or Other consultant Offerors List of Quoters form No. A-1013 at the time of submittal of offeror or other consultant proposal. The T/LPA shall advise offerors that failure to submit this form accurately and completely will render the offeror's or other consultant's proposal non-responsive.

Projects with DBE Contract Goals:

1. When NMDOT has established a DBE contract goal, the contract shall be awarded only to a bidder/offeror that makes good faith efforts to meet it. NMDOT will determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following:
 - a. Documents that it has obtained enough DBE participation to meet the goal; or
 - b. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, the award must not be denied on the basis that the bidder/offeror failed to meet the goal.
2. In solicitations for USDOT-assisted contracts for which a DBE contract goal has been established, the following are required:
 - a. Award of the contract is conditioned on meeting the requirements of this section and failure to do so will render the bid non-responsive;
 - b. All bidders/offerors are required to submit the following information at the time provided in paragraph 2(c) of this section as a matter of responsiveness;
 - i. The names and addresses of DBE firms that will participate in the contract
 - ii. A description of the work that each DBE will perform
 - iii. The dollar amount of the participation of each DBE firm participating
 - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
 - v. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment
 - vi. If the contract goal is not met, evidence of good faith efforts
 - c. The bidder/offeror must provide the information required by paragraph 2(b) of this section as follows:
 - i. The information required by paragraphs 2(b) (i) through (v) shall be provided through submission of NMDOT Form A-585A as part of the bid packet at the time the bid is submitted.

- ii. The information required by paragraph 2(b)(vi) shall be provided through submission of NMDOT Form A-644 4:00 p.m. of the fifth working day after the bid opening.
 - iii. The information required by paragraph 2(b)(vi), if necessary, shall be provided by 4:00 p.m. of the fifth working day after the bid opening.
 - iv. The contracting agency shall make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing itself to the performance of the contract by the bidder/offeror. This assurance shall be documented through a compliance notification issued by the NMDOT Office of Equal Opportunity Programs.
- d. If the apparent successful bidder/offeror has failed to meet the requirements of paragraph A of this section, the T/LPA will, before an award of the contract is made, provide the bidder/offeror, in writing, an opportunity for administrative reconsideration. In such an instance, the T/LPA shall contact the NMDOT Office of Equal Opportunity Programs (OEOP) for guidance on the process.
- i. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
 - ii. The NMDOT will assign a reconsideration official who did not take part in the original determination that the bidder/offeror failed to meet the goal or made adequate good faith efforts to do so.
 - iii. The bidder/offeror will be given the opportunity to meet in person with the NMDOT reconsideration official to discuss the issue of whether it met the goal or made adequate good faith to do so.
 - iv. NMDOT will send the bidder/offeror and the T/LPA a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
 - v. The result of the reconsideration process is not administratively appealable to USDOT.

Should an addendum be necessary during the advertising period to change something to the approved PS&E package, such addenda shall be transmitted to all individual contractors holding the plans, specifications, and bid document data. Each bidder shall present, with its bid, written notice of receipt of each addendum.

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount. If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening.

After the bid opening, the T/LPA's engineer checks to verify that all required bid documents have been properly submitted and executed by all bidders. All bids must then be reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked, confirmed, and certified. Additionally, the T/LPA shall submit all bid packets, including all DBE related forms, to the NMDOT's OEOP for their review and determination of each bidder's compliance and responsiveness.

When the construction contract contains an incentive clause which encourages the contractor to propose changes which will accomplish the project's functional requirements at less cost and the successful bidder has used this option, the proposed changes shall be carefully studied and a justification prepared supporting or not supporting the changes.

The T/LPA engineer shall prepare a tabulation of bids showing the bid item details for at least the three lowest acceptable bids and the total amount of all other acceptable bids. The T/LPA engineer shall certify that these tabulations are correct. Adequate justification for rejecting any bids must be documented by the T/LPA.

STATE FUNDS

Projects funded entirely with state funds shall provide for a 5% resident preference in the contract. The contract shall require the bidder to include his state contractor's license number. Each bid shall be made on the forms furnished by the T/LPA and shall be signed by the bidder with the signature in full. If a partnership makes the proposal, it shall contain the name of each partner and shall be signed in the firm name, followed by the signature of the person authorized to sign. If a corporation makes the proposal, it shall be signed in the name of the corporation by the officer or officers having authority to sign contracts. The address and telephone number of the bidder shall be typed or printed on the proposal.

A unit or lump sum price, as required in the proposal, shall be submitted on each item of work for which bids are requested. Any omission of prices on items shown in the proposal form or any addition in writing to the form of bid, or any condition, limitation, or provision not officially invited in the proposal or special provisions may be cause for rejection of the bid as being incomplete or modified. Adequate justification for rejecting any bids must be documented by the T/LPA.

State funded projects shall be advertised for a minimum of ten (10) calendar days in accordance with the State Procurement Code.

CONTRACT AWARD

After bids have been tabulated and evaluated with the approval of the OEOP and T/LPA Region Coordinator the T/LPA may award the contract to the lowest compliant, responsible and qualified bidder. The T/LPA shall advise the contractor in writing of the award.

If the T/LPA determines that the lowest bidder is not qualified, it may award the contract to the next lowest compliant, responsible and qualified bidder, providing that the next lowest bid is otherwise acceptable. If necessary, the T/LPA shall document justification for the award to a low bid greater than seven (7) percent above the engineer's estimate.

Upon execution of the contract, the T/LPA shall issue a Notice to Proceed (work order) to the contractor, advising him of the date to commence work.

In addition, the T/LPA shall make distribution of the contract materials as follows:

FEDERAL PROJECT DISTRIBUTION LIST

Recipient	Contract & Plans	Final Detail Estimate	Notice to Proceed
NMDOT Region T/LPA Coordinator	Three Sets	Three Sets	Three Sets
NMDOT OEOP	One Contract	One Set	One Set
Bonding Company	One Set	-----	One Set

*Preferably on a CD

FAILURE TO COMPLETE A PROJECT

Title 23 - Highways, US Code (Highways) and FHWA Regulations stipulate that should a federal-aid highway project not be completed, any federal funds expended on the project must be repaid to the FHWA. These provisions apply to T/LPA Projects.

Any T/LPA that has received authorization to proceed with the development of a federal-aid project and fails to complete the project through construction must repay to the NMDOT all funds paid to the T/LPA for preliminary engineering, right of way acquisition, and/or construction in connection with the project.

INACTIVE PROJECTS

The NMDOT may terminate the Agreement if the federal funds have not been contractually committed between the T/LPA and a contractor within one year from the date the funds have been authorized by the FHWA.

The NMDOT 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 NMDOT determines a project to be inactive, the NMDOT may, in conjunction with FHWA, redirect the unexpended balance pursuant to 23 CFR Part 630.106.

The NMDOT may, at its option, terminate the Agreement if the T/LPA fails to comply with any provision of the Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

The T/LPA shall pay all Project costs that exceed the total funding amount specified in the Agreement.

FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the T/LPA's Engineer's Estimate of Probable Cost. The engineer's estimate shall be submitted to the Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.

After the project is advertised, bids shall be submitted to the Region T/LPA Coordinator, who will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106.A4. The T/LPA's approved responsive low bid for the project, including approved alternates, will be compared to the amount obligated. The NMDOT will allow a 15% increase over the base bid and any approved alternates to cover Engineering and Contingencies and Gross Receipts Tax. If the Bid is more than the amount programmed in the STIP the T/LPA is responsible for the overage. If the difference between the FHWA's obligation amount and the responsive low bid plus the 15% is within \$250,000, the amount of funds obligated will not change. If the difference between the obligation amount and the responsive low bid plus the 15% exceeds \$250,000, the difference will be deducted reducing the amount of funds obligated.

A T/LPA shall not be able to include additional scope of work not originally identified in the bidding documents for those projects that are bid for less than the amount programmed in the STIP unless the additional work is justified as a result of an unforeseen site condition or to address an unanticipated safety condition.

The T/LPA shall abide with the conditions identified within 23 CFR 635.120 in entirety. If the T/LPA identifies additional work as described above that may be justifiable in incorporating into the construction contract this work shall be reviewed and approved by the NMDOT prior to commencing with the additional work.

FEDERAL GRANT REPORTING REQUIREMENTS

Under the Federal Funding Accountability and Transparency Act, the NMDOT 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.

The type of information the NMDOT 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.

NMDOT will extract as much information as possible from the SUBGRANTEE'S grant application and standard reports. As specified in Section Four, Paragraph 28, the SUBGRANTEE will be required to provide the total compensation and names of the SUBGRANTEE'S top five executives, if applicable, and shall register with www.ccr.gov and DUNS and provide that information to the NMDOT.

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>.

T/LPAs shall register with www.ccr.gov and DUNS and provide such information to the NMDOT as well as the total compensation and names of the T/LPA's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.

If the T/LPA has received a combined \$500k in Federal Funding, which under OMB Circular A-133 requires the T/LPA to have a single audit performed, the T/LPA must provide the NMDOT a copy of the most recent completed audit report before the start of work

OFFICE OF INSPECTOR GENERAL REVIEWS

The T/LPA shall provide to all bidders the reporting and oversight requirements that they are bound to from the time of bid submission. The following provisions must be included in all prime contracts, subcontracts, and other contracts for services for a federally-funded project.

- 1) **Inspector General Reviews.** Any Inspector General of a federal NMDOT 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 NMDOT or agency concerned.
- 2) **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.
 - a) 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.

- b) 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 T/LPA administering the contract, regarding such transactions.
- c) Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

New Mexico Department of Transportation/Office of Inspector General as specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, has the authority to carry out all duties required. The duties 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 c

- 3) 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 NMDOTs 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). Moving Ahead for Progress in the 21st Century Act (MAP-21, 2012)

CHAPTER 11 CONSTRUCTION

CONSTRUCTION PROCEDURES FOR STATE AND FEDERAL AID T/LPA LEAD PROJECTS

DESCRIPTION

As a condition to accepting Federal-Aid highway funds, NMDOT in conjunction with the public entity agrees to follow all applicable project and program requirements as set forth in the New Mexico Department of Transportation Federal-Aid Highway Program Stewardship And Oversight Agreement.

The purpose of this section is to establish procedures, provide guidance and clarification to T/LPA Project managers and inspectors on the inspection and management of construction projects funded with Federal funds. This guide is not inclusive of all details and responsibilities of the T/LPA project personnel.

These procedures will be required on all state and federally funded T/LPA lead projects. Exceptions to these procedures will require a formal request from the T/LPA to the respective District Engineer with concurrence from the State Construction Engineer of the NMDOT.

It will be the T/LPA responsibility to ensure that all work meets either the Department's standards as set forth in the current New Mexico Department of Transportation Standard Specifications and Supplemental Specifications. For the purpose of this requirement alternative standards will require prior-approval by the District Engineer with concurrence from the State Construction Engineer of the NMDOT.

It is required that the T/LPA meet with the NMDOT District personnel to discuss the required project documentation, format, for submittals and procedures to be used to ensure adequate management of a federally funded construction project. This meeting should take place prior to letting the project to bid.

The T/LPA is responsible for the development of the project and for obtaining the required approvals from the NMDOT and FHWA prior to advertising the project for bids. It is the responsibility of the T/LPA to award the contract to the lowest responsible bidder.

The following is a list of items that should be discussed and agreed upon prior to letting a project to bid:

1. Project Staffing
2. Source Book Format – Project (Item installation tracking)
3. Project Development history, peculiarities, design issues, etc.
4. Environmental commitments
5. Material Testing Requirements
 - a. Testing Credits
 - b. Certificates of Compliance
 - i. All steel materials shall meet the “Buy America” requirement
 - c. Testing Equipment Certification
 - d. Material Guarantees and Warranties
 - e. Required Weekly and Monthly Reports for Material Tested
6. Progress Payments
 - a. Detail Estimate

- b. Format for Estimate
 - c. Forms to Accompany Estimate
- 7. Change Orders
 - a. Procedure
 - b. Format
- 8. Project Final Acceptance and Close Out

STATE RESPONSIBILITIES AT THE DISTRICT LEVEL

The District Office will concur in the award of the project and assure the construction oversight responsibility of T/LPA lead projects. These responsibilities include: performing and documenting periodic inspections of the construction project to determine that the applicable Federal, State and local rules and regulations are being followed; approval of change orders; performing and documenting the final inspection of the project; and making final acceptance of the project after the final estimate and documentation are submitted.

The District is also responsible for assisting the T/LPA with questions regarding record keeping and paperwork that is required including, but not limited to, Minimum Sampling and Testing Requirements, Certificates of Compliance, Equal Employment Opportunity (EEO) reports, DBE reports, preparation of change orders, source document books, etc. A District representative will be assigned as the point of contact for the T/LPA for each project. The District representative may be the Assistant District Engineer or a person designated by the Assistant District Engineer. The District representative will inspect the project and project documentation at random to determine that the project is being constructed in accordance with the contract, plans and specifications. The District personnel will randomly audit projects as deemed appropriate by the District Construction Audit Section.

The District is responsible for processing reimbursement requests for construction projects. The District will provide guidance on the documentation required for a reimbursement request. The District is responsible for working with the T/LPA to assure that the proper documentation is provided. The District may also provide guidance to the T/LPA in ensuring that project is constructed in a safe manner that does not cause a safety problem for the public.

MATERIALS

All materials incorporated into the construction project must be in strict compliance with the NMDOT standard specifications, supplemental specifications, contract requirements, and/or approved alternative standards.

Materials incorporated into the project may include but not limited to the following:

- 1. Soils,
- 2. Aggregate,
- 3. Concrete,
- 4. HMA/WMA (Asphaltic Materials),
- 5. Steel and metal components,
- 6. Culverts,
- 7. Utility Appurtenances,
- 8. Traffic Control/Safety Devices, and
- 9. Paint.

All materials incorporated into the construction project must be have a certificate of compliance and/or must be tested in accordance with Technician Training and Certification Program (TTCP) guidelines in order to insure quality of materials.

Items three (3) and four (4) above should be tested by a TTCP certified inspector tester for compliance with approved mix design.

Materials that cannot be field tested shall be verified with the certificates of compliance.

The agreed upon reporting and documentation process shall be followed for all materials incorporated into the project. This includes materials that have been rejected and replaced.

CONSTRUCTION REQUIREMENTS

Preconstruction Conference

A Notice to Proceed is issued prior to or at the Pre-Construction Conference. The Pre-Construction meeting is scheduled and coordinated by the T/LPA Construction Project Manager or the Consultant. The Contractor and interested parties are given at least one-week notice to schedule and prepare for the meeting. It is suggested that the T/LPA's Project Manager, T/LPA's Inspectors, T/LPA's Office Manager, T/LPA's Designer, District Technical Support Engineer, Assistant District Engineer, District Construction Audit Section, District Project Manager, the NMDOT OEOP, the Region Design Center TSE, and the FHWA Area Engineer (if the project is on the National Highway System or Interstate System) attend the Pre-Construction Conference.

Preconstruction Conference Agenda (Example)

DATE:

PROJECT:

STATE PROJECT NO.:

CONTROL NO.:

BID AMOUNT:

CONTRACTOR:

ENGINEER:

CONSTRUCTION MANAGEMENT:

1. Opening
 - a. Introduction of attendees
 - b. Responsibilities of key personnel
 - i. T/LPA Project Manager:
 - ii. Inspectors:
 - iii. Consultant:
 - iv. Contractor:
 - v. Superintendent:
 - vi. Traffic Control Engineer
 - vii. Others:
2. Preliminary Matters
 - a. Contract Status
 - b. Notice to Proceed
 - c. Subcontractors approval

- i. Form A-1086 & A-1088a permission to subcontract request with all required attachments (Responsibility of T/LPA)
 - d. Permits
 - i. Environmental Health
 - ii. NPDES
 - iii. Top Soil Disturbance
 - iv. Code Permits
 - v. Excavation/Barricades
 - e. Bulletin Board
 - f. Public Awareness/Public Relations
 - g. Plans and Specifications
 - h. Omissions and errors in the plans
 - i. Environmental issues and commitments
- 3. Construction Schedule
- 4. Effect on Utilities
 - a. Water and water shut off schedules
 - b. Sanitary sewer
 - c. Storm Sewer & By-pass provisions
 - d. Electric
 - e. Gas
 - f. Phone
 - g. Other (traffic signals/transit/interconnects/cable)
- 5. General Discussion on Contract
 - a. Contract time
 - b. Liquidated damages
 - c. Survey requirements
 - d. Project Inspection
 - i. Testing Laboratory
 - ii. Testing Procedures
 - iii. Special Inspections
 - e. Submittals
 - f. Pay Estimates
 - i. Certified Payrolls (prime and sub-contractors)
 - ii. Cut off Dates
 - iii. Certificate of Compliance
 - iv. Affidavit of Payment
 - v. Materials on Hand
 - g. Change Orders
 - h. Final Acceptance and Close Out
 - i. EEO/Labor Compliance/DBE
 - i. DBE/ Form A-644
 - ii. Certified Payrolls
 - iii. Requirements
 - j. Contractor's Operations

- i. Workers & Public Safety/ Occupational Safety and Health Administration (OSHA)
 - ii. Materials & Equipment
 - iii. Storage
 - iv. Subcontractors
- k. Miscellaneous
 - i. Complete Subcontract Packages
 - ii. Safety Questionnaire (Risk Management)
 - iii. Company EEO policy statement
 - iv. Name and address of project EEO Officer
 - v. Evidence of the indoctrination of supervisory personnel on company
 - vi. EEO Policy by Letter of Meeting
 - vii. Letter of Authorization of signatures

Project Staffing & Agency Responsibilities

The T/LPA shall demonstrate to the New Mexico Department of Transportation (NMDOT) that sufficient, adequately qualified personnel are assigned to a project to ensure compliance with all contract requirements by performing minimum testing, inspection, and documentation. To insure quality inspection all projects with State or Federal funding will utilize TTCP certification or pre-approved alternative in the respective field of testing and/or inspection. Failure to meet these requirements will be considered a violation of the terms and conditions of the Agreement (may constitute non-participation of funding).

T/LPA CONSTRUCTION PROJECT MANAGER'S RESPONSIBILITIES

The District T/LPA has the overall responsibility for the administration and satisfactory completion of the project. At a minimum, the following duties shall be performed:

1. Supervise activities for the inspectors and office personnel
2. Approve the issuing of all change orders
3. Obtain prior written authorization of contract change order from District Engineer
4. Prepare and negotiate all project change orders
5. Obtain approval of change orders from the Contractor, T/LPA and State
6. Coordinate project activities between the Contractor and State
7. Maintain public relations
8. Address all problems and/or concerns on the project
9. Approve and certify all project documentation and submittals (including source books, certificates of compliance, estimates, NPDES, payrolls, subcontracts, traffic control diary and testing reports)
10. Enforce contractor's compliance with contract requirements (i.e., Buy America, DBE, EEO, etc.)
11. Review of the A-1086 & A-1088a forms
12. Maintain a diary
13. Administer monthly progress payments
14. Reject defective material and workmanship
15. Interpret the plans and specifications

T/LPA INSPECTOR'S RESPONSIBILITIES

At a minimum, the Inspector shall perform the following duties:

1. Prepare a daily diary
2. Prepare Source Document Books – show pay quantities and quantity computations, prepare structure packages
3. Keep testing credits up-to-date

4. Schedule and/or perform testing
5. Prepare change orders
6. Inspect on-going operations – Measure quantities
7. Check for quality assurance (QA) of materials and workmanship
8. Maintain public relations
9. Utility coordination
10. Conduct EEO and Labor Compliance interviews
11. Prepare quantities for paying monthly estimates – cross-reference to source document books

The inspector has the authority to make minor modifications to quantities and plans to meet field conditions. The inspector does not have the authority to alter the provisions of the contract (i.e., changing scope of work, adding/deleting items or modifying specifications/design requirements).

T/LPA OFFICE PERSONNEL'S RESPONSIBILITIES

At a minimum, the following are the responsibilities of the Office Personnel:

1. Maintain project files including NPDES file if applicable
2. Verify percentage of subcontractor sublet on Form A-1086 & A-1088a, "Permission to Sublet"
3. Audit payrolls with EEO interviews and pay scales
4. Audit and file all structure test reports as per "Minimum Testing Requirements"
5. Prepare documents for requesting reimbursement from the State by auditing the following:
 - a. Contractor and subcontractor's payrolls
 - b. Certificate of compliance files
 - c. Documentation of payment from T/LPA to the Contractor
 - d. DBE for A-644
 - e. EEO for PR-1391 for all subcontractors and the Contractor
 - f. Summary of all testing credits
6. Audit Consultant's files
7. Review Source Books
8. Enter and /or confirm entry of all required information and payment data into B2Gnow and LCPtracker

T/LPA CONSULTANT'S RESPONSIBILITIES

Consultant's construction personnel such as project manager, inspectors and office personnel will assure the same duties as stated for the Construction Project Manager (CPM), inspector, and office personnel with the T/LPA.

Prepare change orders and submit to the T/LPA. The authorized T/LPA agent will sign the change orders and forward to the District.

Review and approve materials and shop drawing submittals.

Material Testing

Quality assurance (acceptance) testing shall be performed under the requirements of the Contract plans, specifications, and the latest NMDOT minimum testing requirements, and as directed by the T/LPA Construction Project Manager. The quality testing program requires acceptance sampling and testing and independent assurance sampling and testing. The T/LPA or their consultant is responsible for conducting all sampling and testing.

The NMDOT at their discretion may perform random sampling and testing of any materials on the project. The test results will not be considered as acceptance sampling and testing, but may be used to monitor the accuracy of the sampling and testing on the project.

CERTIFICATES OF COMPLIANCE

Some materials are tested at local project laboratories and other are tested at their area of manufacture. Qualified personnel shall do those tests conducted at their area of manufacture and a certificate of compliance will accompany the material to the construction site to convey its compliance with the applicable specifications. A lot number is usually assigned to the particular item or material being delivered and its certificate of compliance shall match the lot number delivered. Please refer to Section 106 of the current NMDOT's Standard Specifications for Highway and Bridge Construction, Control of Materials, for additional information.

Traffic Control Inspections

Contract documents shall require that Contractor designate a certified Traffic Control Supervisor during the life of the project. Contract documents shall require the Contractor to keep traffic control diaries. The T/LPA Project Manager or his representative shall review the diaries weekly. This requirement shall be part of the Contractor's pay estimate.

Traffic Control Plans (TCP's) and phasing of the project in the construction documents are to be followed as closely as possible (Reference Section 618 "Traffic Control Management" of the current NMDOT Standard Specifications). Minor changes to fit field conditions and requested by the T/LPA personnel will be documented. Major changes to the TCP and/or phasing shall be prepared, requesting prior approval from the NMDOT District Traffic Engineer prior to making any modifications to the traffic control in the field. Subsequent to prior approval, a change order must be prepared and submitted for NMDOT approval. All emergency changes and/or unsafe situations shall be handled immediately, verbally with written documentations to follow.

METHOD OF MEASUREMENT

Project Inspection Documentation

Project inspection is one of the most important aspects of a construction project as it will directly affect the project outcome and processing of documentations for reimbursement of funds for federally funded projects.

The minimum inspection personnel requirements shall depend on the complexities, nature and number of Contractor's operations and activities in accordance with the staffing guidelines. The T/LPA may hire a consultant to perform the inspection activities, but this will not relieve the T/LPA from its responsibility for ensuring proper and adequate inspection of the project.

SOURCE DOCUMENT BOOKS

The Source Document Books are prepared for all projects and the T/LPA will need to assign permanent file book numbers which will be used as a cross reference to the Project Daily Diaries and other supporting project documentations. These books may be permanent bound books or electronic format. Their purpose is for the progress and final recording for payment of all contract quantity pay items as they are completed; enumeration of plan quantity versus final quantity; and explanations of overruns and/or underruns from plan quantity. The overruns must be approved by change order and entered in the source book below the plan quantity. All quantities shown in these books must be in exact accordance with the Detailed Estimate.

Change Orders

A change order is defined as written order issued to the Contractor by the T/LPA covering contingencies, extra work, increases or decreases in contract quantities, payments for items for which there is no bid item unit price, additions or alterations to the plans or specifications within the scope of the contract, and establishing the basis of payment and time adjustments for the work affected by the changes, or adjustments to the original contract. A change order may

consist of a Supplemental Agreement or Field Sheet. A change order is the only method authorized for changing the Contract.

CHANGE ORDER NOMENCLATURE

The NMDOT has different types of change orders that are used on projects. The following descriptions of each type of change order are provided to clarify the nomenclature used by the NMDOT:

1. **FIELD SHEET:** Field sheets are defined as overruns and underruns of contract quantities, changes to the plans and contract that do not affect the length or scope of the project, or contract time. These changes are limited to 25% of the bid item on those items that are more than 10% of the value of the total contract amount.
2. **SUPPLEMENTAL AGREEMENT:** Supplemental Agreements are change orders, which do not fit the definition of a field sheet as described above. They require prior approval from the NMDOT. Prior approval is the method used by NMDOT to document the approval for additional work and is done in those instances when work must be done in order to expedite the project and while the cost negotiations are still taking place. Some examples of work required by a supplemental agreement include scope changes in materials or processes, change of project limits, establishing or deleting items, specification modifications, and extension of contract time.

BASIS OF PAYMENT

Change Orders

A Project Change Order as defined above may be utilized for extra work and legal changes in the contract or quantities, or both, establishing the basis of payment and time adjustments, if any, for the work ordered. The Change Order can consist of a Supplemental Agreement or a Field Sheet. A Change Order serves the multi-purpose of being an engineering document to secure approval to make the change, and an accounting document to inform those concerned about the cost of the change. A Change Order should be a self-supporting document, written clearly and concisely enough that it can be easily understood.

Change Orders often require computations, drawings, and/or other explanatory documents as attachments. The Change Order should clearly state the reason why it is necessary or desirable for the change to be made, and to correct problems with future projects before they occur.

The T/LPA may issue change orders on a project without prior approval from the NMDOT if the T/LPA will fund 100% of any cost involved in the change order. However, this may violate the terms and conditions of the Agreement and may constitute non-participation of funding for the entire project. Also, if the T/LPA funds 100% of any cost involved in the change order, the change order should not affect or involve any of the following items:

1. Modify the specifications
2. Change the contract time
3. Change the project limits
4. Change the project scope of work (i.e., add unapproved item of work or delete approved items of work)

If any one of the above listed items is affected by the change order, prior authorization/approval must be requested prior to initiating any change order work being authorized by the T/LPA. Also, if the T/LPA is requesting NMDOT and/or Federal participation for the change order work, prior approval must be requested and received from the NMDOT. If the project is on the NHS, prior authorization and/or approval should be requested and received from the FHWA.

PRE-AUTHORIZATION FORMS

The T/LPA is required to submit a request for pre-authorization prior to giving authorization to the Contractor to proceed with work that includes the work described in the supplemental agreement type of work. The pre-authorization form must be submitted by the T/LPA to the NMDOT District representative for their authorization of Federal funds if there are funds available. The District will forward this request to Funding Control for their authorization of Federal funds if there are funds available.

The pre-authorization form is used to obtain agreement from the District that the work is eligible for Federal reimbursement. However, this approval does not amend the Joint Powers Agreement (JPA) or the Cooperative Project Agreement (CPA). A separate request will be required, if necessary, to amend the Joint Powers Agreement or Cooperative Project Agreement.

CHANGE ORDER FORMAT

The items required in a Change Order are:

1. Description;
2. Reason for Change;
3. Cost Data;
4. FHWA Participation (Participating or Non- Participating); and
5. Time.

The description should include item number, item description, unit prices, and quantities for new items. Justification or reason for change should state the reasons for change. The cost data, a price justification should be noted. The NMDOT average unit bid price schedule may be utilized. Please see the following link: <http://dot.state.nm.us/en/PSE.html>. For time, the effect on contract time due to the change should be stated (if any).

Once a change order is fully approved and the work has been completed and approved, the change order quantity may be submitted for payment or reimbursement as applicable.

Partial Reimbursement Requirements

The request for progress payment reimbursement shall be submitted monthly to the NMDOT District T/LPA Coordinator by the T/LPA on each project. The monthly estimates must follow the same format as the approved detailed estimate prepared for the project. The reimbursement request should include a summary table showing the amount to be reimbursed on each work category (roadway, bridge, signing, landscaping, etc.) including computations for New Mexico gross receipts tax, retainage and reimbursement percentage for each funding category.

The T/LPA will attach a checklist of items to be included with a progress payment estimate. Assistance in determining what to include in the checklist may be provided by the NMDOT District personnel. The checklist may include but is not limited to the following:

1. Original Progress Payment Estimate,
2. Original Affidavit of Payment to Contractor,
3. Summary of Testing Credits to date,
4. Statement of Certificates of Compliance to date, and
5. Payroll submittal Form for Prime Contractor and Subcontractors.

The NMDOT shall review the items submitted and issue reimbursement. Exceptions to the requested reimbursement amount can be made by the NMDOT based on any of the following conclusions:

1. The amount of reimbursement requested for new items of work prior to change order approval by the NMDOT.
2. The reimbursement for items that exceed the original quantity will be made as long as that work category is not exceeded.

3. The maximum funding established in the JPA or CPA will be exceeded.

The T/LPA's project files shall be open and subject to inspection and audit by the NMDOT and/or the FHWA at any time during the project until final reimbursement on the project is received by the T/LPA. At the meeting held prior to letting the project for bids, the District personnel will provide, upon request, a sample format for the progress payment.

Request for Final Reimbursement

All prior progress estimates shall be subject to correction in the final estimate. The final estimate voucher shall be stamped as follows:

ACCEPTANCE OF FINAL ESTIMATE

The undersigned hereby accepts the amount shown in this final estimate voucher as payment in full for all work performed on the project and agrees to file no further claim against the T/LPA or the State of New Mexico or its Department of Transportation on account of the contract for any work performed on the project.

Signatures of Parties of Second Part of Contract

Acceptance of the final estimate will be made upon:

1. Proof of final payment to the Contractor (canceled check or letter from the Contractor).
2. Certification of payment of claims, Form A-1083.
3. OEOP letter ensuring B2GNow and LCPtracker Compliance.
4. Project Manager's statement with full total project amount.
5. Project certification by the T/LPA Project Manager that the items shown on the final estimate have been completed in accordance with the contract requirements.
6. Copy of final estimate and request for final reimbursement by the T/LPA authorized agent, not the consultant. Include breakdown of FHWA participation and non-participating amounts.
7. Letter of final acceptance by the T/LPA with appropriate signatures, stating that the project was built in substantial compliance with the plans and specifications.
8. Summary of work days/calendar days charged to the project.
9. Explanation of overruns and underruns work item quantities incorporated into the project.
10. Release of liens and consent of surety from insurance Bond Company.

Final Reimbursement

The final reimbursement will be made upon:

1. Audit of the project files and final package by the District Audit Unit.
2. Compliance Report from OEOP.
3. Letter from NMDOT District Project Manager T/LPA Coordinator that a final inspection has been performed and that the work appears to have been completed as per plans and specifications.
 - a. Material Certifications
 - b. Final Estimate
 - c. Final Statement of Working Days
 - d. Contractor's Written Statement of Claims
 - e. List of Construction Change Orders
 - f. List of Time Extensions
 - g. Final Report
 - h. Utilization of DBE Summary
 - i. Statement of Environmental Commitments Completed
4. Letter from NMDOT clearing all exceptions.

5. Letter from Assistant District Engineer of Final Acceptance recommendations. A-1079
6. A Materials Certification provided by the T/LPA Project Manager.
7. ROW Encroachment Certification?
8. Final Payment Letter from DE to T/LPA Requesting Project Closer
9. District Engineer Certification A-1081
10. Environmental Commitments Letter
11. Pit Release Letters
12. Funding Sheet
13. Notification to Close
14. T/LPA Compass Report
15. Summary Sheet (Final Contractor Request)
16. Summary of Change Orders
17. Affidavits of Wages Paid
18. C-135 Final Surfacing and Borrow

CHAPTER 12

CIVIL RIGHTS AND EEO PROGRAM OBLIGATIONS

NMDOT has established a Civil Rights and EEO Program that includes an external Equal Employment Opportunity Program, a Labor Compliance Program, an On-the-Job Training Program, a Disadvantaged Business Enterprise Program, a Title VI Program and an ADA Program in accordance with applicable federal law and the requirements and regulations of the United States Department of Transportation (USDOT). The NMDOT administers these programs through its Office of Equal Opportunity Programs (OEOP).

As a recipient of USDOT federal funds, NMDOT has a responsibility to ensure that sub-recipients of such federal funds, including T/LPAs and their contractors and subcontractors, comply with all pertinent Civil Rights requirements. The T/LPA, as a sub-recipient of federal funds, has an independent responsibility and is therefore mandated to know and comply with all Civil Rights/EEO requirements. Failure to do so by the T/LPA or its contractors may result in, among other things, the withholding of project funding or reimbursement. The following paragraphs provide examples of certain Civil Rights/EEO requirements applicable to federally funded projects. This information is not all-inclusive and, again, the T/LPA, as a sub-recipient of federal funds, has an independent responsibility to know and comply with all Civil Rights/EEO requirements on its federally funded projects.

CIVIL RIGHTS/EEO FIELD PROCEDURES MANUAL

The NMDOT OEOP office developed a Civil Rights/EEO Field Procedures Manual to assist Local Public Agencies in administration and oversight of the required Civil Rights programs by providing guidance, procedures, forms and checklists related to the various responsibilities associated with each program. The Civil Rights/EEO Field Procedures Manual can be accessed electronically at <http://dot.state.nm.us>.

T/LPAs shall administer their projects in accordance with the requirements of the Civil Rights/EEO Field Procedures Manual and should contact the NMDOT OEOP for support and guidance.

MANDATORY USE OF SOFTWARE

As a recipient of federal funds through NMDOT, the T/LPA shall utilize and shall require that its contractors utilize the web-based software program B2GNow to report and confirm all payments made on its federal-aid project. This software program also tracks DBE participation and prompt payment compliance information on federal-aid projects. Also, as a recipient of federal funds through NMDOT, the T/LPA shall utilize and shall require that its contractors utilize the web-based software program LCPTracker to report EEO and weekly payroll information. This software program tracks compliance with project prevailing wage requirements and collects certain EEO information for federal reporting purposes.

While each of these software programs automates the data collection process, the T/LPA is required to review the data and verify compliance with specific requirements. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for further guidance including obtaining software user IDs and log-on information, project set-up in the systems, administration and oversight responsibilities and training opportunities.

PROMPT PAYMENT AND RETAINAGE

The T/LPA shall require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) calendar days from receipt of each payment the T/LPA makes to the prime contractor. Monitoring of prompt payment is done through the B2Gnow payment reporting and confirmation function.

The T/LPA shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. To comply with this requirement, the T/LPA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the T/LPA makes payment to the prime contractor.

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment among the parties may take place only for good cause, with the prior written approval of NMDOT. The T/LPA is responsible for monitoring prompt payment through the B2Gnow system. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for guidance on prompt payment and retainage issues.

TERMINATION/ SUBSTITUTION/REPLACEMENT OF DBE FIRMS ON PROJECTS HAVING CONTRACT DBE GOALS

The prime contractor shall not terminate for convenience a DBE subcontractor listed on Form A-585A (or an approved substitute DBE firm) without the written concurrence of the T/LPA. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, or with a non-DBE firm, or with a substitute DBE firm.

The T/LPA will provide written consent to the termination request only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm.

The T/LPA is responsible for ensuring that DBE firms are not terminated on their projects without good cause. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for guidance on Termination/Substitution/Replacement issues.

COUNTING DBE PARTICIPATION TOWARD GOALS

When a DBE participates in a contract, only the value of the work actually performed by the DBE will be credited toward DBE goals.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE subcontractor or subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward meeting the DBE goal.

Credit to a DBE contractor will be allowed only if the DBE is performing a commercially useful function on the contract. The intent is to verify that the DBE subcontractor is actually performing, managing, and supervising the work it is subcontracted to do on the project.

The T/LPA is responsible for performing routine commercially useful function reviews on every DBE working on its project using Form A-1239, DBE Commercially Useful Function Interview and Assessment. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for guidance on commercially useful function issues.

LABOR COMPLIANCE REQUIREMENTS

The T/LPA is responsible for ensuring that its contractors abide by all labor compliance requirements of the contract, including compliance with Davis-Bacon and its related Acts and the labor related state statutes and regulations promulgated by the NM Department of Workforce Solutions. The contract shall contain both a state and federal wage decision, and the wage decision that contains the higher wage rates shall govern. No laborer or mechanic shall receive less than the prevailing wage rates including fringe benefits as indicated in the wage decision for the classification of work being performed.

The prime contractor and all subcontractors working on T/LPA federal-aid projects are required to use the LCPtracker labor compliance software to report weekly payroll information. The T/LPA will set the project up and make it ready for use in LCPtracker upon contract award, and the prime contractor is responsible for setting up its subcontractors in LCPtracker.

The prime contractor and each subcontractor shall furnish certified payrolls to the T/LPA for each consecutive week starting from the first week it performs work on the project. Certified payrolls shall be submitted by uploading required payroll information into LCPtracker. The T/LPA shall verify the data contained on each certified payroll and, should errors or discrepancies be found, the T/LPA must reject the payroll in LCPtracker and notify the contractor or subcontractor of the error. The contractor or subcontractor will be required to correct the error and submit a revised payroll.

Labor compliance issues can be complex, and non-compliance with labor requirements can put the T/LPA and its contractors at risk for significant penalties and other consequences from the US Department of Labor, the Office of Federal Contract Compliance Programs and the NM Department of Workforce Solutions. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for guidance on labor compliance issues.

EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

The T/LPA is responsible for ensuring that its contractors are in compliance with all EEO requirements of the contract. The goal of EEO is increased participation of minorities and women in the work force, and extends to contractor practices in recruitment, hiring, pay, training, promotion, and retention. On federally-funded contracts, no person is to be subjected to discrimination because of race, color, religion, sex, national origin, age, or disability. These nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers, and procurement of materials. The T/LPA shall ensure the prime contractor has a compliant EEO Policy and Affirmative Action Plan established and implemented before the start of the project. The T/LPA must also ensure the contractor submits a Letter notifying the T/LPA of its designated Company and/or Project EEO Officer. The T/LPA shall ensure the contractor properly disseminates the EEO Policy, hold periodic EEO meetings, properly indoctrinates its recruitment personnel, and monitors and documents its recruitment activities.

The T/LPA shall ensure the contractor erects and maintains a project bulletin board in a presentable manner for the life of the project. The bulletin board shall be placed in a conspicuous location readily accessible to employees, applicants for employment, or potential employees. All notices and posters as indicated on Form A-1245 Bulletin Board Checklist for Federal-Aid Projects shall be placed on the bulletin Board, and the T/LPA shall periodically inspect the bulletin board to ensure it remains accessible, readable, and compliant with Form A-1245 Bulletin Board Checklist for Federal-Aid Projects.

More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for guidance on project EEO issues.

LABOR AND EEO COMPLIANCE INTERVIEWS

The T/LPA shall conduct Labor and EEO Compliance Interviews to verify contractor and subcontractor compliance with the labor and EEO requirements of the contract. The information gathered shall be reviewed and verified by the T/LPA to ensure employee statements and employer payroll information match, to ensure minimum wage rates are being complied with, and to ensure employees know about and are indoctrinated into their employer's EEO Policy and procedures.

The T/LPA shall conduct the interviews on the job during normal working hours utilizing Form A-1077 Labor and EEO Compliance Interview. Normally, the T/LPA shall conduct at least two to four wage interviews each week during the course of the project and, at a minimum, the T/LPA shall conduct interviews of at least 50% of employees in each covered classification before the project is completed. The T/LPA shall immediately notify the contractor in writing of any issue of non-compliance revealed by the Labor and EEO Compliance Interview and shall require corrective action by the contractor or its subcontractors to resolve the issue. More detailed information and procedures are located in the Civil Rights/EEO Field Procedures Manual. The T/LPA should review the Manual and contact the NMDOT OEOP for further guidance on labor and EEO compliance issues.

AMERICANS WITH DISABILITIES ACT RESPONSIBILITIES

As a recipient of federal funds through NMDOT, the T/LPA shall ensure its contractors design and construct its project in compliance with the requirements of the ADA and, more specifically, the PROWAG. To avoid costly tear-outs of non-compliant pedestrian access facilities, NMDOT has developed processes to ensure compliance with these guidelines in an effort to ensure contractors do it right the first time. The T/LPA shall work closely with its regional design center, its NMDOT T/LPA Region Coordinator and the NMDOT ADA Coordinator to ensure compliance with ADA requirements from design to final construction and finishing. Failure of the T/LPA to build its project in compliance with the ADA may result in the withholding of project funding or reimbursement.

CHAPTER 13

LOCAL TECHNICAL ASSISTANCE PROGRAM

HISTORY

Over three million miles of road and 29,000 bridges in the United States are maintained by counties, cities and towns. These roads and bridges often encounter excess wear due to traffic, weather and mistreatment. Keeping them safe and navigable requires design, maintenance and rehabilitation. Limited funding for this work has created a significant need for technical assistance to the 38,000 local communities across the United States. In 1982, the Federal Highway Administration (FHWA) recognized this need by creating the Local Technical Assistance Program (LTAP).

LTAP is composed of a national network of centers - one in every state, Puerto Rico, and seven regional centers serving tribal governments. The LTAP centers enable local counties, parishes, townships, cities and towns to improve their roads and bridge by supplying them with an almost unlimited base of materials, data, and training opportunities. The New Mexico LTAP (NMLTAP) Center is proud to be part of this network and provide these services to the New Mexico T/LPAs.

NMLTAP is staffed by a coordinator, an instructor, and a part-time assistant. The Center's mission is to foster a safe, efficient, environmentally sound transportation system by improving skills and knowledge of local transportation providers through training, technical assistance, and technology transfer to the T/LPAs. The center is state funded annually, with a corresponding federal match.

AVAILABLE SERVICES

Seminars and Training Sessions

T/LPA personnel are regularly invited to participate in seminars, workshops, and special transportation related courses and training sessions. Heavy equipment operator classes are offered at the Roswell Training Academy, the New Mexico Institute of Mining and Technology in Socorro, and on-site by NMLTAP's trainer. Training announcements for regularly scheduled heavy equipment operator classes for T/LPAs are mailed quarterly and special workshop announcements are mailed prior to the event. A current calendar of events with enrollment information can also be accessed at the NMLTAP website at: www.nmltap.com.

Quarterly Newsletter

The newsletter, "New Mexico LTAP Approach", emphasizes New Mexico news and information or issues that directly affect the T/LPAs served by NMLTAP. It is also used to publicize NMDOT events, as well as others that are of interest to T/LPAs.

Technology Transfer Materials

The free materials area in the NMLTAP office is maintained and advertised throughout the state in the quarterly newsletter. Numerous technical publications are available such as the NMDOT's standard specifications, AASHTO design standards, the Manual on Uniform Traffic Control Devices (MUTCD), and others. This area is continually being updated as new publications become available. The NMLTAP staff also locates publications for specific needs. Call for a current list of publications available.

Information Services

T/LPAs may request information using NMLTAP's toll free telephone number, 1-800-523-3028. Or at the NMLTAP website at: www.nmltap.com.

Mailing Lists

NMLTAP's list includes elected, administrative, road, and transportation personnel for the state's municipalities, counties, federal agencies, and most Native American tribes and pueblos. To be placed on the mailing list, please complete the form at the end of the chapter.

Library Services

NMLTAP has a small but comprehensive, in-house library of reference materials. There are over 1,000 videos, books, magazines, reference materials, reports, and research documents in the library. All media in the NMLTAP library is available to local and tribal agencies for checkout for a 30 day period, free-of-charge.

- FREE RESOURCE LIBRARY – consists of books, magazines, reports, and a few CD's that are available free to our clients. These Free Resource materials can be obtained by request.
- LENDING LIBRARY – contains numerous books, magazines, reports. There is a brief description of each item in the library, along with other information such as date, publisher. The Lending Library materials are available for checkout on loan for a period of 30 days at no charge. A limit of four (four) titles may be borrowed per request.
- MULTI-MEDIA LIBRARY – contains numerous Videos, CDs, and DVDs. Each item in this library has a brief description along with other information such as date, publisher, and length of time. The Multi-Media materials are available for checkout on loan for a period of 30 days at no charge. A limit four (4) titles may be borrowed per request. **Note:** Some media materials are protected by copyright and may **NOT** be reproduced without written permission from the publisher.

A current video catalog is in the printing process and will be mailed to all T/LPAs as soon as it is available. At the end of this chapter is a Video Request Form that can be used to request a listing of videos on a particular subject. In the near future all the libraries and their offerings will be available on the NMLTAP website.

In addition to the Center's libraries, T/LPAs also have access to the NMDOT's Special Library collection of transportation materials. This library is located in the NMDOT's

Research Bureau
1001 University Blvd., SE, Suite 103
Albuquerque, NM 87106.

The NMDOT's Special Library office hours are from 9:00 am to 12:00, and 1:00 pm to 4:00 pm, Monday through Friday. A librarian is available to assist with locating materials and electronic searches.

NMLTAP's technology transfer and training opportunities are a valuable free resource for T/LPAs. The Center's staff is dedicated to serving their needs.

For further information or assistance, please contact the New Mexico LTAP Director at:

New Mexico NMDOT of Transportation
Local Technical Assistance Program
1120 Cerrillos Road
Santa Fe, NM 87504
1-800-523-3028
Email nmltap@state.nm.us
FAX 505-827-5550

CHAPTER 14

CAPITAL OUTLAY

The following procedures were developed as a result of the lessons learned during the 2010 Solvency. The new process will ensure that state agencies know the status of a Capital Outlay Project at all times. This guidance was developed by the New Mexico Department of Transportation (NMDOT) PINF Finance Division to provide T/LPA's with an overview of the process.

INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN (ICIP)

In the future, the Legislature may change state law to require that all Capital Outlay projects be listed in the Infrastructure Capital Improvement Plan (ICIP). During the 2012 Legislative Session, NMDOT was asked to report which projects were in the ICIP before the Governor signed the bill.

You can access ICIP and other helpful information at the following web site:
http://www.nmdfa.state.nm.us/Capital_Outlay_Bureau.aspx

ICIP Capital Outlay Appropriation requests should be descriptive and have enough funding to complete the project or a phase of the project. For example, if you estimate a project will cost \$100,000 to design and \$1,500,000 to construct, note in the description if the funding is for design or construction.

Appropriation ID and NMDOT Control Number

The Appropriation ID is a 6 digit number assigned by DFA to all Capital Outlay Appropriations. The first two digits refer to the calendar year that the funds were appropriated. For example, a project appropriated during the 2012 Legislative Session may be numbered 12-1234. NMDOT assigns the control number by adding a C (capital outlay) and the district number to the Appropriation ID C1121234.

BOND SALE PROCESS

Please be aware that Severance Tax Funding is not available until the Bond Sale Questionnaire is returned and the Bond is sold. PINF Finance will not execute a Grant Agreement until the bond sale has occurred. In order for the State of New Mexico to sell the bond, the following steps must occur:

1. The New Mexico Legislature awards projects funded with Severance Tax and General Funds – depending upon budget availability;
2. Based on Executive Order 2013-006 (EO 2013-006), capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired. Please see link to EO 2013-006:
http://www.nmdfa.state.nm.us/uploads/FileLinks/6583a4770de841daa2d07b9e130326e7/EO_2013_006.REQUIREMENTS.FOR.GRANTS.pdf
 - a. State Agencies must ensure grantees' submit timely annual audits, have approved budgets with DFA, and Financial reports are necessary to assess a grantee's accounting methods and procedures.
 - b. State agencies must critically examine annual audits to identify relevant material weaknesses and significant deficiencies.
 - c. If audits reveal weaknesses and or deficiencies, special conditions can be imposed and or an alternative fiscal agent can be put into place in order to allow grantee to received funding.
3. PINF Finance will get notification from the New Mexico State Board of Finance (SBOF) bond counsel that questionnaires are available in the web based questionnaire system. PINF Finance will notify the T/LPA to complete the questionnaire. Questionnaires will automatically be sent to SBOF for processing;

4. Bonding Attorney includes project in next bond sale; and,
5. Severance Tax Bond Sale occurs in June and December.

Bond Sale Provisions

The Appropriation Bills require T/LPA Public Agencies to comply with the following Severance Tax Provisions:

1. Enter into a third party contract to expend at least five percent (5%) of the bond proceeds within six (6) months after the bond is sold; and,
2. Spend at least eighty-five percent (85%) of the bond proceeds within three (3) years after the bond is sold.

Project Scope & Termini Form

NMDOT developed the Project Scope & Termini Form to obtain additional information on the project. The T/LPA should provide a detailed description of the project to include specific street(s) and/or route(s), as well as how much funding will be utilized for each phase of the project. NMDOT requires that T/LPAs complete and return the Project Scope & Termini Form to PINF Finance prior to issuing a Grant Agreement.

GRANT AGREEMENT PROCESS

Once PINF Finance receives the Project Scope & Termini Form, they will begin the Grant Agreement detailed below:

1. PINF Finance drafts and reviews the Grant Agreement internally, routes to District for review and submits to NMDOT Office of General Counsel for signature;
2. PINF Finance mails the Grant Agreement to the T/LPA for signature;
3. T/LPA obtains signatures on all three sets of the Grant Agreement and returns to PINF Finance;
4. PINF Finance submits the Grant Agreement for NMDOT Deputy Secretary signature and contract number assignment; and,
5. PINF Finance mails the fully executed Grant Agreement to T/LPA along with a letter explaining the Third Party Agreement / Notice of Obligation steps.

NOTICE OF OBLIGATION PROCESS

The following process was developed to ensure State Agencies know the status of all Capital Outlay projects at all times:

1. T/LPA advertises project in accordance with State Procurement Laws;
2. T/LPA provides a copy of their Third Party Agreement with a contractor (**BEFORE IT IS FULLY EXECUTED**) to District contact;
3. District reviews the Third Party Agreement and issues a Notice of Obligation in the amount of the Third Party Agreement or in the full amount of the Capital Outlay Award;
4. District sends the Notice of Obligation to the T/LPA and sends a copy to PINF Finance;
5. T/LPA receives the Notice of Obligation, completes the execution of the Third Party Agreement and can now proceed with the design and/or construction of the project; and,
6. PINF Finance prepares a Purchase Order, which encumbers the funding amount listed on the Notice of Obligation

REIMBURSEMENT PROCESS

1. T/LPA utilizes Exhibit 2 in their Capital Outlay Agreement to request monthly reimbursements. Reimbursement requests are submitted to the District and should contain back up documentation as required by the District; and,
2. District notifies the T/LPA of any additional information, if required. Once package is deemed complete, the District processes the payment.

REPORTING PROCESS

All T/LPAs are **required** to **update** CPMS on a Monthly basis as noted in the following instructions:

LOCAL ENTITY INSTRUCTIONS

CAPITAL PROJECT MONITORING SYSTEM

WEBSITE to VIEW and UPDATE Appropriations: <http://cpms.dfa.state.nm.us>

To VIEW Appropriations

At the "Capital Appropriations Search" page, you have the option to search for and filter current and past capital appropriations using different criteria. Choose your selection criteria(s) from the selection boxes and click Submit. A list of appropriations matching your selection criteria will be displayed. You can click on the Appr ID to view the appropriation information.

To UPDATE Appropriations

1. At the top right of the "Capital Appropriations Search" title bar click Login;
2. Select Local Entity to access the local entity "Capital Appropriations" login page.;
3. Enter Username and Password. Click Submit. (Contact Agency or Project Manager in LGD for Login);
4. When you login, the "Capital Appropriations" page displays the "Open Appropriations Only" for your local entity. The list displays projects that have a balance greater than zero. If a project is not shown on the list for your local entity, do the following:
 - Go to the Capital Appropriations Search page to find the Admin Agency for the project.
 - Contact PINF Finance Section and ask him to update the Local Fiscal Agent Code.
5. Click Appr ID (in purple) in the "Appr ID" column to access project information for updates;
6. Update all required fields for the monthly update;

FIELD NAME	FIELD TYPE
Expended Amount (Local Entity)	Number - do not use \$ or comma.
Balance (Local Entity)	Number - do not use \$ or comma.
Status/Comments (Local Entity)	Text - avoid special characters (see NOTE).
Phase of Project (Local Entity)	Drop-Down Menu - see options and definitions.
Valid Contracts in Place (True/False)	Check Box if valid contracts exist.
Other Project Funding Sources	Text - avoid special characters (see NOTE).

Total of Contract Amounts (Local Entity)	Number - total amount of all valid contracts.
Contract Information	Text - avoid special characters (see NOTE).
No activity for month being reported (True/False)	Check box if no activity for month reporting.
Last Submission Date (Local)	Enter date when final monthly update complete.

NOTE:

- For Status/Comments, provide specific details about the project including any delays, problems, or changes to timelines or milestones. Date each comment to keep a history on the project progress. Status/Comments are required for each monthly update - if there is no activity for the project indicate "No Activity" and explain WHY.
 - For Other Project Funding Sources, enter any other types of funding secured for this project (i.e. CDBG, Federal, private, etc.).
 - For Contract Information, you must provide the name of the contractor, contract amount, and contract expiration date for ALL valid contracts in place.
7. Once updates are done, click Submit. (If you do not submit, updated information will be lost.);
 8. Once changes are submitted, the screen will go back to the "Capital Appropriations" page. At the top in the yellow header, it will display in red "Appropriation ID: ##-#### successfully updated ". If you do not receive this statement, the changes were not saved;

TIP: If changes are not saved, you may need to TAB into and out of fields when updating.

9. Repeat steps 5, 6 and 7 for each project you are updating;
10. To print a copy of the data for your files, click the Appr ID in blue in the "Printable Format" column; and,
11. Upon completion of all updates, click Logout at top right corner or you can access Reports.

UPDATES REQUIRED BY THE 30th OF EACH MONTH

Appropriation Phase - OPTIONS and DEFINITIONS

CODE	DESCRIPTION	APPROPRIATION PHASE DEFINITION & ACCOUNTING STATUS
0150	Grant Agreement Issued	Indicates a Grant Agreement has been approved and is in place for this project – AMOUNT PREENCUMBERED IN SHARE.
0200	Purchase in Process	Appropriation is for a PURCHASE - use this option if the purchase is in process (i.e. bids, quotes, purchase order in place, etc...) Explain in <i>Status/Comments</i> specifics on the purchase. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0210	Project In Design	Appropriation is part of a construction project and appropriation is being used for design. Explain in <i>Status/Comments</i> specifics on the design stage for this appropriation. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.

0220	Project in Construction	Appropriation is for a construction project and construction has started. Explain in <i>Status/Comments</i> specifics on phase of construction. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0230	Substantial Completion	Project has reached substantial completion. Explain in <i>Status/Comments</i> specifics on completion of this appropriation. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0240	Project Complete	Project complete. Notify Agency if a balance remains and is ready to revert. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0245	Purchase Complete	Purchase complete. Notify Agency if a balance remains and is ready to revert. ONLY ENCUMBERED PORTION UNDER THIRD PARTY OBLIGATION – BASED ON STATE NOTICE OF OBLIGATION TO GRANTEE.
0250	Project Closed	Closed - No further activity for appropriation - appropriation fully expended or balance has been reverted.

APPENDIX

ACRONYMS

AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ADA	Americans with Disabilities Act
ARF	Agreement Request Form
ASTM	American Society for Testing and Materials
B2GNow	Reporting Software
CAA	Clean Air Act
CAP	County Arterial Program
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality
CMEs	Construction Maintenance Easements
CN	Control Number
CPA	Cultural Properties Act
CPM	Construction Project Manager
CWA	Clean Water Act
DBE	Disadvantaged Business Enterprise
DSI	Detailed Site Investigations
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHPM	Federal Highway Program Manual
FHWA	Federal Highway Administration

FMIS	Financial Management Information Systems
FONSI	Finding of No Significant Impact
FTA	Federal Transit Administration
HTF	Highway Trust Fund
HSIP	Highway Safety Improvement Program
ICIP	Infrastructure Capital Improvement Plan
ISA	Initial Site Assessments
IM	Interstate Maintenance
ISTEA	Intermodal Surface Transportation Efficiency Act, 1991
ITS	Intelligent Transportation System
JPA	Joint Powers Agreement
LCPtracker	Reporting Software
PINF Finance	Programs and Infrastructure Finance
LGRF	Local Government Road Fund
LTAP	Local Technical Assistance Program
MAP	Municipal Arterial Program
MAP 21	Moving Ahead for Progress in the 21 st Century
MPO	Metropolitan Planning Organization
MUTCD	Manual on Uniform Traffic Control Devices
NAAQS	National Ambient Air Quality Standard
NEPA	National Environmental Policy Act
NMDOT	New Mexico Department of Transportation
NHPA	National Historic Preservation Act
NMDGF	New Mexico Department of Game and Fish
NMED	New Mexico Environment Department
NMLTAP	New Mexico LTAP
NMPPHA	New Mexico Prehistoric and Historic Site Preservation Act
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System

OEOP	Office of Equal Opportunity Programs
OSHA	Occupational Safety and Health Administration
PE	Preliminary Engineering
PFR	Preliminary Field Review
PFF	Project Feasibility Form
PIF	Project Identification Form
<i>PPM</i>	<i>Planning Procedures Manual</i>
PPP	Pollution Prevention Plan
PROWAG	Public Rights of Way Accessibility Guidelines
PS&E	Plans, Specifications, and Estimate
PSI	Preliminary Site Investigations
QA/QC	Quality Assurance/Quality Control
RTPO	Regional Transportation Planning Organizations
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act
SHPO	State Historic Preservation Officer
SIP	State Implementation Plan
STIP	Statewide Transportation Improvement Program
STP	Surface Transportation Program
T & E	Threatened and Endangered Species
TCP	Temporary Construction Permit
THPO	Tribal Historic Preservation Officer
T/LPA	Tribal and Local Public Agency
TTCP	Technician Training and Certification Program
USDOT	United States Department of Transportation
USFWS	U.S. Fish and Wildlife Service

FORMS

Please click on link below for appropriate form. We have examples of the form below.

1. [Project Feasibility Form](#) (PFF)
2. [Project Identification Form](#) (PIF)
3. [Agreement Request Form](#) (ARF)

PROJECT FEASIBILITY FORM (PFF)

RTPO

PROJECT FEASIBILITY FORM (PFF)

For assistance, contact XXXXX, RPO Planner, at phone number or email

GENERAL INFORMATION

Preparation Date _____

Project Title: _____

Requesting Entity: _____

Governing Body Approval:
YES ___ NO ___ PENDING ___

Contact Person: _____

Phone: _____

PROJECT DESCRIPTION AND JUSTIFICATION

Project Type (Circle/boldface/underline all that apply):

ROADWAY TRANSPORTATION ALTERNATIVE BRIDGE SAFETY OTHER

Route Number and/or Street Road Name: _____

Project Termini: _____ Beginning Mile point ____ Ending Mile point ____

Total length of proposed project: _____

PURPOSE AND NEED

NEED(S) to be addressed (Circle/boldface/underline all that apply):

System Preservation

Economic Development

System Connectivity

Safety

Environmental Protection

Security

Justification of NEED(S) circled above (Use additional pages if necessary):

Begin typing here. Box will expand as needed.

PROJECT COSTS:

Column A			Column B
If project is <u>not</u> phased, complete column A only. If project is phased, list the amount of funding being currently requested in Column A and complete Column B.			Total Phases No. (1, 2, 3, I, II, III, etc.):
			The amount below represents the cost of the entire project and will be greater than Column A.
Project Cost: \$			Total Project Cost: \$
Percentage Estimates:			Phased projects are usually large and divided into parts or phases. If you wish to supply any additional information, list comments here:
Total Local Match	%	\$	
Total Federal Share	%	\$	
	100%		

DISTRICT REVIEW:

By: _____ Date: _____ Recommended: Yes No

PROJECT IDENTIFICATION FORM



New Mexico DEPARTMENT OF
TRANSPORTATION

PROJECT IDENTIFICATION FORM (PIF)

**INSTRUCTIONS: Please complete all sections thoroughly.
See the end of this document for required distribution.**

1. Date of Submittal: [Click here to enter date.](#) 2. Initial or Revised PIF? [Initial / Revised](#)

3. Is this project phased? [Yes / No](#) If phased: [Enter phase number and total # of phases.](#)

4. Sponsoring public entity: [Enter entity name.](#) 5. Project Name: [Enter project name.](#)

Note: per MAP-21, Non-Profit Organizations cannot be lead agencies, but they can contribute to projects.

6. Is the project on the ICIP? [Yes / No](#) If yes, year and priority #: [Year, priority # \(if available\)](#)

7. Is the project in or consistent with a MPO/RPO/Local planning document? [Yes / No](#)
If yes, which document (MTP/SLRP/TTP/etc.): [Enter document name and year.](#)

8. Is the project in the STIP? [Yes / No](#) If yes, year(s): [Enter year\(s\).](#) Control #: [Enter CN.](#)

9. Is the project on the MPO TIP/RPO RTIP? [Yes / No](#) If yes, which year(s): [Enter year\(s\).](#)

Notes: Please contact your MPO/RPO planner if this project is not in any local planning documents; if it is, please include the first page and the page on which the project is listed for any relevant documents.

10. County: [Select a county.](#)

11. US Congressional District: [Select a district.](#)

12. New Mexico House District: [Enter House District.](#)

13. New Mexico Senate District: [Enter Senate District.](#)

14. Contact Person and/or PDE: [Click here to enter contact person/PDE name.](#)

15. Address: [Enter street address, city, state \(if not NM\), and zip code.](#)

16. Phone: [Enter phone #.](#)

17. Fax: [Enter fax #.](#)

18. E-mail: [Enter email address.](#)

19. MPO or RPO: [Select a MPO/RPO.](#)

20. NMDOT District #: [Select a district.](#)

Project Description

21. In the space below, please provide a narrative describing the Project, its Purpose and Need, i.e., the rationale behind the project. If this project has or will go through the NEPA process, the description below should match the NEPA description as closely as possible.

[Enter a project description – this field will expand as needed, but please be concise.](#)

22. Select an Improvement Type for the project: [Select the \(primary\) Improvement Type.](#)

Notes: See FMIS Improvement Type Codes for complete improvement descriptions. List additional improvement types here: Enter improvement type(s), including improvement type number.

Project Details (fill out where applicable)

23. Route # or (Street) Name: Enter route number or name. 24. Length (mi.): Enter length in miles.
25. Begin mile post/intersection: Enter begin point. 26. End mile post/intersect.: Enter end point.
27. Directions from nearest major intersection or landmark: Enter directions, field will expand.
28. Google Maps link (see tutorial for help): Enter shortened Google Maps URL
[goo.gl/maps/xxxx].
29. Roadway FHWA Functional Classification(s): Select a road type, or enter road types.
-

Funding Information

30. Has this project received Federal funding previously? Yes / No If yes, which years? Enter year(s). Which program(s)? Enter program(s).

Please Itemize the Total Project Costs by Type

31. Environmental/Planning: Enter \$ amount. 32. Preliminary Engineering: Enter dollar amount.
33. Design: Enter dollar amount. 34. Right-Of-Way: Enter dollar amount.
35. Construction: Enter dollar amount. 36. Other (specify): Enter cost type, dollar amount.

Funding Sources

List all sources and amounts of funding, both requested and committed, for the project.

37. Total Project Cost Estimate: Enter TOTAL dollar amount, to match sum of all other funds below.
38. Local/County/Tribal Gov't Funds*: Dollar amount, source. [Committed/Not Committed]
39. State Funds: Enter dollar amount. [Select Existing or Requested]
40. Tribal Transportation Program (TTP): Enter dollar amount. [Select Existing or Requested]
41. Other Federal grants: Enter dollar amount. [Select Existing or Requested]
42. Federal Funds (STP/CMAQ/TAP funds requested): Enter dollar amount.

** Identify the specific local/ city/ county/ tribal government fund(s) source, such as gas tax, sales tax, etc.*

Project Readiness

This is a list of certifications, clearances, and other processes that could apply to the project.
These steps may not be required at this time, but could be necessary at a later date. Identify the date that

the certification or clearance was received **OR** if a certification/ clearance is under way **OR** will be started in the future **OR** the step is not applicable (N/A). **Do not leave any field blank.**

43. **Public Involvement:** Date completed, under way, OR to be started.

44. **Right of Way:** Date completed, under way, to be started, OR N/A.

45. **Design:** Date completed, under way, to be started, OR N/A.

46. **Environmental Certification**:** Date completed, under way, to be started, OR N/A.

47. **Utility Clearances:** Date completed, under way, to be started, OR N/A.

48. **ITS Clearances:** Date completed, under way, to be started, OR N/A.

49. **Railroad Clearances:** Date completed, under way, to be started, OR N/A.

50. **Other Clearances:** Date completed, under way, to be started, OR N/A.

** NEPA assessment may evaluate: Threatened & Endangered Species, Surface Water Quality (Clean Water Act), Ground Water Quality, Wetlands, NPDES Permit, Noxious weeds, Air Quality Analysis, Noise Analysis, Hazardous Materials Analysis, and other areas; 4-F properties. NHPA Section 106 Cultural Resources Investigation may include: coordination with land management agencies and State Historic Preservation Officer, Cultural Properties Inventory (buildings recorded), Traditional Cultural Property Inventory (consult with appropriate Native American tribes), Tribal Historic Preservation Officer and State Historic Preservation Officer. **For a full list of environmental and cultural areas that may be evaluated, see the T/LPA Agreement Handbook.**

Project Planning Factors

Below are the federally mandated planning factors for all transportation projects. Please check all that apply and provide a brief explanation of how the project addresses the factor. Comment area will expand as needed. **NOTE: if you are applying for TAP funds, leave this section blank and complete the supplemental TAP application.**

51. ☐ **Economic Vitality:** Type explanation.

52. ☐ **Safety for Motorized and Non-motorized Users:** Type explanation.

53. ☐ **Security for Motorized and Non-motorized Users:** Type explanation.

54. ☐ **Accessibility and Mobility of People and Freight:** Type explanation.

55. ☐ **Environment, Energy Conservation, Quality of Life:** Type explanation.

56. ☐ **Integration and Connectivity:** Type explanation.

57. ☐ **System Management and Operation:** Type explanation.

58. ☐ **System Preservation:** Type explanation.

REQUIRED DISTRIBUTION

59. **Send a completed electronic version to appropriate RPO/MPO, District staff, and NMDOT Planning liaison.**

AGREEMENT REQUEST FORM

New Mexico Department of Transportation AGREEMENT REQUEST FORM (ARF)

Control No. _____

New Agreement _____

Amendment _____

Tribal/Local Public Agency (T/LPA) _____

Address _____

Contact Person _____ Title _____

Phone _____ Email _____

Who Executes agreement at T/LPA (Mayor, Governor, Chairman): _____

Termini/ Project Description Matching STIP (Specific as this will be on the Cooperative Agreement): _____

* Note: This description will be verified with Region to make sure Project/ Funds are eligible for above description.

STIP YEAR _____	PROPOSED WORK /PHASE (PER STIP)		
FUNDING SOURCE	CONSTRUCTION	RIGHT OF WAY	DESIGN
Federal Funds	\$ _____	\$ _____	\$ _____
State Funds	\$ _____	\$ _____	\$ _____
Local Match	\$ _____	\$ _____	\$ _____
TOTAL AMOUNT	\$ _____	\$ _____	\$ _____

☐ *Construction Certification Package has been reviewed and approved by Region.*

*** If applicable*

Anticipated Begin Date _____ Anticipated End Date _____

What month will this project be ready to authorize Federal Funds? _____

You must also submit a graphical project timeline (e.g., Microsoft Project, Primavera, Critical Path or Gantt chart) that provides the projected completion dates for applicable certifications for construction, right of way and design phases.

Additional Information: _____

T/LPA Authorized Signature _____ Date _____

Region T/LPA Authorized Signature _____ Date _____

District T/LPA Authorized Signature _____ Date _____

A project agreement **WILL NOT** be processed until this ARF is received and has all signatures.

T/LPA must submit completed Agreement Request Form and project timeline to your T/LPA Region Coordinator for review.

GLOSSARY

ANNUAL AVERAGE DAILY TRAFFIC (AADT):

The number of vehicles passing a specified point during a 24-hour period averaged over one calendar year.

ALLOCATION:

An administrative distribution of funds among the States. Prior to obligation this is like a line of credit.

APPORTIONMENT:

This is like issuing a line of credit. With regard to the HTF, apportionments are a statutory distribution of funds providing certain funding levels to the States based on formulas prescribed in law.

APPROPRIATION:

Legislation to allow the Federal Highway Administration and HTF to make actual cash reimbursements to the States.

AUTHORIZATION:

An Act which allows a program to be undertaken and establishes a level of funds which may be used for the program.

BRIDGE PROGRAM (BR):

Federal-aid program reserved specifically for bridges. All bridges on public roads are eligible.

CERTIFICATION PACKAGE:

The package for construction projects funded with federal aid must include the following; Environment Certification including completion of applicable NEPA requirements, Right of Way and Utilities Certification, Railroad and ITS Certifications PS&E Certification.

CERTIFICATION PROJECT:

Projects on local streets or roads for which the NMDOT provides very minimal engineering oversight. The T/LPA, through the Project Agreement, agrees to certain terms and, upon completion of the project, submits a written certification stating that the T/LPA, in fact, complied with said terms. Examples are Severance Tax, General Fund, Local Government Road Fund, and some State Road Fund projects.

CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM (CMAQ):

Federal-aid program for transportation projects in Clean Air Act (CAA) non-attainment and maintenance areas for ozone, carbon monoxide, and particulate matter. The Albuquerque urban area and portions of southern Doña Ana County in the El Paso urban area are the only qualifying areas in New Mexico. Any project using CMAQ funds must be able to demonstrate a reduction in air pollutants from motor vehicle emissions. Projects must be included in the Statewide Transportation Improvement Program (STIP).

CONSTRUCTION (PROJECT) TERMINI:

The beginning and end points of the construction project, not to be confused with “logical termini” for environmental documentation purposes.

CONTROL NUMBER(CN):

A number assigned to projects in the STIP. Projects are most often identified by control number.

CONTRACT EXECUTION:

The process of acquiring all the necessary signatures for a Project Agreement. A contract is not considered executed until the final party has signed it; i.e., the Department of Finance and Administration for a Joint Powers Agreement or the NMDOT's Deputy Secretary for a Cooperative Agreement.

COOPERATIVE PROGRAM (CO-OP):

State-aid program for project development, construction, reconstruction, maintenance, repair, or improvement of public highways, streets, and public school parking lots or the acquisition of right(s)-of-way or materials. Municipalities, counties, school districts, any branch agency, NMDOT, board, instrumentality, or institution of the state is eligible. CO-OP projects are funded by the Local Government Road Fund (LGRF). LGRF/local matching ratios are 75/25, respectively. Applications are processed through the respective NMDOT Districts.

COUNTY ARTERIAL PROGRAM (CAP):

State-aid program for project development, construction, reconstruction, improvement, maintenance, repair, right of way acquisition, and material acquisition for county arterial roads. The LGRF/local matching ratios are 75/25, respectively. Distribution of funds is based on the number of miles maintained.

EARMARKING:

Earmarked funds may only be used for special purposes once they are apportioned to the states. For example, two percent of the major categories can only be used for planning and research activities. A more common use of the term Earmarking is when a member of congress inserts a specific project in the Authorization Act. This requires states to fund the earmarked project out of their obligation authority and does not generate an increase in overall funding.

ENVIRONMENTAL ASSESSMENT (EA):

A document that is an interdisciplinary investigation to: 1) identify alternatives, impacts, and mitigation measures; 2) and either determine the need for an Environmental Impact Statement (EIS); or 3) obtain location approval and project authorization with a Finding of No Significant Impacts (FONSI). Actions for which the significance of environmental impacts has not been clearly established require the preparation of an EA to determine the appropriate environmental document required. Please refer to 23 CFR 771.115 (c) for detailed information regarding conditions to prepare an EA.

ENVIRONMENTAL CATEGORICAL EXCLUSION (CE):

A CE is a category of action that, when properly documented, is excluded from the requirement to prepare an EA or EIS because individually or cumulatively there will not be a significant effect on the environment. Please refer to 23 CFR 771.115 (b) for detailed information regarding conditions for seeking a CE.

ENVIRONMENTAL IMPACT STATEMENT (EIS):

A document that assesses and details impacts resulting from a project. An EIS is required when actions will significantly affect the environment. Please refer to 23 CFR 771.115 (a) for detailed information regarding conditions requiring an EIS.

FEDERAL-AID ROAD:

Roads not functionally classified as local roads or rural minor collectors are eligible for federal Surface Transportation Program (STP) funds.

GENERAL OBLIGATION BONDS:

State-aid program funded by the sale of General Obligation Bonds. Debt service for these bonds is paid from the State General Fund. Capital outlay requests proposing projects are introduced to committees during the legislative session. Final determination is made by the legislature. For local road and street projects, funds are usually appropriated to the NMDOT, which enters into an agreement with the T/LPA to reimburse project costs up to the funded amount. Activities, matching ratios, and available funding are specified in the authorizing legislation.

HOME RULE CITY:

A municipality, such as Albuquerque and Las Cruces, that has adopted a charter in accordance with the "Municipal Charter Act", Sections 3-15-1 through 3-15-16, NMSA 1978, and has in place approved procurement procedures different from the State Procurement Code.

HORIZONTAL ALIGNMENT:

The way a road is situated horizontally - straight, curved or a combination.

INACTIVE PROJECT:

A project for which no expenditures have been charged against Federal funds for the past 12 months.

INTERMODAL FACILITIES:

Facilities where people or commodities can be shifted from one mode of transportation to another.

INTERSTATE MAINTENANCE PROGRAM (IM):

Federal-aid program to maintain Interstate highways.

LOCAL GOVERNMENT ROAD FUND (LGRF):

The LGRF is the umbrella funding source for the Municipal Arterial (MAP), County Arterial (CAP), School Bus Route (SBR) and the CO-OP Programs. The LGRF receives the following distributions: 1.44% of the gasoline tax (to the Municipal Arterial Program); 11.11% of the special fuels tax; 100% of ID cards and DWI reinstatement fees; 50% of the petroleum product loading fee; 25% of the Leased Vehicle Gross Receipts Tax; and earned interest on its own balances. Applications for the CAP, SBR, and CO-OP, are made to the respective NMDOT District Office. The MAP is administered by the NMDOT's State Maintenance Bureau.

LOGICAL TERMINI:

The beginning and end points selected for purposes of environmental documentation, between which the environmental investigations will occur. The distance between logical termini should be of sufficient length to address environmental matters on a broad scope. Logical termini are not to be confused with "project or construction termini".

MAJOR STRUCTURE:

Bridge or a large pipe or combination of pipes in excess of 20' in length (span).

MAP-21:

MAP-21 creates a streamlined, performance-based, and multimodal program to address the many challenges facing the U.S. transportation system. These challenges include improving safety, maintaining infrastructure condition, reducing traffic congestion, improving efficiency of the system and freight movement, protecting the environment, and reducing delays in project delivery.

MINOR ARTERIAL:

Routes with linkage to cities, larger towns, and other traffic generators that attract travel over similarly long distances. They provide an interconnecting network between larger cities and towns.

MINOR STRUCTURE:

Culverts and drainage structures less than 20' in length (span).

MULTI-MODAL:

A transportation facility which serves more than one mode of travel. For example, a road with a dedicated High Occupancy Vehicle (HOV) lane is a multi-mode facility serving two modes of travel, regular motor vehicle traffic and transit (buses or car pools).

MUNICIPAL ARTERIAL PROGRAM (MAP):

The MAP is funded through the LGRF. Eligible activities include development, construction, reconstruction, improvement, maintenance, repair and right of way acquisition, or material acquisition for local projects on municipal arterial streets. The LGRF/local matching ratios are 75/25, respectively.

NATIONAL HIGHWAY SYSTEM (NHS):

The network of nationally designated roads which includes all interstate routes, a large percentage of rural principal arterial roads, the defense strategic highway network and significant highway connectors.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT:

Section 402 (p) of the Clean Water Act requires that storm water discharges associated with construction activities that result in the disturbance of more than 5 acres must be authorized by a NPDES permit. Please refer to 40 CFR 122 for detailed information regarding NPDES Permits.\

OBLIGATION:

The Federal government's legal commitment (promise) to pay or reimburse the States for the Federal share of a project's eligible costs. This is like using a credit card where no cash is involved.

OBLIGATION LIMITATION:

A restriction, or "ceiling" on the amount of Federal assistance that may be promised (obligated) during a specified time period. This does not affect the apportionment or allocation of funds, rather it controls the rate at which these funds may be used.

OUTLAYS EXPENDITURES:

This is the final actual cash transaction, where money is provided to the States as reimbursement for the Federal share for approved highway program activities.

PRELIMINARY ENGINEERING:

Project Development activities including: defining the scope, estimating cost, environmental, archaeological studies and design activities up to construction.

PRINCIPAL ARTERIAL:

Rural and urban routes serving predominantly through traffic. Rural routes provide an inter-connected network between major urban areas. Urban area routes may include expressway and freeway systems.

PUBLIC TRANSPORTATION:

Transportation service which is available to any person upon payment of the proper fare and which cannot be reserved for the private or exclusive use of one individual or group.

REIMBURSEMENT:

The FHWA only reimburses states for costs actually incurred. The states and/or T/LPAs generally start a project with their own funds and receive cash for the federal share of the project as work is completed and bills are submitted to the Districts for payment.

ROUTE CONTINUITY:

Maintaining the same geometric and capacity characteristics of a given roadway.\

RURAL MAJOR COLLECTOR:

A road which provides service to any county seat not on an arterial route to those larger towns not directly served by the higher systems and to other traffic generators of equivalent intra-county importance such as consolidated schools shipping points, county parks, important mining and agricultural areas, etc. Major collector link these places with nearby towns or cities, or with routes of higher classification and serve the more important intra-county travel corridors not classified as minor arterial.

RURAL MINOR COLLECTOR:

A road network spaced at intervals consistent with population density that collects traffic from local roads and brings all traffic from a local road to a major collector road. The rural minor collectors provide service to the remaining smaller communities and link locally important traffic generators with rural areas. Rural minor collectors are generally not eligible for federal funds.

SCHOOL BUS ROUTE PROGRAM (SBR):

State-aid program for the improvement of roads that are school bus routes. Improvements include right of way acquisition, construction, maintenance, repair, and paving of public highways and streets and public school parking lots. This program requires a 40% match by the T/LPA.

SEVERANCE TAX (ST):

State-aid program funded by the sale of Severance Tax Bonds. Debt Service for these bonds is paid for by severance tax revenues levied on removal of natural resources. Road and street project funds are usually appropriated to the NMDOT which, for local projects, enters into an agreement with the T/LPA to reimburse project costs up to the funded amount.

STATE IMPLEMENTATION PLAN (SIP):

A detailed description of the programs a state will use to carry out its responsibilities under the Clean Air Act. SIPs are collections of the regulations used by a state to reduce air pollution. The Clean Air Act requires that EPA approve each SIP. Members of the public are given opportunities to participate in review and approval of SIPs. Mid Region MPO and Sunland Park as part of El Paso MPO are the two areas in New Mexico where SIPs are required

STATE PRIORITY (SP):

State-aid program funded by the State Road Fund.

STATEMENT OF PURPOSE AND NEED:

Explains why the expenditure of funds is necessary and worthwhile and that the priority given to the project, relative to other needed highway projects, is warranted

SURFACE TRANSPORTATION PROGRAM (STP):

Federal-aid program that may be used by states and localities for projects on any federal-aid road. Safety, Bridge and transportation enhancement projects paid for with STP funds are not restricted to federal-aid roads. Funds from other Federal programs cannot be used as matching funds unless specifically authorized by law.

TRUST FUNDS:

Accounts established by law to hold receipts (such as specific taxes or revenues) collected by the Federal Government and earmarked for financing special purposes and programs. To assure the financial soundness of a trust fund, it must be tracked separately to determine that outlays/expenditures do not exceed available revenues. For transportation purposes the trust fund refers to revenue from tax and gasoline.

URBAN COLLECTOR:

A road that collects traffic from local streets and channels it into the arterial system. An urban collector provides both land access service and traffic circulation within residential neighborhoods and commercial and industrial areas.

VERTICAL ALIGNMENT:

The way that a road is situated vertically, i.e. uphill, downhill, flat or any combination.

RESOURCES

Use of the latest edition of these publications is required, determination of which is the responsibility of the T/LPA.

AASHTO A Policy on Geometric Design of Highways and Streets, ("Green Book")

23 CFR 633, Subpart A-Required Contract Provisions-Federal-aid Constructions Contracts (Other than Appalachian Contracts)

23 CFR 630, Subpart B-Plans, Specifications, and Estimate

AASHTO A Policy on Design Standards, Interstate System

AASHTO Guide for the Development of Bicycle Facilities

AASHTO Guide To Design Of Pavement Structures,(Also refer to 23 CFR 626)

AASHTO Highway Drainage Guidelines

AASHTO LRFD Bridge Design Specifications

AASHTO Roadside Design Guide

AASHTO Standard Specifications for Highway Bridges

AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals

AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing, Parts I and II

American Indian Religious Freedom Act of 1978, 42 USC 1996 (1978)

Archaeological Resources Protection Act, 16 USC 470cc. and dd.; 43 CFR 7

Clean Air Act (CAA) 23 USC 109(1), 42 USC 7401-7428, and 23 CFR 770, 40 CFR 50-52, 49 CFR 623

Clean Water Act (CWA), 33 USC 1251, et seq.

Code of Federal Regulations Title 23 - Highways

Code of Federal Regulations Title 28, Part 35 - Nondiscrimination On The Basis Of Disability In State And Local Government Services

Code of Federal Regulations Title 28, Part 36 - Nondiscrimination On The Basis Of Disability By Public Accommodations and IN Commercial Facilities

Code of Federal Regulations Title 29, Part 1630 Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act

Code of Federal Regulations Title 40 PARTS 300, 302, 311, and 355

Code of Federal Regulations Title 49 - Transportation

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC 9601-9651 and 40 CFR PARTS 300, 302, 311 and 355

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC § 9601 et seq. (2002)

Construction Program Guide- <http://www.fhwa.dot.gov/construction/cqit/>

Contract Administration Core Curriculum Manual and Reference Guide-
<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>

Cultural Properties Act, NMSA 1978, Section 18-6-1

Department of Transportation Act of 1966 (DOT), Section 4(f) Evaluations

Development and Review of Specifications-<http://www.fhwa.dot.gov/construction/specreview.cfm>

E 1527-05, Standard practice for environmental site assessments: Phase I environmental site assessment process, 2005, American Society for Testing and Materials

Endangered Species Act (ESA), 16 U.S.C. 1531, et seq. 1973, and 7 CFR 355, 50 CFR 17-453

Executive Order 13007, 6 Fed. Reg. 26,771 (1996), "Indian Sacred Sites

Executive Order 13175, (2000), "Consultation and Coordination with Indian Tribal Governments

Executive Order State of New Mexico 2005-003, Adoption of Statewide Tribal Policy on the Protection of Sacred Places and Repatriation

Farmland Protection Policy Act (FPPA), Public Law 97-98, 7 U.S.C. 4201-4209, 1981

FHWA Geometric Design Criteria For Resurfacing, Restoration And Rehabilitation (3R)

FHWA Highway Functional Classification - Concepts, Criteria And Procedures

FHWA Highway/Utility Guide

FHWA Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

FHWA Manual on Uniform Traffic Control Devices

FHWA Real Estate Acquisition Guide For Local Public Agencies

FHWA SAFETEA-LU: "Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users, FHWA (2000)

FHWA Standard Specifications For Construction of Roads and Bridges on Federal Highway Projects (FP-96)

Financial Management Checklists-Billing/Payment Process of State and Local Governments

Financial Management Checklists-Indirect Costs of State and Local Governments

Financial Management Checklists-Local Project Administration Policies and Procedures

Fish and Wildlife Coordination Act (FWCA), 16 USC 661-667(d)

Floodplain Management, Executive Order 11988, FHPM 6-7-3-2 and 23 CFR 650 A, 23 CFR 771

Guidance for Preparing and Processing Environmental and Section 4(f) Documents, FHWA Technical Advisory 6640.8A, October 30, 1987

Guidance Regarding NEPA Regulations, CEQ July 28, 1983

Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation-
<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>

Handbook of Species Endangered In New Mexico, New Mexico Department of Game and Fish.

Land and Water Conservation Act of 1965, 16 USCS 4601-8

Metrication Pocketbook of Facts And Figures

National Environmental Policy Act (NEPA) of 1970, 42 USC 4321-4347 and 23 CFR 771, 40 CFR 1500-1508 (CEQ Regulations)

National Historic Preservation Act, as amended, USC 470f, and EC 11593, 23 CFR 771, 36 CFR 60, 36 CFR 63, 36 CFR 800

National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," 1990, National Park Service

Native American Graves Protection and Repatriation Act, 25 USC 3001 et seq., 1990

New Mexico Hazardous materials Act, NMSA 1978, Sections 74-4-1 - 74-4-13.

New Mexico Prehistoric & Historic Sites Preservation Act, NMSA 1978, Section 18-8-1

New Mexico Solid Waste Act, NMSA 1978, Section 74-9-1

New Mexico Statutes Annotated 1978, as Amended

New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 - 74-6-14

NMDOT Action Plan

NMDOT Consultant Services Procedures Manual

NMDOT Design Exceptions and Design Variances
NMDOT Drainage Manual, Volume I, Hydrology
NMDOT Drainage Manual, Volume II, Hydraulics, Sedimentation and Erosion
NMDOT Field Guide to Asbestos and Lead Based Paint Issues
NMDOT Hazardous Material Assessment Handbook, 2006 Environmental Geology Section
NMDOT Location Study Procedures
NMDOT Metric Conversion Interim Guidelines for Geometrics and Roadway Design and Surveying
NMDOT National Pollutant Discharge Elimination System Implementation Package
NMDOT New Mexico State Traffic Monitoring Standards
NMDOT Noise Abatement Policy, revised 2006
NMDOT Regional Planning Process Guidelines Notebook
NMDOT Regulations for Driveways and Median Openings on Non-access Controlled Highways
NMDOT Right Of Way Handbooks
NMDOT RPO Handbook
NMDOT Standard Specifications For Highway And Bridge Construction, ("Silver/ Platinum Book" - SAE Units)
NMDOT State Transportation Commission Policies
Protection of Wetlands, Executive Order 11990, 23 CFR 777
Questions and Answers about NEPA Regulations, CEQ March 30, 1981
Resource Conservation and Recovery Act of 1976 (RCRA), 42 USC 6901, et seq.
Scoping Guidance, CEQ April 30, 1981
Transportation Equity Act for the 21st Century
Transportation Research Board Practices For Resurfacing, Restoration, And Rehabilitation (3R)
Transportation Research Board, Highway Capacity Manual
Wild and Scenic Rivers Act, 16 USC 1271-1287, and 36 CFR 251, 36 CFR 261, 43 CFR 8350
Wildlife Conservation Act, NMSA 1978, Sections 17-2-37 - 17-2-46

ENVIRONMENTAL RESOURCES ON THE WEB

NMDOT Cultural Resources Section

<http://nmshtd.state.nm.us/main.asp?secid=14763>

The CRS web page provides links to the NMDOT cultural resources guidelines and Historic Preservation Division regulations.

NMDOT Environmental Geology Bureau

<http://nmshtd.state.nm.us/main.asp?secid=14483>

The EGS web site contains links to some of the many state and federal web sites that have proven useful in the completion of environmental site assessments. It also contains a link to the Hazardous Materials Assessment Handbook and the NMED's eIDEA searchable database for regulated sites in New Mexico.

NMDOT Human and Natural Resources Section

<http://nmshtd.state.nm.us/main.asp?secid=14464>

The H&NRS web site contains links to Federal NEPA guidelines, FHWA regulations, and natural resource agency permitting and related procedures.

NMDOT Location Study Procedures Guidebook

<http://www.nmshtd.state.nm.us/main.asp?secid=11182>

The Location Study Procedures guidebook has been prepared to assist transportation engineers and planners and other practitioners in preparing alignment and corridor studies consistent with the requirements of the National Environmental Policy Act (NEPA), the regulatory requirements codified in 23 CFR 770-772, and other federal and state regulations and policies related to transportation planning and project development.

Federal Highway Administration, Environmental Program

<http://www.fhwa.dot.gov/environment/index.htm>

FHWA Office of Planning and Environment web site provides links to diverse and widespread variety of programs, research and other activities including: Air quality, Environmental Justice, Environmental Guidebook, Environmental Streamlining, Highway Traffic Noise, Human Environment, Natural Environment, NEPA Project Development, Public Involvement, General Topics.

Advisory Council on Historic Preservation

www.achp.gov/work106.html

This is the primary web-based resource for the council's guidance on working with Section 106. The site provides the full text of the council's 1999 revised regulations as well as other information about cultural resource management. Also useful are the publications designed to aid Section 106 users as they apply the revised regulations.

New Mexico Environment Department

<http://www.nmenv.state.nm.us/>

The NMED website provides links to regulatory research and guidance; announcements of changes within the agency structure and regulations, including draft regulations available for public review and comment; a searchable database of regulated properties; etc.

US Environmental Protection Agency

<http://www.epa.gov/>

The EPA web site provides links to numerous federal programs, and research and regulatory resources including: current research; guidance regarding asbestos, lead, hazardous materials, Superfund sites and others; testing methods; informational sources; and educational resources.

FHWA's Eastern Resource Center Environmental Guidebook

<http://www.environment.fhwa.dot.gov/guidebook/index.asp> Provides full text of numerous regulations, executive orders, etc. Many files can also be downloaded. Subjects covered include NEPA/Project Development and the Environmental Process; Section 4(f); Historic and Archeological resources; Community and Social Issues; Wetlands and Floodplains. Links to other guidance and information and related web sites are also available.