

**AGREEMENT FOR
ROAD IMPROVEMENTS TO
ROADS IN THE LA TIERRA SUBDIVISION
SANTA FE COUNTY, NEW MEXICO**

This Agreement is made this 11 day of April 2017, by and between **Santa Fe County**, New Mexico (hereinafter "County"), a political subdivision of the state of New Mexico, and **The La Tierra Association, Inc.** (hereinafter "Association"). P.O. Box 45628, Rio Rancho, NM 87174-5628.

WHEREAS, the County is responsible for maintenance, repair and improvements to these County roads within the La Tierra Subdivision; and

WHEREAS, the Association has requested that a double chip seal application be made on some of the roads within the La Tierra Subdivision; and

WHEREAS, the County has estimated that chip seal improvements to the roads within the subdivision, described on Exhibit "A" will cost approximately \$173,000.00 to improve; and

WHEREAS, the County does not have the available funds to provide the chip seal improvements on the roads within the La Tierra Subdivision; and

WHEREAS, the County has received a \$95,000.00 legislative appropriation for the chip seal improvements on roads within the La Tierra Subdivision; and

WHEREAS, the County budgeted \$30,000 from Commission District 2 Capital Outlay GRT for the project; and

WHEREAS, the Association committed to provide a \$78,000.00 match to utilize the legislative appropriation for road improvements within the Subdivision; and

WHEREAS, the parties desire to enter into an agreement whereby the Association will pay up to \$78,000.00 to the County for the material costs and expenses for the chip seal improvements to the roads within the La Tierra Subdivision; and

WHEREAS, the County will hire a licensed contractor to do chip seal improvements to the roads within the Subdivision; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. SCOPE.

The County will reconstruct the roads and provide a double penetration chip seal on the roads within the La Tierra Subdivision listed on Exhibit "A". Such improvements, repairs, maintenance and resurfacing shall include repairing and improving roadsides, and chip seal

resurfacing, including the reclaiming of surface (process, place and compact) where needed. The intent is to clean, repair and maintain the road surface. All repairs, maintenance and improvements shall hereinafter be referred to as the work. This Agreement shall include the repair and maintenance of existing road surface.

2. STANDARD.

The parties recognize that there are differing standards for new road construction versus maintenance standards of previously constructed roads and that the roads, subject to this Agreement, were originally constructed to the County's road standards at the time the La Tierra Subdivision was created. Therefore, nothing contained herein shall require the County to conduct such studies and reviews as might be necessary to determine the extent of construction required to improve such road to meet current standards of new road construction. Further, the County is not, by this Agreement, bound to improve said roads to new road standards. The parties understand that the Work performed under this Agreement shall be performed according to what is determined necessary by County personnel relying on their experience and expertise in order to achieve reasonably safe road conditions and the reasonable elimination or reduction of the deterioration of the road and associated problems. The parties agree that the Work will be performed according to all current and applicable maintenance and improvement standards only. To the extent that it is reasonable and practical and, where appropriate, the County will seek to employ the new road construction standards set forth in the current New Mexico Highway Department's "Standard Specifications for Highway and Bridge Construction" (for new road construction).

3. COMMENCEMENT.

The Work contemplated under this Agreement shall commence in the summer of 2017 and shall proceed on a timely basis until completed.

4. ELIGIBLE COSTS AND EXPENSES.

The eligible costs and expenses under this Agreement shall be limited to any private contractor directly used to perform any work under this Agreement.

5. PAYMENT.

The Association hereby agrees to deposit, with the Santa Fe County Treasurer a total amount of \$78,000.00 for the eligible costs and expenses as defined herein.

Upon completion of the Work, the County will prepare an itemized statement, which will be provided to the Association with the specific work completed, along with the costs and expenses for labor, materials and equipment by showing the number of personnel and total hours worked, amount and type of materials and any specialized equipment used. Any unused funding provided by the Association will be refunded within 30 days upon receipt of the statement.

6. ACCOUNTING AND APPLICATION.

The County shall account for the receipt of all payments under a separate line item in the County's budget. All accounting shall be completed pursuant to generally accepted accounting practices and applicable New Mexico statutes. No payment made under this Agreement shall be considered a tax or assessment of any nature.

7. TERM.

This Agreement shall commence as set forth in Paragraph 3 above and terminate upon completion of the Work or on December 1, 2017, whichever is earlier. Either party may terminate this Agreement upon 30 days' written notice to the other party, provided that the County shall be required to complete any Work in progress and the Association shall be required to pay for any Work completed. The foregoing is subject to the availability of funds by both parties and the determination of the availability of County funds and resources is in the sole discretion of the County.

8. TORT CLAIM LIABILITY.

Nothing contained herein shall be deemed a waiver by the County of its rights pursuant to 41-4-1, et. seq. NMSA 1978 (the NM Tort Claims Act). The County hereby acknowledges and agrees that by entering into this Agreement, the Association shall not incur any liability to any third party or entity for any injury or damage resulting from the Work completed or in progress.

9. MISCELLANEOUS.

This Agreement:

- (a) constitutes the entire agreement between the parties and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto;

- (b) shall be construed and enforced in accordance with the laws of the State of New Mexico;

- (c) shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives;

- (d) may be modified only by a writing duly executed by the parties;

- (e) may not be assigned or delegated by either party without the written consent of the other party. Any purported assignment without such consent shall be void and shall entitle the other party to the remedies allowed herein for a default in the performance of this Agreement;

- (f) is the product of mutual effort and shall not be construed against one party in favor of the other.

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

If any provision of this Agreement, or application thereof, shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and any application of its other provisions shall remain in full force and effect.

The title and paragraph headings used in this Agreement are solely for the convenience of the parties and shall not be used to explain, construe, modify or aid in the interpretation of the provisions of this Agreement.

10. NOTICE.

All notices required to be given to the County shall be mailed (pre-postage paid) to the County at:

Santa Fe County
Attn: Director, Roads Division
Santa Fe County Public Works Department
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276

The Association: The La Tierra Association, Inc.
Attn: Carol Couch, Secretary
17 ~~Vuelta Road~~ ROSAL
Santa Fe, NM 87506

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year last shown below.

SANTA FE COUNTY


Katherine Miller, County Manager

4-11-2017
Date

Approved as to form:


Gregory S. Shaffer, County Attorney

3-29-17
Date

Finance Department:

Don Moya
Don D. Moya, Finance Director

4-3-12
Date

THE LA TIERRA ASSOCIATION, INC.

Alice M. Davis, President
(signature and title)

4-6-17
Date

