

Contract No. \_\_\_\_\_

Vendor No. \_\_\_\_\_

Project No. TPA-TPO-TPS-0076(2)01

Control No. CN 3365

## MAINTENANCE AGREEMENT FOR IRRIGATION

THIS AGREEMENT is made and entered into this 6<sup>th</sup> day of Sept., 2005 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, herein referred to as "DEPARTMENT", and the SANTA CRUZ IRRIGATION DITCH COMMISSIONERS, (collectively, "PARTIES") in Espanola, New Mexico, herein referred to as "COMMISSIONERS", acting through its duly elected Chairman and representatives, pursuant to the NMSA 1978, Section 67-3-28, as amended, THE PARTIES AGREE AS FOLLOWS:

### RECITALS

**WHEREAS**, the DEPARTMENT will be reconstructing the intersection of NM 76 and NM 583 under Control Number 3365, Project Number TPA-TPO-TPS-0076(2)01, Herein referred to as the "PROJECT", and

**WHEREAS**, the DEPARTMENT desires to perform the installation of a utility (irrigation pipeline) as part of and in conjunction with the reconstruction of the NM 76/NM 583 project, and

**WHEREAS**, the PARTIES have determined that it is necessary to further identify pertinent areas of responsibility for the operation and maintenance of the project as specifically set forth herein below:

### SECTION ONE -- PURPOSE:

The purpose of this AGREEMENT is to specify and delineate the rights and duties of the PARTIES hereto, for the purpose of defining the COMMISSIONERS responsibility in the areas of operation and maintenance of a utility (irrigation pipeline) as part of and in conjunction reconstruction within the project TPA-TPO-TPS-0076(2)01. This project shall hereinafter be

referred to interchangeably as the "Project" or "Project Control No. 3365". The Project is a joint and coordinated effort for which the PARTIES each have authority or jurisdiction.

**SECTION THREE – DEPARTMENT SHALL:**

1. Include the construction plans for the utility (irrigation pipeline) in the construction plans for the **“Project”**.
2. Act as the lead agency for the design and construction of a utility (irrigation pipeline) at the following locations: **a)** replacement of the existing 18 in. irrigation pipeline under NM 76 at the eastern limits of the project and its connection to **b)** the new 18 in. irrigation pipeline that replaces the existing irrigation ditch that parallels eastbound NM 76 within the project limits.
3. The DEPARTMENT shall provide the design for the utility (irrigation pipeline).
4. The DEPARTMENT shall perform all construction inspection of the COMMISSIONERS utility (irrigation pipeline) work.
5. The DEPARTMENT shall construct the utility (irrigation pipeline) so that is available for use by the COMMISSIONERS on Fridays and Saturdays of the COMMISSIONERS irrigation season (March 15 to October 1) during the project construction period.
6. The DEPARTMENT shall provide maintenance of the utility (irrigation pipeline) by March 1 each year.
7. The DEPARTMENT shall replace or repair utility (18 in. irrigation pipeline) under NM 76 if damaged due to roadway loading (see Section 4, not 2).
8. The DEPARTMENT shall design, construct, and maintain the 30 in. overflow pipeline and connections between the Storm Drain Vaults in the northwest quadrant of the intersection and the utility (irrigation pipeline).

**SECTION FOUR -- COMMISSIONERS SHALL:**

1. Coordinate maintenance of the utility (irrigation pipeline) headgates with the property owners and the DEPARTMENT at all times after their installation by the DEPARTMENT. This also includes replacement of headgates by the property owners, as required by the COMMISSIONERS bylaws, should non-project related damage to them occur.
2. Maintain the utility (irrigation pipeline) under NM 76 (18 in. irrigation pipeline) after its installation by the DEPARTMENT unless utility (irrigation pipeline) is damaged due to roadway loading (see Section 3, note 7).
3. Designate a Contact Person, who will coordinate construction inspections with the NMDOT Project Manager for the utility (irrigation pipeline) during construction (see Section 3, note 4). The Contact Person shall also coordinate utility (irrigation pipeline) maintenance with the NMDOT District 5 Assistant District Engineer for Maintenance.

**SECTION FIVE -- PROJECT RESPONSIBILITY:**

The utility (irrigation headgates) portion of the Project, once constructed, is, pursuant to COMMISSIONERS Bylaws, the Landowners sole responsibility and nothing herein is intended to give the DEPARTMENT any responsibility for future maintenance of this portion of the Project.

**SECTION SIX -- DISTRICT SOLE JURISDICTION:**

By reason of the DEPARTMENT's participation in this Project, the DEPARTMENT is incorporating the utility (irrigation pipeline) portion of the Project into the State Highway Maintenance Program. The DEPARTMENT is not assuming any maintenance or user responsibility or liability for participation in the utility (irrigation headgates) portion of the Project.

**SECTION SEVEN – CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:**

The DEPARTMENT and COMMISSIONERS shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The PARTIES further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans With Disabilities Act of 1990, Executive Order No. 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive order 11375 and as supplemented by the Department of Labor Regulations (41 CFR 60). Accordingly, 49 CFR 21 is applicable to this AGREEMENT and incorporated herein by reference.

**SECTION EIGHT -- EQUAL OPPORTUNITY COMPLIANCE:**

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

## **SECTION NINE -- DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY:**

In accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26) or as may be amended, the COMMISSIONERS shall agree to abide by and take all necessary and reasonable steps to comply with the following:

1. **DBE Policy** -- It is the policy of the DEPARTMENT to implement the provisions of 49 CFR 26, other pertinent regulations, and source legislation. The objectives are:
  - a. To ensure nondiscrimination in the award and administration of United States Department of Transportation (DOT)-assisted contracts in the DOT's highway, transit, and airport financial assistance programs;
  - b. To create a level playing field on which Disadvantaged Businesses (DBE's) can fairly compete for DOT-assisted contracts;
  - c. To ensure that DOT's DBE Program is narrowly tailored in accordance with applicable law;
  - d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBE's;
  - e. To help remove barriers to the participation of DBE's in DOT-assisted contracts, and;
  - f. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
2. **DBE Obligations** -- The DEPARTMENT will establish the state DBE goal on an annual basis. The approved FY 2000 state DBE goal is established at 10.5% for all federally assisted projects.
  - a. **Means of Attaining the State Goal** -- The DEPARTMENT will meet the state DBE goal on federally assisted projects through race neutral measures. There will be no individual project goals on federally assisted projects unless an analysis of DBE utilization indicates that the goal falls substantially short of the annual goal and that good faith efforts have not been fulfilled. In the event the DEPARTMENT adopts race conscious measures to attain the state DBE goal, the COMMISSIONERS shall be required to implement the individual project goal established by the DEPARTMENT.
  - b. **Record Keeping Responsibilities** -- The COMMISSIONERS are responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the DEPARTMENT's project manager or to the DEPARTMENT's Office of Equal Opportunity Programs Bureau (OEOPB) at the following address:

New Mexico Department of Transportation  
OEOPB  
Aspen Plaza, Suite 107  
1596 Pacheco Street  
Santa Fe, NM 87505

3. **DEPARTMENT's DBE Program** -- The DEPARTMENT's DBE Program, 18 NMAC 28.2, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the COMMISSIONERS of its failure to carry out the terms and conditions of the DBE Program, the DEPARTMENT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. **Recipient/COMMISSIONERS Assurances** -- Each contract the COMMISSIONERS enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project shall ensure that such contract and subcontracts shall include the following assurances:
  - a. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR 26. The DEPARTMENT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of DOT-assisted contracts. The DEPARTMENT's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the recipient of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
  - b. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the recipient to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the DEPARTMENT deems appropriate.

**SECTION TEN -- THIRD PARTY BENEFICIARY CLAUSE:**

This AGREEMENT is not intended by any of the provisions of any part of the AGREEMENT to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the AGREEMENT to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this AGREEMENT.

**SECTION ELEVEN -- TORT CLAIMS ACT:**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law and the New Mexico Tort Claims Act. The COMMISSIONERS, and their "public employees" and the DEPARTMENT, and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this AGREEMENT modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION TWELVE -- TERMINATION:**

The DEPARTMENT has the option to terminate this AGREEMENT if the COMMISSIONERS fail to comply with any provisions of this AGREEMENT. By such termination neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the AGREEMENT.

**SECTION THIRTEEN -- TERMS OF THIS AGREEMENT:**

This AGREEMENT incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written AGREEMENT. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT. The terms of this AGREEMENT are lawful; performance of all duties and obligations herein shall conform with and do not contravene any state, local, or Federal statutes, regulations, rules, or ordinances.

**SECTION FOURTEEN -- EXECUTION OF AGREEMENT:**

This AGREEMENT shall not take effect until executed by the parties hereto.

**SECTION FIFTEEN -- SEVERABILITY:**

In the event that any portion of this contract is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this contract shall remain in full force and effect.

**SECTION SIXTEEN -- AMENDMENT:**

This AGREEMENT shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

**IN WITNESS WHEREOF**, the parties have set their hands and seals this day and year set forth below.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
District Five Engineer

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

By: SSBul  
Assistant General Counsel

Date: 8/11/05

**SANTA CRUZ IRRIGATION DITCH COMMISSIONERS**

By: Joseph Medusa  
CHAIRMAN

Date: 9-6-05

By: Neil Martin  
TREASURER

Date: 9-6-05

By: Lannie Montoya  
SECRETARY

Date: 9-6-05