



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**  
MOBILITY FOR EVERYONE

**Local Government Agreement Unit**

P.O. Box 1149, South Building 4  
Santa Fe, New Mexico 87504-1149  
(505) 827-5640 fax

December 27, 2006

Gadsden Independent School  
Ronald Haugen, Superintendent  
P.O. Drawer 70  
Anthony, NM 88021

**RE: Capital Cooperative Agreement Certification Project for 2006 Legislative  
Appropriation(s) for Gadsden Independent School District.**

Dear Mr. Haugen:

Enclosed for your coordination of signatures are four originals of the Capital Cooperative Agreement referenced above. Please return them to my attention at the address shown above.

Also, please DO NOT fill in the date on the first page of the enclosed agreements. An original will be mailed to you at the time they are fully executed.

The agreement will not be fully executed until the 2006 Legislative Budget is available to the Department.

If you have any questions concerning the agreement or if I can be of further assistance, please contact me at (505) 827-5309 or Eddie Pacheco at (505) 827-5325.

Sincerely,

  
Kimberly Wildharber  
Contract Manager  
Enclosures

**Bill Richardson**  
Governor

**Rhonda G. Faught P.E.**  
Cabinet Secretary

**Commission**

**Johnny Cope**  
Chairman  
District 2

**David Schutz**  
Vice Chairman  
District 5

**Gregory T. Ortiz**  
Secretary  
District 6

**Norman Assed**  
Commissioner  
District 3

**Jim Franken**  
Commissioner  
District 4

**John L. Hummer**  
Commissioner  
District 1

|                 |                |
|-----------------|----------------|
| Contract Number | _____          |
| Vendor Number   | 0000054415     |
| Project Number  | See Appendix B |
| Control Number  | See Appendix B |

## CAPITAL COOPERATIVE AGREEMENT CERTIFICATION PROJECT

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the New Mexico Department of Transportation, hereafter referred to as "Department," and the Gadsden Independent School District, hereafter referred to as "School District."

In consideration of the covenants contained herein and pursuant to the NMSA 1978, Section 67-3-28 (1993), State Transportation Commission Policy No. 44, and New Mexico appropriation Laws of 2006, the parties agree as follows:

### SECTION ONE: PURPOSE

The purpose of this Agreement is to specify and delineate the rights and duties of the parties hereto as outlined in Appendix B and made part of this Agreement. Projects shall hereafter be referred to interchangeably as "Project" or "Project Control Number." Each Project identified in Appendix B shall be assigned a separate control number and project number. The Project is a joint and coordinated effort for which the Department and the School district each have authority or jurisdiction.

### SECTION TWO: PROJECT FUNDING

1. For Severance Tax Bond and General Fund Appropriations Projects listed in Appendix B the Department shall reimburse the School district funds in the amount not to exceed the total amount in Appendix B.
2. Funds must be expended for the purpose designated in Appendix B and must not exceed the amounts designated for each Project.
3. Any unexpended funds shall revert to the originating fund within six months of completion of the Project but no later than June 30, 2010.

#### **SECTION SIX: SCHOOL DISTRICT SOLE JURISDICTION**

By reason of the Department's participation in the funding of this Project, the Department is not incorporating this Project into the state highway system.

#### **SECTION SEVEN: LEGAL COMPLIANCE**

The School district shall comply with all applicable federal, state and local laws, and Department regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental and cultural resources requirements, right-of-way acquisition, workplace safety, employer-employee relations, and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The School district shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

#### **SECTION EIGHT: THIRD PARTY BENEFICIARY CLAUSE**

No provision of this Agreement creates 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 NINE: NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the School district arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

#### **SECTION TEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS**

There shall be strict accountability for all receipts and disbursements relating hereto. The School district shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The School district shall furnish the Department or State Auditor, upon demand, any and all such records relevant to this Agreement and allow them the right to audit all records, which support the performance of this Agreement. If an audit finding determines that specific funding use was inappropriate or not related to the project, the School district shall reimburse that portion to the Department within thirty days of written notification. If documentation is

insufficient to support an audit by customarily accepted accounting practices, the expenses supported by such insufficient documentation shall be reimbursed to the Department within thirty days.

#### **SECTION ELEVEN: AUTHORIZATION OF EXPENDITURES**

The terms of this Agreement are contingent upon passage of sufficient appropriations by the Legislature of New Mexico, for performance of this Agreement. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

#### **SECTION TWELVE: REIMBURSEMENT FOR EXPENDITURES INCURRED**

The Department's District Office shall reimburse the School district upon receipt of reimbursement requests for the Projects listed in Appendix B. The School district shall include a certification authenticating work completed, amount due, remaining Project balance, and Project Control Number. Reimbursement requests must be submitted individually for each Project listed in Appendix B. Incomplete submittals will be returned to the School district for corrections. The Department's District Office will not reimburse the School district for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Payment requests shall be submitted to the Department's District Office within six months of completion of the Project.

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

This Agreement constitutes the entire agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement.

#### **SECTION FOURTEEN: TERMINATION**

1. This Agreement shall terminate on June 30, 2010. Neither party shall have obligation under this Agreement after said date except as stated in Section Five of this Agreement.
2. The Department may, at its option, terminate this Agreement if the School district fails 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 FIFTEEN: SEVERABILITY**

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

**SECTION SIXTEEN: AMENDMENT**

This Agreement shall not be supplemented or amended except by an instrument in writing and executed by the parties hereto.

In witness whereof, the parties have set their hands and seal the day and year set forth below.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Deputy Secretary

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

**GADSDEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Board President

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

**GADSDEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
School Superintendent

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

APPENDIX A

CERTIFICATION OF CAPITAL COOPERATIVE AGREEMENT  
COMPLIANCE/COMPLETION

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of  
\_\_\_\_\_ do hereby certify as follows:

That the School district has complied with all the terms and conditions in the  
1. Agreement for

Control Number \_\_\_\_\_, Project Number \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

In witness whereof, \_\_\_\_\_  
in his/her capacity as School Board Superintendent does hereby certify the aforementioned  
matters stated herein are true to his/her knowledge and belief.

**Gadsden Independent School District**

By: \_\_\_\_\_

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

School Board Superintendent

When Completed, please send Certification to:

Paul Little, District Engineer  
New Mexico Department of Transportation  
District 1  
2912 E. Pine Street  
Deming, New Mexico 88030

APPENDIX B

2006 CAPITAL COOPERATIVE AGREEMENT  
Gadsden Independent School District

01. 2006 General Fund

Chapter 111, Section 60, Subsection 83

Control Number C6G48, Project Number SP-GA-7513(287)

to plan, design and construct improvements to the school bus dropoff area and parking areas at Santa Teresa high school in the Gadsden independent school district in Dona Ana county.

\$600,000

TOTAL

\$600,000