

## GRANT AGREEMENT

This grant agreement is between the New Mexico Department of Transportation (the “**Department**”) and <<Grantee name>> (the “**Grantee**”). The Department and the Grantee agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following project: <<project name, number and dollar amount>> or <<alternate project identification>>.
2. **Scope of Work.** The Grantee shall perform the professional services stated in <<exhibit A>> or <<alternate project identification>>.
3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely, properly prepared reimbursement requests as provided in the Department’s <<title of procedures manual>>. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to both parties signing the agreement, after termination of the agreement, or in excess of the amount of the award noted in section 1. The Grantee must submit its final reimbursement request no later than thirty days after termination of this agreement.
4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this agreement. The Grantee shall record costs incurred, services rendered and payment received, and shall maintain these financial records during the agreement and for three years from the date of submission of the final reimbursement request. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee’s principal office during the agreement and for three years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project, or otherwise used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty days of written notice.
5. **Officials Not to Benefit.** The parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee or tribal council member, in that person’s individual capacity, will benefit from this agreement.
6. **Termination.** The Department may terminate this agreement for any reason, by giving the Grantee thirty days written notice. The Grantee may only terminate this agreement based on the Department’s uncured, material breach of the agreement. On receipt of a “Notice of Cancellation,” the Grantee shall suspend work unless otherwise directed by the Department

in writing. The parties acknowledge that termination will not nullify obligations incurred prior to termination.

7. **Appropriations.** The Grantee acknowledges that:

- (1) this agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;
- (2) if sufficient appropriations and authorizations are not made, this agreement will terminate upon written notice by the Department to the Grantee; and
- (3) the Department will not expend any funds until they are approved for expenditure, and the Department's determination as to whether approval has been granted will be final.

8. **Compliance with Law.** The Grantee, its employees, agents and contractors, shall comply with the following:

- (1) Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. § 21;
- (2) all federal and state laws, rules, and regulations, and executive orders of the Governor of the state of New Mexico pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, §§ 28-1-1 through -15 (In accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age or handicap, will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this agreement. If the Grantee it is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation.);
- (3) state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, §§ 52-1-1 through -70, and related regulations; and
- (4) those sections in exhibit B labeled "applies to subrecipients as well as states." <<If agreement is funded under 23 U.S.C. § 402 or § 405, include this subsection 4 and exhibit B; otherwise omit both.>>

9. **Notices.** For a notice under this agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail return receipt requested and postage prepaid, fax or e-mail; and be addressed as follows:

<<parties' names and addresses>>

10. **Severability.** The parties intend that if any provision of this agreement is held to be unenforceable, the rest of the agreement will remain in effect as written.

11. **Tort Claims.** The parties intend that (1) immunity from liability for tortious conduct under NMSA 1978, § 41-4-4(A) will apply to all conduct relating to this agreement, (2) only the waivers of immunity from liability under NMSA 1978, §§ 41-4-4 through -12 will apply, and (3) this agreement does not waive immunity from liability for tortious conduct relating to this agreement of any employee of the Department or the Grantee.

12. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.

13. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in section 2.

14. **Term.** This agreement takes effect upon signature of all parties. If the Grantee does not deliver the signed agreement to the Department within sixty days of the Department's signature, the agreement will be voidable by the Department. The agreement terminates at midnight on <<month, day and year>> unless earlier terminated as provided in section 6 or section 7.

15. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law principles, govern all adversarial proceedings arising out of this agreement.

16. **Amendment.** No amendment of this agreement will be effective unless it is in writing and signed by the parties.

17. **No Third-party Beneficiary.** This agreement does not confer any rights or remedies on anyone other than the Department and the Grantee.

18. **Merger.** This agreement constitutes the entire understanding between the parties with respect to the subject matter of the agreement and supersedes all other agreements, whether written or oral, between the parties, except that this agreement does not supersede the Grantee's rights under any other grant agreement.

19. **Disadvantaged Business Enterprise.** The 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 part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions

as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). <<If agreement is funded under 23 U.S.C. §§ 101-170 (federal-aid highways), include this section 19; otherwise omit it.>>

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

DEPARTMENT OF TRANSPORTATION

Date: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Cabinet Secretary or Designee

<<Grantee's name>>

Date: \_\_\_\_\_, 2015

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

Approved as to form and legal sufficiency.

Date: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Assistant General Counsel  
Department of Transportation

Approved as to form and legal sufficiency.

Date: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Counsel for <<Grantee's name>>

Exhibit A

SCOPE OF WORK, TRAINING, REIMBURSEMENT AND REPORTING

1. **Scope of Work.** <<State the professional services Grantee must provide. The following wording is a *sample* only:>> The Grantee shall conduct sobriety checkpoints and saturation patrols accompanied by public information, media and educational activities. Sobriety checkpoints must be staffed by at least <<insert>> officers and must last at least <<insert>> hours. Saturation patrols must include at least two officers working at the same time in the same area. Optimally, the Grantee will conduct <<insert>> sobriety checkpoints and <<insert>> saturation patrols during the <<insert>> Period.

<<Sections 2-5 are *optional*. The wording in blue, below, explains when each one is needed or not. The rest of the wording is a *sample* only; your own wording may differ.>>

2. **Definitions.** <<Include this section only if there are specialized terms in this exhibit.>> For purposes of this exhibit, the following definitions apply:

“**Holiday Superblitz Period**” means November 15, 2013 to January 5, 2014.

“**Expanded Enforcement Period**” means <<insert>>.

“**Enforcement Activity**” means <<insert>>.

“**Program Manager**” means <<insert>>.

“**Agency Coordinator**” means <<insert>>.

“**Payroll Administrator**” means <<insert>>.

3. **Training and qualifications.** <<Include this section only if there are special qualifications Grantee must have *in addition* to those stated in the agreement or your procedure manual.>> The Agency Coordinator must attend the Department’s Law Enforcement Coordinators Meeting and Project Management and Accounting Procedures financial training. The Payroll Administrator must attend TSD’s Project Management and Accounting Procedures financial training. The Grantee’s officers must have the following qualifications and credentials: <<insert>>

4. **Reimbursement.** <<Include this section only if there are reimbursement requirements *in addition* to those stated in the agreement or your procedure manual.>> The Department will pay the Grantee \$<<insert>> per checkpoint. Claims for payment must specify officers’ actual hourly rate of overtime pay; the Department will not pay any amount in excess of that rate. The Department will pay the Grantee for the following:

- (1) overtime pay for officers conducting traffic safety enforcement in high crash locations or safety corridors identified in data compiled by local, state or federal government agencies, and in targeted locations from <<insert>> through <<insert>>;
- (2) training for officers not previously trained in S.T.E.P.;

- (3) attendance at court hearings directly related to arrests made while participating in <<insert>>;
- (4) attendance at, and excess per diem for, Operation Safe Kids (a four-day NHTSA standardized child passenger safety training);
- (5) assistance at child safety seat clinics or car seat fitting stations; and
- (6) administrative costs, including overtime costs for officers or civilian employees to dispatch or process paperwork directly related to the project, up to ten percent of the total monthly claim amount.

5. **Reporting.** <<Include this section only if there are reporting requirements *in addition to those stated in the agreement or your procedure manual.*>> The Grantee must submit activity reports on the same schedule as claims for payment (as provided in section 3 of the agreement), using the activity report form provided unless otherwise directed by the Department. Activity reports must include the type of law enforcement activity conducted, dates worked, total hours worked, number of officers participating, and type of citation issued. The final activity report must assess whether performance goals were met, and must include a summary of the project activities, an analysis of the data reported from the project, and an analysis of the accomplishments of the project.

Exhibit B

<<Attach an executed copy of the Certifications and Assurances found at Appendix A to 23 C.F.R. § 1200.>>