

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CITY OF ALBUQUERQUE  
FOR  
CONSTRUCTION  
OF THE  
OXBOW SITE 3A  
MIDDLE RIO GRANDE RESTORATION, NEW MEXICO

THIS AGREEMENT is entered into this 28th day of August, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Albuquerque District, and City of Albuquerque (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Middle Rio Grande Restoration, New Mexico for ecosystem restoration and recreation (hereinafter the "Authorized Project") at Albuquerque and Sandia Pueblo, New Mexico was authorized by Section 3118 of the Water Resources Development Act of 2007, Public Law 110-114, "Middle Rio Grande Restoration, New Mexico", as amended by Section 114 of the Energy and Water Development and Related Agencies Appropriations Act, 2009, Division C of the Omnibus Appropriations Act, 2009, Public Law 111-8;

WHEREAS, the Government was authorized to perform *monitoring* and *adaptive management* (as defined in Article I.M. and Article I.N. of this Agreement, respectively) as part of the Authorized Project;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the Oxbow Site 3A (a separable element of the Authorized Project and hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 3118 of the Water Resources Development Act of 2007, Public Law 110-114, "Middle Rio Grande Restoration, New Mexico", as amended by Section 114 of the Energy and Water Development and Related Agencies Appropriations Act, 2009, Division C of the Omnibus Appropriations Act, 2009, Public Law 111-8 specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the *ecosystem restoration features* and the *recreation features* as generally described in the *Middle Rio Grande Bosque, New Mexico, General Investigation Study, Final Feasibility Report*, dated March 2011, and approved by the Assistant Secretary of the Army (Civil works) on May 13, 2011.

B. The term "*ecosystem restoration features*" shall mean restoration of approximately 30 acres of bosque riparian habitat to include replacement of non-native vegetation with native vegetation, gated culverts to regulate flows into and around new features including side and backwater channels and wetlands, bank terraces, modifications to two storm drainage outfalls, and related infrastructure as generally described in the *Middle Rio Grande Bosque, New Mexico, General Investigation Study, Final Feasibility Report*, dated March 2011 and approved by the Assistant Secretary of the Army (Civil Works) on May 13, 2011.

C. The term "*recreation features*" shall mean passive recreation improvements through the *Project* area, including educational and trail signage, benches and/or resting area and other related infrastructure as generally described in the *Middle Rio Grande Bosque, New Mexico, General Investigation Study, Final Feasibility Report*, dated March 2011 and approved by the Assistant Secretary of the Army (Civil Works) on May 13, 2011.

D. The term "*total project costs*" shall mean the sum of all costs incurred by the Government in accordance with the terms of this Agreement directly related to design, construction, *monitoring*, and *adaptive management* of the *Project*. The term does not include any value for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined by the Government to be required or necessary for the *Project*; any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of dispute resolution under Article V of this Agreement; or any costs incurred by the Non-Federal Sponsor.

E. The term "*total ecosystem restoration costs*" shall mean that portion of *total*

*project costs* allocated to the *ecosystem restoration features*.

F. The term “*total recreation costs*” shall mean that portion of *total project costs* allocated to the *recreation features*.

G. The term “*period of construction*” shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Project* or commences construction of the *Project* using the Government’s own forces, whichever is earlier, to the date that construction, *monitoring*, and, if necessary, *adaptive management* of the *Project* are complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article X or Article XI.C. of this Agreement, whichever is earlier.

H. The term “*highway*” shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

I. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

J. The term “*functional portion of the Project*” shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Albuquerque District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

K. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share there for.

L. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

M. The term “*monitoring*” shall mean activities, including the collection and analysis of data, that are necessary to determine if predicted outputs of the *ecosystem restoration features* are being achieved and to determine if *adaptive management* is necessary.

N. The term “*adaptive management*” shall mean measures taken to adjust the *ecosystem restoration features* in response to the *monitoring* results so that the predicted outputs of the *ecosystem restoration features* are achieved following their construction. The term includes, but is not necessarily limited to, modifications of structures, or adjustments to operation or management, of the *ecosystem restoration features*.

O. The term “*Authorized Federal Participation Limit*” shall mean the statutory

limitation on the Government's financial participation in the design, construction, *monitoring*, and *adaptive management* of the Authorized Project, as specified in Section 3118 of the Water Resources Development Act of 2007, Public Law 110-114. As of the effective date of this Agreement, such limitation is \$25,000,000.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress"), expeditiously shall construct the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. As of the effective date of this Agreement, *total project costs* are projected to be \$1,600,000; *total ecosystem restoration costs* are projected to be \$1,500,000; and *total recreation costs* are projected to be \$100,000. By November 1, 2014 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; *total ecosystem restoration costs*; *total recreation costs*; and the *Authorized Federal Participation Limit*.



B. The Government shall allocate *total project costs* between *total ecosystem restoration costs* and *total recreation costs*.

C. In accordance with Article III of this Agreement, the Non-Federal Sponsors shall provide, at no cost to the Government, all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

D. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$24,984,000 of Federal funds have been provided by Congress for the Authorized Project of which \$1,600,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Authorized Project or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In no event shall the Government incur costs for the *recreation features* that exceed 10 percent of *total ecosystem restoration costs*.

3. In the event the Government projects that the amount of Federal funds available for the *Project* through the then-current *fiscal year*, or the upcoming *fiscal year*, is not sufficient, that portion of *total project costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds available for the *Project* will be exhausted. Upon the exhaustion of Federal funds available for the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to continue work on the *Project*, or the Government or the Non-Federal Sponsor elects to terminate construction (including *monitoring* and *adaptive management*) under this Agreement.

4. In accordance with Section 3118 of the Water Resources Development Act of 2007, Public Law 110-114, the Government's total financial obligations for design, construction, *monitoring*, and *adaptive management* of all elements of the Authorized Project shall not exceed the *Authorized Federal Participation Limit*. If the Government projects that the amount of Federal funds available for this *Project* that are within the *Authorized Federal Participation Limit* will not be sufficient to meet *total project costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the amount of Federal funds available for the *Project* will be exhausted. Upon the exhaustion of Federal funds for the *Project*, the parties shall conclude their activities related to construction (including *monitoring* and *adaptive*

*management*) of the *Project*.

E. When the District Engineer determines that, except for *monitoring* and *adaptive management*, the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

F. Upon notification from the District Engineer in accordance with paragraph E. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VI of this Agreement. Concurrent with the Non-Federal Sponsor's performance of operation, maintenance, repair, rehabilitation, and replacement for the completed *Project* or such completed portion, the Government shall perform *monitoring* and, if necessary, *adaptive management* in accordance with the provisions of this Agreement.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

H. The Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall finalize the plan for *monitoring* of the *ecosystem restoration features* contained in the *Middle Rio Grande Bosque, New Mexico, General Investigation Study, Final Feasibility Report*, dated March 2011 and approved by the Assistant Secretary of the Army (Civil Works) on May 13, 2011. The *monitoring* plan shall describe the key project specific parameters to be monitored; how these parameters relate to achieving the desired outcomes of the *ecosystem restoration features*; methods for measuring those parameters; frequency and duration of *monitoring* of the *ecosystem restoration features*; criteria for measuring the success of the *ecosystem restoration features*; preparation and distribution of *monitoring* reports and other coordination requirements; and estimated *monitoring* costs. As of the effective date of this Agreement, the costs of *monitoring* for the *ecosystem restoration features* of the *Project* are estimated to be \$50,000.

I. The *monitoring* of the *ecosystem restoration features* shall be performed in accordance with the finalized *monitoring* plan and the provisions of this paragraph.

1. The Government shall perform the *monitoring* of the *ecosystem restoration features*. Performance of *monitoring* shall be initiated as detailed in the finalized *monitoring* plan. Such initiation may occur prior to completion of construction of the *ecosystem restoration features*. Upon the: (a) tenth anniversary of the date of the written notification to the Non-Federal Sponsor, required by paragraph E. of this Article, of the District Engineer's determination that construction of the *ecosystem restoration features* is complete; (b) date that the Commander, South Pacific Division determines in writing that ecological success has been achieved; or (c) date that the costs for all elements of the Authorized Project reaches the *Authorized Federal Participation Limit*, whichever occurs first, the Government's responsibility for performance of *monitoring* ceases. The Government's costs of such *monitoring* shall be included in *total project costs*. In no event shall the Government incur any costs of *monitoring* beyond the end of its *monitoring* responsibility.

2. If ecological success is not achieved prior to the end of the Government's responsibility for performance of *monitoring*, the Non-Federal Sponsor shall be responsible for performance of *monitoring* in accordance with the *monitoring* plan until the date that the Commander, South Pacific Division determines in writing that ecological success has been achieved. Any costs of *monitoring* incurred by the Non-Federal Sponsor pursuant to this paragraph shall be solely the responsibility of the Non-Federal Sponsor.

3. If in its sole discretion the Non-Federal Sponsor elects to perform *monitoring* after the date that the Commander, South Pacific Division determines in writing that ecological success has been achieved, any costs of *monitoring* incurred by the Non-Federal Sponsor pursuant to this paragraph shall be solely the responsibility of the Non-Federal Sponsor.

J. Applying the criteria specified in the *monitoring* plan, the Government shall determine whether *adaptive management* of the *ecosystem restoration features* is necessary. The Government may make such a determination at any time during the period that *monitoring* is the Government's responsibility. Within 120 calendar days after the end of the Government's *monitoring* responsibility, the Government shall make a final determination of whether *adaptive management* of the *ecosystem restoration features* is necessary. In making such determinations, the Government shall consult with the Non-Federal Sponsor and, as appropriate, with other concerned agencies. Upon any determination by the Government that *adaptive management* of the *ecosystem restoration features* is necessary, the Government shall notify the Non-Federal Sponsor in writing of its determination and expeditiously shall perform such *adaptive management* in accordance with paragraph K. of this Article. If, after the end of the Government's *monitoring* responsibility, the Government determines that *adaptive management* of the *ecosystem restoration features* is not necessary, the Government shall notify the Non-Federal Sponsor in writing of its determination.

K. If the Government determines, pursuant to paragraph J. of this Article, that *adaptive management* of the *ecosystem restoration features* is necessary, the Government, in



consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall perform *adaptive management* of the *ecosystem restoration features* in accordance with the provisions of this paragraph, paragraph A., and paragraph D. of this Article.

1. When the District Engineer determines that *adaptive management* of the *ecosystem restoration features* is complete, the District Engineer shall: a) notify the Non-Federal Sponsor in writing of such determination; b) furnish the Non-Federal Sponsor with an amended OMRR&R Manual that reflects any modifications to structures or adjustments to operation or management methods; c) furnish the Non-Federal Sponsor with a copy of any new or revised as-built drawings for the *ecosystem restoration features*; and d) within 30 calendar days after such notice and in consultation with the Non-Federal Sponsor, determine whether to continue *monitoring* of the *ecosystem restoration features*, subject to the limits in paragraph I. of this Article.

2. Upon notification from the District Engineer in accordance with subparagraph 1. of this paragraph, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project* in accordance with Article VI of this Agreement.

L. The Non-Federal Sponsor shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the *ecosystem restoration features*, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

M. The Non-Federal Sponsor shall not use the *ecosystem restoration features*, or the lands, easements, and rights-of-way required pursuant to Article III of this Agreement for such features, as a wetlands bank or mitigation credit for any other project.

N. The Non-Federal Sponsor shall keep the *recreation features*, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

O. The Non-Federal Sponsor shall not be entitled to reimbursement for any costs that it incurs in performing its responsibilities under this Agreement.

### ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government



determines the Non-Federal Sponsor must provide, respectively, for the *ecosystem restoration features* and for the *recreation features*, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any financial obligations for construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* that are necessary, respectively, for the *ecosystem restoration features* and for the *recreation features* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any financial obligations for construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements that are required, respectively, for the *ecosystem restoration features* and for the *recreation features* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any financial obligations for construction of

a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XI.A. of this Agreement; historic preservation activities in accordance with Article XIV of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; finalization of the *monitoring* plan; performance of *monitoring* and *adaptive management*; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other

matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor shall be solely responsible for its costs for participation in the Project Coordination Team. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs*.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.E. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.F. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article VIII of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason



is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE VII – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction, *monitoring*, *adaptive management*, operation, maintenance, repair, rehabilitation, and replacement of the *Project*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VIII – FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

#### ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.



## ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate construction (including *monitoring* and *adaptive management*) under this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XI.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XI.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XI.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XI.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates construction (including *monitoring* and *adaptive management*) under this Agreement in accordance with the provisions of Article XI.C. of this Agreement.

C. In the event that construction (including *monitoring* and *adaptive management*) under this Agreement is terminated pursuant to this Article, Article II.D., or Article XI.C. of this Agreement, both parties shall conclude their activities relating to the *Project*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any termination of construction (including *monitoring* and *adaptive management*) under this Agreement or suspension of future performance under this Agreement in accordance with this Article, Article II.D., or Article XI.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

## ARTICLE XI - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the

Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. Any costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be the sole responsibility of the Non-Federal Sponsor.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate construction (including *monitoring* and *adaptive management*) under this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate construction (including *monitoring* and *adaptive management*) under this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article IV of this Agreement in an effort to ensure that responsible parties

bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:  
Chief Administrative Officer,  
City of Albuquerque  
PO Box 1293  
Albuquerque, NM 87103

If to the Government:  
District Engineer  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XIV - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any



identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work incurred before the end of the *period of construction* shall be included in *total project costs* and shall be the responsibility of the Government.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government before the end of the *period of construction* for such mitigation activities shall be included in *total project costs* and shall be the responsibility of the Government.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation incurred before the end of the *period of construction* for this *Project* and the costs of data recovery activities associated with historic preservation for all other elements of the Authorized Project shall be borne entirely by the Government up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the Authorized Project. The costs of data recovery activities associated with historic preservation incurred before the end of the *period of construction* for this *Project* shall be included in *total project costs* and shall be the responsibility of the Government.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). In the event the Government does incur, before the end of the *period of construction*, costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article, such costs shall be included in *total project costs* and shall be borne entirely by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

#### ARTICLE XV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.



## ARTICLE XVI - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF ALBUQUERQUE

BY:

Patrick J. Dagon  
Patrick J. Dagon  
Lieutenant Colonel, U.S. Army  
District Engineer

BY:

Robert J. Perry  
Robert J. Perry  
Chief Administrative Officer  
City of Albuquerque

DATE:

28 Aug 14

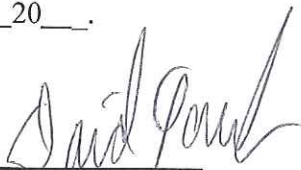
DATE:

8/28/14

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the City of Albuquerque that the City of Albuquerque is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Albuquerque in connection with the Oxbow Site 3A, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Albuquerque have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.



David Tourek  
City Attorney  
City of Albuquerque



## CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
\_\_\_\_\_  
Robert J. Perry  
Chief Administrative Officer  
City of Albuquerque

DATE: 8/26/14

