

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
FOR
DESIGN AND CONSTRUCTION ASSISTANCE
FOR THE
UPPER VENADA DRAINAGE IMPROVEMENTS

THIS AGREEMENT is entered into this 17 day of November, 2022, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Albuquerque District (hereinafter the "District Commander") and the Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA) (hereinafter the "Non-Federal Sponsor"), represented by its Executive Engineer.

WITNESSETH, THAT:

WHEREAS, the Government is authorized to provide design and construction assistance for publicly owned, non-Federal water-related environmental infrastructure and resource protection and development projects in Arizona, Idaho, Montana, rural Nevada, New Mexico, rural Utah, and Wyoming, including projects for wastewater treatment and related facilities, water supply and related facilities, and surface water resource protection and development pursuant to Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 595");

WHEREAS, the District Commander has determined that the non-Federal project for Design and Construction at Sandoval County, New Mexico is eligible for design and construction assistance under Section 595;

WHEREAS, the design and construction assistance for the non-Federal project pursuant to this Agreement will be provided for increment(s) of work, as defined in Article I.A. of this Agreement, undertaken by the Non-Federal Sponsor;

WHEREAS, Section 595(e)(3) provides that the Federal share of costs under each agreement entered into under Section 595 shall be 75 percent, which may be in the form of reimbursements; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “increment of work” means design and construction of features, as generally described in a Scope of Work, and approved by the District Commander for Albuquerque District . The initial increment of work consists of designing and constructing features within the Venada Drainage to remove debris and contaminants from storm flows as well as incorporate flood prevention measures to reduce downstream flow rates before being discharged into the Rio Grande, as generally described in the Scope of Work for Venada Drainage Improvements, dated June 2022 and approved by the District Commander Albuquerque District on September 8, 2022. Each additional increment of work, if any, will be described in a separate Scope of Work, which will specify the amount of Federal funds available for such work. In the event of a conflict between this Agreement and a Scope of Work, this Agreement will control.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (See 42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of an increment of work and cost shared. The term includes, but is not necessarily limited to: the Non-Federal Sponsor’s eligible pre-Scope of Work design work costs, if any; the Government’s costs for conducting environmental compliance activities, providing management oversight and technical assistance, as needed, preparing monthly financial reports, preparing Scopes of Work, reviewing design work, appraisals, and invoices provided by the Non-Federal Sponsor, conducting periodic inspections during construction, and any other costs incurred by the Government pursuant to the provisions of this Agreement; the Non-Federal Sponsor’s eligible costs of engineering, design, construction, and supervision and administration; the Non-Federal Sponsor’s eligible costs for providing real property interests and relocations, and performing permit work; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; audits; betterments; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “pre-Scope of Work design work” means the design work performed by the Non-Federal Sponsor prior to approval of the Scope of Work for that increment of work that the Government determines was accomplished in a satisfactory manner and is integral to the increment of work.

G. The term “betterment” means a difference in the design or construction of an element of an increment of work that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The amount of Federal funds available for each increment of work is limited to the amount identified in the Scope of Work for that increment of work. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount, and such excess costs shall not be eligible for credit or reimbursement or included in the construction costs for cost-sharing purposes. For the initial increment of work, the Federal funds available are limited to \$2,800,000.

B. The Non-Federal Sponsor shall design and construct each increment of work in accordance with all requirements of applicable Federal laws and implementing regulations and the following paragraphs. If after completion of the design portion of an increment of work, the parties mutually agree in writing not to proceed with construction of that increment of work, the parties shall conclude their activities relating to that increment of work and proceed to a final accounting in accordance with Article VI.C.

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of each increment of work. 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 the purpose of performing inspections pursuant to Article II.D.

2. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all design work for an increment of work, including relevant plans and specifications, at intervals determined by the Government in coordination with the Non-Federal Sponsor, and related contract solicitations, prior to the Non-Federal Sponsor’s issuance of such solicitations. In addition, until the Government has provided written confirmation that environmental compliance has been completed for an increment of work, the Non-Federal Sponsor shall not issue the solicitation for the first construction contract for that increment of work or commence construction of that increment of work using its own forces.

3. The Non-Federal Sponsor is responsible for obtaining all permits and licenses necessary for design, construction, and operation and maintenance of each increment of work and for ensuring compliance with all requirements of such permits and licenses.

4. The Non-Federal Sponsor shall establish and maintain such legal and institutional structures as necessary to ensure the effective long-term operation of each increment of work at no cost to the Government.

5. Upon completion of design for each increment of work, the Non-Federal Sponsor shall furnish the Government with copies of the completed design.

6. The Non-Federal Sponsor shall operate and maintain each increment of work at no cost to the Government. The Non-Federal Sponsor shall furnish the Government with a copy of the as-built drawings for the completed work.

7. No more frequently than every 30 calendar days, the Non-Federal Sponsor shall provide the Government an invoice with the documentation required by Article V for the Government to determine whether costs incurred by the Non-Federal Sponsor for an increment of work are eligible for inclusion in construction costs. If the Non-Federal Sponsor incurred costs for pre-Scope of Work design work for an increment of work, documentation of such costs shall be included in the Non-Federal Sponsor's initial invoice. Following completion of an increment of work, the Non-Federal Sponsor shall notify the Government, which shall conduct a final inspection of that increment of work. No later than 60 calendar days after the Government conducts the final inspection, the Non-Federal Sponsor shall provide its final invoice for that increment of work, unless an extension is requested by Non-Federal Sponsor in writing and approved by the Government.

C. Using information developed and provided by the Non-Federal Sponsor, the Government shall ensure environmental compliance activities necessary to achieve compliance with all applicable environmental laws and regulations for design and construction of an increment of work are completed prior to initiation of construction on that increment of work. For each increment of work, the Government will notify the Non-Federal Sponsor in writing when such compliance has been completed.

D. The Government may perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis during design and construction of an increment of work. Further, the Government shall perform a final inspection to verify satisfactory completion of an increment of work.

E. For each increment of work, the Government shall be responsible for 75 percent of construction costs, with reimbursement for costs incurred by the Non-Federal Sponsor determined in accordance with this paragraph. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, that are eligible for inclusion in construction costs. To the maximum extent practicable, within 30 days of receipt of each invoice, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for costs for each invoice by taking 75 percent of the Non-Federal Sponsor's eligible costs, less 25 percent of the costs incurred by the Government during that

same invoice period. The Government shall provide a written explanation to the Non-Federal Sponsor for costs it determines are not eligible for inclusion in construction costs.

F. The Government shall ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended, prior to initiation of construction. All costs incurred by the Government and the Non-Federal Sponsor for actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the NHPA and the mitigation of adverse effects other than data recovery, as the Government determines necessary and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of such costs, shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for each increment of work may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for each increment of work, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the increment of work. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan, including appropriate engineering plans and specifications.

I. If the Non-Federal Sponsor elects to include betterments in the design or construction of an increment of work, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits for such work, without reimbursement by the Government.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government and Non-Federal Sponsor shall jointly determine the real property interests required for construction, operation, and maintenance of each increment of work and the Non-Federal Sponsor shall provide the Government with general written descriptions,

including maps as appropriate, of such real property interests. Upon written confirmation by the Government, the Non-Federal Sponsor shall acquire such real property interests and notify the Government in writing when such interests have been acquired. The Non-Federal Sponsor shall ensure that real property interests provided for such work are retained in public ownership and, in accordance with Article IV.A., that the real property interests are investigated and that HTRW does not exist in, on, or under the real property interests.

B. The Government and Non-Federal Sponsor shall jointly determine the relocations required for construction, operation, and maintenance of each increment of work and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, as appropriate, for such relocations. Upon written confirmation by the Government, the Non-Federal Sponsor shall perform or ensure performance of such relocations and notify the Government in writing when such relocations have been accomplished.

C. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of each increment of work.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of an increment of work, within 15 calendar days of such discovery, the Non-Federal Sponsor, in addition to providing any other notice required by applicable law, shall provide written notice to the Government. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property

interests, no further activities on that increment of work shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid by the Non-Federal Sponsor, without reimbursement or credit by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.E.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of each increment of work for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in the construction costs for an increment of work shall be determined in accordance with the following procedures, requirements, and conditions and shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Government shall include in construction costs the value of required real property interests acquired from private owners after the date of approval of the Scope of Work for an increment of work except that the value of real property interests donated to the Non-Federal Sponsor are not eligible for inclusion in construction costs. The Non-Federal Sponsor shall obtain for each required real property interest acquired from private owners an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor after the date of approval of

the Scope of Work for an increment of work shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings after the date of approval of the Scope of Work for an increment of work, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor concludes the acquisition of the interest. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for valuation purposes.

(3) The Government shall include in the construction costs the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings after the date of approval of the Scope of Work for an increment of work, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for valuation purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2), the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs eligible incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in acquiring required real property interests from private owners for an increment of work after the date of approval of the Scope of Work for such work. Such incidental costs include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of required real property interests.

e. Any publicly owned real property interests or real property interests owned by the Non-Federal Sponsor on the date of approval of the Scope of Work and required for an increment of work will be provided by the Non-Federal Sponsor at no cost to the Government.

2. Relocations. The Government shall include in construction costs eligible costs of required relocations performed by the Non-Federal Sponsor after approval of the Scope of Work for an increment of work.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the state of New Mexico would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Design and Construction Work. The Government shall include in construction costs for an increment of work eligible costs of the design and construction work performed by the Non-Federal Sponsor after the date of approval of the Scope of Work for such work, and eligible costs of pre-Scope of Work design work, if any.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Scope of Work design work is expressed as fixed costs plus a percentage of the construction

costs for the increment of work, the Non-Federal Sponsor shall renegotiate such costs with its contractor based on actual costs.

b. The following costs are not eligible for inclusion in construction costs for an increment of work: interest charges, or any adjustment to reflect changes in price levels between the time the design or construction work is completed; pre-Scope of Work design work previously reimbursed under another agreement; design or construction work obtained at no cost to the Non-Federal Sponsor; costs that exceed the Government's estimate of the cost for such design and construction work; or any construction work initiated on an increment of work prior to completion of environmental compliance for such work.

4. Permit Work. The Government shall include in construction costs for an increment of work eligible costs of permit work performed by the Non-Federal Sponsor after the date of approval of the Scope of Work for such work. Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design, construction, operation and maintenance of the increment of work, including the permits necessary for construction, operation, and maintenance of the increment of work on publicly owned or controlled real property interests. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for design and construction of an increment of work in construction costs.

5. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act) The Non-Federal Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of an increment of work in construction costs.

B. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for any costs it incurs for real property interests, relocations, and permit work that exceed 25 percent of construction costs for an increment of work, and any such excess amount cannot be applied towards the non-Federal cost share for another increment of work; and for any costs incurred by the Non-Federal Sponsor prior to the effective date of this Agreement, excluding costs for pre-Scope of Work design work.

ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, construction costs for the initial increment of work are projected to be \$3,733,000, with the amount of Federal funds available for such work limited to \$2,800,000. Costs incurred by the Government for the initial increment of work are projected to be \$30,000. Costs incurred by the Non-Federal Sponsor for the initial increment

of work are projected to be \$933,000, which includes eligible design and construction work after the effective date of this Agreement projected to be \$923,000, eligible pre-Scope of Work design work projected to be \$0, eligible real property interests projected to be \$10,000, eligible relocations projected to be \$0, and eligible permit work projected to be \$0. Reimbursements pursuant to Article II.E. for eligible costs incurred by the Non-Federal Sponsor for the initial increment of work are projected to be \$2,770,000. The Scope of Work for each additional increment of work will include information on the Federal funds available for the increment of work and the Non-Federal Sponsor's share of construction costs for such work. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. For each increment of work, the Government shall provide the Non-Federal Sponsor with monthly financial reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; and the balance of the Federal funds available.

C. After the Non-Federal Sponsor has provided its final invoice to the Government for an increment of work, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. As a part of the final accounting, the Government will determine the total reimbursable amount by taking 75 percent of eligible costs incurred by the Non-Federal Sponsor, less 25 percent of the costs incurred by the Government for that increment of work. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursement by delivering a check payable to "FAO, USAED, Albuquerque (L4)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate design and construction assistance. If the Government determines that the Federal funds available for an increment of work will be exhausted prior to completion of such work, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of such work, at no cost to the Government and without credit or reimbursement.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from any and all damages arising from design, construction, or operation and maintenance of any work under this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - 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 the 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 X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

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. Neither party shall provide, without

the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Executive Engineer
Southern Sandoval County Arroyo Flood Control Authority
1041 Commercial Drive SE,
Rio Rancho, NM 87124

If to the Government:

District Commander
U.S. Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109

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.

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 - 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 a party to this Agreement.

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

DEPARTMENT OF THE ARMY

Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA)

BY: 

Jerre V. Hansbrough
Lieutenant Colonel, U.S. Army
District Commander

BY: 

David Gatterman, P.E.
Executive Engineer

DATE: 11/17/2022

DATE: 11/16/2022