

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
AND  
PUEBLO OF SANDIA  
FOR  
CONSTRUCTION  
OF THE  
MIDDLE RIO GRANDE RESTORATION, NEW MEXICO

THIS AGREEMENT is entered into this 20th day of July, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Albuquerque District (hereinafter the "District Engineer") and Middle Rio Grande Conservancy District (hereinafter the "MRGCD"), represented by the Chair of the Middle Rio Grande Conservancy District Board, and Pueblo of Sandia (hereinafter the "Pueblo"), represented by the Governor (MRGCD and the Pueblo when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Middle Rio Grande Restoration, New Mexico for ecosystem restoration and recreation (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) in the middle reach of the Rio Grande, in the vicinity of the City of Albuquerque, New Mexico was authorized by Section 3118 of the Water Resources Development Act of 2007, P.L. 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, P.L. 111-8;

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

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the *Project*, wherein the responsibility of the Pueblo is limited to providing access to and use of certain lands that are owned by the Pueblo solely for the purpose of construction (including *monitoring* and *adaptive management*) and operation, maintenance, repair, rehabilitation, and replacement of certain *ecosystem restoration features* of the *Project*;

WHEREAS, Section 3118 of the Water Resources Development Act of 2007, P.L. 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, P.L. 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 Non-Federal Sponsors 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 Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsors 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 Sponsors, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsors 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 916 acres of bosque riparian habitat in 18 areas to include 2 or more high flow channels and crossings, 2 or more backwater channels, 9 or more willow swales with bank terracing features, 2 or more wetlands, non-native vegetation removal and native vegetation establishment throughout the project area, and 3 or more channel outfall connection improvements all 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 throughout the project area, except on the *Pueblo Parcels*, consisting of improvements to soft surface foot trails, installation of park benches along trails, parking improvements and kayak launches at select river access locations, picnic tables, boardwalks to minimize disturbances to wetland and other restored habitat, bridges needed to maintain existing trail connections and minimize disturbances to restored habitat, educational signs and other interpretive features including kiosks, all 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 *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VI of this Agreement; any costs incurred by MRGCD; or any costs incurred by the Pueblo.

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 XI or Article XII.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 “*betterment*” shall mean a difference in the construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

L. 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 therefor.

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

N. 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.

O. 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*.

P. The term “*Pueblo Parcels*” means 3 parcels of land located along the east side of the Rio Grande and North of the community of Alameda and the City of Albuquerque: (1) project parcel 1B consisting of approximately 92.2 acres of bosque or riparian lands owned by the Pueblo of Sandia and located in Section 23 of Township 12 North, Range 3 East in Sandoval County, New Mexico; (2) project parcel 1D consisting of approximately 21.2 acres of bosque or riparian lands owned by the Pueblo of Sandia and located in Section 3 of Township 11 North, Range 3 East in Bernalillo County, New Mexico; and (3) project parcel 1F consisting of approximately 0.9 acres of bosque or riparian lands owned by the Pueblo of Sandia and located in Section 3 of Township 11 North, Range 3 East in Bernalillo County, New Mexico.

Q. 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 *Project*, as specified in Section 3118 of the Water Resources Development Act of 2007, P.L. 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 SPONSORS

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 MRGCD has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall afford MRGCD 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 MRGCD the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing MRGCD 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 MRGCD the opportunity to review and comment on all contract claims prior to resolution thereof. With respect to portions of the *Project* located on the *Pueblo Parcels*, the Government shall also afford such opportunities to the Pueblo. The Government shall consider in good faith the comments of MRGCD and the Pueblo, 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 MRGCD.

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*; provided that the responsibility of the Pueblo shall be limited to providing access to and use of the *Pueblo Parcels* for the purpose of construction (including *monitoring* and *adaptive management*) and operation, maintenance, repair, rehabilitation, and replacement of that portion of the *ecosystem restoration features* located on the *Pueblo Parcels*.

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, \$18,984,000 of Federal funds are available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*.

2. 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 MRGCD 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 MRGCD in writing that sufficient Federal funds are available to continue work on the *Project*, or the Government or MRGCD elects to terminate construction (including *monitoring* and *adaptive management*) under this Agreement.

3. In accordance with Section 3118 of the Water Resources Development Act of 2007, P.L. 110-114, the Government's total financial obligations for design, construction, *monitoring*, and *adaptive management* of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsors in accordance with paragraph 11. of this Article) shall not exceed the *Authorized Federal Participation Limit*. If the Government projects that the amount of Federal funds available for the *Project* within the *Authorized Federal Participation Limit* will not be sufficient to meet *total project costs*, the Government shall notify the Non-Federal Sponsors 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 MRGCD in writing and furnish MRGCD 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 MRGCD 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 MRGCD 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

MRGCD, and the Government and MRGCD 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 MRGCD. The Pueblo shall receive copies of all OMRR&R manuals and notices for portions of the *Project* affecting the *Pueblo Parcels*.

F. Upon notification from the District Engineer in accordance with paragraph E. of this Article, MRGCD 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 VII of this Agreement. Concurrent with MRGCD'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. MRGCD shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

H. MRGCD may request the Government to perform or provide, on behalf of MRGCD, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify MRGCD in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. MRGCD shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article V.B. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, MRGCD shall be responsible, as between the Government and MRGCD, for any costs of cleanup and response in accordance with Article XII.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

I. Prior to completion of construction of a *functional portion of the Project* related to the *ecosystem restoration features*, the Government, in consultation with MRGCD, the

Pueblo with respect to the *Pueblo Parcels*, and, as appropriate, other concerned agencies, shall finalize the plan for *monitoring* such *functional portion of the Project*. The *monitoring* plan for each *functional portion of the Project* related to the *ecosystem restoration features* shall describe the specific parameters to be monitored; how these parameters relate to achieving the desired outcomes and to ascertaining whether *adaptive management* measures of such *functional portion of the Project* will be necessary; methods for measuring those parameters; frequency and duration of *monitoring* for such *functional portion of the Project*; criteria for measuring the success of such *functional portion of the Project*; 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 *Project* are estimated to be \$300,000.

J. Upon providing notification to MRGCD that a *functional portion of the Project* related to the *ecosystem restoration features* is complete in accordance with paragraph E. of this Article, the Government shall perform *monitoring* of such *functional portion of the Project* in accordance with the applicable *monitoring* plan. *Monitoring* shall be performed until the U.S. Army Engineer, South Pacific Division determines, in writing, that ecological success has been achieved. Ecological success shall be documented by the District Engineer, in consultation with, as appropriate, other concerned agencies, through an evaluation of the outcomes predicted in the approved decision document as measured against the actual results. Performance of *monitoring* by the Government of such *functional portion of the Project* shall end upon the date of the first of the following to occur: (1) a determination is made by the U.S. Army Engineer, South Pacific Division, in writing, that ecological success has been achieved; (2) 10 years from the date of the written notification to MRGCD that such *functional portion of the Project* is complete in accordance with paragraph E. of this Article; or (3) the Government's total financial obligations for design, construction, *monitoring*, and *adaptive management* of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsors in accordance with paragraph H. of this Article) reaches the *Authorized Federal Participation Limit*. If at the end of the Government performed *monitoring* the U.S. Army Engineer, South Pacific Division has not determined, in writing, that ecological success has been achieved, MRGCD shall perform, at no cost to the Government, *monitoring* of such *functional portion of the Project* in accordance with the applicable *monitoring* plan until the U.S. Army Engineer, South Pacific Division determines in writing that ecological success has been achieved.

K. Applying the criteria specified in the *monitoring* plan, the Government shall determine, for each *functional portion of the Project* related to the *ecosystem restoration features*, whether *adaptive management* of such *functional portion of the Project* is necessary. The Government may make such a determination for a *functional portion of the Project* related to the *ecosystem restoration features* at any time during the *monitoring* described in paragraph J. of this Article for such *functional portion of the Project*. Within 120 calendar days after the expiration or termination of such *monitoring* for each *functional portion of the Project* related to the *ecosystem restoration features*, the Government shall make a final determination of whether *adaptive management* of such *functional portion of the Project* is necessary. In making such determinations, the

Government shall consult with MRGCD, the Pueblo with respect to the *Pueblo Parcels*, and, as appropriate, with other concerned agencies. Upon any determination by the Government that *adaptive management* of a *functional portion of the Project* related to the *ecosystem restoration features* is necessary, the Government shall notify MRGCD and the Pueblo with respect to the *Pueblo Parcels* in writing of its determination and expeditiously shall perform such *adaptive management* in accordance with paragraph L. of this Article. If, after the expiration or termination of such *monitoring* for a *functional portion of the Project* related to the *ecosystem restoration features*, the Government determines that *adaptive management* of such *functional portion of the Project* is not necessary, the Government shall notify MRGCD and the Pueblo with respect to the *Pueblo Parcels* in writing of its determination.

L. If the Government determines, pursuant to paragraph K. of this Article, that *adaptive management* of a *functional portion of the Project* related to the *ecosystem restoration features* is necessary, the Government, in consultation with MRGCD, the Pueblo with respect to the *Pueblo Parcels*, and, as appropriate, other concerned agencies, shall perform *adaptive management* of such *functional portion of the Project* in accordance with the provisions of this paragraph and paragraph A. of this Article.

1. When the District Engineer determines that *adaptive management* of a *functional portion of the Project* related to the *ecosystem restoration features* is complete, the District Engineer shall: a) notify MRGCD in writing of such determination; b) furnish MRGCD with an amended OMRR&R Manual that reflects any modifications to structures or adjustments to operation or management methods; c) furnish MRGCD with a copy of any new or revised as-built drawings for such *functional portion of the Project*; and d) within 30 calendar days after such notice and in consultation with MRGCD, determine whether to continue *monitoring* of such *functional portion of the Project*, subject to the limitations in paragraph J. of this Article. The Pueblo shall also receive such notices, materials and consultation rights with respect to the *Pueblo Parcels*.

2. Upon notification from the District Engineer in accordance with subparagraph 1. of this paragraph, MRGCD shall be responsible for ensuring operation, maintenance, repair, rehabilitation, and replacement of such *functional portion of the Project* in accordance with Article VII of this Agreement.

M. The Non-Federal Sponsors 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.

N. The Non-Federal Sponsors 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.

O. MRGCD shall keep the *recreation features*, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

P. The parties to this Agreement acknowledge and agree that the obligations and responsibilities of the Pueblo under the provisions of this Agreement are limited to providing the *Pueblo Parcels* for the construction (including *monitoring* and *adaptive management*) and operation, maintenance, repair, rehabilitation, and replacement of that portion of the *ecosystem restoration features* located on the *Pueblo Parcels* in accordance with the provisions of this Agreement.

Q. The Non-Federal Sponsors shall not be entitled to reimbursement for any costs that they incur in performing their 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 Sponsors, 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 Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, respectively, in accordance with the terms and conditions of this Agreement, for the *ecosystem restoration features* and for the *recreation features*, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide MRGCD with a written notice to proceed with acquisition of such lands, easements, and rights-of-way that MRGCD must provide. 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, MRGCD shall acquire all lands, easements, and rights-of-way the Government determines MRGCD 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*, MRGCD shall acquire all lands, easements, and rights-of-way required to be provided by MRGCD for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. Prior to the issuance of the solicitation for a 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, for which the Government determines that the *Pueblo Parcels* are required, the Pueblo shall provide the Government with an authorization for entry to the *Pueblo Parcels*. MRGCD shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by MRGCD are retained in public ownership for uses compatible with the authorized purposes of the *Project*. The Pueblo shall ensure that the *Pueblo*

*Parcels* that the Government determines to be required for the *Project* and that were provided by the Pueblo are retained in Pueblo ownership for uses compatible with the ecosystem restoration purposes of the *Project*.

B. The Government, after consultation with MRGCD, 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 MRGCD 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 MRGCD to fulfill its obligations under this paragraph, and shall provide MRGCD 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, MRGCD 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*, MRGCD shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with MRGCD, 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 dewatering pumps and pipes. The Government in a timely manner shall provide MRGCD 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 MRGCD to fulfill its obligations under this paragraph, and shall provide MRGCD 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, MRGCD 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*, MRGCD shall provide all improvements set forth in such descriptions.

D. MRGCD 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, MRGCD 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 MRGCD shall co-chair the Project Coordination Team.

B. The Government's Project Manager and MRGCD'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 XII.A. of this Agreement; historic preservation activities in accordance with Article XV 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 MRGCD, and the Pueblo if it chooses to participate pursuant to paragraph F. of this Article.

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 Government's costs of participation in the Project Coordination Team shall be included in *total project costs*. MRGCD's shall pay for its own costs of participation in the Project Coordination Team.

F. At the election of the Pueblo, representatives of the Pueblo may participate in the activities of the Project Coordination Team, but are not required to do so. If the Pueblo representatives participate in the activities of the Project Coordination Team, the Pueblo's shall pay for its own costs of participation in the Project Coordination Team.

#### ARTICLE V - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to MRGCD current projections of costs, financial obligations, and contributions provided by the parties.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$24,809,000; *total ecosystem restoration costs* are projected to be \$22,890,200; *total recreation costs* are projected to be \$1,918,800; and the Government's total financial obligations for the additional work to be incurred and MRGCD's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with MRGCD, and are not to be construed as the total financial responsibilities of the Government and MRGCD.

2. By December 1, 2011 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 MRGCD 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*; *Authorized Federal Participation Limit*; and the Government's total financial obligations for additional work incurred and MRGCD's contribution of funds for such costs required by Article II.H. of this Agreement.

B. MRGCD shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify MRGCD in writing of such scheduled date and of the full amount of funds the Government determines to be required from MRGCD to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, MRGCD shall provide the Government with the full amount of the funds required to cover the costs of such additional work by delivering a check payable to "FAO, USAED, Albuquerque District" to the District Engineer, or verifying to the satisfaction of

the Government that MRGCD has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to MRGCD, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by MRGCD such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that MRGCD must provide additional funds to pay for such additional work, the Government shall notify MRGCD in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, MRGCD shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph C.1. of this Article.

C. In the event the Government performed any additional work in accordance with Article II.H. of this Agreement, upon the District Engineer's determination that, except for *monitoring* and *adaptive management*, the entire *Project* is complete and all relevant claims and appeals and eminent domain proceedings have been resolved, the Government shall conduct an interim accounting of the Government's financial obligations for additional work incurred and furnish MRGCD with written notice of the results of such accounting. Further, upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish MRGCD with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish MRGCD with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and MRGCD's contribution of funds provided thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by MRGCD for such additional work, MRGCD, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAID, Albuquerque, District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by MRGCD for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to MRGCD within 90 calendar days of the date of completion of such accounting. In the event MRGCD is due a refund and funds are not available to refund the excess amount to MRGCD, the Government shall seek such appropriations as are necessary to make the refund.

## ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 all 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 VII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.F. of this Agreement and for so long as the *Project* remains authorized, MRGCD, 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. MRGCD 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 IX 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 Pueblo hereby gives MRGCD a right to enter, at reasonable times and in a reasonable manner, and subject to reasonable notification and other procedures to be agreed to between the Pueblo and MRGCD, upon the *Pueblo Parcels* for the purposes of inspection, operation, maintenance, repair, rehabilitation, and replacement of the *Project*.

C. MRGCD hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that MRGCD 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*. The Pueblo hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, and subject to reasonable procedures, upon the *Pueblo Parcels* 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 MRGCD for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to MRGCD and to the Pueblo. If, after 30 calendar days from receipt of such written notice by the Government, MRGCD 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 MRGCD now or hereafter owns or controls, and upon the *Pueblo Parcels*, as necessary and appropriate, 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 MRGCD of responsibility to meet MRGCD'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 VIII – HOLD AND SAVE

MRGCD 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* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, MRGCD 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 X - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors 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, no party shall provide, without the consent of the other parties, any contractor with a release that waives or

purports to waive any rights the other parties may have to seek relief or redress against that contractor either pursuant to any cause of action that the other parties may have or for violation of any law.

## ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their 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 MRGCD determine to suspend future performance under this Agreement in accordance with Article XII.C. of this Agreement, such suspension shall remain in effect until the Government and MRGCD 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 XII.C. of this Agreement due to failure to reach agreement with MRGCD on whether to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement, or the failure of MRGCD to provide funds to pay for cleanup and response costs or to otherwise discharge MRGCD's responsibilities under Article XII.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and MRGCD reach agreement on how to proceed or to terminate construction (including *monitoring* and *adaptive management*) under this Agreement; 2) MRGCD provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XII.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 XII.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 XII.C. of this Agreement, the parties shall conclude their activities relating to further construction (including *monitoring* and *adaptive management*) of the *Project*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by MRGCD in accordance with Article II.H. of this Agreement 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 XII.C. of this

Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by MRGCD shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

E. Upon termination of construction (including *monitoring* and *adaptive management*) under this Agreement in accordance with this Article, Article II.D., or Article XII.C of this Agreement, the Pueblo shall be released of any further obligation under this Agreement to provide the *Pueblo Parcels*, unless the Government determines that the *Pueblo Parcels* are required for operation and maintenance of any completed *functional portions of the Project*.

## ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, MRGCD shall perform, or ensure performance of, any investigations for hazardous substances that the Government or MRGCD 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 MRGCD with prior specific written direction, in which case MRGCD shall perform such investigations in accordance with such written direction. Any costs incurred by MRGCD for such investigations for hazardous substances shall be the sole responsibility of MRGCD.

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*, MRGCD and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and MRGCD shall not proceed with the acquisition of the real property interests until the parties agree that MRGCD should proceed.

C. The Government and MRGCD 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 MRGCD determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, MRGCD shall be responsible, as between the Government and MRGCD, 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 MRGCD 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 MRGCD'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. MRGCD 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 among the Government, the Pueblo, and MRGCD, MRGCD shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, MRGCD shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XIII - 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 sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to MRGCD: Chief Executive Officer, Middle Rio Grande Conservancy District, P.O. Box 581, Albuquerque, New Mexico, 87103,

If to the Pueblo: Governor, Pueblo of Sandia, 481 Sandia Loop, Bernalillo, NM 87004,

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

B. A party may change the 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 XIV - 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 XV - 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 borne entirely by 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 for such mitigation activities incurred before the end of the *period of construction* shall be included in *total project costs* and shall be borne entirely by 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* shall be included in *total project costs* and 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 *Project*.

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, MRGCD discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, MRGCD shall provide prompt written notice to the Government of such discovery. MRGCD 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 MRGCD that it should proceed with such work.

#### ARTICLE XVI- 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.

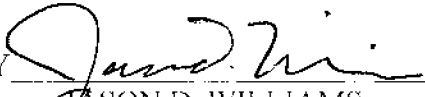
#### ARTICLE XVII - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of MRGCD or the Pueblo, 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

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

BY   
JASON D. WILLIAMS  
Lieutenant Colonel, U.S. Army  
Commander

BY   
DERRICK J. LENTE  
Chair  
Middle Rio Grande Conservancy  
District Board

DATE: 7-20-11

DATE: 7/11/2011

PUEBLO OF SANDIA

BY   
MALCOLM MONTOYA  
Governor

DATE: 7-15-11

CERTIFICATE OF AUTHORITY

I, Chuck Dumars, do hereby certify that I am the principal legal officer of the Middle Rio Grande Conservancy District, that the Middle Rio Grande Conservancy District 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, the Middle Rio Grande Conservancy District, and the Pueblo of Sandia in connection with the Middle Rio Grande Restoration, New Mexico, 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 Middle Rio Grande Conservancy District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
11<sup>th</sup> day of July 2011.



CHUCK DUMARS  
Legal Counsel,  
Middle Rio Grande Conservancy District

CERTIFICATE OF AUTHORITY

I, David C. Mielke, do hereby certify that I am the principal legal advisor of the Pueblo of Sandia for this project, that the Pueblo of Sandia is a federally recognized Indian tribe with full authority and legal capability to perform its obligations under the terms of the Agreement between the Department of the Army, the Middle Rio Grande Conservancy District, and the Pueblo of Sandia in connection with the Middle Rio Grande Restoration, New Mexico, 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 person who has executed this Agreement on behalf of the Pueblo of Sandia has acted within his authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
19<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
DAVID MIELKE  
Legal Counsel,  
Pueblo of Sandia

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-111, "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.

  
DERRICK J.LENTE

Chair  
Middle Rio Grande Conservancy  
District Board

DATE: 7/11/2011

## 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.

  
MALCOLM MONTOYA

Governor  
Pueblo of Sandia

DATE: 7-15-11