

AMENDMENT NO. 1  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY  
AND  
BERNALILLO COUNTY  
FOR  
CONSTRUCTION  
OF THE  
SOUTHWEST VALLEY FLOOD REDUCTION PROJECT

THIS AMENDMENT NO. 1 is entered into this 15<sup>th</sup> day of JULY, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the Albuquerque District Commander, and Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), represented by the AMAFCA Chairman of the Board, and Bernalillo County, represented by the Bernalillo County Manager (hereinafter the "Non Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Southwest Valley Flood Reduction Project for flood damage reduction (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Albuquerque, Bernalillo County, New Mexico was authorized by Section 1001(35) of the Water Resource Development Act of 2007, Public Law 110-114;

WHEREAS, the Government and the Non Federal Sponsors entered into a Project Cooperation Agreement for construction of the Southwest Valley Flood Reduction Project on June 17, 2008 (hereinafter the "Agreement");

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b(a)(4)), authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the *Project* for the value of in-kind contributions that the Secretary of the Army determines are integral to the *Project*;

WHEREAS, the Non Federal Sponsors desire to receive credit toward their required contribution of funds for the *Project* in accordance with the provisions of this Agreement for certain work (hereinafter the "*in kind contributions*" as defined in Article I.L. of this Agreement) that were determined to be integral to the *Project* on June 21, 2010;

WHEREAS, the pagination of the Agreement is incorrect, insofar as the pages numbered 22 through 51 should have been numbered 2 through 31, and the succeeding three pages should have been numbered 32 through 34;

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 to amend the Agreement as follows:

#### 1. ARTICLE I – DEFINITIONS

a. Paragraph A. is amended by adding “The term includes the *in-kind contributions* described in paragraph L. of this Article.” at the end of the paragraph.

b. Paragraph B. is amended by striking the current paragraph and replacing it with the following paragraph:

“B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during construction; the Non Federal Sponsors’ and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.C.1. of this Agreement; the Government’s actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the amount of credit that the Government affords for *in-kind contributions* in accordance with Article II.B.6. of this Agreement; the Government’s supervision and administration costs; the Non Federal Sponsors’ and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; the value of 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 for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement; and the Non Federal Sponsors’ and the Government’s costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.G.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government’s costs for data recovery activities associated with historic

preservation in accordance with Article XVII.C.3. and Article XVII.C.4. of this Agreement; or the Non Federal Sponsors' costs of negotiating this Agreement.”

c. Paragraph D. is amended by striking the current paragraph and replacing it with the following paragraph:

“D. The term “*financial obligations for construction*” shall mean the financial obligations of the Government, and the costs for the *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.”

d. Paragraph E is amended by striking the current paragraph and replacing it with the following paragraph:

“E. The term “*non Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total project costs* for the *in-kind contributions*, as determined by the Government, and the Non Federal Sponsors' total contribution of funds required by Article II.B.1. and Article II.B.3.b. of this Agreement to *financial obligations for construction*, as projected by the Government.”

e. Article I – Definitions, is further amended by striking the current paragraph L. and adding the new paragraphs “L. – M.” as follows:

“L. The term “*in-kind contributions*” shall mean the design and construction of the flood flow channel and crossing structure at Isleta Boulevard that will be performed or provided after the effective date of this Agreement and that was determined to be integral to the *Project* on June 21, 2010.

M. The term “*sufficient invoice*” shall mean documentation provided by the Non Federal Sponsors containing the following: (1) a written certification by the Non Federal Sponsors to the Government that they have made specified payments to contractors, suppliers, or employees for performance of work on the *Project* or a *functional portion of the Project* in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments; (3) written identification of costs that have been paid with *Federal program funds*; and (4) a written request for credit of a sum certain amount not in excess of such specified payments.”

## 2. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON FEDERAL SPONSORS

a. Paragraphs A. and A.1. – A.4. are amended by striking the current paragraphs and replacing them with the following paragraphs A. and A.1 - A.7.:

“A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non Federal Sponsors, expeditiously shall construct the *Project* (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), except

for the *in-kind contributions*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non Federal Sponsors expeditiously shall perform or provide the *in-kind contributions* that will be performed or provided after the effective date of this Agreement in accordance with applicable Federal, State, and local laws, regulations, and policies.

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

2. The Non Federal Sponsors shall obtain all permits and licenses necessary for the design and construction of the *in-kind contributions*, and in the exercise of their rights and obligations under this Agreement, shall comply with all applicable Federal, State, and local laws, regulations, and policies including the laws and regulations specified in Article X of this Agreement.

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

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

5. The Non Federal Sponsors shall not commence activities required to provide provision of *in-kind contributions* until the designs, detailed plans and specifications, and arrangements for the prosecution of such *in-kind contributions* have been approved by the Government. Changes proposed by the Non Federal Sponsors to approved designs and plans and specifications also must be approved by the Government in advance of the related construction. The Non Federal Sponsors shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant plans and specifications, prior to the Non Federal Sponsors' issuance of such solicitations. To the extent possible, the Non Federal Sponsors shall afford the Government the opportunity to review and

comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non Federal Sponsors shall provide such notification in writing at the earliest date possible. To the extent possible, the Non Federal Sponsors also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non Federal Sponsors shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non Federal Sponsors, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations. The Non Federal Sponsors shall include appropriate provisions in their contracts for the design and construction of the *in-kind contributions*, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies.

6. At the time the Non Federal Sponsors furnish a contractor with a notice of acceptance of completed work for each contract awarded by the Non Federal Sponsors for the *in-kind contributions*, the Non Federal Sponsors shall furnish a copy thereof to the Government. Upon completion of the *in-kind contributions*, the Non Federal Sponsors shall furnish to the Government a copy of all final as-built drawings for the construction portion of such work.

7. As of the effective date of Amendment No. 1 to this Agreement, \$9,141,400 of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.”

b. Paragraphs B. and B.1. – B.4. are amended by striking the paragraphs and replacing them with the following paragraphs B. and B.1. – B.7.:

“B. The Non Federal Sponsors shall contribute a minimum of 35 percent, but not to exceed 50 percent, of *total project costs* in accordance with the provisions of this paragraph.

1. The Non Federal Sponsors shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article VI.B. of this Agreement. The Non Federal Sponsors may not fulfill this requirement by providing *in-kind contributions*.

2. In accordance with Article III of this Agreement, the Non Federal Sponsors shall provide 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*.

3. The Non Federal Sponsors shall provide an additional contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non Federal Sponsors' contributions listed in the next sentence will be less than 30 percent of *total project costs*, the Government shall determine the amount of funds that would be necessary to meet 30 percent of *total project costs* prior to the Government affording credit for the *in-kind contributions* pursuant to paragraph B.6. of this Article. To determine such amount, the Government shall subtract from an amount equal to 30 percent of *total project costs* the collective value of the following: (a) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (b) the value of the Non Federal Sponsors' contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; and (c) the value of the Non Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement.

b. The Non Federal Sponsors shall provide a contribution of funds in the amount determined by this paragraph in accordance with Article VI.B. of this Agreement. To determine such required contribution of funds, the Government shall reduce the amount determined in accordance with paragraph B.3.a. of this Article by the amount of credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.6. of this Article.

4. The Government, subject to the availability of funds and as limited by paragraph B.7. of this Article, shall refund or reimburse to the Non Federal Sponsors any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total project costs*: (a) the value of the Non Federal Sponsors' contributions of funds required by paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non Federal Sponsors' contributions under paragraph B.3.b. of this Article; (d) the amount of credit afforded for the *in-kind contributions* pursuant to paragraph B.6. of this Article; and (e) the value of the Non Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non Federal Sponsors. Notwithstanding the 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 by the Government under this paragraph, the Non Federal Sponsors shall be responsible, as between the Government and the Non Federal Sponsors, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

5. The Government, in accordance with the conditions and limitations of this paragraph, shall determine the amount of the costs for *in-kind contributions* that may be eligible for credit.

a. The Non Federal Sponsors in a timely manner shall provide the Government with *sufficient invoices* and any other documents required by the Government to enable the Government to determine the costs of *in-kind contributions* that may be eligible for credit.

b. The Non Federal Sponsors' costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Non Federal Sponsors' costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* were or are completed and the time the credit is afforded.

d. None of the costs for *in-kind contributions* paid by the Non Federal Sponsors using *Federal program funds* are eligible for credit pursuant to 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.

e. Costs for *in-kind contributions* that are in excess of the Government's estimate of the costs for the Government to have performed or provided such work or materials are not eligible for credit pursuant to this Agreement.

f. Costs for *betterments*, the provision of lands, easements, rights-of-way, *relocations*, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are not eligible for credit as *in-kind contributions*.

g. In the performance of the construction portion of the *in-kind contributions*, the Non Federal Sponsors must 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 (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)). The Government may determine that costs for the construction portion of the *in-kind contributions*, in whole or in part, are not be eligible for credit pursuant to this Agreement, as a result of the Non Federal Sponsors' failure to comply with its obligations under these laws.

h. Costs for *in-kind contributions* are not eligible for credit pursuant to this Agreement unless the Government determines through a review or on-site inspection, as applicable, performed by the Government that the work was accomplished in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government and the provisions of this Agreement.

i. No costs for *in-kind contributions* performed prior to compliance with all applicable environmental laws and regulations covering such work, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. §1251-1387, 200b) are eligible for credit pursuant to this Agreement.

6. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.3.a. of this Article for the costs of the *in-kind contributions* determined in accordance with paragraph B.5. of this Article. However, the maximum amount of credit afforded shall not exceed the lesser of the following amounts as determined by the Government: (a) the amount of funds determined in accordance with paragraph B.3.a. of this Article; or (b) the costs of the *in-kind contributions* determined in accordance with paragraph B.5. of this Article.

7. Notwithstanding any other provision of this Agreement, the Non Federal Sponsors shall not be entitled to reimbursement of any costs for *in-kind contributions* that exceed the amount of credit afforded pursuant to paragraph B.6. of this Article.”

c. Paragraph C is amended by striking the current paragraph and replacing it with the following paragraph:

“C. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non Federal Sponsors in writing and furnish the Non Federal Sponsors with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non Federal Sponsors a copy of all final as-built drawings for the portion of the *Project* for which the Government awarded a construction contract, or the Government constructed using its own forces, if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non Federal Sponsors with all final as-built drawings for the portion of the *Project* for which the Government awarded a construction contract, or the Government constructed using its own forces, and also shall furnish the Non Federal Sponsors with the final OMRR&R Manual for the entire *Project*. In the event all final as-built drawings for the portion of the *Project* for which the Government awarded a construction contract, or the Government constructed using its own forces, or the final OMRR&R Manual for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non Federal Sponsors, and the Government and the Non Federal Sponsors 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 and Non Federal Sponsors’ Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided to the other party previously shall be provided to the Non Federal Sponsors or the Government, as applicable.”

### 3. ARTICLE IV – CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

a. Paragraph C.1. is amended by striking the current paragraph and replacing it with the following:

“1. Date of Valuation.

a. The fair market value of lands, easements, or rights-of-way owned by the Non Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non Federal Sponsors provide the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non Federal Sponsors on the effective date of this Agreement that are required for the *in-kind contributions*, fair market value shall be the value of such real property interests as of the date the Non Federal Sponsors award the first construction contract for the *in-kind contributions*, or, if the Non Federal Sponsors perform the construction with their own forces, the date that the Non Federal Sponsors begin construction of the *in-kind contributions*.

b. The fair market value of lands, easements, or rights-of-way acquired by the Non Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.”

4. ARTICLE V – PROJECT COORDINATION TEAM

a. Paragraph C. is amended by striking the current paragraph and replacing it with the following:

“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*, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and the construction portion of the *in-kind contributions*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the performance of, scheduling for, and determining eligibility of costs of *in-kind contributions*; the Government’s cost projections for the *Project*; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non Federal Sponsors.”

b. Paragraph D. is amended by striking the current paragraph and replacing it with the following:

“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* except for the *in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations. On matters related to the *in-kind contributions*, that the Project Coordination Team generally oversees, the Project Coordination Team may make recommendations to the Non Federal Sponsors including suggestions to avoid potential sources of dispute. The Non Federal Sponsors in good faith shall consider the recommendations of the Project Coordination Team. The Non Federal Sponsors, having the legal authority and responsibility for design and construction of the *in-kind contributions*, have the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations."

## 5. ARTICLE VI – METHOD OF PAYMENT

a. Paragraphs A. and A.1. – A.2. are amended by striking the current paragraphs and replacing them with the following paragraphs A. and A.1. – A.2.:

"A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non Federal Sponsors current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* 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 in accordance with Article IV of this Agreement, and the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6. of this Agreement.

1. As of the effective date of Amendment No. 1 to this Agreement, *total project costs* are projected to be \$23,000,000; the Non Federal Sponsors' contribution of funds required by Article II.B.1. of this Agreement is projected to be \$1,150,000; the value of the Non Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be \$130,000; the amount of funds determined in accordance with Article II.B.3.a. of this Agreement is projected to be \$2,960,000; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6 is expected to be \$1,740,000; the Non Federal Sponsors' contribution of funds required by Article II.B.3.b. of this Agreement is projected to be \$1,220,000; the *non-Federal proportionate share* is projected to be 27.6 percent; the Non Federal Sponsors' contribution of funds required by Article XVII.C.4. of this Agreement is projected to be \$0; the value included in *total project costs* 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 in accordance with Article IV of this Agreement is projected to be \$3,810,000; and the Government's total financial obligations for the additional work to be incurred and the Non Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non Federal Sponsors.

2. By October 2008 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non Federal Sponsors with a report setting forth

all contributions provided to date and the current projections of the following: *total project costs*; the Non Federal Sponsors' contribution of funds required by Article II.B.1. of this Agreement; the value of the Non Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement; the amount of funds determined in accordance with Article II.B.3.a. of this Agreement; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6 of this Agreement; the Non Federal Sponsors' contribution of funds required by Article II.B.3.b. of this Agreement; the *non-Federal proportionate share*; the Non Federal Sponsors' total contribution of funds required by Article XVII.C.4. of this Agreement; the total contribution of funds required from the Non Federal Sponsors for the upcoming *fiscal year*; the maximum amount determined in accordance with Article XX of this Agreement; the value included in *total project costs* 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 in accordance with Article IV of this Agreement; and the Government's total financial obligations for additional work incurred and the Non Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement."

b. Paragraph B. is amended by striking "Article II.B.3., and Article XVII.B.3." and replacing it with "Article II.B.3.b., and Article XVII.C.4."

c. Paragraph B.1. is amended by striking "Article XVII.B.3." and replacing it with "Article XVII.C.4." in both places.

d. Paragraph B.2.a. is amended as follows:

(1) by striking "Article XVII.B.3." and replacing it with "Article XVII.C.4." in both places;

(2) by inserting "and after consideration of the credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.6. of this Agreement" after "pursuant to the terms of the Design Agreement" and before ", to meet:"; and

(3) by striking all occurrences of "fiscal year" and replacing them with "*fiscal year*".

e. Paragraph B.2.b. is amended by striking "Article XVII.B.3." and replacing it with "Article XVII.C.4." in both places. The paragraph is further amended by inserting "and after consideration of the credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.6. of this Agreement" after "pursuant to the terms of the Design Agreement" and before ", to meet:".

f. Paragraph B.2.c. is amended as follows:

(1) by striking "Article XVII.B.3." and replacing it with "Article XVII.C.4." in both places;

(2) by inserting "and after consideration of the credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.6. of this Agreement" after "pursuant to the terms of the Design Agreement" and before ", to meet:"; and

(3) by striking all occurrences of “fiscal year” and replacing them with “*fiscal year*”.

g. Paragraph B.3. is amended as follows:

(1) by striking “Article XVII.B.3.” and replacing it with “Article XVII.C.4.”;

(2) by inserting “and after consideration of the credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.6. of this Agreement” after “pursuant to the terms of the Design Agreement” and before “, to cover:”; and

(3) by striking by all occurrences of “fiscal year” and replacing them with “*fiscal year*”.

h. Paragraph C.2. is amended by inserting “and as limited by Article II.B.7. of this Agreement” after “subject to the availability of funds” and before “, shall refund or reimburse”.

## 6. ARTICLE XIII – TERMINATION OR SUSPENSION

a. Paragraph B. is amended by striking “Article XVII.B.2. and Article XVII.B.3.” and replacing it with “Article XVII.C.3. and Article XVII.C.4.” in both places.

b. Paragraph D. is amended by striking “Article II.B.3.” and replacing it with “Article II.B.3.b.”; and striking “Article XVII.B.3” and replacing it with “Article XVII.C.4.”.

## 7. ARTICLE XVII – HISTORIC PRESERVATION

a. Article XVII is amended by striking current paragraphs A. - C. and replacing them with the following paragraphs A. – E.:

“A. Except as provided in paragraph B. below, the Government shall perform any identification, survey, or evaluation of historic properties that it determines is necessary for the *Project*. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event that the Government determines that any identification, survey, or evaluation of historic properties is required for construction of the *in-kind contributions*, and if the Government and the Non Federal Sponsors agree in writing that the Non Federal Sponsors should perform such identification, survey, or evaluation of historic properties, the Non Federal Sponsors shall perform such identification, survey, or evaluation in accordance with this paragraph and other written directions of the Government.

1. The Non Federal Sponsors shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non Federal Sponsors shall submit study plans and reports to the Government for review and approval and the Non Federal Sponsors shall be responsible for resolving any deficiencies identified by the Government.

2. Any costs of identification, survey, or evaluation of historic properties incurred by the Non Federal Sponsors pursuant to this paragraph shall be included in the costs for *in-kind contributions* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

C. Except as provided in paragraph C.2. below, 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, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. In the event that the Government determines that mitigation activities or actions other than data recovery activities associated with historic preservation are required for construction of the *in-kind contributions*, and if the Government and the Non Federal Sponsors agree in writing that the Non Federal Sponsors should perform such activities or actions, the Non Federal Sponsors shall perform such activities or actions in accordance with the written directions of the Government. The Non Federal Sponsors shall perform the agreed upon activities or actions prior to construction of such *in-kind contributions*. Any costs incurred by the Non Federal Sponsors in accordance with the provisions of this paragraph shall be included in the costs for *in-kind contributions* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

3. 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 shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

4. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph C.3. 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)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non Federal Sponsors and the Government consistent with the minimum cost sharing requirements for flood damage reduction, as follows: 35 percent will be borne by the Non Federal Sponsors and 65 percent will be borne by the Government.

D. If, during its performance of *relocations*, 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, or performance of the *in-kind contributions*, the Non Federal Sponsors discover historic properties or other cultural resources that have not been evaluated in accordance with this Article, the Non Federal Sponsors shall provide prompt written notice to the Government of such discovery. The Non Federal Sponsors shall not proceed with performance of the *relocation*, construction of the improvement, or performance of such *in-kind*

*contributions* related to such discovery until the Government provides written notice to the Non Federal Sponsors that they should proceed with such work.

E. The Non Federal Sponsors shall include provisions in all of its construction contracts for *in-kind contributions* for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non Federal Sponsors and the Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non Federal Sponsors shall participate as a consulting party. In such a case, construction of the *in-kind contributions* shall not continue until the Government sends written notification to the Non Federal Sponsors. Where the Non Federal Sponsors elect to perform the construction of the *in-kind contributions* using their own forces, the same procedures shall be followed.”

#### 8. ARTICLE XX – SECTION 902 MAXIMUM COST OF PROJECT

Paragraph A. is amended by striking “\$24,800,000” and replacing it with “\$27,600,000” and striking “2007” and replacing it with “2010”.

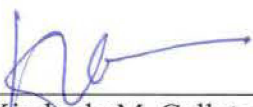
9. The pagination is amended by numbering the second page of the Agreement through the thirty-fourth page of the Agreement as pages “2” through “34” successively.

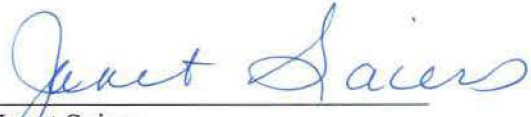
10. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

ALBUQUERQUE METROPOLITAN ARROYO  
FLOOD CONTROL AUTHORITY

BY:   
\_\_\_\_\_  
Kimberly M. Colloton  
Lieutenant Colonel, EN  
U. S. Army Corps of Engineers  
District Engineer


BY:   
\_\_\_\_\_  
Janet Saiers  
AMAFCA Chairman of the Board

DATE: 15th July 2010

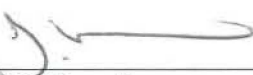
DATE: 7-12-2010

RECOMMENDED BY:

BERNALILLO COUNTY

  
\_\_\_\_\_  
Tom Zdunek  
Deputy County Manager for Public Works

7/15/10  
Date

BY:   
\_\_\_\_\_  
Thaddeus Lucero  
Bernalillo County Manager

DATE: 7/15/10

CERTIFICATE OF AUTHORITY

I, Marcus J. Rael, Jr., do hereby certify that I am the principal legal officer of the Albuquerque Metropolitan Arroyo Flood Control Authority, that the Albuquerque Metropolitan Arroyo Flood Control Authority is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 to the Agreement between the Department of the Army and the Albuquerque Metropolitan Arroyo Flood Control Authority in connection with the Southwest Valley Flood Reduction Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 1 to the 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 Amendment No. 1 to the Agreement on behalf of the Albuquerque Metropolitan Arroyo Flood Control Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 13<sup>th</sup>  
day of July, 2010.



Marcus J. Rael, Jr.  
AMAFCA Attorney

## CERTIFICATION REGARDING LOBBYING

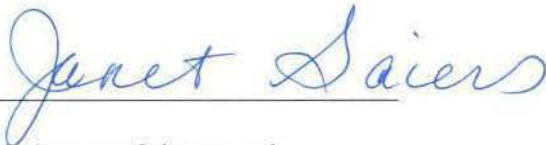
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Janet Saiers  
AMAFCA Chairman of the Board

DATE: 7-12-2010

CERTIFICATE OF AUTHORITY

I, Jeff Landers, do hereby certify that I am the principal legal officer of Bernalillo County, that Bernalillo County is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 to the Agreement between the Department of the Army and Bernalillo County in connection with the Southwest Valley Flood Reduction Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 1 to the 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 Amendment No. 1 to the Agreement on behalf of Bernalillo County have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 15<sup>th</sup>  
day of July, 2010.

  
\_\_\_\_\_  
Jeff Landers  
Bernalillo County Attorney

CERTIFICATION REGARDING LOBBYING

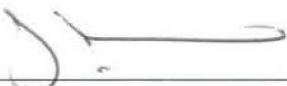
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

  
\_\_\_\_\_  
Thaddeus Lucero  
Bernalillo County Manager

DATE: 7/15/20