

AMENDMENT NO. 2
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. 2 is entered into this 27th day of March, 2014, 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 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 *Project* on June 17, 2008 (hereinafter the "Agreement"), and executed Amendment No. 1 to the Agreement on July 15, 2010 to allow credit for *in-kind contributions* that were determined to be integral to the *Project* on June 21, 2010; and

WHEREAS, the Non Federal Sponsors desire to provide additional *in-kind contributions* and receive credit toward their required contribution of funds for the *Project* in accordance with the provisions of this Agreement for such additional *in-kind-contributions* that were determined to be integral to the *Project* on September 16, 2013.

NOW, THEREFORE, the Government and the Non Federal Sponsors agree to further amend the Agreement as follows:

1. ARTICLE I – DEFINITIONS

a. Paragraph B. is amended by striking the current last sentence of the paragraph and replacing it with the following: "The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *in-kind contributions* determined by the Government to not be eligible for credit; 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.”

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

“L. The term “*in-kind contributions*” shall mean:

(a) the design, construction, and construction management of the Isleta Boulevard Crossing Structure performed and provided after the effective date of Amendment No. 1 to this Agreement that was determined integral to the *Project* on June 21, 2010; and

(b) the design, construction, and construction management of 7 sites, including (1) the Arenal Main crossing structure at the Isleta Drain, (2) 5 roadway crossing structures at the Los Padillas Drain, (3) excavating Pond 187 and constructing inlet structure from Pond 187A to Pond 187 and the outlet structure to connect Pond 187 to the Isleta Drain, (4) station 76+15 Isleta Drain crossing of the irrigation canal at Anthony Lane, (5) Del Rio Road crossing at Armijo Drain, (6) Barcelona Road crossing at Armijo Drain, and (7) the Barcelona Road Crossing at Isleta Drain that will be performed or provided after the effective date of Amendment No. 2 to this Agreement and that was determined to be integral to the *Project* on September 16, 2013.”

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

a. Paragraph A.7. is amended by striking the current paragraph and replacing it with the following:

“7. As of the effective date of Amendment No. 2 to this Agreement, \$9,097,000 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. Paragraph B.5.d. is amended by striking the current paragraph and replacing it with the following:

“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 funds verifies in writing that such funds are authorized to be used to carry out the *Project*.”

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

Paragraph A. is amended by striking the current last sentence of the paragraph and replacing it with the following: “In addition, no amount shall be included in *total project costs*, no credit shall

be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.”

4. ARTICLE VI – METHOD OF PAYMENT

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

“1. As of the effective date of Amendment No. 2 to this Agreement, *total project costs* are projected to be \$20,414,000; the Non Federal Sponsors’ contribution of funds required by Article II.B.1. of this Agreement is projected to be \$1,020,700; the value of the Non Federal Sponsors’ contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be \$0; the amount of funds determined in accordance with Article II.B.3.a. of this Agreement is projected to be \$3,354,200; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6 is expected to be \$3,354,200; the Non Federal Sponsors’ contribution of funds required by Article II.B.3.b. of this Agreement is projected to be \$0; the *non-Federal proportionate share* is projected to be 7.14 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 \$2,770,000; 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. ”

5. ARTICLE XX – SECTION 902 MAXIMUM COST OF PROJECT is amended by striking the current text of the article and replacing it with the following:

“The Non-Federal Sponsor understands that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of *total project costs* for the *Project*. On the effective date of this Agreement, the maximum amount of *total project costs* for the *Project* is estimated to be \$38,028,000, as calculated in accordance with Engineer Regulation 1105-2-100, using October 1, 2013 price levels and including allowances for projected future inflation. The Government shall adjust such maximum amount of *total project costs* for the *Project*, in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), when necessary.”

6. All other terms and conditions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2, 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: Antoinette R. Gant
Antoinette R. Gant
Lieutenant Colonel, U.S. Army
District Engineer

BY: Danny Hernandez
Danny Hernandez
AMAFCA Chairman of the Board

DATE: 27 March 2014

DATE: 3/27/14

BERNALILLO COUNTY

BY: Tom Zednek
Tom Zednek
Bernalillo County Manager

RECOMMENDED BY:

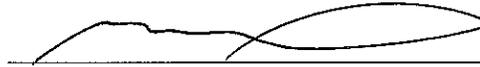
Jarvis D. Middleton 3/26/14
Jarvis D. Middleton P.E. Date
Deputy County Manager for Public Works

DATE: 3/20/14

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. 2 to the Agreement between the Department of the Army, the Albuquerque Metropolitan Arroyo Flood Control Authority, 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. 2 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. 2 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 27th
day of March, 2014.



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.



Danny Hernandez
AMAFCA Chairman of the Board

DATE: 3/27/14

CERTIFICATE OF AUTHORITY

I, Randy M. Autio, 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. 2 to the Agreement between the Department of the Army, the Albuquerque Metropolitan Arroyo Flood Control Authority, 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. 2 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. 2 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 19th
day of March, 2014.



Randy M. Autio
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.



Tom Zdunek
Bernalillo County Manager

DATE: 3/20/14

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