

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF NEW MEXICO FOR RESTORATION AND PRESERVATION OF THE
ACEQUIAS IRRIGATION SYSTEM, NEW MEXICO

THIS AGREEMENT is entered into this 8th day of MARCH, 1999, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the STATE OF NEW MEXICO, acting by and through the New Mexico Interstate Stream Commission, (hereinafter referred to as the "Local Sponsor"),

WITNESSETH, THAT:

WHEREAS, Section 1113(a)(1) of the Water Resources Development Act of 1986, Public Law 99-662 (hereinafter referred to as the "Act") set forth a Congressional finding that the irrigation ditch systems in New Mexico, known as the Acequia systems, date from the eighteenth century, and that the Acequia systems constitute early engineering works which have significance in the settlement and development of the United States; and,

WHEREAS, Section 1113(a)(2) of the Act set forth a Congressional declaration that the restoration and preservation of the Acequia systems has cultural and historic values to the region; and,

WHEREAS, Section 1113(b) of the Act authorized and directed the Secretary of the Army to undertake as a project, without regard to economic analysis, such measures as are necessary to protect and restore the river diversion structures and associated canals attendant to the operations of the community ditch and Acequia systems in New Mexico that are declared to be political subdivisions of the State of New Mexico; and,

WHEREAS, community ditch and acequia associations are political subdivisions of the State under the laws of the State of New Mexico; and,

WHEREAS, Section 1113(b) of the Act further provides that the non-Federal share of any work undertaken under Section 1113(b) shall be 25%; and,

WHEREAS, Section 334 of the Water Resources Development Act of 1996 amended Section 1113(b) of the Act to make the Federal share of the Reconnaissance studies carried out by the Secretary 100 percent; and

WHEREAS, the Government and the Local Sponsor entered into Local Cooperation Agreements, dated June 17, 1992, September 27, 1990, June 8, 1989, and August 11, 1988, whereby the parties agreed to protect and restore community ditch and acequia systems as named in Exhibit B to those Agreements, to the extent that funds would permit; and,

WHEREAS, the Government and the Local Sponsor agree to continue to undertake the protection and restoration of the river diversion structures and associated canals attendant to the operation of the community ditch and acequia systems to the extent of funds appropriated and made available; and,

WHEREAS, the Local Sponsor agrees to obtain from individual acequia organizations access to lands currently owned or controlled by them in order to enable project construction; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until the Local Sponsor has entered into a written agreement to furnish its required cooperation for the Project; and,

WHEREAS, the Local Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R., sections 241.1 - 6, entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

WHEREAS, the Local Sponsor proposes to perform certain work, hereinafter referred to as the "Section 215 Work", which is a part of the Project; and,

WHEREAS, Section 215 of Public Law 90-483, as amended, provides that the Secretary of the Army may enter into an agreement to credit or reimburse the costs of certain work accomplished by states or political subdivisions thereof, which later is incorporated into an authorized project when it is determined that such credit or reimbursement is in the public interest; and,

WHEREAS, the Secretary of the Army has determined that it is in the public interest to credit the local sponsor for that portion

of the Section 215 Work, as defined in Article VI of this Agreement; and,

WHEREAS, Section 215 of Public Law 90-483, as amended, limits Federal credit for a single project to no more than \$5,000,000; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement; and,

WHEREAS, construction of the Project or Project features cannot be initiated until the Government has satisfied the requirements of applicable environmental laws.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Agreement:

A. The term "Project" shall mean the protection and restoration work that will be performed in accordance with the conceptual designs for the Community Ditch and Acequia Systems selected by the Government, in cooperation with the Local Sponsor. The individual works which comprise the Project will be determined based on coordination between the Government and the Local Sponsor.

B. The term "acequia commission" shall mean the governing body of the community ditch or acequia system.

C. The term "item of work" shall mean an individual portion of the Project for which a conceptual design has been prepared by the Government and agreed to by the Local Sponsor, and that is to be performed on a community ditch or acequia system pursuant to an individual construction contract.

1. The term "reconnaissance study" shall mean all those activities performed by the Government prior to, and in association with, an item of work, beginning with the prioritization and selection of an acequia for rehabilitation, the assessment of water delivery problems associated with the community ditch's irrigation facilities, development of alternative solutions and cost estimates, obtaining the approval of an acequia commission and the Local Sponsor on a plan of improvement, and ending with the execution of the loan agreement or letter of agreement between an acequia commission and the Local Sponsor.

2. The term "construction phase" shall mean those activities performed for an item of work that occurs after the execution of the loan agreement between an acequia commission and the Local Sponsor and that results in the construction of the recommended plan of improvement, ending in a financial close out report transmitted to the Local Sponsor.

D. The term "item of work cost" shall mean all costs incurred by the Government and the Local Sponsor directly related to an individual item of work. Such costs shall include, but not necessarily be limited to, actual construction costs, costs of applicable engineering and design, administrative cost of land acquisition, supervision and administration costs, costs of project construction contract dispute settlements or awards, the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIII.A. of this Agreement; costs of historic preservation activities in accordance with Article XV.A. of this Agreement; costs of participation in the Project Coordination Team in accordance with Article IV of this Agreement; costs of relocations of railroad bridges or approaches thereto, and the costs of lands, easements, and rights-of-way, to the extent they are not already owned or controlled by the individual Acequia and are needed as part of the item of work, utility and facility alterations or relocations, and dredged material disposal areas; costs of audit in accordance with Article VIII of this Agreement; and costs incurred for the Section 215 Work, defined in paragraph L. of this Article for which the Government affords credit in accordance with Article II.F.1. of this Agreement, to the extent that they do not duplicate costs otherwise included in this paragraph D. of this Article, but shall not include any costs for operation and maintenance; any costs due to betterments; any costs of dispute resolution under Article VI of this Agreement; or any non-assignable costs.

1. The term "reconnaissance study cost" shall mean all costs incurred by the Government directly related to the performance of a reconnaissance study for the Project or for an item of work.

2. The term "construction phase cost" shall mean all costs incurred by the Government and the Local Sponsor directly related to the performance of the construction phase of the Project or for an item of work.

E. The term "non-assignable costs" shall mean all costs incurred by the Government not directly related to an item of work and are to be at 100% Federal cost. Non-assignable costs include,

but are not limited to, reconnaissance studies carried out by the Government that were not completed prior to October 12, 1996.

F. The term "total project costs" shall mean the sum of item of work costs and non-assignable costs.

G. The term "period of construction" shall mean the time from the date the Government first notifies the Local Sponsor in writing, in accordance with Article V.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first Government contract for an item of work to the time that the District Engineer notifies the Local Sponsor in writing that the item of work is complete.

H. The term "District Engineer" shall mean the U.S. Army Engineer for the Albuquerque District or his designee.

I. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

J. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures and improvements determined by the Government to be necessary for the construction of the Project.

K. The term "fiscal year" shall mean one fiscal year of the United States Government unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

L. The term "Section 215 Work" for the Project shall mean activities to be undertaken by the Local Sponsor, or undertaken on behalf of the Local Sponsor through agreements between the Local Sponsor with an acequia commission, related to construction of an item of work, pursuant to the authority contained in Section 215 of Public Law 90-483, as amended.

M. The term "betterment" shall mean a change in the design and construction of an element or item of work of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element or item of work.

N. The term "satisfying the requirements of applicable environmental laws" shall mean compliance with all applicable public laws, and regulations, of the Government relating to the protection of the environment. These shall include, but not be limited to, the environmental requirements necessary to achieve compliance with the National Environmental Policy Act, Clean Water Act, Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and the Clean Air Act.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The Government, in cooperation with the Local Sponsor, shall select those community ditch and acequia systems eligible for performance of the reconnaissance study.

B. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Local Sponsor, and subject to any Section 215 Work performed by the Local Sponsor, shall expeditiously construct the Project, including each individual item of work, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. For each item of work performed by the Government, the Government shall afford the Local Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first contract for construction of each item of work until the Local Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Local Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Local Sponsor 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 Local Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Local Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government. The Government shall not obligate any funds for

construction of any Project feature until environmental compliance has been satisfied for that feature.

2. For each item of work performed by the Local Sponsor as Section 215 Work, the Local Sponsor shall plan, design, and construct the Section 215 Work, applying those procedures usually followed or applied by the Local Sponsor and subject to the provisions of this Agreement. The Government shall be afforded the opportunity to review and comment on all construction contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. The Local Sponsor will consider the views of the Government, but award of contracts and performance of work on the Section 215 Work shall be exclusively within the control of the Local Sponsor.

3. Throughout the period of construction, the parties shall furnish each other with a copy of the Written Notice of Acceptance of Completed Work for each contract for the Project.

C. The Local Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Local Sponsor 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. The Local Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article V.E. of this Agreement.

D. When the District Engineer determines that an item of work performed as a part of the Project is complete, including any of the Section 215 Work performed by the Local Sponsor, the District Engineer shall so notify the Local Sponsor in writing. In accordance with Article VII of this Agreement, the Local Sponsor shall enter into an agreement with the applicable acequia commission to provide for the operation, maintenance, repair, replacement, and rehabilitation of each completed item of work.

E. For each item of work performed by the Government, the Government shall acquire all lands, easements, rights-of-way, and dredged material disposal areas not owned or controlled by the acequia commissions or by the Local Sponsor, and perform all alterations and relocations of buildings, utilities, highways, railroads, sewers, and related and special facilities necessary for construction of the Project. For each item of work performed by the Local Sponsor as Section 215 Work, the Local Sponsor shall

acquire all lands, easements, rights-of-way, and dredged material disposal areas not owned or controlled by the acequia commissions or by the Local Sponsor, and perform all alterations and relocations of buildings, utilities, highways, railroads, sewers, and related and special facilities necessary for construction of the Project. The cost of such activities shall be included in each item of work cost.

1. In acquiring all required lands, easements and right-of-way for the Project or for each individual item of work, the Government and the Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project (including each individual item of work), including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

F. As further specified in Article V hereof, the Local Sponsor shall provide 25% of the total item of work cost for each item of work .

1. As authorized by Section 215 of Public Law 90-483, as amended, the Government may afford credit for the Section 215 Work. Such credit may be afforded in increments as useful increments of the Section 215 Work are completed by the Local Sponsor, including the completion of each item of work. The affording of such credit shall be subject to a technical review by the Government to verify that the credited work was accomplished in a satisfactory manner and in accordance with the limitations contained in this Agreement. To afford any such credit, the Government, as further specified in Article V.B. of this Agreement, shall apply the actual amount of credit toward the cash contribution required by this paragraph. The actual amount of credit shall not exceed the Local Sponsor's actual costs attributable to the Section 215 Work. The actual amount of credit shall be subject to an audit in accordance with Article VIII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. If the actual amount of credit for completion of each item of work exceeds the cash contribution required by this paragraph the Government shall apply any excess credit to subsequent items of work. As an alternative the Government may, in its sole discretion, subject to the availability of funds, reimburse the Local Sponsor in an amount

equal to such excess credit amount. The amount of credit afforded the Local Sponsor for completed Section 215 work shall include any applicable credits for lands, easements, rights-of-way and relocations performed in accordance with paragraph E. of this Article.

G. The Local Sponsor shall provide the Government rights-of-entry for construction of the items of work on all lands currently owned or controlled by the individual acequia commissions and by the Local Sponsor.

H. No Federal funds may be used to meet the non-Federal share of total project costs under this Agreement, including the non-Federal share of each item of work, unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

I. In addition to any other limitations contained in this Agreement, the affording and the amount of credit is subject to the following additional limitations:

1. No credit shall be given until the District Engineer has certified that the work subject to the credit has been completed and performed in accordance with the terms of this Agreement.

2. This Agreement shall not be construed as committing the Government to assume any responsibilities placed upon the Local Sponsor or any other non-Federal entity by the conditions of Federal Project authorization or any other applicable statute or regulation.

3. Credit shall not be made for any work which does not, in the judgment of the Government, conform to the Project.

4. The amount of credit provided by the Government to the Local Sponsor for the Section 215 Work described herein shall not exceed the statutory limitation of \$5,000,000 or 1 percent of total project costs, whichever is greater.

5. The amount of credit or reimbursement for which the Local Sponsor may be eligible pursuant to this Agreement is neither subject to interest charges nor to adjustment to reflect changes in price levels between the time the Section 215 Work is completed and the time that the credit or reimbursement is afforded.

6. No credit shall be afforded for costs incurred before the date of this Agreement.

7. Any reimbursement for the Section 215 Work performed by the Local Sponsor shall be dependent upon the appropriation of funds applicable thereto or funds available therefor.

8. The Local Sponsor shall obtain all applicable Federal, State and local permits required for the performance of the Section 215 Work.

9. Any contract awarded by the Local Sponsor for the Section 215 Work under this Agreement shall include provisions consistent with all applicable Federal laws and regulations.

ARTICLE III -CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Local Sponsor and the Government shall receive credit toward its share of each item of work cost for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that either the Local Sponsor or the Government must provide pursuant to Article II.E. of this Agreement, and for the value of the relocations that either the Local Sponsor or the Government must perform or for which it must ensure performance pursuant to Article II.E. of this Agreement. However, the Local Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Local Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute. In accordance with Articles I.D. and II.E. of this Agreement, the Local Sponsor shall also not receive credit for lands, easements and rights-of-way that are already owned or controlled by either the Local Sponsor or the individual Acequia and that were not acquired solely to perform a scheduled item of work.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way acquired by the Local Sponsor 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.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Local Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Local Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Local Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Local Sponsor's appraisal, the Local Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Local Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Local Sponsor's second appraisal, or the Local Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Local Sponsor. In the event the Local Sponsor does not approve the Government's appraisal, the Government, after consultation with the Local Sponsor, shall consider the Government's and the Local Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Local Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Local Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Local Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Local Sponsor, but no

less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Local Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Local Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Local Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Local Sponsor agree as to an appropriate amount, then the Local Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Local Sponsor cannot agree as to an appropriate amount, then the Local Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with subparagraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Local Sponsor at any time after the effective date of this Agreement, the value of the interest shall

include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article II.E. of this Agreement.

C. After consultation with the Local Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

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

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of New Mexico would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article VIII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article VIII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs

associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE IV - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Local Sponsor and the Government, not later than 30 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 for the last item of work performed under this Agreement. The Government's Project Manager and a counterpart named by the Local Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Local Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees. Each party shall submit a quarterly progress report, including activities accomplished and Project expenditures.

C. Until the end of the period of construction for the last item of work performed under this Agreement, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; construction of the Section 215 Work; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Local Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters 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, reject, or modify the Project Coordination Team's recommendations. If the Local Sponsor disagrees with the

Government's actions, it may seek its remedies under Article VI of this Agreement.

E. The costs of participation in the Project Coordination Team shall be included in the cost of each applicable item of work and cost shared in accordance with the provisions of this Agreement.

ARTICLE V - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of the cost of each item of work, of total project costs and costs due to betterments. By 15 February of each year and at least quarterly, the Government shall provide the Local Sponsor with a report setting forth all contributions provided to date and the current projections of each item of work, of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XVI of this Agreement, of the components of total project costs, of each party's share of total project costs, including each party's share of each item of work, of the Local Sponsor's total cash contributions required in accordance with Articles II.C. and II.F. of this Agreement, and of the non-Federal share. On the effective date of this Agreement, total project costs are projected to be \$88,000,000 and the Local Sponsor's required cash contribution are 25% of the construction phase costs and it is estimated that \$13,052,108 of total project costs were expended on the prior Local Cooperation Agreements of which the Federal share was \$10,161,758 and the Local Sponsor's share was \$2,890,350. The amount of credit for the Section 215 Work to be afforded against the Local Sponsor's required contribution towards total project costs in accordance with Article II.F.1. of this Agreement is projected to be \$5,000,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

B. The Local Sponsor shall provide the cash contribution required under Article II.F. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the Project following execution of this Agreement, the Government shall notify the Local Sponsor in writing of such scheduled date and the funds the Government, after consideration of any credit projected to be afforded through the first fiscal year of construction pursuant to Article II.F. of this

Agreement, determines to be required from the Local Sponsor to meet the non-Federal share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal share of financial obligations for construction incurred prior to the period of construction. Not later than such scheduled date, the Local Sponsor shall deposit the required funds in an escrow account acceptable to the Government, with interest accruing to the Local Sponsor.

2. For each succeeding fiscal year the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of the total project costs for that fiscal year, said share being based on a current Government proposal of items of work that may be performed during that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall verify to the satisfaction of the Government that it has deposited the requisite amount in an escrow account acceptable to the parties, with interest accruing to the Local Sponsor. As construction of the project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs. However, the construction of the project shall proceed at a rate not to exceed the amount budgeted by the Government and the Local Sponsor in the then current fiscal year.

C. In the event that the item of work cost exceeds the cost estimate, the Government shall immediately notify the Local Sponsor of the amount required to complete the item of work. The Local Sponsor shall, after making the appropriate financial arrangement with the acequia commissions, deposit in the escrow account the full amount of its additional required contribution.

D. At least 60 days prior to each Interstate Stream Commission meeting, the Government shall notify the Local Sponsor of the Local Sponsor's share of the cost for each item of work that is scheduled for a construction contract award. If the estimated share of the cost is acceptable to the Local Sponsor, the Government may proceed with the work and draw on the escrow account provided by the Local Sponsor such amounts as are necessary to cover the item of work costs as they are incurred, after consideration of any actual amount of credit afforded pursuant to Article II.F.1. of this Agreement.

1. If at any time during the period of construction the Government, after consideration of any actual amount of credit afforded pursuant to Article II.F. of this Agreement, determines that additional funds will be needed from the Local Sponsor to cover the non-Federal share of projected financial obligations for

construction for the current fiscal year, the Government shall notify the Local Sponsor in writing of the additional funds required, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in paragraph V.B.1. of this Article.

E. In advance of the Government incurring any financial obligation associated with additional work under Article II.E. of this Agreement, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor. The Government shall draw from the funds provided by the Local Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Local Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Local Sponsor shall provide the Government with a check for the full amount of the additional required funds.

F. Upon completion of each item of work and resolution of all relevant contract claims and appeals relating thereto, the Government shall compute the item of work cost and tender to the Local Sponsor a final accounting of the Local Sponsor's share of the item of work cost. In the event the total contribution by the Local Sponsor under this Agreement for an item of work, after consideration of any actual amount of credit afforded pursuant to Article II.F of this Agreement, is less than its required share of item of work costs at the time of the final accounting, the Local Sponsor shall, no later than 90 days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its required share of costs. If the Local Sponsor's contribution under this Agreement, after consideration of any actual amount of credit afforded pursuant to Article II.F of this Agreement, exceeds 25% of its part of the item of work cost, the Government, subject to the availability of funds, shall refund the excess to the Local Sponsor no later than 90 days after the final accounting is complete. Alternatively, the Government may credit the Local Sponsor for this amount against subsequent items of work.

G. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final

accounting of the Local Sponsor's share of the total project costs. In the event the total contribution by the Local Sponsor under this Agreement is less than its required share of the total project costs at the time of final accounting, after consideration of any actual amount of credit afforded pursuant to Article II.F of this Agreement, the Local Sponsor shall, no later than 90 days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its required share of the total project costs. If the Local Sponsor's contribution under this Agreement exceeds 25% of its part of the total project costs, the Government, subject to the availability of funds, shall refund the excess to the Local Sponsor no later than 90 days after the final accounting is complete.

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 party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent 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, REPLACEMENT, AND REHABILITATION (OMRR&R)

The Local Sponsor shall enter into an agreement with the applicable acequia commission to provide for the acequia commission's operation, maintenance, repair, replacement and rehabilitation of each completed item of work. The agreement shall provide that upon notification in accordance with Article II.D. of this Agreement and for so long as the Project remains authorized, the acequia commission shall operate, maintain, repair, replace, and rehabilitate each completed item of work at no cost to the Government, 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. The Government shall have no responsibility for the operation, maintenance, repair, replacement or rehabilitation of any item of work, nor shall it have any responsibility for any further protection and restoration work.

ARTICLE VIII -MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Local Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Local Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Local Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Local Sponsor and independent auditors any information necessary to enable an audit of the Local Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Local Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE IX- FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and

State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 1020.1 issued pursuant thereto and published in Part 800 of Title 36, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X- RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XI - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate the item of work or this Agreement or suspend future performance under this Agreement unless he 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. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XIII of this Agreement, both parties shall conclude their activities relating to

the Project and proceed to a final accounting in accordance with Article V.G. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIII of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Local Sponsor 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.

ARTICLE XIII- HAZARDOUS SUBSTANCES

A. After execution of this Agreement, the Government shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for construction, operation or maintenance of the items of work that are performed by the Government pursuant to this Agreement. After execution of this Agreement and upon direction by the District Engineer, the Local Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Local Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way to be required for the construction, operation, and maintenance of the items of work that are performed by the Local Sponsor as Section 215 Work. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Local Sponsor with prior specific written direction, in which case the Local Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by either the Government or the Local Sponsor for such investigations for hazardous substances shall be included in each item of work cost and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VIII.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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 required for the construction, operation, and maintenance of an item or work, the Local Sponsor and the Government shall provide prompt written notice to each other, and the Local Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Local Sponsor should proceed.

C. The Government and the Local Sponsor shall determine whether to initiate construction of an item of work, or, if already in construction, whether to continue with work on the item of work, suspend future performance under this Agreement, or terminate 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 required for the construction, operation, and maintenance of the Project. Should the Government and the Local Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for the costs of clean-up and response, to include 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 item of work cost or total project costs. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Local Sponsor and the Government shall consult with each other in accordance with Article IV of this Agreement in an effort to ensure that responsible parties bear any necessary clean up 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. Through an agreement with the applicable acequia commission, the Local Sponsor shall require the acequia commission, to the maximum extent practicable, to operate, maintain, repair, replace, and rehabilitate each completed item of work in a manner that will not cause liability to arise under CERCLA. The Government shall not be considered the operator of the Project or any item of work for purposes of CERCLA liability.

ARTICLE XIV - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

Interstate Stream Engineer
Interstate Stream Commission
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

and

Acequia Program Manager
Interstate Stream Commission
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

If to the Government:

Commander
U.S. Army Engineer District, Albuquerque
4101 Jefferson Plaza, N.E.
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 such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XV - HISTORICAL PRESERVATION

A. Costs of identification, survey, and evaluation of historical properties for each item of work following the reconnaissance study shall be included in each item of work cost and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)); the costs of mitigation and data recovery activities associated with historic preservation shall be borne

entirely by the Government as a non-assignable cost and shall not be included in each item of work cost, up to the statutory limit of one percent of the total amount estimated for each individual item of work.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit for each item of work shall not be included in total project costs nor in each item of work cost, but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the non-Federal cost sharing requirements for the underlying Project, as follows: 25 percent borne by the Local Sponsor, and 75 percent borne by the Government.

ARTICLE XVI - SECTION 902 PROJECT COST LIMITS

The Local Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Restoration and Preservation of the Acequias Irrigation System, New Mexico. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs or for any individual item of work for the value of any contribution provided by the Local Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$98,660,000, as calculated in accordance with ER 1105-2-100 using October 1, 1997 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XVII- FUTURE OBLIGATIONS

Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of New Mexico .

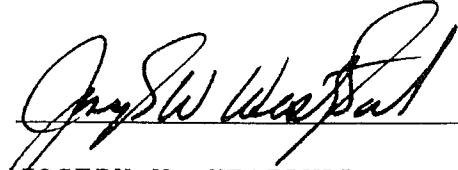
ARTICLE XVIFI - PRIOR AGREEMENTS

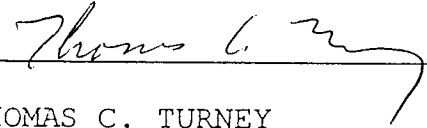
The parties recognize that local cooperation agreements were previously executed for elements of the Project. This Agreement applies to all items of work that are not covered by these prior agreements. Nothing in this Agreement is intended to abrogate any prior agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works) or his duly authorized representative.

THE DEPARTMENT OF THE ARMY

THE STATE OF NEW MEXICO

BY: 
JOSEPH W. WESTPHAL
Assistant Secretary
of the Army (Civil Works)

BY: 
THOMAS C. TURNEY
Secretary
Interstate Stream Commission

DATE: 08 MAR 1999

DATE: 2/26/99

CERTIFICATE OF AUTHORITY

I, Lee Huffman, do hereby certify that I am an agency attorney for the Interstate Stream Commission, that the Interstate Stream Commission of the State of New Mexico is an agency of the State of New Mexico with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of New Mexico, in connection with the Acequias Irrigation System, New Mexico project, within the State of New Mexico, and is a "non-Federal interest" as defined in Section 221 of Public Law 91-611, and that the person who has executed the Agreement on behalf of the State of New Mexico has acted within statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certification this 26th day of February, 1999.

Lee Huffman

Agency Attorney

CERTIFICATION REGARDING LOBBYING

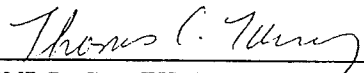
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

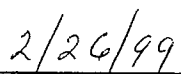
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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 section 1352, title 31, U.S. Code. 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.



THOMAS C. TURNEY
Secretary
Interstate Stream
Commission



Date