

SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
AGREEMENT FOR REAL PROPERTY ACQUISITION – ON CALL SERVICES

THIS AGREEMENT, made and entered into this ____day of _____, 2020 by and between Southern Sandoval County Arroyo Flood Control Authority, (hereinafter referred to as “SSCAFCA”), and _____(hereinafter referred to as the “Contractor”).

Contractor and SSSCAFCA desire to enter into an agreement regarding professional services;

1. Scope of Work

See Exhibit A.

2. Compensation

The compensation will be as set forth in Exhibit B. Contractor shall submit its invoices to SSSCAFCA on a monthly basis. Invoices are due and payable within 30 days of receipt.

3. Term of Agreement

This Agreement shall be for a period of one (1) year from the date of execution of this Agreement. This Agreement may be extended for up to three (3) additional years in one (1) year increments, if requested by the Executive Engineer and subject to approval by the SSSCAFCA Board of Directors.

4. Termination

- a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- b. This contract may be terminated in whole or in part in writing by SSSCAFCA for its convenience, provided that the Contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- c. If termination for default is effected by SSSCAFCA, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Contractor at the time of termination may be adjusted to cover any additional costs to SSSCAFCA because of the Contractor's default. If the Contractor effects termination for default, or if SSSCAFCA effects

termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Contractor relating to commitments which had become firm prior to the termination.

- d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to SSCAFCA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this contract, whether completed or in process.
- e. Upon termination under paragraphs (a) or (b) above, SSCAFCA may take over the work and may award another party a contract to complete the work under this contract.
- f. If, after termination for failure of the Contractor to fulfill contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of SSCAFCA. In such event, adjustment of the sub agreement price shall be made as provided in paragraph (c) of this clause.

5. Final Payment

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Contractor shall execute and deliver to SSCAFCA a release of all claims against SSCAFCA arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of SSCAFCA's claims against the Contractor under this contract.

6. Status of Contractor

The Contractor, and the Contractor's agents and employees, are independent Contractors performing professional services for SSCAFCA and are not employees of SSCAFCA.

7. Assignment

Contractor shall not assign or transfer any interest in this Agreement without the written consent of SSCAFCA.

8. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of SSCAFCA.

9. Insurance

Contractor agrees to maintain general liability insurance providing coverage in an amount no less than one million dollars (\$1,000,000) per claim. Proof of insurance shall be submitted to SSCAFCA. Such insurance shall remain in full force and effect during the term of this Agreement.

10. Records and Audits

The Contractor shall maintain detailed time records which indicate the date, time, and nature of services rendered if hourly services are being provided. These records shall be subject to inspection by SSCAFCA. SSCAFCA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of SSCAFCA to recover excessive and/or illegal payments.

The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The Contractor shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to SSCAFCA. SSCAFCA or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection.

- a. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the Contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the Contractor agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.
- b. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

- c. The Contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
- d. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
- e. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:
 - 1. To the extent the records pertain directly to contract performance;
 - 2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
 - 3. If the sub agreement is terminated for default or for convenience.

11. Covenant Against Contingency Fees

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this assurance, SSCAFCA shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

12. Indemnification

Contractor agrees to indemnify, hold free and harmless SSCAFCA, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against SSCAFCA, its elected officials, officers, agents and employees arising out of the performance of the work undertaken pursuant to this Agreement.

13. Remedies

Unless otherwise provided in this contract, all claims, counter claims, disputes and other matters in question between SSCAFCA and the Contractor arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other

alternative dispute resolution mechanism; or in a court of competent jurisdiction within New Mexico.

14. Gratuities

- a. If SSCAFCA finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of SSCAFCA, in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, SSCAFCA may, by written notice to the Contractor, terminate this contract. SSCAFCA may also pursue other rights and remedies that the law or this contract provides.
- b. In the event this contract is terminated as provided in paragraph (a), SSCAFCA may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by SSCAFCA) which shall be not less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

15. Release

The Contractor shall, upon final payment of the amount due under the Agreement, release the officers and employees and SSCAFCA from all liabilities, claims and obligations whatsoever arising from or under the Agreement. The Contractor agrees not to purport to bind SSCAFCA, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

16. Confidentiality

Any information provided to or developed by the Contractor in the performance of the Agreement shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of SSCAFCA.

17. Conflict of Interest

The Contractor warrants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

18. Amendment

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by both parties.

- a. SSCAFCA may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the Contractor's cost or time required to perform any services under this contract, whether or not changed by any order, SSCAFCA shall make an equitable adjustment and modify this contract in writing. The Contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives SSCAFCA's notification of change, unless SSCAFCA grants additional time before the date of final payment.
- b. No claim by the Contractor for an equitable adjustment shall be allowed if made after final payment under this contract.
- c. No services for which the Contractor will charge an additional compensation shall be furnished without the written authorization of SSCAFCA.

19. Merger

This Agreement incorporates all of the agreements, covenants, and understandings between the parties thereto concerning the subject matter thereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents is valid or enforceable unless embodied in this Agreement.

20. Applicable Law

This Agreement shall be governed by the laws of the State of New Mexico.

21. Waiver

No waiver or any breach of this Agreement or any of the terms or conditions hereof shall be held to be a waiver or any other subsequent breach; nor shall any waiver be valid, alleged or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

22. Notice

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 (1984 as amended), impose Civil and Criminal penalties for its violations. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kick-backs.

23. Equal Opportunity Compliance

The Contractor shall agree to abide by all federal and state laws pertaining to equal employment opportunity.

In accordance with all such laws the Contractor shall agree to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap,

be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first written above.

**SOUTHERN SANDOVAL COUNTY
ARROYO FLOOD CONTROL AUTHORITY**

Date: _____

By: _____

Charles Thomas
Executive Engineer

Contractor:

Date: _____

By: _____

Its: _____

EXHIBIT A – SCOPE OF WORK

1. Coordinate with SSCAFCA, and relevant Agencies and parties regarding each project to identify right of way issues, and/or to discuss project status, procedural issues, budget, and schedules.
2. Attend project meetings, make public presentations to individuals and organizations and represent SSCAFCA in presentations and public hearings on all matters pertaining to the Project, as needed.
3. Prepare and submit, in a format acceptable to SSCAFCA, monthly acquisition status reports. If appropriate, as requested by SSCAFCA, the schedule and/or acquisition status report may require updating more frequently.
4. Prepare a cost estimate and firm budget for project right of way costs. The right of way project costs shall include an appropriate contingency amount for unknowns and proposed changes. Any proposed changes to right of way costs for project will be submitted to SSCAFCA for review and approval. Project cost estimates will be updated quarterly.
5. Provide Quality Assurance/Quality Control (QA/QC) throughout term of the contract. The QA/QC is intended to ensure that the appraisals, maps, reports, plans, studies, estimates, agreements and other documents submitted under assigned Scope of Work are complete, accurate, checked, and proofread to meet professional standard practice requirements, and to monitor work for conformance with the appropriate standards and policies.
6. Complete all right of way acquisition and negotiation services in accordance with SSCAFCA's Property Acquisition Procedures and any other applicable regulations.
7. Obtain Appraisals or Market Analyses as needed for the acquisition of real property.
8. Provide title and escrow services necessary for the acquisition of real property, which include, but are not limited to, obtaining preliminary title reports, litigation guarantees, policies of title, title searches, document searches, document preparation, estimates of closing costs, escrow instructions, and other documents.
9. Prepare acquisition packages, including recommendation of amount of just compensation and negotiate with property owners. Just compensation must be based on the appraised value and the negotiator's additional recommendations. SSCAFCA shall approve the final determination of just compensation.
10. Maintain a Record of Negotiations documenting that all elements of the acquisition process and transactions were performed in accordance with applicable Federal, State, and local laws and regulations. A file shall be established and maintained for each property owner or property interest acquired pursuant to SSCAFCA's policies and procedures.
11. Upon completion of the acquisition process for each property or property interest, or at project completion, provide SSCAFCA with the original acquisition file as well as an electronic copy for

each property or property interest acquired.

- 12.** Perform other normal procedures and processes to implement the acquisition assignment and provide any other supporting information and/or correspondence required by SSCAFCA, as needed.
- 13.** Provide bilingual (Spanish/English) acquisition agents as needed.
- 14.** Assist SSCAFCA in Eminent Domain support if needed. If requested, provide expert testimony in any court or administrative proceedings, and assist as required in legal matters as directed by SSCAFCA legal staff, especially in the litigation of cases for or against SSCAFCA, including but not limited to gathering of documents and information.
- 15.** Develop and maintain an escrow schedule; deliver documents and checks to escrow companies; review all documents for submission and delivery to escrow companies; review title and escrow documents; ensure that SSCAFCA is acquiring good title and/or the property rights needed for the completion of the Project, free and clear of any and all encumbrances that may affect or hinder the development of future consideration; coordinate escrow closings and file all applicable forms and documents with the Sandoval County Assessor's Office.

EXHIBIT B – COMPENSATION