

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR SEDIMENT REMOVAL AND RIP RAP PLACMENT (ON CALL)**

THIS AGREEMENT is by and between Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA) (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 *Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:*

- A. Contractor’s services will be detailed in a duly executed Cost Estimate Form for each Specific Project. The general format of a Cost Estimate Form is shown in Attachment 1 to this Agreement. Each Cost Estimate Form will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Contractor to issue any Cost Estimate Forms.
- C. Contractor shall not be obligated to perform any prospective Cost Estimate Form unless and until Owner and Contractor agree as to the particulars of the Specific Project, including the scope of Contractor’s services, time for performance, Contractor’s compensation, and all other appropriate matters.

1.02 *Cost Estimate Procedure*

- A. Owner and Contractor shall agree on the scope, time for performance, and basis of compensation for each Cost Estimate Form. Each duly executed Cost Estimate Form shall be subject to the terms and conditions of this Agreement.
- B. Contractor will commence performance as set forth in the Cost Estimate Form.

ARTICLE 2 – THE PROJECT

2.01 Section not used.

ARTICLE 3 – ENGINEER

3.01 Section not used.

ARTICLE 4 – CONTRACT TIMES

4.01 *Term*

- A. This Agreement shall be effective and applicable to Cost Estimate Forms issued hereunder for one (1) year from the Effective Date of the Agreement.

- B. The parties may extend or renew this Agreement annually, with or without changes, by written instrument establishing a new term, for up to three (3) additional years.

4.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Cost Estimate Form.
- B. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Contractor's services, and the amounts of Contractor's compensation, shall be adjusted in accordance with Attachment 2.
- C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Contractor's performance of its services.
- D. If the Contractor fails, through its own fault, to complete the performance required in a Cost Estimate Form within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- E. If required as part of a Cost Estimate Form, the Cost Estimate Form shall include the following language, "The Work will be substantially completed within █ days after the date when the Cost Estimate Form commences to run as provided in Paragraph 4.02 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within █ days after the date when the Cost Estimate Form commences to run."

4.03 *Liquidated Damages*

- A. Section not used.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, Hourly Rates as shown in Attachment 2 and the specific Cost Estimate Form as provided in Paragraph 1.02

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions, the terms of Attachment 2 and the specific Cost Estimate Form.

6.02 *Progress Payments; Retainage*

- A. Section not used.

6.03 *Final Payment*

- A. Section not used.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of Federal funds rate plus 1% percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, if applicable, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, if applicable.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies,

or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to [REDACTED], inclusive).
 - 2. Performance bond (NOT REQUIRED).
 - 3. Payment bond (NOT REQUIRED).
 - 4. Other bonds.
 - a. (NOT REQUIRED).
 - 5. General Conditions.
 - 6. Supplementary Conditions (NONE).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of [REDACTED] sheets with each sheet bearing the following general title: No Plans for this work.
 - 9. Addenda (NONE).
 - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

NOTE(S) TO USER:

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on [REDACTED] (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.