

**SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY  
SEDIMENT REMOVAL AND CONSTRUCTION SERVICES**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between Southern Sandoval County Arroyo Flood Control Authority, (hereinafter referred to as “SSCAFCA”), and **(Contractor Name)** (hereinafter referred to as the “Contractor”).

**WHEREAS**, Contractor and SSCAFCA desire to enter into an agreement regarding professional services;

**1. Scope of Work**

The Contractor shall provide the installation of fence, fence repair, gate installation, and gate repair for SSCAFCA on an “as needed” basis. Compensation will be based upon the Contractor’s unit prices and hourly rates set forth in the Contractor’s response to SSCAFCA’s IFB 2010-01 and upon an estimate prepared by the Contractor and approved by SSCAFCA prior to the work being done for each project and service to be provided. All documents pertaining to inspections, work orders (attached) and work completed are required and must be accepted prior to payment. Work not completed as required or work not completed on agreed to completion date may be grounds for termination. Payments for work performed shall not exceed the estimate (attached) prepared by the contractor and approved by SSCAFCA without prior written approval by SSCAFCA.

**2. Compensation**

Compensation will be based upon the Contractor’s rates set forth in the Contractor’s bid submitted in response to SSCAFCA’s IFB No. 2018-04, which is attached hereto as Exhibit II, and upon a cost estimate prepared by the Contractor and approved by SSCAFCA prior to the work being done for each project and service to be provided.

**3. Term of Agreement**

This Agreement shall be for a period of one (1) year, but may be extended annually by the Board of Directors of SSCAFCA for up to three (3) additional years. In no event can this Agreement be extended beyond four (4) years from the date of execution of this Agreement. Continuation of this Agreement for each succeeding year shall be contingent on the availability of funds, and written approval by both parties.

**4. Termination**

The Agreement may be terminated without cause by either of the parties thereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations or liabilities already incurred for performance or for failure to perform prior to the date of termination.

**5. 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.

## **6. Assignment**

The Contractor shall not assign or transfer any interest in the Agreement or assign any claims for money due or to become due under the Agreement without the prior written approval of SSCAFCA.

## **7. Subcontracting**

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

## **8. Insurance**

### **A. General Conditions**

Contractor shall procure and maintain in full force and effect during the life of this Agreement, such insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and they shall be in a form satisfactory to SSCAFCA and properly filed and approved by the Superintendent of Insurance, State of New Mexico. The pro-rata cost of required insurance shall be included in the prices bid for the Work and no additional compensation will be made therefore. When Contractor delivers the executed Agreement to SSCAFCA, Contractor shall furnish SSCAFCA copies of certificates of required insurances (or copies of insurance policies if SSCAFCA calls for them). All certificates of insurance (or policies) shall provide that thirty (30) days' written notice be given to the Executive Engineer, Southern Sandoval County Arroyo Flood Control Authority, 1041 Commercial Dr. SE, Rio Rancho, NM 87124, before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. SSCAFCA reserves the right to require complete, certified copies of all required insurance policies at any time.

### **B. Approval of Insurance**

The Contractor shall not begin any work under this Agreement until the required insurance has been obtained and the proper certificates (or policies) are filed with SSCAFCA. Neither approval nor failure to disapprove certificates, policies or the insurance by SSCAFCA shall relieve Contractor of full responsibility to maintain the required insurance in full force and effect.

### **C. Commercial General Liability Insurance**

1. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed for SSCAFCA by Contractor, including coverage for collapse (C), explosion (X), and underground (U) liability coverage, coverage for the user of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work,

and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement.

#### **D. Workmen's Compensation Insurance**

Contractor shall comply with the provisions of the Workmen's Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Contractor shall procure and maintain during the life of this Agreement, complete Workmen's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978 Section 52-1-10 (1989), for safety devices. With respect to Workmen's Compensation Insurance, if Contractor elects to be self-insured, he shall comply with the applicable requirements of law. If any portion of the Work is sublet, Contractor shall require the Subcontractor similarly to provide such coverage (or qualify as a self insured) for all latter's employees to be engaged in such Work. Contractor shall save harmless SCAFCA's officers, agents, and employees from any claims or actions occasioned by failure of Contractor to comply with the provisions of this subparagraph. It is agreed that with respect to all Workmen's Compensation Insurance, the Contractor and its insurer shall waive any right of subrogation it may acquire against SCAFCA's officers, agents, and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of this Agreement.

#### **E. Increased Limits**

If, during the life of this Agreement, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-27 (1976 as amended)), SCAFCA may require Contractor to increase the maximum limits of any insurance required herein. In the event that Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the Agreement amount will be made.

#### **9. 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 SCAFCA. SCAFCA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of SCAFCA to recover excessive and/or illegal payments.

#### **10. Release**

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

#### **11. 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.

**12. Product of Service; Copyright**

Nothing produced, in whole or in part, by the Contractor under the Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

**13. 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.

**14. Amendment**

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

**15. 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.

**16. Applicable Law**

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

**17. 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.

**18. 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.

**19. 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.

**20. Multiple Counterparts**

The Contract will be executed in multiple counterparts, each of which will be deemed to be an original for all purposes.

**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: \_\_\_\_\_

James Fahey  
Chairman, Board of Directors

**Contractor:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Federal I.D. Number  
\_\_\_\_\_

Taxpayer Identification Number  
\_\_\_\_\_