

ARTICLE III
CONSULTANT'S FEE

A. **COMPENSATION**

Compensation will be based upon the agreed upon rates set forth in Exhibit II and based upon a Task Order prepared by the Consultant and approved by SSCAFCA prior to the work being done for each project assigned to the Consultant by SSCAFCA.

B. **PAYMENT SCHEDULE FOR FEES**

In consideration for the services provided pursuant to Article I, payment for services rendered will be billed by the Consultant on a monthly basis and SSCAFCA shall pay on the following charges:

- a. All fees, costs and expenses as per the agreed upon rates based on the Reimbursable Expenses Schedule and Standard Hourly Rates included as Exhibit II. Said fees, costs and expenses shall not increase during the term of the Agreement unless approved in writing by SSCAFCA; and
- b. New Mexico gross receipts tax at the applicable rate.

C. **COST RECORDS**

Upon written request by SSCAFCA, and in response to an audit or special need for the information, the Consultant shall furnish cost records for all billings sufficient to substantiate all charges and fees. The Consultant shall complete work and cost records for all billings on such forms and in such manner as is satisfactory to SSCAFCA.

E. **DELETED WORK**

If work performed by the Consultant is deleted due to a change in design criteria or due to deletion of a portion or the entire project, the parties agree to negotiate equitable payment for such deleted work of the Consultant. The amount of payment due shall be determined by applying a percentage of the unpaid balance representing the percent of the progress made by the Consultant toward completing the deleted work. These amounts shall then be due the Consultant and authorized for payment provided the completed work is satisfactory to SSCAFCA.

F. **SUBCONTRACTING FEES**

When the Consultant has certain portions of the work performed by a subcontractor, the Consultant will submit pay requests by the subcontractor to SSCAFCA with markup identified in Exhibit II. Subcontractors, to be used by the Consultant, will be identified on the Task Order.

ARTICLE IV
OWNERSHIP OF PLANS AND DOCUMENTS: RECORDS

A. All documents prepared as part of or related to the project, including, but not limited to the

field notes graphics, GIS information and any computer-generated materials prepared under this Agreement as instruments of service, are and shall remain, the property of SSCAFCA. At the termination of this Agreement or the conclusion of the project, whichever is sooner, upon request by SSCAFCA, the Consultant shall deliver in a form acceptable to SSCAFCA one digital set of data generated due to a Task Order. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country by the Consultant. SSCAFCA shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

B. After project completion and final payment under this contract, the Consultant shall maintain for no less than ten (10) years, copies of all documents, maps, records, computer data, and computer-generated materials, tests and field notes which were developed in the course of work on the project for SSCAFCA and for which compensation has been received by the Consultant. The above shall be the property of SSCAFCA, maintained by the Consultant, at no additional cost to SSCAFCA and in accordance with applicable law and requirements prescribed by SSCAFCA. If required by SSCAFCA, and upon written request, delivery of these documents or copies of this information shall be transmitted to SSCAFCA at a mutually agreed upon cost.

ARTICLE V **TERMINATION**

A. This Agreement may be terminated by either party upon fifteen (15) days written notice to the other party in the event of substantial failure by the other party to fulfill its obligation under this Agreement through no fault of the terminating party.

B. This Agreement may also be terminated by SSCAFCA for its convenience upon fifteen (15) days written notice to the Consultant.

C. In the event of termination as provided in this Article, the Consultant shall be paid in full for services performed to the date of such termination, provided such work is satisfactory to SSCAFCA, an amount to be negotiated between the parties. Such amount shall be paid by SSCAFCA upon the Consultant's delivering to SSCAFCA, in a form acceptable to SSCAFCA, the data reports, summaries, documents, computer data and computer-generated materials of any nature and other such information and materials as may have been accumulated, acquired, or prepared by the Consultant in performing the services included in this Agreement whether completed or in progress. Cost of delivery to SSCAFCA of the work product defined above shall be included in the compensation amount negotiated between the parties to terminate this Agreement.

ARTICLE VI **ASSIGNMENT**

This Agreement shall not be assigned except upon written consent of the parties hereto, and if so assigned, shall extend to and be binding upon the successors and assigns of the parties hereto.

ARTICLE VII **INDEMNITY**

The Consultant hereby agrees to hold harmless, indemnify and defend SSCAFCA, its officers, agents and employees from and against all liability, suits, actions, claims, damages, attorney fees and costs arising out of or resulting from the Consultant's and/or any of its Subcontractor's employees, agents, or officers negligent conduct, performance, act(s), error(s) or omissions(s) relating in any manner whatsoever to this Agreement. Provided, however, nothing in this Agreement shall be construed to require the Consultant to defend, indemnify and hold harmless SSCAFCA, its officers, agents and employees from and against any liability, suits, actions claims, damages and attorney fees caused by or resulting from the negligence of SSCAFCA, its officers, agents and employees.

Receipt by SSCAFCA of the Consultant's services under this agreement, review by SSCAFCA of any plans, specifications and documents prepared by the Consultant, and SSCAFCA authorizations for the Consultant to proceed with the various phases of services shall not be construed as approval of the Consultant's work product by SSCAFCA or as the giving of instructions or directions by SSCAFCA. These indemnification provisions are subject to the limitations and provisions of NMSA 1978, Section 56-7-1(1971).

The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

When the Consultant acts as an agent for SSCAFCA, SSCAFCA, to the extent authorized by law, shall defend, indemnify, and hold harmless the Consultant from and against all suits, actions, or claims resulting from negligent acts, errors, or omissions of SSCAFCA and from actions, suits, or claims resulting from actions taken or services rendered by the Consultant at the direction of SSCAFCA which are not resulting from the negligent acts, errors, or omissions of the Consultant.

ARTICLE VIII **INSURANCE**

A. **GENERAL CONDITIONS**

If applicable, SSCAFCA will require that the Consultant 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 licensed or approved to do business in the State of New Mexico.

The Consultant shall furnish SSCAFCA copies of certificates of required insurance in a form satisfactory to SSCAFCA (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 SSCAFCA before a policy is cancelled or not renewed except that thirty (30) days notice shall not apply for non-payment of premiums.** Various types of required insurance may

be written in one or more policies.

If part of this Agreement is subcontracted, the Consultant shall require its subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Consultant's insurance policies.

B. APPROVAL OF INSURANCE

Even though a "Notice to Proceed" may have been given, the Consultant or subcontractor shall not begin any work under this Agreement until the required insurance has been obtained and the proper Certificates (or insurance policies) have been provided to SSCAFCA, adding SSCAFCA as an additional insured. Neither approval nor failure to disapprove certificates, policies or the insurance by SSCAFCA shall relieve the Consultant of full responsibility to maintain the required insurance in full force and effect.

C. PROFESSIONAL LIABILITY INSURANCE

The Consultant will be required to obtain Professional Liability Insurance in an amount not less than \$1,000,000 in the aggregate provided however, that there shall not be a per claim limit of less than \$1,000,000.

In the event SSCAFCA elects to require insurance coverage in excess of \$1,000,000 the cost directly incurred by the Consultant, if it is in addition to the Consultant's Basic Professional Liability Insurance, shall be a direct reimbursable expense (additional insurance premium cost only) paid by SSCAFCA.

D. COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE INSURANCE

All commercial general liability and automobile insurance policies shall have 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 shall be in effect for the term of this Agreement and include coverage for all operations performed for SSCAFCA by the Consultant. Consultant shall provide with the Certificate of Insurance an endorsement from their policy showing the Consultant carries Additional Insured coverage.

E. WORKERS' COMPENSATION INSURANCE

The Consultant shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law.

F. INCREASED LIMITS

If, during the life of this contract, the legislature of the State of New Mexico increases the maximum limits of the liability under the Tort Claims Act, SSCAFCA may require the Consultant to increase the maximum limits of any insurance required herein. In the event that the Consultant is so required to increase the limits of such insurance, an appropriate adjustment in contract amount will be made.

G. NOTIFICATION

Consultant agrees to notify Owner of any change or cancellation of insurance policy.

ARTICLE X
PROJECT SCHEDULE COMPLIANCE

It is the goal of SSCAFCA in entering into this Agreement with the Consultant to complete projects in a timely fashion. After execution of this Agreement, the Consultant shall furnish SSCAFCA a project schedule for approval with each task order and task billing. Once a task order is approved, a notice to proceed will be issued. Unless otherwise agreed to in writing between the parties, compliance with the project schedule is mandatory and must be met by the Consultant.

ARTICLE XI
INDEPENDENT CONTRACTOR

Neither the Consultant nor its employees are considered to be employees of SSCAFCA for any purpose whatsoever. The Consultant is considered to be an independent contractor at all times in the performance of the services described herein. The Consultant further agrees that neither it nor its employees are entitled to any benefits from SSCAFCA under the provisions of the Workers' Compensation Act, or to any of the benefits granted to employees of SSCAFCA.

ARTICLE XII
PERSONNEL

The Consultant represents that it has, or will secure at its own expense, all personnel required in performing all of the services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with SSCAFCA. All the services required hereunder shall be performed by the Consultant or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of SSCAFCA. Any work or services subcontracted hereunder shall be specified in a written contract or agreement and shall be subject to each provision of this Agreement.

ARTICLE XIII
CONSULTANT'S PERFORMANCE

In the performance of professional services, the Consultant will use the degree of care and skill ordinarily exercised under similar conditions in similar localities and no other warranties expressed or implied, are made or intended in any of the Consultant's proposals, contracts or reports.

ARTICLE XIV
REPORTS AND INFORMATION

At such times and in such forms as SSCAFCA may require, there shall be furnished to SSCAFCA such statements, records, reports, data and information, as SSCAFCA may request pertaining to matters covered by this Agreement. Compensation to the Consultant for furnishing the reports and information shall be invoiced and paid as special services.

ARTICLE XV
INFORMATION PROVIDED BY SSCAFCA

The Consultant shall be entitled to rely upon the accuracy of data and information provided by SSCAFCA or agents of SSCAFCA without independent review or evaluation. This does not relieve the Consultant of its duties or of reviewing the data and bringing to SSCAFCA's attention, or its agent, any inaccuracy in the data that it may find.

ARTICLE XVI
TIME OF PERFORMANCE

Services of the Consultant shall commence on the date of final execution of the agreement and task order and only after issuance of the Notice to Proceed and shall be undertaken and completed as set forth in the project schedule, as approved.

ARTICLE XVIII
AUDITS AND INSPECTIONS

At any time during normal business hours and as often as SSCAFCA may deem necessary, there shall be made available to SSCAFCA for examination, all of the Consultant's records with respect to all matters covered by this Agreement. The Consultant shall permit SSCAFCA to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoice materials, payrolls, and other data relating to all matters covered by this Agreement, except as specifically excluded by law.

ARTICLE XIX
SUBCONTRACTING

No work shall be subcontracted without the prior written consent of SSCAFCA. The intent of this section shall not be circumvented by the Consultant placing a subcontractor's employees directly on the Consultant's payroll and/or by the use of a subcontractor's materials or equipment.

Nothing contained herein, including, but not limited to approval by SSCAFCA of any subcontractors and/or materials, shall be construed to waive the Consultant's liability of any nature under this Agreement and no bond, insurance or liability of any nature shall be waived or in

any way diminished by the subcontracting or assignment of any portion or interest under this Agreement.

ARTICLE XX
COMPLIANCE WITH LAWS

In providing the scope of services outlined herein, the Consultant and SSCAFCA shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments.

ARTICLE XXI
NON-APPROPRIATION CLAUSE

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by SSCAFCA for the performance of this Agreement. If sufficient appropriations and authorization are not made by SSCAFCA, this Agreement shall terminate upon written notice being given by SSCAFCA to the Consultant. SSCAFCA's decision as to whether sufficient appropriations are available shall be accepted by the Consultant and shall be final.

ARTICLE XXII
CONSTRUCTION AND SEVERABILITY

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of this Agreement is reasonably capable of completion.

ARTICLE XXIII
ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

ARTICLE XXIV
CONTRACT CHANGES

SSCAFCA may, from time to time, request changes in this Agreement or the Scope of Services of the Consultant to be performed hereunder. Such changes will be authorized as an amendment to the Agreement as stipulated in this Agreement.

ARTICLE XXV
SSCAFCA OBLIGATION ON REVIEW

SSCAFCA is not obligated to provide an extensive check of any documents or reports submitted by Consultant. Acceptance of documents, reports and/or investigations by SSCAFCA does not relieve the Consultant or its subcontractors of their responsibility for accurate and complete work.

ARTICLE XXVI
APPLICABLE LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico.

ARTICLE XXVII
EQUAL OPPORTUNITY COMPLIANCE

The Consultant agrees to abide by all federal and state laws pertaining to equal employment opportunity.

In accordance with all such laws, the Consultant agrees 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 Consultant is found not to be in compliance with these requirements during the life of this Agreement, Consultant agrees to take immediate appropriate steps to correct these deficiencies.

ARTICLE XXVIII
COMPLETION AND EXPIRATION DATES

This Agreement shall be for one year from the date of execution; however, services that are in progress or incomplete at the end of the contract year shall be completed. This Agreement may also be renewed for up to three (3) additional years, subject to annual renegotiation of fee schedule and approval by SCAFCA's Board of Directors.

ARTICLE XXIX
ADMINISTRATION OF AGREEMENT

The Executive Engineer, or his authorized representatives, shall administer this Agreement for SCAFCA.

ARTICLE XXX
APPROVAL REQUIRED

This Agreement shall not become effective or binding until approved by the Board of Directors of SCAFCA and executed hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

**SOUTHERN SANDOVAL COUNTY
ARROYO FLOOD CONTROL AUTHORITY**

By: _____
James Fahey, Jr.
Chairman, Board of Directors

Date: _____

:

Charles Thomas, P.E.
Executive Engineer
SSCAFCA

CONSULTANT:

By: _____

Name: _____

Title: _____

Date Signed: _____

State of : _____

Federal I.D. Number: _____

Taxpayer Identification
Number: _____

EXHIBIT I
SCOPE OF SERVICES

PROFESSIONAL ON-CALL SURVEYING SERVICES

Specific services shall include all duties typically expected of a professional surveyor or surveying firm, including, but not limited to, boundary surveys, plats, topographic surveys and construction surveying, preparation of legal descriptions, locate, relocate, establish, reestablish, or retrace any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries, replace lost or missing boundary corners, photogrammetric surveying, aerial topographic mapping or aerial photography. All services shall be for projects serving SSCAFCA's jurisdiction. Expert witness testimony may also be required.

EXHIBIT II

SCHEDULE OF FEES BY LABOR CLASSIFICATION

