

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
SANTA CLARA PUEBLO  
FOR THE  
SANTA CLARA PUEBLO, NEW MEXICO WATERSHED ASSESSMENT

THIS AGREEMENT is entered into this 21<sup>st</sup> day of September, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Albuquerque District, and Santa Clara Pueblo (hereinafter the "Pueblo"), represented by the Governor, pursuant to authorization of the Santa Clara Pueblo Tribal Council.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies and in consultation with the Secretary of the Interior, may carry out water-related planning activities and study and determine the feasibility of carrying out water resources development projects that will substantially benefit Indian tribes, and are located primarily within Indian country or in proximity to Alaska Native villages, and such studies may address flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources; watershed assessments and planning activities; and such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, and in consultation with the Secretary of the Interior, determines to be appropriate pursuant to Section 203 of the Water Resources Development Act of 2000, Public Law 106-541, as amended by Section 2011 of WRDA 2007, Public Law 110-114 (33 U.S.C. 2269); hereinafter "Section 203";

WHEREAS, the Government and Santa Clara Pueblo desire to enter into an agreement (hereinafter the "Agreement") for a watershed assessment of the water resources needs of Santa Clara Pueblo, New Mexico (hereinafter the "Assessment" as defined in Article I.A. of this Agreement) pursuant to Section 203;

WHEREAS, Section 203 provides that to carry out work under Section 203, \$5,000,000 in Federal funds are authorized to be appropriated for each of *fiscal years* 2002 through 2012, of which not more than \$1,000,000 may be used with respect to any one Indian tribe;

WHEREAS, Section 729 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2267a) specifies the cost-sharing requirements applicable to the *Assessment*;

WHEREAS, the Pueblo does not qualify for a reduction of the non-Federal cost share for the *Assessment* pursuant to the current guidelines that implement 33 U.S.C. 2213(m);

WHEREAS, the Pueblo may provide in-kind contributions (hereinafter the "*in-kind contributions*") as defined in Article I.I. of this Agreement) that are necessary to prepare the

*Assessment* and to receive credit for such contributions toward the amount of its required contribution for the *Assessment*;

WHEREAS, the Pueblo may provide up to 100 percent of its required contribution for the *Assessment* as *in-kind contributions*;

WHEREAS, the Government and the Pueblo have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Assessment* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Pueblo, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Pueblo through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Pueblo, and facilitate the successful *Assessment*.

NOW, THEREFORE, the Government and the Pueblo agree as follows:

#### ARTICLE I – DEFINITIONS

A. The term “*Assessment*” shall mean the activities and tasks required to identify and evaluate strategies for a Watershed Plan to address alternative uses of watershed resources in the interest of flood risk management, environmental restoration and protection, and preservation of cultural and natural resources in the Santa Clara Pueblo, New Mexico. The term includes the *in-kind contributions* described in paragraph I. of this Article.

B. The term “*total assessment costs*” shall mean the sum of all costs incurred by the Pueblo and the Government in accordance with the terms of this Agreement directly related to performance of the *Assessment* plus the costs of the *Assessment* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of planning and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the Watershed Plan; the costs of the *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the Government’s costs of any review processes required by the Government; the Government’s supervision and administration costs; the Pueblo’s and the Government’s costs of participation in the Assessment Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Pueblo’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs incurred as part of an Initial Watershed Assessment; any costs incurred as part of studies under any other agreement or program; any costs of dispute resolution under Article V of this Agreement; the Pueblo’s costs of negotiating this Agreement; or any costs of negotiating any future agreement.

C. The term “*period of assessment*” shall mean the time from the effective date of this Agreement to the date that the Watershed Plan for the *Assessment* is duly approved by the Government or the date that this Agreement is terminated in accordance with Article IX of this Agreement.

D. The term “*financial obligations for the assessment*” shall mean the financial obligations of the Government and the costs for the *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total assessment costs*.

E. The term “*Pueblo’s proportionate share*” shall mean the ratio of the sum of the costs included in *total assessment costs* for the *in-kind contributions*, as determined by the Government, and the Pueblo’s contribution of funds required by Article II.B.1.b. of this Agreement to *financial obligations for the assessment*, as projected by the Government.

F. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

H. The term “*WAMP*” shall mean the watershed assessment management plan, and any modifications thereto, developed by the Government, and agreed to by the Pueblo, that specifies the scope, cost, and schedule for *Assessment* activities and guides the performance of the *Assessment* through the *period of assessment*.

I. The term “*in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Pueblo after the effective date of this Agreement in accordance with the *WAMP* and that are necessary for performance of the *Assessment*.

J. The term “*Section 203 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual appropriations for work implemented pursuant to Section 203 of the Water Resources Development Act of 2000, Public Law 106-541, as amended (33 U.S.C. 2269). As of the effective date of this Agreement, such limitation is \$5,000,000 for each of *fiscal years* 2002 through 2012, of which not more than \$1,000,000 may be used with respect to any one Indian tribe.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE PUEBLO

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Pueblo, expeditiously shall conduct the *Assessment*, in accordance with applicable Federal laws,

regulations, and policies. The Pueblo expeditiously shall perform or provide the *in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for the *Assessment* or commence the *Assessment* using the Government's own forces until the Pueblo has confirmed in writing its willingness to proceed with the *Assessment*.

2. To the extent possible, the Government and the Pueblo shall conduct the *Assessment* in accordance with the *WAMP*.

3. The Government shall afford the Pueblo the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of assessment*. The Government shall consider in good faith the comments of the Pueblo, but the final approval of all *Assessment* products shall be exclusively within the control of the Government.

4. The Government shall afford the Pueblo the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Pueblo the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Pueblo with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Pueblo 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 Pueblo, but the contents of solicitations, award of contracts or commencement of work on the *Assessment* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Assessment*, except for the *in-kind contributions*, shall be exclusively within the control of the Government.

5. At the time the U.S. Army Engineer, Albuquerque District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Assessment*, the District Engineer shall furnish a copy thereof to the Pueblo.

6. The Pueblo shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant scopes of work, prior to the Pueblo's issuance of such solicitations. To the extent possible, the Pueblo shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Pueblo shall provide such notification in writing at the earliest date possible. To the extent possible, the Pueblo also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Pueblo shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Assessment* using the Pueblo's own forces, execution

of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Pueblo.

7. At the time the Pueblo furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Pueblo for the *in-kind contributions*, the Pueblo shall furnish a copy thereof to the Government.

8. Notwithstanding paragraph A.4. and paragraph A.6., if the award of any contract for work on the *Assessment*, or continuation of work on the *Assessment* using the Government's or the Pueblo's own forces, would result in *total assessment costs* exceeding \$1,850,000, the Government and the Pueblo agree to defer award of that contract, award of all remaining contracts for work on the *Assessment*, and continuation of work on the *Assessment* using the Government's or the Pueblo's own forces until such time as the Government and the Pueblo agree in writing to proceed with further contract awards for the *Assessment* or the continuation of work on the *Assessment* using the Government's or the Pueblo's own forces, but in no event shall the award of contracts or the continuation of work on the *Assessment* using the Government's or the Pueblo's own forces be deferred for more than three years. If the Government and the Pueblo agree to not proceed or fail to reach agreement on proceeding with further contract awards for the *Assessment*, or the continuation of work on the *Assessment* using the Government's or the Pueblo's own forces, the parties shall terminate this Agreement and proceed in accordance with Article IX.D. of this Agreement.

B. The Pueblo shall contribute 25 percent of *total assessment costs* in accordance with the provisions of this paragraph.

1. The Pueblo shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Pueblo's contributions listed in the next sentence will be less than the Pueblo's required share of 25 percent of *total assessment costs*, the Government shall determine the amount of funds that would be necessary to meet the Pueblo's required share without considering the credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.4. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Pueblo's required share of 25 percent of *total assessment costs* the collective value of the Pueblo's contributions under Article III and Article VI of this Agreement.

b. The Pueblo shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Pueblo shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a. of this Article by the amount of credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.4. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph B.5. of this Article and the *Section 203 Annual Program Limit*, shall refund or reimburse to the Pueblo any contributions in excess of 25 percent of *total assessment costs* if the Government determines at any time that the collective value of the following has exceeded 25 percent of *total*

*assessment costs*: (a) the Pueblo's contribution of funds required by paragraph B.1.b. of this Article; (b) the amount of credit to be afforded for the *in-kind contributions* pursuant to paragraph B.4. of this Article; and (c) the value of the Pueblo's contributions under Article III and Article VI of this Agreement.

3. The Government shall determine and include in *total assessment costs* any costs incurred by the Pueblo for *in-kind contributions*, subject to the conditions and limitations of this paragraph. The Pueblo in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total assessment costs* for *in-kind contributions*.

a. Acceptance by the Government of *in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items provided or performed as *in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, or other *in-kind contributions* will facilitate completion of the *Assessment*.

b. The Pueblo's costs for *in-kind contributions* that may be eligible for inclusion in *total assessment costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Pueblo's costs for *in-kind contributions* that may be eligible for inclusion in *total assessment costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* are provided and the time the costs are included in *total assessment costs*.

d. The Government shall not include in *total assessment costs* any costs for *in-kind contributions* paid by the Pueblo using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

e. The Government shall not include in *total assessment costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, or other *in-kind contributions* had been provided by the Government.

4. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.1.a. of this Article for the costs of the *in-kind contributions* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for the *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph B.1.a. of this Article; the costs of the *in-kind contributions* determined in accordance with paragraph B.3. of this Article; or 25 percent of *total assessment costs*.

5. Notwithstanding any other provision of this Agreement, the Pueblo shall not be entitled to reimbursement of any costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article and included in *total assessment costs* that exceed the amount of credit afforded for the *in-kind contributions* determined in accordance with paragraph B.4. of this Article and the Pueblo shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total assessment costs* that exceed the amount of credit afforded.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Assessment* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Assessment* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Assessment* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total assessment costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Pueblo in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Assessment* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Assessment*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

2. If the Government determines that the amount of Federal funds provided by Congress for all work implemented pursuant to Section 203 has reached the *Section 203 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Assessment* within the *Section 203 Annual Program Limit* will not be sufficient to meet the Federal share of *total assessment costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Assessment* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Assessment* within the *Section 203 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

3. As of the effective date of this Agreement, \$65,000 of Federal funds is currently projected to be available for the *Assessment*. The Government's financial participation in the *Assessment* is limited to the Federal funds that the Government makes available to the *Assessment*.

D. Upon conclusion of the *period of assessment*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Pueblo.

E. The Pueblo shall not use *Federal program funds* to meet any of its obligations for the *Assessment* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

F. This Agreement shall not be construed as obligating either party to recommend or implement any future studies or projects.

### ARTICLE III - ASSESSMENT COORDINATION TEAM

A. To provide for consistent and effective communication, the Pueblo and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to an Assessment Coordination Team. Thereafter, the Assessment Coordination Team shall meet regularly until the end of the *period of assessment*. The Government's Project Manager and a counterpart named by the Pueblo shall co-chair the Assessment Coordination Team.

B. The Government's Project Manager and the Pueblo's counterpart shall keep the Assessment Coordination Team informed of the progress of the *Assessment* and of significant pending issues and actions, and shall seek the views of the Assessment Coordination Team on matters that the Assessment Coordination Team generally oversees.

C. Until the end of the *period of assessment*, the Assessment Coordination Team shall generally oversee the *Assessment*, including matters related to: planning and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products, including the Watershed Plan; any review processes required by the Government; completion of any necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of and scheduling for the *in-kind contributions*; and other matters related to the *Assessment*. This oversight of the *Assessment* shall be consistent with the *WAMP*.

D. The Assessment Coordination Team may make recommendations to the District Engineer on matters related to the *Assessment* that the Assessment Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Assessment Coordination Team. The Government, having the legal authority and responsibility for performance of the *Assessment* except for the *in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Assessment Coordination Team's recommendations. On matters related to the *in-kind contributions*, that the Assessment Coordination Team generally oversees, the Assessment Coordination Team may make recommendations to the Pueblo including suggestions to avoid potential sources of dispute. The Pueblo in good faith shall consider the recommendations of the Assessment Coordination Team. The Pueblo, having the legal authority and responsibility for the *in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Assessment Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Pueblo's costs of participation in the Assessment Coordination Team shall be included in *total assessment costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IV.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of



participation in the Assessment Coordination Team shall be included in *total assessment costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Pueblo current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total assessment costs* for the *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement, and the credit to be afforded for the *in-kind contributions* pursuant to Article II.B.4. of this Agreement.

1. As of the effective date of this Agreement, *total assessment costs* are projected to be \$1,850,000; the value of the Pueblo's contributions under Article III - ASSESSMENT COORDINATION TEAM and Article VI - MAINTENANCE OF RECORDS AND AUDIT of this Agreement is projected to be \$150,000; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement is projected to be \$312,500; the costs included in *total assessment costs* for the *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement are projected to be \$312,500; the credit to be afforded for the *in-kind contributions* pursuant to Article II.B.4. of this Agreement is projected to be \$312,500; the Pueblo's contribution of funds required by Article II.B.1.b. of this Agreement is projected to be \$0; and the *Pueblo's proportionate share* is projected to be 18.38 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Pueblo, and are not to be construed as the total financial responsibilities of the Government and the Pueblo.

2. By October 1, 2011 and each quarterly anniversary thereof until the conclusion of the *period of assessment* and resolution of all relevant claims and appeals, the Government shall provide the Pueblo with a report setting forth all contributions provided to date and the current projections of the following: *total assessment costs*; the value of the Pueblo's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement; the costs included in *total assessment costs* for the *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the credit to be afforded for the *in-kind contributions* pursuant to Article II.B.4. of this Agreement; the Pueblo's contribution of funds required by Article II.B.1.b. of this Agreement; the total contribution of funds required from the Pueblo for the upcoming contract and upcoming *fiscal year*; and the *Pueblo's proportionate share*.

B. The Pueblo shall provide the contribution of funds required by Article II.B.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for work on the *Assessment* or commencement of work on the *Assessment* using the Government's own forces, the Government shall notify the Pueblo in writing of such scheduled dates and the funds the Government determines to be required from the Pueblo to meet: (a) the *Pueblo's proportionate share of financial obligations for the*

*assessment* incurred prior to the commencement of the *period of assessment*; (b) the projected *Pueblo's proportionate share of financial obligations for the assessment* to be incurred for such contract; and (c) the projected *Pueblo's proportionate share of financial obligations for the assessment* using the Government's own forces through the first quarter. Not later than such scheduled date, the Pueblo shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Albuquerque District L4" to the District Engineer, or verifying to the satisfaction of the Government that the Pueblo has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Pueblo, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the work on the *Assessment* is complete, the Government shall notify the Pueblo in writing of the funds the Government determines to be required from the Pueblo, and the Pueblo shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Pueblo in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Assessment*, of the funds the Government determines to be required from the Pueblo to meet the projected *Pueblo's proportionate share of financial obligations for the assessment* to be incurred for such contract. No later than such scheduled date, the Pueblo shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Pueblo in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make *financial obligations for the assessment* using the Government's own forces, of the funds the Government determines to be required from the Pueblo to meet the projected *Pueblo's proportionate share of financial obligations for the assessment* using the Government's own forces for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the Pueblo shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Pueblo such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.4. of this Agreement, to cover: (a) the *Pueblo's proportionate share of financial obligations for the assessment* incurred prior to the commencement of the *period of assessment*; and (b) the *Pueblo's proportionate share of financial obligations for the assessment* as *financial obligations for the assessment* are incurred. If at any time the Government determines that additional funds will be needed from the Pueblo to cover the Pueblo's share of such financial obligations for the current contract or to cover the Pueblo's share of such financial obligations for work performed using the Government's own forces in the current quarter, the Government shall notify the Pueblo in writing of the additional funds required and provide an explanation of why additional funds are required. Within 45 calendar days from receipt of such notice, the Pueblo shall provide the

Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of assessment* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Pueblo with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Pueblo with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Pueblo with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total assessment costs*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Pueblo's total required share of *total assessment costs* exceeds the Pueblo's total contributions provided thereto, the Pueblo, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Albuquerque District L4" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Pueblo for *total assessment costs* exceed the Pueblo's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.B.5. of this Agreement and the *Section 203 Annual Program Limit*, shall refund or reimburse the excess amount to the Pueblo within 90 calendar days of the date of completion of such accounting. In the event the Pueblo is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Pueblo, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

## ARTICLE V - 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. Each party shall pay an equal share 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 VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Pueblo shall develop procedures for keeping books, records, documents, or 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 with State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Pueblo shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Pueblo shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Pueblo is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Pueblo and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Pueblo and independent auditors any information necessary to enable an audit of the Pueblo'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 (2 C.F.R. Part 225) and A-133, and such costs as are allocated to the *Assessment* shall be included in *total assessment costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Pueblo is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 (2 C.F.R. Part 225) and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total assessment costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Pueblo and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and 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 VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Pueblo each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of assessment*, upon 30 calendar days written notice to the other party, 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 either the Government or the Pueblo elects to terminate this Agreement.

B. If at any time the Pueblo fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless she determines that continuation of performance of the *Assessment* 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 *Assessment*.

C. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Pueblo in writing that sufficient Federal funds are available to meet the Federal share of *total assessment costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Pueblo elects to terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Assessment* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Assessment* and an equal percentage of the total funds contributed by the Pueblo in accordance with Article II.B.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Assessment* shall be made available to the parties to the Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Pueblo 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 X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Pueblo:

Governor of Santa Clara  
Santa Clara Pueblo  
P.O. Box 580  
Española, NM 87532

If to the Government:

District Engineer  
U.S. Army Corps of Engineers  
Albuquerque District - DE  
4101 Jefferson Plaza, NE  
Albuquerque, NM 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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

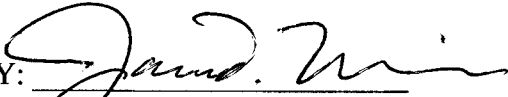
ARTICLE XIII – TRIBAL SOVEREIGN IMMUNITY

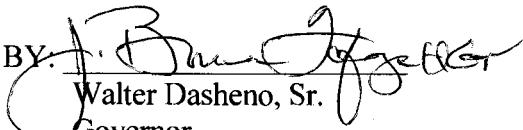
By Tribal Council Resolution No. 2011-08 dated June 21, 2011, the Pueblo waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such Resolution authorized the Governor of the Pueblo to include such waiver as part of this Agreement. Accordingly, the Pueblo hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; and (2) recover damages for any breach of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

SANTA CLARA PUEBLO

BY:   
Jason D. Williams  
Lieutenant Colonel, US Army  
District Engineer  
Albuquerque District

BY:   
Walter Dasheno, Sr.  
Governor

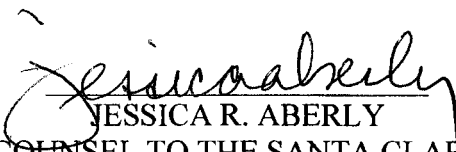
DATE: 21 SEP 2011

DATE: 09-21-11

CERTIFICATE OF AUTHORITY

I, Jessica R. Aberly, do hereby certify that I serve as the principal legal advisor to the Santa Clara Pueblo for this project, that the Santa Clara Pueblo is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Santa Clara Pueblo in connection with the *Assessment* for the Santa Clara Pueblo Section 203 Watershed Assessment, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Santa Clara Pueblo have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
22nd day of September 2011.

  
JESSICA R. ABERLY  
SPECIAL COUNSEL TO THE SANTA CLARA PUEBLO



## 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-I.I.I., "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 31 U.S.C. 1352. 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.

  
WALTER DASHENO, SR.  
GOVERNOR

DATE: 09-21-11