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Executive Engineer



**Albuquerque
Metropolitan
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June 25, 2014

Kevin Daggett, P.E.
Storm Water Section Manager
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Re: 2003 Cooperative for Participation in Stormwater Monitoring and Testing
Letter of Concurrence for FY15 Program

Dear Mr. Daggett,

In 2003, AMAFCA, City of Albuquerque (COA), New Mexico Department of Transportation (NMDOT) and University of New Mexico (UNM) executed a Cooperative Agreement for Participation in Storm Water Monitoring and Testing in order to share the cost of the water quality monitoring program to comply with the conditions outlined in the MS4 Permit issued by the EPA to the four co-permittees. The funding was structured such that AMAFCA and the COA would split the USGS Joint Funding Agreement amount and the COA would collect funds from the NMDOT and UNM in order to pay for the Water Utility and State lab costs separately.

Agency	Annual Cost Share
AMAFCA	37%
COA	37%
NMDOT	13% (not to exceed \$20,000)
UNM	13% (not to exceed \$20,000)

Per the 2003 Cooperative Agreement, the co-permittees shall be notified in writing of the annual cost of monitoring and testing as determined by the COA and AMAFCA. The purpose of this letter is to notify the co-permittees of the FY15 monitoring and testing program and cost.

Historically, this program was performed by the U.S. Geological Survey (USGS) as part of the USGS Joint Funding Agreement and included:

- Rainfall and runoff gage data;
- Water sample collection (including full analytes, bacteria, and PCBs);
- Soil sample collection for PCBs;

- Lab analysis;
- Data validation and verification;
- Temperature and dissolved oxygen continuous data; and
- Reporting.

The funding for last four years of the program is tabulated below. Please note that the FY14 funding was reduced to reflect the credit of samples budgeted in FY12 and FY13, but not taken due to drought conditions.

	Total	USGS Funding	AMAFCA Funding	COA Funding
FY11	\$595,696	\$254,974	\$170,361	\$170,361
FY12	\$579,020	\$252,000	\$150,000	\$177,020
FY13	\$606,050	\$252,000	\$177,025	\$177,025
FY14	\$509,170	\$240,000	\$134,585	\$134,585

Since inception, this monitoring program has been reviewed and revised annually in order to meet the requirements of the current MS4 Permit. In the discussions for FY15 scope, AMAFCA, COA and USGS agreed that USGS should continue to collect the rainfall and runoff gage data and discontinue the water quality data collection. Since USGS shares a percentage of the cost of the program, requirements unique to the USGS were increasing the cost of the water quality monitoring and diverging from the requirements of the MS4 Permit and the needs of the co-permittees. The USGS process for publishing data is very time-consuming, which is not conducive to the MS4 Permit requirement for prompt exceedance notification. Also, the standard USGS contract is similar to a Lump Sum contract in which quarterly payments are made throughout the year, whether samples are collected during storm events, or not. In recent drought years, the manual tracking of storm samples not taken in a year has proved to be problematic for all parties. For example, USGS recently requested (in error) an additional \$60,150 collectively from AMAFCA and the COA for samples taken in FY14 which were actually documented as funded (i.e., credited) from previous years. AMAFCA and the COA provided the documentation of sample credits to the USGS, which invalidated this request.

Since the USGS has the expertise to collect rainfall and runoff gage data, AMAFCA and the COA would like to have USGS continue collecting this data in FY15. USGS estimated the total cost of the FY15 gage data collection to be \$212,323 and anticipates their cost share to be \$106,162.

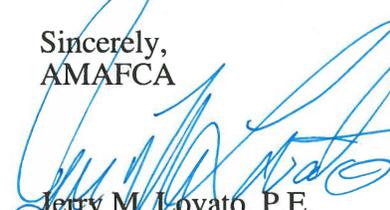
For FY15, AMAFCA and the COA intend to utilize the AMAFCA Water Quality On-Call Contracts to issue tasks to two or more consultants for the water quality monitoring. The scope of work will be issued this week to all of the On-Call consultants with a request for a fee proposal. The scope includes performing the storm water sample collection, lab analysis, data validation and verification, continuous monitoring of temperature and dissolved oxygen, and reporting. The scope requires the work to be performed in compliance with the Quality Assurance Project Plan (QAPP) and Field

Sampling Plan (FSP) recently developed by Bohannon-Huston Inc. (BHI) and Daniel B. Stephens & Associates (DBSA). At the May 2014 AMAFCA Board meeting, staff from BHI and DBSA recommended improvements to optimize the monitoring program. Their presentation included an annual cost estimate of approximately \$124,000 for the recommended optimized program and a summary of the QAPP and FSP.

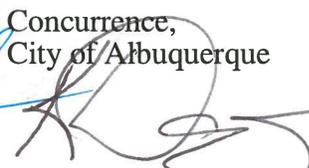
Based on the USGS and BHI-DBSA estimates, the FY15 gage and water quality program will cost the co-permittees approximately \$230,164, which is more than a 14% reduction from the FY14 program. In general, the intent is to continue sharing the funding of the entire program between the co-permittees in accordance with the Cooperative Agreement for Participation in Stormwater Monitoring and Testing. The proposed approach for funding in FY15 is to have the COA fund the entire USGS contract for \$106,162 and AMAFCA to fund the various On-Call tasks for approximately \$124,000. The COA is willing to fund additional mutually beneficial studies in order to maintain the match per the Cooperative Agreement for Participation in Stormwater Monitoring and Testing. The NMDOT will continue to contribute 13% with a \$20,000 cap per the 2003 Cooperative Agreement.

UNM is currently evaluating continuation of their participation in the 2003 Cooperative Agreement. AMAFCA has not yet received written notice of UNM's termination in accordance with the 2003 Cooperative Agreement. Upon receipt of UNM's written notification of termination, AMAFCA will notify the EPA of UNM's election to terminate their participation in the monitoring program and that AMAFCA is not responsible for any noncompliance on behalf of UNM. If UNM continues to participate, UNM will continue to contribute 13% with a \$20,000 cap per the 2003 Cooperative Agreement.

Sincerely,
AMAFCA


Jerry M. Lovato, P.E.
Executive Engineer

Concurrence,
City of Albuquerque


Kevin Daggett, P.E.
Storm Water Section Manager

Concurrence,
NMDOT


Tim Parker, P.E.
District Engineer

Encl.: 2003 Cooperative Agreement for Participation in Stormwater Monitoring and Testing
cc: Tim Parker, NMDOT
Tim Trujillo, NMDOT
Carla Dominici, UNM
Correspondence File
Contract File 2003-11

2003-11

COOPERATIVE AGREEMENT

FOR

PARTICIPATION IN STORMWATER MONITORING AND TESTING

THIS AGREEMENT is entered into pursuant to NMSA, 1978 Sections 67-3-28 and Section 2-3-1 of the City of Albuquerque Revised Ordinances, 1994, by and between the City of Albuquerque, a New Mexico municipal corporation ("City"), Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), a political subdivision of the State of New Mexico, the New Mexico State Highway and Transportation Department ("NMSHTD"), and the University of New Mexico ("UNM"), hereinafter referred to as the "Agencies".

WHEREAS, the U.S. Environmental Protection Agency ("EPA") is requiring National Pollutant Discharge Elimination System ("NPDES") storm water discharge permits for Municipal Separate Storm Sewer Systems ("MS4"), and

WHEREAS, the storm drainage systems of the Agencies are not separate systems and storm water runoff is intermixed within the drainage systems, and

WHEREAS, the Agencies have completed NPDES permit applications individually or as co-permittees, and

WHEREAS, the City is the lead agency in preparation of the yearly progress report to the EPA; and

WHEREAS, the City and AMAFCA have established over thirty (30) monitoring stations for flow measurement and/or water sampling in the major urban drainage basins; and

WHEREAS, the City and AMAFCA have entered into yearly cooperative agreements with the US Geological Survey ("USGS") for the collection and analysis of stormwater samples; and

WHEREAS, pursuant to NMSA, 1978 Sections 67-3-28, the Agencies have agreed to participate in the municipal separate storm sewer system application submittal and execution of the forthcoming EPA-NPDES permit.

WHEREAS, the Agencies have entered into an existing Cooperative Agreement, "Existing Agreement" dated January 2000, (City contract No. D09150), wherein the Agencies have agreed to allocate cost-share responsibilities for stormwater monitoring and testing; and

WHEREAS, the Agencies wish to terminate the Existing Agreement and replace it with this Agreement to reallocate the cost share responsibilities for stormwater monitoring and testing.

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COOPERATIVE AGREEMENT

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NOW THEREFORE, the Agencies agree as follows:

1. The Existing Agreement is hereby terminated and this Cooperative Agreement shall supercede and replace the Existing Agreement.
2. The purpose of the agreement is for the Agencies to participate in the NPDES storm water discharge permit for the City as co-permittees as defined in the Federal Register Vol. 55, No. 222, final rules for the National Pollutant Discharge Elimination System Permit Application for Storm Water Discharges.
3. The Agencies shall participate in the total cost of the NPDES Monitoring, Testing and Reporting Items of the USGS/City/AMAFCA yearly monitoring agreement mentioned above according to the following schedule:

<u>AGENCY</u>	<u>% Of Total Monitoring, Testing and Reporting Items in USGS yearly Agreement</u>
NMSHTD	13%
AMAFCA	37%
CITY	37%
UNM	13%

4. The cost of monitoring and testing shall be determined annually by the City and AMAFCA, and the City shall annually notify the Agencies by letter of such annual cost participation by May 1. The cost shall be shared by the Agencies as set forth above in paragraph 2.
5. Cost participation payments shall be made to the City by UNM and NMSHTD annually, during the month of February.

UNM and NMSHTD participation shall not exceed \$20,000 each, annually.
6. Special monitoring and testing and/or water quality requirements that are imposed, via the NPDES permit, upon individual Agencies shall be addressed by the individual system operator. Cost of addressing those special requirements shall be the responsibility of the individual operator.
7. The Agencies will be individually responsible for submittal of storm drainage information to EPA as required by the EPA -NPDES requirements. The City will be responsible to additionally submit required water quality monitoring data per requirements of the MS4 permit.
8. The parties understand and agree that the obligations of the Agencies under this Agreement shall be performed in compliance with all applicable laws, statutes and ordinances. Nothing herein is intended to constitute any agreement for the parties to

COOPERATIVE AGREEMENT

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perform any activity in violation of the Constitution or Laws of the State of New Mexico or the Ordinance of the City of Albuquerque.

9. Strict accountability shall be required for all funds received and disbursed under the terms of this agreement.
10. This agreement may be amended if done so in writing and approved by the parties herein.
11. This agreement may be terminated by any party by providing sixty (60) days written notice in advance of the termination. In the event of termination, the costs incurred shall be paid by all parties as mutually agreed to for services satisfactorily completed to the date of termination. If the terms and conditions of termination cannot be mutually agreed to, then all parties agree to arbitrate under the New Mexico Uniform Arbitration Act.
12. If any clause or provision in this agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term of this agreement, then and in that event, it is the intention of the parties hereto that the remainder of this agreement shall not be affected thereby.
13. As between the parties hereto, each party shall be responsible for liability arising from the personal injury or damage to person or property occasioned by its own agents or employees in the performance of this agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (sections 41-4-1. Et seq., NMSA 1978) and any amendments thereto. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claim Act.
14. It is specially agreed between the Parties executing this agreement that it is not intended by any of the provisions of any part of agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s), to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this agreement.
15. By entering into this agreement, the Parties hereto and its "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense(s) and/or do not waive any limitation(s) of liability and/ or waives any provision of the New Mexico Tort Claims Act.
16. That all parties to this agreement are expressly not committed to expenditure of any funds until such time as they are budgeted, appropriated by their respective public bodies, and approved for expenditure. Each party's decision as to whether its funds are sufficient for fulfillment of this agreement shall be final.
17. Any funds remaining after the purposes of this agreement have been accomplished will be returned to the parties in proportion to their contribution.

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STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on December 10,
2002 by Steve Bunch, Assistant General Counsel of the New Mexico State
Highway and Transportation Department.

Laura Elizabeth Lopez
Notary Public

University of New Mexico

Julie Weeks Gutierrez
Date

Vice President for Business and Finance



STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on November 19,
2002 by Julie Weeks Gutierrez, VP for Business & Finance on behalf of the Regents
of the University of New Mexico.

Theresa Chavez
Notary Public