

# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

CALEB CHANDLER, Chairman, Clovis  
TOM BLAINE, P.E. Secretary  
JIM DUNLAP, Farmington  
BLANE SANCHEZ, Isleta  
MARK SANCHEZ, Albuquerque  
JAMES WILCOX, Carlsbad  
TOPPER THORPE, Cliff



BATAAN MEMORIAL BUILDING, ROOM 101  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102  
(505) 827-6160  
FAX: (505) 827-6188

February 8, 2017

Alex Brown, Town Manager  
Town of Silver City  
PO Box 1188  
Silver City, NM 88062

RE: Municipal Conservation Funding Agreement – Town of Silver City

Dear Mr. Brown,

This letter shall serve as official notice to proceed up to \$18,157 of the Town of Silver City Municipal Conservation Funding Agreement.

Please make sure that all invoices that are submitted under this agreement reference the Purchase Order number 55000-0000016594.

All deliverables under this contract will be due to the ISC as stated in the agreement.

If you have any questions regarding the agreement, please contact Helen Sobien at (505) 827-6114.

Sincerely,

  
Kim Abeyta-Martinez  
Administrative Manager  
Interstate Stream Commission

Copy to:  
Helen Sobien  
Marcos Mendiola  
Contract File



# State of New Mexico Purchase Order

PO Number to be on all Invoices and Correspondence  
**Dispatch via Print**

## Office of State Engineer

P.O. Box 25102  
Santa Fe NM 87504-5102  
United States

**Vendor:** 0000054364  
TOWN OF SILVER CITY  
P O BOX 1188  
SILVER CITY NM 88062-1188

|   |   |                             |                  |
|---|---|-----------------------------|------------------|
| <b>Purchase Order</b><br>55000-0000016594 | <b>Date</b><br>02/01/2017               | <b>Revision</b>             | <b>Page</b><br>1 |
| <b>Payment Terms</b><br>Pay Now           | <b>Freight Terms</b><br>FOB Destination | <b>Ship Via</b><br>Best Way |                  |
| <b>Buyer</b><br>STEVEN BAROS              |   | <b>Phone</b>                |                  |

**Ship To:** P.O. Box 25102  
Santa Fe NM 87504-5102  
United States

**Bill To:** P O Box 25102  
Santa Fe NM 87504-5102  
United States

**Origin:** EXE **Exc\Excl #:** 13-1-98A

| Line-Sch | Item/Description | Mfg ID | Quantity | UOM | PO Price | Extended Amt | Due Date |
|----------|------------------|--------|----------|-----|----------|--------------|----------|
|----------|------------------|--------|----------|-----|----------|--------------|----------|

|      |  |  |      |    |           |           |            |
|------|--|--|------|----|-----------|-----------|------------|
| 1- 1 | Finance the town's project to upgrade the irrigation system for 3 town parks and 1 cemetary to include adding radio controller valves and adding drip zones. |  | 1.00 | EA | 18,157.00 | 18,157.00 | 02/01/2017 |
|------|--|--|------|----|-----------|-----------|------------|

55000-30810-A150100-543100- - - -91648-50000

**Schedule Total** 18,157.00

**Item Total** 18,157.00

**Total PO Amount** 18,157.00

Agency Approval - I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulation. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

**Authorized Signature**

STATE OF NEW MEXICO  
GENERAL SERVICES DEPARTMENT- PURCHASING DIVISION  
TERMS AND CONDITIONS UNLESS OTHERWISE SPECIFIED

SPD-101A (07/92)

1. **GENERAL:** When the State Purchasing Agent issues a purchase document in response to the Vendors bid, a binding contract is created.
2. **VARIATION IN QUANTITY:** No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process, and then only to the extent, if any, specified elsewhere in this order.
3. **ASSIGNMENT:**
  - A: Neither the order, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 3B below or as expressly authorized in writing by the STATE PURCHASING AGENTS OFFICE. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
  - B: Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. **STATE FURNISHED PROPERTY:** State furnished property shall be returned to the state upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.
5. **DISCOUNTS:** Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within 20 days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise or invoice, whichever is later.
6. **INSPECTION:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed, at the Vendors risk and expense, promptly after notice of rejection.
7. **INSPECTION OF PLANT:** The State Purchasing Agent may inspect, at any reasonable time, the part of the contractors, or any subcontractors plant or place of business, which is related to the performance of this contract.
8. **COMMERCIAL WARRANTY:** The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such supplies or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other cause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
9. **TAXES:** The unit price shall exclude all State taxes.
10. **PACKING, SHIPPING AND INVOICING:**
  - A: The States purchase document number and the Vendors name, users name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipment. The users count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.
  - B: The Vendors invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices shall be rendered for each and every complete shipment.
  - C: Invoices must be submitted to the using agency and NOT THE STATE PURCHASING AGENT.
11. **DEFAULT:** The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendors default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include, but are not restricted to, acts of God or of the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor where obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.
12. **NON-COLLUSION:** In signing this bid, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this proposal submitted to the State Purchasing Agent.
13. **NON-DISCRIMINATION:** Vendors doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of that Act, Rev., 1979.
14. **THE PROCUREMENT CODE:** Sections 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation.  
In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
15. All bid items are to be NEW and most current production, unless otherwise specified.
16. **PAYMENT FOR PURCHASES:** Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in section 13-14158 NMSA 1978.
17. **WORKERS COMPENSATION:** The Contractor agrees to comply with state laws and rules pertaining to workers compensation benefits for its employees. If the Contractor fails to comply with Workers Compensation Act and applicable rules when required to do so, this (Agreement) may be terminated by the contracting agency.
18. **PAY EQUITY RECORDING:** The Contractor agrees to comply with New Mexico Pay Equity reporting requirements as detailed in Executive Order 2009-049 Implementation Guidance available at <http://www.generalservices.state.nm.us/spd/guidance.pdf>

**STATE OF NEW MEXICO  
INTERSTATE STREAM COMMISSION  
TOWN OF SILVER CITY  
MUNICIPAL CONSERVATION FUNDING AGREEMENT  
(IRRIGATION SYSTEM UPGRADE)**

**THIS AGREEMENT** is made and entered into by and between the New Mexico Interstate Stream Commission, 407 Galisteo Street, Santa Fe, New Mexico, 87501, hereinafter called the “ISC” or the “Commission,” and the Town of Silver City, hereinafter called the “Town.” Collectively, the Commission and the Town are referred to as the “Parties.”

**RECITALS**

**WHEREAS**, pursuant to NMSA 1978, Section 72-14-3, the ISC is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the water and stream systems of this state; and

**WHEREAS**, in the Arizona Water Settlements Act, Pub. L. 108-451, (“AWSA”) the Congress of the United States appropriated funds to the ISC to finance a New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the ISC; and

**WHEREAS**, pursuant to the AWSA, those funds are being deposited in yearly installments into the New Mexico Unit Fund, a fund created by the New Mexico Legislature in the New Mexico Treasury for the specific purpose of receiving AWSA money (NMSA 1978, Section 72-14-45); and

**WHEREAS**, at its November 24, 2014 public meeting, the Commission approved an allocation of \$3,000,000.00 from the New Mexico Unit Fund to finance municipal water conservation projects in the region; and

**WHEREAS**, pursuant to this award, the Commission set up an application process to distribute the municipal conservation funds to local proponents; and

**WHEREAS**, the Town applied for \$18,157.00 to finance the Town’s project to upgrade the irrigation system for three Town parks and a cemetery; and

**WHEREAS**, at its December 11, 2015 public meeting, the Commission approved an allocation of \$18,157.00 from the municipal conservation funds to finance the Town’s project to upgrade the irrigation system for three Town parks and a cemetery; and

**WHEREAS**, in accordance with the Commission’s decision regarding municipal conservation, the ISC will provide funds to the Town, on a reimbursement basis, in accordance with the terms and conditions of this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual benefits, covenants, and obligations contained herein, the Parties hereby agree as follows:

### **ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF FUNDING, REVERSION DATE, AND PROJECT BUDGET**

A. Project Description. The project that is the subject of this Agreement is the upgrade of the irrigation systems at four Town locations. The grounds at Gough Park will be regraded to prevent water run-off, and the existing battery operated irrigation controllers will be replaced with a single WiFi irrigation controller. Three drip irrigation systems will be installed to irrigate landscaping at the Town Recreation Area, at the public pool, and at the cemetery.

B. This irrigation system upgrade project is referred to throughout the remainder of this Agreement as the "Project," the information contained in Article I(A), and in the Scope of Work and Budget Form, attached hereto as Exhibit A, is referred to collectively throughout the remainder of this Agreement as the "Project Description." This Scope of Work is incorporated into, and made a part of, this Agreement. The Town shall not change the Scope of Work and Budget Form without first submitting to the ISC staff for approval a written amendment to the form. The Town shall reference the Project's number in all correspondence with, and submissions to, the ISC concerning the Project, including but not limited to, Requests for Payment and reports.

C. Amount of Funding. Total reimbursements by the ISC to the Town shall not exceed the amount awarded by the Commission of eighteen thousand, one hundred and fifty-seven dollars (\$18,157.00) (the "Municipal Conservation Award"). In addition, pursuant to the ISC's decision on November 24, 2014, the Town will secure any additional funding for the Project from sources other than the New Mexico Unit Fund.

D. Reversion Date. Project funds must be expended by the Town as of June 30, 2020. This date is referred to throughout the remainder of this Agreement as the "Reversion Date." On the Reversion Date, any part of the Municipal Conservation Award not expended by the Town will revert to the New Mexico Unit Fund and will no longer be available to the Town.

E. Project Budget

(i) Project Budget Generally

(1) The Town will secure any additional funding that may be necessary to complete the Project from sources other than the New Mexico Unit Fund.

(2) The Town will expeditiously initiate and complete the Project.

(3) The Town will prepare a Project Budget (“Project Budget”), which will outline all steps to be completed to pursue and finance the Project, including, but not limited to, detail regarding how the Municipal Conservation Award will be spent.

(4) No funds from the New Mexico Unit Fund shall be expended towards the Project until the Project Budget has been approved by the ISC staff.

(5) The Town will not be reimbursed from the New Mexico Unit Fund for any part of any expenditure that is not included in the Project Budget approved by the ISC staff.

(6) The Town will not change the Project Budget without first submitting to the ISC staff for approval a written amendment to the Scope of Work and Budget Form.

(ii) Submitting the Project Budget. Prior to execution of this Agreement by the ISC, the Town shall submit to the ISC a Project Budget on the Scope of Work and Budget Form, attached hereto as Exhibit A. This Project Budget is incorporated into, and made a part of, this Agreement. The Project Budget shall list all the proposed tasks that the Town believes are reasonably necessary to accomplish the Project. Out of that list, the Project Budget shall outline all the tasks for which the Town plans to seek reimbursement from the Municipal Conservation Award and all the tasks from which the Town plans to obtain additional funding from other sources.

## **ARTICLE II. REIMBURSEMENTS TO THE TOWN**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the ISC will reimburse the Town for certain expenses associated with the Project, as defined in the Project Description, up to the limit of the Municipal Conservation Award. No reimbursement shall be made unless the Town has received a Notice to Proceed (“NTP”) from the ISC. This Agreement and the disbursement of any and all amounts of the Municipal Conservation Award are expressly conditioned upon the following:

(i) The Town’s expenditures shall be made on or before the Reversion Date or, if applicable, the Early Termination Date. This means that the goods will have been delivered and accepted, or the title to the goods will have been transferred to the Town, or the services will have been rendered to the Town before the Reversion Date or, if applicable, the Early Termination Date.

(ii) The total amount reimbursed by the ISC to the Town or Town’s contractors shall not exceed the Municipal Conservation Award identified in Article I(C).

(iii) The Town shall commit to obtaining or providing any additional funds necessary to complete the Project if the Municipal Conservation Award is insufficient to pay for the entire cost of the Project.

- (iv) The Town's expenditures shall be made in accordance with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-21 through 13-1-199, and upon execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project.
- (v) The Town shall timely submit a form requesting payment ("Request for Payment"), using the form attached hereto as Exhibit B, in accordance with the procedures set forth in this Agreement.
- (vi) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to, or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. Must be approved by the applicable oversight entity (if any) in accordance with law;
  - b. If no oversight entity is required to approve the transaction, the ISC must approve the transaction as complying with the law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the ISC may, in its discretion, and unless inconsistent with New Mexico State Board of Finance-imposed conditions, reimburse the Town for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures.

B. The Town shall implement the Project in all respects. The Town shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Town shall finance its share, if any, of the costs of the Project, including all Project overruns.

C. The Municipal Conservation Award shall not be used for purposes other than those specified in the Project Description, Scope of Work, and the tasks described in the Project Budget. All Project expenditures will conform to the Scope of Work incorporated into this Agreement.

D. The Town shall make all purchases under this Agreement in compliance with the requirements of New Mexico law, including without limitation the New Mexico Procurement Code, NMSA 1978, Sections 13-1-21 through 13-1-199. Failure to observe the New Mexico Procurement Code is a misdemeanor and may result in criminal and civil penalties.

**ARTICLE III. DESIGNATED REPRESENTATIVES**

Whenever written notices related to this Agreement, including written decisions, are to be given, the following provisions shall apply:


The Parties hereby designate the persons listed below as their official representatives concerning all matters related to this Agreement:

**TOWN OF SILVER CITY**

*Primary Representative:*

Name: Alex Brown  
Title: Town Manager  
Address: P.O. Box 1188  
Silver City, NM 88062  
Email: townmanager@silvercitynm.gov  
Telephone: (575) 542-3259  
Fax: (575) 542-3507

*Alternate Representative:*

Name: Peter Pena  
Title: Public Works Director  
Address: 610 East 8th St.   
Silver City, NM 88023  
Email: pwdirector@silvercitynm.gov  
Telephone: (575) 388-4640  
Fax: (575) 388-0863

**INTERSTATE STREAM COMMISSION:**

*Primary Representative:*

Name: Helen Sobien  
Title: Gila Engineer  
Address: 407 Galisteo Street (87501)  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Email: Helen.Sobien@state.nm.us  
Telephone: (505) 827-6114  
Fax: (505) 827-6188



*Alternate Representative:*

Name: Ali Effati  
Title: Gila Basin Manager  
Address: 407 Galisteo Street (87501)  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Email: Ali.effati@state.nm.us  
Telephone: (505) 827-5801  
Fax: (505) 827-6188

The Parties shall send all notices related to this Agreement to the above-named persons by regular mail or e-mail. In the case of regular mailings, notices shall be deemed to have been given and received upon the date of the receiving Party's actual receipt or five calendar days after mailing, whichever occurs first. In the case of e-mail transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of the e-mail.

**ARTICLE IV. EXPENDITURE OF FUNDS**

The Municipal Conservation Award must be expended on or before the Reversion Date, set forth in Article I or, if applicable, the Early Termination Date of this Agreement, discussed in Article V below. For purposes of this Agreement, it is not sufficient for the Town to encumber the Municipal Conservation Award on its books on or before the Project's Reversion Date or Early Termination date. Rather, funds are expended, and an expenditure has occurred, as of the date that a particular quantity of goods are delivered to and received by the Town, or title to the goods is transferred to the Town, or as of the date particular services are rendered to the Town. Funds are not expended, and an expenditure has not occurred, as of the date the funds are encumbered by the Town pursuant to a contract or purchase order with a third party.

**ARTICLE V. TERM; EARLY TERMINATION**

A. Term

This Agreement shall be effective as of the date of execution by the last signatory (the "Effective Date"). It shall terminate on June 30, 2020, the Reversion Date, unless terminated by either Party before the Reversion Date ("Early Termination") pursuant to this Article V.

B. Circumstances of Early Termination

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date;

- (ii) Termination due to expenditure of the total Municipal Conservation Award before the Reversion Date;
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the ISC or the Town may terminate this Agreement prior to the Reversion Date. Early Termination can be accomplished by providing the other Party with a minimum of fifteen (15) days advance, written notice of Early Termination. The Town hereby waives any rights to assert an impairment of contract claim or a breach of contract claim against the ISC or the State of New Mexico in the event of Early Termination of this Agreement by the ISC pursuant to this Section of the Agreement.

#### C. Early Termination Due to Non-Appropriation

Although the funds provided under this Agreement were appropriated to the ISC by the U.S. Congress, the New Mexico Legislature may, in its discretion, appropriate or withdraw appropriation of funds for municipal water conservation projects. If the Legislature withdraws appropriation of funds that are earmarked for this Agreement, the ISC shall have the discretion to terminate this Agreement earlier than its Reversion Date, as of the effective date of the law withdrawing an appropriation. The ISC's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Town and shall be final. The Town hereby waives any rights to assert an impairment of contract claim or a breach of contract claim against the ISC or the State of New Mexico in the event of Early Termination of this Agreement by the ISC pursuant to this section of the Agreement.

#### D. Limitation on the ISC's Obligation to Make Disbursements in the Event of Early Termination

In the event of Early Termination of this Agreement by either Party, the ISC's sole obligation to reimburse the Town is expressly conditioned upon the limitations set forth in this Agreement.

### **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

#### A. Suspension

The ISC may choose, in its absolute discretion, to direct the Town to suspend incurring any new or further obligation that would be paid by the ISC pursuant to this Agreement ("Suspension"). The ISC shall provide written notice of the Suspension to the Town in accordance with the provisions of this Agreement.

If a Suspension directive is issued:

- (i) Upon the date the Town receives written notice of Suspension from the ISC, the Town shall immediately suspend the incurrence of any new or further written obligation with third parties; and
- (ii) The ISC may suspend issuance of any new or further NTP under this Agreement; and
- (iii) The ISC may direct the Town to implement a corrective action plan in accordance with this Agreement.

**B. Reimbursement**

In the event of Suspension of this Agreement, the ISC's sole obligation to reimburse the Town is expressly conditioned upon the limitations set forth in this Agreement.

**C. Lifting of Suspension**

A Suspension of new or further obligations under this Agreement shall remain in effect until the date the Town receives written notice from the ISC informing the Town that the Suspension has been lifted or that the Agreement has been terminated early in accordance with Article V herein. If the Suspension is lifted, the ISC will consider further requests for NTPs.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the ISC, in its sole and absolute discretion, issues a Suspension to the Town under this Agreement, the ISC may, but is not obligated to, require the Town to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be signed by the Town and approved by the ISC. Failure to sign a corrective action plan, or to meet the terms and deadlines set forth in the signed corrective action plan, shall be deemed a violation of the terms of this Agreement for purposes of Early Termination. The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy available to the ISC, including, but not limited to, Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement can only be amended by a written instrument duly executed by all the Parties hereto.

## **ARTICLE VIII. REPORTS AND INSPECTION**

### **A. Periodic Reports**

In order that the ISC staff may adequately monitor Project activity, the Town shall submit to the ISC Periodic Reports for the Project. The Periodic Report shall be signed by the Project's design engineer who is charged with oversight of the Project. The Report shall be submitted on a form prescribed by the ISC, attached hereto as Exhibit C.

The Periodic Report shall be due each quarter year on the last day of the quarter, beginning with the first full quarter following the Effective Date and ending with the submission of a Final Report for the Project. The ISC may, in its discretion, change the reporting period from time to time by giving the Town a minimum of thirty (30) days advance written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

### **B. Final Report**

The Town shall submit to the ISC a Final Report for the Project. The Final Report shall be signed by the Project's design engineer who is charged with construction oversight of the Project and shall be submitted by the Town to the ISC. The Final Report shall be submitted on a form prescribed by the ISC and identical to the form used for the Periodic Reports (Exhibit C to this Agreement), and shall contain such information as the ISC may require. The ISC shall provide the Town with a minimum of thirty (30) days advance written notice of any change to the Final Report format or content. The Final Report must be submitted within twenty (20) days after completion of the Project or, if the Project is not completed, within twenty (20) days after final expenditure of funds reimbursable from the Water Conservation Award.

### **C. Requests for Additional Information/Project Inspection**

While this Agreement is in effect, and during the period of time during which the Town must maintain records pursuant to this Agreement, the ISC may (i) request such additional information regarding the Project as it deems necessary, and (ii) conduct, at reasonable times and upon reasonable notice, on-site inspections of the Project. The Town shall respond to such requests for additional information within a reasonable time, as established by the ISC. The ISC may inspect Project progress prior to disbursing funds in response to Requests for Payment. Requests made pursuant to this subparagraph are in addition to, and not in lieu of, the periodic and final reporting described in this Article VIII.

### **D. ISC Oversight**

Pursuant to the limitations contained in Article XIV, any inspection, review and approval of the Project itself or the Periodic and Final reports, as described above, are

only for purposes of compliance with the terms of the Agreement. ISC inspection, review and approval will not be interpreted as any warranty or guarantee of any kind.

## **ARTICLE IX. REQUEST FOR PAYMENT**

### **A. Request for Payment**

The Town shall request payment for goods or services by submitting a Request for Payment, in the format of the document attached hereto as Exhibit B. Payment requests are subject to the following procedures:

- (i) The Town must submit one original and one copy of each Request for Payment.
- (ii) Each Request for Payment shall contain proof of payment by the Town, or proof of liabilities incurred by the Town, in the form of copies of invoices and a certification by the Town's representative as designated in Article III herein. The certification must state that the expenditures are valid, or are liabilities incurred by the Town, for services rendered by a third party or goods received by the Town for the implementation of the Project.
- (iii) Each Request for Payment must be certified as approved for payment by the ISC representative who is providing oversight of the project.
- (iv) When the Town is submitting a Request for Payment to the ISC based upon invoices from a third party contractor or vendor received, but not yet paid by the Town, if the invoices comply with the provisions of this Agreement and are a valid liability of the Town, the Town shall make payment to those contractors or vendors upon the invoice within fifteen (15) calendar days from the date of cashing or depositing the payment from the ISC.

### **B. Deadlines**

Requests for Payments shall be submitted by the Town to the ISC within thirty (30) days of the date each respective invoice is received by the Town from a contractor, or within thirty (30) days from the date this Agreement expires or is terminated. However, due to New Mexico fiscal year deadlines imposed by the New Mexico Department of Finance and Administration, for work completed by June 30 of any given year, the Town must submit all invoices to the ISC by July 15 of that same year in order to be reimbursed. Any invoice covering expenses incurred prior to June 30 but received by the ISC after July 15 will not be reimbursed.

### C. Payment Processing

- (i) The Town's failure to abide by the requirements set forth in Article II herein may result in the denial of its Requests for Payment or in delays in processing Requests for Payment. The ISC has the right to reject a Request for Payment for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures, and the Town, are otherwise in compliance with this Agreement. The ISC's right to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the ISC due to any violation of this Agreement by the Town.
- (ii) Pursuant to the limitations contained in Article XIV, any approval by the ISC of a Request for Payment, as described above, shall not be interpreted as a warranty or guarantee of any kind.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS**

#### A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, and any applicable local procurement ordinance.
- (ii) The construction phase of the Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, NMSA 1978, Sections 13-4-10 through 13-4-17, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Town is a party to for construction, alteration, demolition, or repair, or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers, or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to NMSA 1978, Section 13-

4-11(B) to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may benefit private entities only in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause." There are no third-party beneficiaries to this Agreement.
- (iv) The Town shall not, at any time, convert any property acquired or developed with the Municipal Conservation Award to uses other than those specified in the Project Description without the ISC's express advance written approval.
- (v) The Town shall comply with all federal and state laws, rules, and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations the Town agrees to assure that no person shall be excluded from employment with the Town, be excluded from participation in the Project, be denied benefits, or otherwise be subject to discrimination under any activity performed pursuant to this Agreement on the grounds of race, color, national origin, sex, sexual preference, age, or handicap in accordance with all such laws, rules and regulations. If the Town is found not to be in compliance with these requirements during the life of this Agreement, the Town shall take appropriate steps to correct any deficiencies. The Town's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- (vi) Contractors of the Project will be required to post a performance bond in accordance with the requirements of NMSA 1978, Section 13-4-18 (1978), and to obtain any necessary easements and all permits required by public entities.
- (vii) The Town shall be solely responsible for the installation, construction, maintenance, and operation of all equipment and improvements associated with the Project. The State of New Mexico and its agencies, including the ISC and its employees, are not in any way responsible for the operation, maintenance, management, replacement, construction, or supervision of any aspect or part of the Project. This provision shall survive termination of this Agreement.
- (viii) The Town shall perform all operations and maintenance of the Project for the design life of the Project after completion and acceptance of the work under the construction contract to assure satisfactory operation of the Project and service to the Town. The Town's obligation to maintain the Project will survive Project close out, and last for the Project's design life.

- (ix) A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

B. The Town hereby represents and warrants the following:

- (i) The Town is recognized as a political subdivision of the state pursuant to NMSA 1978, Chapter 3, Article 18, and has the legal authority to receive and expend the Municipal Conservation Award.
- (ii) This Agreement has been duly authorized by the Town. The Town's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Town to sign the Agreement and to sign Requests for Payment. Once executed by the Town, this Agreement shall constitute a binding obligation on the Town, enforceable according to its terms.
- (iii) This Agreement and the Town's obligations hereunder do not conflict with any federal or state law, ordinance, or resolution applicable to the Town, the Town's charter, if applicable, or any judgment or decree to which the Town is subject.
- (iv) The Town shall abide by New Mexico laws regarding conflicts of interest, governmental conduct, and whistleblower protection. No officer or employee of the Town or its designees or agents, no member of the governing body, and no public official of the Town who exercises any function or responsibility with respect to this Municipal Conservation Award, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. Further, the Town shall require all its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (v) The Town certifies that no funds have been paid, or will be paid, by or on behalf of the Town, to spouses, children, parents, brothers, and sisters of members of the Town's governing body otherwise defined as "immediate family members," in accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-62.
- (vi) The Town certifies that no funds have been paid or will be paid, by or on behalf of the Town, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding third party obligation. The Town shall



require certifying language prohibiting lobbying to be included in the award documents for all sub-awards, including subcontracts, loans, and cooperative agreements. All sub-recipients shall be required to certify accordingly.

**ARTICLE XI. ACCOUNTING OF RECEIPTS AND  
DISBURSEMENTS; WATER SAVINGS; PROJECT RECORDS**

A. The Town shall be strictly accountable to the ISC for receipts and disbursements relating to the Municipal Conservation Award. The Town shall follow Generally Accepted Accounting Principles and, if feasible, maintain a separate bank account or fund with a separate organizational code for the funds provided pursuant to this Agreement, and ensure separate budgeting and accounting of the funds.

B. For a period of five (5) years after completion of the Project, the Town shall generate records indicating the quantity of water that has been saved each year as a result of the Project.

C. For a period of six (6) years after completion of the Project, the Town shall maintain all Project-related records, including without limitation, all financial records, all records of water savings, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, and minutes of pertinent meetings; shall also maintain records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, and the purpose for which such funds were used; and shall maintain any such other records as the ISC may prescribe.

D. The Town shall make all Project records available to the ISC, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, the Municipal Conservation Award, if the State Auditor finds that any or all of these funds were improperly expended, the Town may be required to reimburse the New Mexico Unit Fund of the ISC for any and all amounts found to be improperly expended.

E. The Town shall comply with the terms of the New Mexico Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and any other applicable laws, regulations, policies, and guidelines related to the Audit Act.

**ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the ISC determines that part or all of the Municipal Conservation Award was improperly reimbursed to the Town, including but not limited to, Project funds reimbursed to the Town based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Town, or violation of this Agreement, the Town shall be required to return such funds to the ISC for disposition in accordance with law.

### **ARTICLE XIII. LIABILITY**

Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

### **ARTICLE XIV. LIMITATIONS**

A. Any ISC inspection, review, and approval of the Project itself, Project plans or designs, or Periodic and Final reports, or approval of any Payment Requests are only for purposes of compliance with the terms of the Agreement. ISC inspection, review, and approval will not be interpreted as a warranty or guarantee of any kind. The Town and its contractors and consultants shall remain responsible for the completion and success of the Project. Inspection, review, or approval by the ISC or ISC staff does not relieve the Town, or any professional engineer or other contractor hired by the Town, of legal responsibility for the overall integrity of the Project, adequacy of the Project design, safety of the Project, or compliance with all applicable laws and regulations. This provision shall survive termination of this Agreement.

B. The Town shall implement the Project in all respects. The Town shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Town shall finance or provide Project engineering and permitting and shall finance all Project cost overruns. The Project is the Town's sole responsibility and nothing herein is intended to impose upon the ISC any responsibility or liability for any current or future design, construction, or maintenance of the Project.

### **ARTICLE XV. NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED UNDER THIS AGREEMENT**

The Town shall include the following termination clause in all contracts between the Town and other parties that are (i) funded in whole or part by funds made available under this Agreement, and (ii) entered into after the effective date of this Agreement. This non-appropriation clause will state:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico or by the State of New Mexico, and available to the Interstate Stream Commission for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature or by the State of New Mexico, and available to the Interstate Stream Commission, the Town of Silver City may immediately terminate this Agreement by giving the Contractor written notice of such termination. The Town's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. The Contractor hereby waives any rights to assert an impairment of contract or breach of contract

claim against the Town of Silver City or the Interstate Stream Commission or the State of New Mexico in the event of immediate or early termination of this Agreement by the Town pursuant to lack of Commission funds.”

**ARTICLE XVI. TERMINATION CLAUSE IN  
CONTRACTS FUNDED UNDER THIS AGREEMENT**

The Town shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement, and (ii) entered into after the effective date of this Agreement:

“This contract is funded, in whole or in part, by funds made available under a disbursement from the Interstate Stream Commission. Should the Interstate Stream Commission terminate the agreement providing those funds before the scheduled termination date, the Town of Silver City may terminate this contract earlier than its scheduled termination date by providing the Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Town’s only liability shall be to pay the Contractor for acceptable goods delivered and services rendered before the termination date.”


**ARTICLE XVII. ENTIRE AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Town and the ISC concerning the subject matter hereof. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or oral, between the Parties hereto with regard to the Municipal Conservation Award for irrigation system upgrades from the ISC to the Town.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, which is in effect as of the date of execution by the last signatory.

**TOWN OF SILVER CITY**


  
\_\_\_\_\_  
Alex C. Brown  
Town Manager, Town of Silver City

Dec 8, 2016  
Date

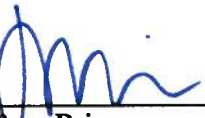
**NEW MEXICO INTERSTATE STREAM COMMISSION**

  
\_\_\_\_\_  
Deborah Dixon, P.E.  
Director

1/31/2017  
Date

*for*   
\_\_\_\_\_  
Amy I. Haas  
General Counsel

12-23-16  
Date

  
\_\_\_\_\_  
Jeffrey Primm  
Program Support Director  
Office of the State Engineer

1/26/17  
Date



**STATE OF NEW MEXICO  
 INTERSTATE STREAM COMMISSION  
 Arizona Water Settlements Act of 2004  
 Non-NM Unit Project  
 Scope of Work and Budget Form  
 Exhibit A**



**Name: Town of Silver City**

**Award: \$18,157.00**

**Mailing Address: PO Box 1188 Silver City, NM 88062**

**Local Match: \$0.00**

**Telephone: 575-597-8989**

**Contact Name: Denise Smith**

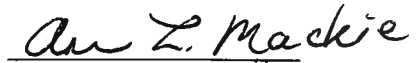
**Project Description: Upgrade irrigation systems in four Town Parks**

| Task #                  | Description                                   | Deliverables                    | Est. Cost (\$)     | Funding Source (AWSA/ Other) | Est. Completion Date |
|-------------------------|---|---------------------------------|--------------------|------------------------------|----------------------|
| 1                       | Gough Park – upgrade irrigation system        | add radio controller and valves | \$3,442.00         | 100%                         | 6-1-17               |
| 2                       | Recreation Center – upgrade irrigation system | Add drip zone                   | \$2,375.00         | 100%                         | 6-1-17               |
| 3                       | Public Pool – upgrade irrigation system       | Add drip zone and P.O.C.        | \$3,860.00         | 100%                         | 6-1-17               |
| 4                       | Cemetery – upgrade irrigation system          | Add four drip zones             | \$8,500.00         | 99%                          | 6-1-17               |
| <b>Grand Total (\$)</b> |   |                                 | <b>\$18,177.00</b> |                              |                      |

**Signatures of members of the governing body:**

  
 Mayor, Town of Silver City  
 Chair

  
 Alex C. Brown, Town of Silver City Manager  
 Treasurer

  
 Ann Mackey Mackie  
 Town Clerk

Date: 12/10/16

**ISC Use Only**

---

This Scope of Work and Budget is hereby approved/  
not approved.

Helen Achen 12/20/2016  
Name \_\_\_\_\_ Date \_\_\_\_\_  
Title GILA ENGINEER  
Interstate Stream Commission

EXHIBIT A TO FUNDING AGREEMENT  
NM ISC and SILVER CITY, NM  
IRRIGATION SYSTEM UPGRADE



**STATE OF NEW MEXICO  
 INTERSTATE STREAM COMMISSION  
 Arizona Water Settlements Act of 2004  
 Non-NM Unit Projects  
 Request for Payment  
 Exhibit B**



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

The Interstate Stream Commission (ISC) is hereby requested to reimburse the following in accordance with the Funding Agreement:

Payee Name and Contract No.: \_\_\_\_\_

Request No. \_\_\_\_\_

Address of Payee: \_\_\_\_\_

Wire transfer to (if applicable): \_\_\_\_\_

Amount of Payment: \_\_\_\_\_

Purpose of Payment and Description of Work: \_\_\_\_\_

Each obligation, item of cost, or expense mentioned herein is for a reimbursement by the ISC to the Payee pursuant to the Funding Agreement between the ISC and the Payee. Each obligation, item of cost, or expense mentioned herein is due and payable, has not been the subject of any previous requisition, and is a proper charge for the aforementioned agreement. All representations in the Funding Agreement and any related documents remain true and correct, and the Payee is not in breach of any covenants contained therein. Supporting material as required by the Funding Agreement is attached.

Payee certifies that it has complied with the terms of the Funding Agreement and with all applicable federal, state, and local laws and regulations, and current orders of courts having jurisdiction over the Payee, including, without limitation, the New Mexico Procurement Code (NMSA 1978, § 13-1-21 *et seq.*).

\_\_\_\_\_  
*Signature of Payee's Officer*

September 17, 2015



**STATE OF NEW MEXICO  
 INTERSTATE STREAM COMMISSION  
 Arizona Water Settlements Act of 2004  
 Non-NM Unit Project  
 Periodic Report/ Final Report  
 Exhibit C**



**PERIODIC REPORT                      FINAL REPORT**

**Reporting Body:** \_\_\_\_\_ **Reporting Period:** \_\_\_\_\_

**1. PROJECT STATUS**

**A. *Third Party Obligations***

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Third Party Obligation Termination Date: \_\_\_\_\_

**B. *Project Phase*** (provide anticipated date of commencement and completion for each phase)

Plan/Design  \_\_\_\_\_

Bid Documents  \_\_\_\_\_

Construction  \_\_\_\_\_

**2. FUNDING STATUS**

AWSA Amount: \_\_\_\_\_

Other Amount and Source of Funds: \_\_\_\_\_

Total Amount of all Requests for Reimbursement: \_\_\_\_\_

Total AWSA Amount Expended to Date: \_\_\_\_\_

Total Other Amount Expended to Date: \_\_\_\_\_

AWSA Amount Balance as of this Date: \_\_\_\_\_



**PERIODIC REPORT**

I hereby certify that the aforementioned AWSA funds are being expended in accordance with all requirements of the Funding Agreement, and in compliance with other applicable requirements.

**FINAL REPORT**

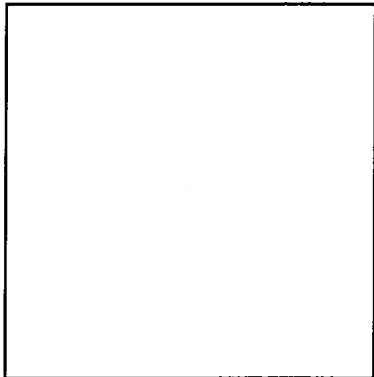
I hereby certify that the aforementioned AWSA-funded project has been completed, and AWSA funds were expended in accordance with all requirements of the Funding Agreement and in compliance with all other applicable laws and regulations.

---

*Signature of Officer*

---

*Date*



*Engineer's seal*

I hereby certify that this project is being/has been completed in accordance with the design and specifications made by me.

---

*Engineer's Signature* *Date*

---

*Printed name*

