

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

TOPPER THORPE, Vice-Chairman, Cliff
TOM BLAINE, P.E. Secretary
BLANE SANCHEZ, Isleta
MARK SANCHEZ, Albuquerque
CAROLYN HOLLIFIELD, Roswell
SAMUEL GONZALES, Aztec



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

October 23, 2017

Jim Massengill
Public Works Director, City of Deming
309 South Gold Avenue
PO Box 706
Deming, NM 88031

RE: City of Deming Effluent Re-Use Funding Agreement

Dear Mr. Massengill,

This letter shall serve as official notice to proceed up to \$1,700,000.00 of the City of Deming Effluent Re-Use Funding Agreement.

Please make sure that all invoices that are submitted reference the Purchase Order number 55000-0000017338.

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



State of New Mexico Purchase Order

PO Number to be on all Invoices and Correspondence

Page: 1

Dispatch Via Print

Office of State Engineer

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

Purchase Order 55000-0000017338	Date 10-18-2017	Revision
Payment Terms Pay Now	Freight Terms FOB Destination	Ship Via Best Way
Buyer STEVEN BAROS	Phone	Currency USD

Supplier: 0000054323
CITY OF DEMING
PO BOX 706
DEMING NM 88031-0000
United States

Ship To: OSEPS01
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	Excl\Excl#:	13-1-98-A				
Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1 - 1	Arizona Water Settlement Act Funding Agreement with City Of Deming to expand the existing effluent re-use system		1.00	EA	\$1,700,000.00	\$1,700,000.00	10/18/2017
						0	
						Schedule Total	\$1,700,000.00
						Item Total	\$1,700,000.00
						Total PO Amount	\$1,700,000.00

55000-30810-A150100-547900- - - -91648-50000

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
INTERSTATE STREAM COMMISSION
CITY OF DEMING EFFLUENT RE-USE
FUNDING AGREEMENT**

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 City of Deming, hereinafter called the "City." Collectively, the Commission and the City are referred to as the "Parties." The Effective Date of this Agreement is the date it is executed by the last signatory.

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; and

WHEREAS, at its November 24, 2014 public meeting, the Commission approved an allocation of \$1,750,000 from the New Mexico Unit Fund to finance in part the City's project to expand its existing effluent re-use system in order to water additional recreational areas with treated effluent; and

WHEREAS, in accordance with the Commission's decision, the ISC will provide funds to the City, 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 a municipal effluent re-use project. Specifically, the project includes design and construction of Alternative C – treatment at the Deming Waste Water Treatment Plant to achieve NMED Class 1A requirements using filters and UV and Alternative G – new reuse trunk line for the high school fields and Hooten Park as described in the Preliminary Engineering Report, Proposed Effluent Reuse Expansion, November 2013, prepared by Souder Miller and Associates for the NM Interstate Stream Commission.

This effluent re-use 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 shall be incorporated into, and made a part of, this Agreement. The City agrees to make no change to the Scope of Work and Budget Form, without first submitting to the ISC staff for its approval a written amendment to the Form. The City 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.

- B. **Amount of Funding.** Total reimbursements by the ISC to the City shall not exceed the amount awarded by the Commission of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000) (the “AWSA Amount”). In addition, pursuant to the ISC’s decision on November 21, 2014, the City hereby commits to securing additional funding for the Project from sources other than the NM Unit Fund.
- C. **Reversion Date.** Project funds must be expended by the City as of June 30, 2019. This date is referred to throughout the remainder of this Agreement as the “Reversion Date.” This Agreement is in effect from the Effective Date until June 30, 2019, the Reversion Date, unless terminated by either Party before the Reversion Date (“Early Termination”), pursuant to Article V herein. On the Reversion Date, any part of the AWSA Amount not expended by the City will revert to the New Mexico Unit Fund and will no longer be available to the City. In the event of a conflict between the AWSA Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Agreement, the Reversion Date herein shall control.

D. **Project Budget**

- (i) Project Budget, Generally.

(1) The City commits to securing any additional funding that may be necessary to complete the Project from sources other than the NM Unit Fund. Nothing contained herein limits the City's ability to seek funding through the municipal conservation funds of the NM Unit Fund.

(2) The City agrees that it will expeditiously initiate and complete the Project in a timely fashion.

(3) The City agrees that it 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 AWSA Amount 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.

(5) The City 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 City agrees to make no change to the Project Budget, without first submitting to the ISC staff for its 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 City shall submit to the ISC an executed Project Budget on the Scope of Work and Budget Form, attached hereto as Exhibit A. This Project Budget shall be incorporated into, and made a part of, this Agreement. The Project Budget shall list all the proposed tasks that the City believes are reasonably necessary to accomplish the Project. Out of that list, the Project Budget shall outline all the tasks for which the City plans on seeking reimbursement from the AWSA Amount and all the tasks from which the City plans on obtaining additional funding from other sources.

ARTICLE II. LIMITATION ON THE ISC'S OBLIGATION TO MAKE REIMBURSEMENTS TO THE CITY

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the City shall be reimbursed by the ISC for certain expenses associated with the Project, as defined in the Project Description, up to the limit of the AWSA Amount. No reimbursement shall be made unless the City has received a Notice to Proceed ("NTP") from the ISC. This Agreement and the disbursement of any and all amounts of the above-referenced AWSA Amount are expressly conditioned upon the following:

(i) The City'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 City, and/or the services will have been rendered to the City before the Reversion Date or, if applicable, the Early Termination Date; and

- (ii) The total amount reimbursed by the ISC to the City or City's contractors shall not exceed the AWSA Amount identified in Article I(B); and
- (iii) The City shall commit to obtaining or providing any additional funds necessary to complete the Project if the AWSA Amount is insufficient to pay for the entire cost of the Project; and
- (iv) The City's expenditures shall be made pursuant to the City's legal procurement in accordance with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-21 through 13-1-199, and 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; and
- (v) The City 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; and
- (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 City 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 City shall implement the Project in all respects. The City shall provide all necessary qualified personnel, material, and facilities to implement the Project. The City shall finance its share, if any, of the costs of the Project, including all Project overruns.

C. The AWSA Amount 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 City 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. NOTICE PROVISIONS: CITY AND ISC 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:

CITY OF DEMING:

Primary Representative:

Name: Jim Massengill
Title: Public Works Director, City of Deming
Address: 309 South Gold Avenue (88030)
P.O. Box 706
Deming, NM 88031
Email: jmassengill@cityofdeming.org
Telephone: (575) 546-8848
Fax: (575) 546-6442

Alternate Representative:

Name: Aaron Sera
Title: City Administrator, City of Deming
Address: 309 South Gold Avenue (88030)
P.O. Box 706
Deming, NM 88031
Email: asera@cityofdeming.org
Telephone: (575) 546-8848
Fax: (575) 546-6442

INTERSTATE STREAM COMMISSION:

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

The Parties agree that they shall send all notices related to this Agreement to the above-named persons by regular mail, e-mail or facsimile. In the case of 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. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation page, indicating a successful transmission of all pages included in the transmission.

ARTICLE IV. TERM

A. Article I establishes a date by which the AWSA Amount must be expended by the City. This date is referred to throughout this Agreement as the Reversion Date. This Agreement shall be effective from the date of execution by the last signatory. It shall terminate on June 30, 2019, the Reversion Date, unless terminated by either Party before the Reversion Date ("Early Termination"), pursuant to Article V herein.

B. The AWSA Amount must be expended on or before the Reversion Date or, if applicable, by the date of Early Termination of this Agreement. For purposes of this Agreement, it is not sufficient for the City to encumber the AWSA Amount 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 City, or title to the goods is transferred to the City, or as of the date particular services are rendered to the City. Funds are *not* expended, and an expenditure has *not* occurred as of the date the funds are encumbered by the City pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. 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 AWSA Amount 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 City 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 City 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.

B. Early Termination Due to Non-Appropriation

The terms of this Agreement appear to be independent of appropriations and authorization being made by the Legislature of the State of New Mexico, and available to the ISC, for the performance of this Agreement. However, the Legislature may, in its discretion, appropriate or un-appropriate funds for projects. If the Legislature un-appropriates 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 making an un-appropriation. The ISC's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the City and shall be final. The City 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. 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 City 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 City to suspend entering into new and further obligations to be paid by the ISC pursuant to this Agreement ("Suspension"). The ISC shall provide written notice of the Suspension to the City in accordance with the provisions of this Agreement.

If a Suspension directive is issued:

- (i) Upon the date the City receives written notice of Suspension from the ISC, the City shall immediately suspend entering into new or further written obligations 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 City 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 City 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 City receives written notice from the ISC informing the City 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 City under this Agreement, the ISC may, but is not obligated to, require the City 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 City 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

A. Periodic Reports.

In order that the ISC staff may adequately monitor Project activity, the City shall submit to the ISC Periodic Reports for the Project. The Periodic Report shall be submitted by City and also signed by the Project's design engineer who is charged with construction 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 quarterly on the last day of each quarter, beginning with the first full quarter following execution of this Agreement by the last signatory 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 City 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 City shall submit to the ISC a Final Report for the Project. The Final Report shall be submitted by the City and also signed by the Project's design engineer who is charged with construction oversight of the Project. The Final Report shall be submitted on a form provided by the ISC and identical to the form used for the Periodic Reports, and shall contain such information as the ISC may require. The Final Report form is the form attached hereto as Exhibit C. The ISC shall provide the City 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 the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

C. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the City 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 City shall respond to such requests for additional information within a reasonable period of time, as established by the ISC. 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 and any other grant requirements. ISC inspection, review and approval will not be interpreted as any warranty or guarantee of any kind.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. Request for Payment

The City shall request payment for goods or services by submitting a Request for Payment, using the form attached hereto as Exhibit B. Payment requests are subject to the following procedures:

- (i) The City must submit one original and one copy of each Request for Payment; and

- (ii) Each Request for Payment shall contain proof of payment by the City, or proof of liabilities incurred by the City, in the form of copies of invoices and a certification by the City's representative as designated in Article III herein. The certification must state that the expenditures are valid, or are liabilities incurred by the City, for services rendered by a third party or goods received by the City for the implementation of the Project; and
- (iii) Each Request for Payment must be certified as approved for payment by the ISC representative who is providing oversight of the project; and
- (iv) When the City 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 City, if the invoices comply with the provisions of this Agreement and are a valid liability of the City, the City 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 City to the ISC within thirty (30) days of the date each respective invoice is received by the City from a contractor, or within thirty (30) days from the date this Agreement expires or is terminated. Provided, however, due to New Mexico fiscal year deadlines imposed by the New Mexico Department of Finance and Administration, for work completed by June 30th of any given year, the City must submit all invoices by July 15th of that same year in order to be reimbursed. Any invoice covering expenses incurred prior to June 30th received after July 15th will not be reimbursed.

C. Payment Processing

- (i) The City's failure to abide by the requirements set forth in Article II herein may result in the denial of its Request 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 City are otherwise in compliance with this Agreement. The ISC's ability 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 City.
- (ii) Pursuant to the limitations contained in Article XIV, any approval of a Request for Payment, as described above, by the ISC will not be interpreted as any warranty or guarantee of any kind.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS:
REPRESENTATIONS AND WARRANTIES

- 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, or any local procurement ordinance, where applicable.
 - (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 City 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."
 - (iv) The City shall not at any time convert any property acquired or developed with the AWSA Amount to uses other than those specified in the Project Description without the ISC's express advance written approval.
 - (v) The City 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 City agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with the City, be excluded from participation in the Project, be denied benefits or

otherwise be subject to discrimination under, any activity performed pursuant to this Agreement. If the City is found not to be in compliance with these requirements during the life of this Agreement, the City agrees to take appropriate steps to correct any deficiencies. The City'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 City shall be solely responsible for the construction, maintenance, and operation of all equipment and improvements associated with the Project. The City agrees that the State of New Mexico and its agencies, including the ISC and its employees, are not in any way responsible for the operation, management, replacement, construction, or supervision of any aspect or part of the Project. This provision shall survive termination of this Agreement.
- (viii) The City 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(s) to assure satisfactory operation of the Project and service to the City. The City's obligation to maintain the Project will 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 City hereby represents and warrants the following:

- (i) The City 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 AWSA Amount.
- (ii) This Agreement has been duly authorized by the City. The City'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 City to sign the Agreement and to sign Requests for Payment. Once executed by the City, this Agreement shall constitute a binding obligation on the City, enforceable according to its terms.

- (iii) This Agreement and the City's obligations hereunder do not conflict with any federal or state law, ordinance or resolution applicable to the City, the City's charter, if applicable, or any judgment or decree to which the City is subject.
- (iv) The City shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The City specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no public official of the locality who exercises any function or responsibility with respect to this AWSA Amount, during his/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 City shall require all its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (v) The City certifies that no funds have been paid, or will be paid, by or on behalf of the City, to spouses, children, parents, brothers and sisters of members of the City's governing body otherwise defined as "immediate family members," in accordance with NMSA 1978, Section 13-1-62, a section of the New Mexico Procurement Code.
- (vi) The City certifies that no funds have been paid or will be paid, by or on behalf of the City, 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 of any contract or work to a third party and that the City shall require certifying language prohibiting lobbying to be included in the award documents for all sub-awards, including sub-contracts, loans and cooperative agreements. All sub-recipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

- A. The City shall be strictly accountable to the ISC for receipts and disbursements relating to the AWSA Amount. The City shall follow Generally Accepted Accounting Principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds related to the Project, in order to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the City shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and sub-contracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the

amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and any such other records as the ISC shall prescribe.

- C. The City 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 AWSA Amount, if the State Auditor finds that any or all of these funds were improperly expended, the City may be required to reimburse the New Mexico Unit Fund of the ISC for any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the ISC determines that part or all of the AWSA Amount was improperly reimbursed to the City, including but not limited to, Project funds reimbursed to the City based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the City, or violation of this Agreement, the City shall 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, Periodic and Final reports, or approval of any Payment Requests are only for purposes of compliance with the terms of the Agreement and any other grant requirements. ISC inspection, review and approval will not be interpreted as any warranty or guarantee of any kind. The City 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 City or any professional engineer hired by the City of legal responsibility for the overall integrity of the Project, adequacy of the design, safety, or compliance with all applicable laws and regulations. This provision shall survive termination of this Agreement.
- B. The City shall implement the Project in all respects. The City shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Project is the City'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. REQUIRED NON-APPROPRIATIONS CLAUSE IN
CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE
UNDER THIS AGREEMENT**

The City acknowledges and agrees that the City shall include a “non-appropriations” clause in all contracts between the City 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 and/or available to the ISC for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and/or available to the ISC, the City of Deming may immediately terminate this Agreement by giving the Contractor written notice of such termination. The City of Deming’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 claim or a breach of contract claim against the City of Deming or the ISC or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Deming pursuant to lack of ISC funds.”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS
FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS
AGREEMENT**

The City acknowledges and agrees that the City 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 ISC. Should the ISC terminate the agreement providing those funds before the scheduled termination date, the City of Deming 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 City of Deming’s only liability shall be to pay the Contractor for acceptable goods delivered and services rendered before the termination date.”

ARTICLE XVII. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the City 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 verbal between the Parties hereto with regard to the subject matter hereof.

[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.

CITY OF DEMING




Signature of Official with Authority to Bind the City

By: Jim Massengill
(Type or Print Name)

Its: Public Works Director
(Type or Print Title)

9/23/2015
Date

NEW MEXICO INTERSTATE STREAM COMMISSION



Deborah Dixon, P.E., Director

12/10/2015
Date



Curtis Eckhart, Program Support

10/28/15
Date



Amy I. Haas, General Counsel

10/21/15
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: City of Deming Effluent Reuse
Mailing Address:
 309 S. Gold Avenue
 Deming, NM 88030
Telephone: 575-546-8848
Contact Name: Jim Massengill

Project #: AWSA 1010
Award: \$1,750,000.00
Local Match:
 Cash match - \$113,195.43
 WTB 310 - \$800,356
 WTB-310 (City) \$141,000

Project Description: Design, bid, and construction of Alternative C – effluent treatment at the Deming Waste Water Treatment Plant to achieve NMED Class 1A requirements using filters and UV and Alternative G – new reuse trunk line for the high school fields and Hooten Park as described in the Preliminary Engineering Report, Proposed Effluent Reuse Expansion, November 2013, prepared by Souder Miller and Associates for the NM Interstate Stream Commission.

****Est. completion dates based on NTP on November 01, 2015**

Task #	Description	Deliverables	Est. Cost (\$)	Funding Source (AWSA/ Other)	**Est. Completion Date
1	Professional Services	Env.Doc/Arch/Cultural Resources/ Soil Sampling-Testing/ Asphalt Core-Testing	15,000	City of Deming	07/2016
2	Professional Services	Topo Survey	11,596	City of Deming	12/2015
3	Professional Services	30% Design Complete - Review with Engineer and Owner	32,161.50	City of Deming	03/2016
4	Professional Services	60% Design Complete – Review with Engineer and Owner	32,161.50	City of Deming	05/2016

5	Professional Services	90% Design Complete –Review with Engineer, Owner, Funding Agency and NMED	32,161.50	AWSA/ ISC funding	07/2016
6	Professional Services	Final Design and Contract Documents	10,720.50	AWSA/ ISC funding	08/2016
7	NMED/ISC Plan Review	Corrections/ Approval to advertise for const. bids	N/A	N/A	09/2016
8	Professional Services	Legal Fees	15,687	AWSA/ ISC funding	10/2017
9	Professional Services	Permits	5,000	AWSA/ ISC funding	09/2016
10	Professional Services	Bid Phase/Bid Recommendation/ NOA-Const.	11,000	AWSA/ ISC funding	12/2016
11	Professional Services	Construction Management	35,997	AWSA/ ISC funding	08/2017
12	Professional Services	Construction Representation	60,345	AWSA/ ISC funding	08/2017
13	Professional Services	O&M Manuals	8,000	AWSA/ ISC funding	09/2017
14	Professional Services	Record Drawings	7,000	AWSA/ ISC funding	10/2017
15	Professional Services	Electrical Eng.	10,500	AWSA/ ISC funding	08/2016
16	Construction Cost	Construction scope of work completed	1,439,850	AWSA/ ISC funding	10/2017
17	NMGRT	Tax on Services	22,276.43	City of Deming	10/2017
18	NMGRT	Tax on Services	113,739	AWSA/ ISC funding	10/2017
		Grand Total (\$)	\$1,863,195.43		

	AWSA/ ISC funding	\$1,750,000.00			
	City of Deming	\$113,195.43			

Signature(s) of authorized signatories:

 Jim Massengill

Date: 09/23/2015

ISC Use Only

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



Oct 21, 2015

Name
Title GILA ENGINEER
Interstate Stream Commission



**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

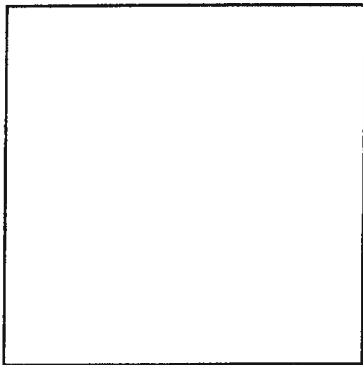
I hereby certify that the aforementioned AWSA funds are being expended in accordance with all requirements of the Funding Agreement, and in compliance with other applicable requirements.

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