

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NEW MEXICO INTERSTATE STREAM COMMISSION  
AND  
THE NEW MEXICO CAP ENTITY  
REGARDING ENGINEERING DESIGN  
FOR THE NEW MEXICO UNIT**

This Agreement (“Agreement” or “MOU”) is entered into by the New Mexico Interstate Stream Commission (“ISC”) and the New Mexico CAP Entity (“Entity”) as of the date of signature by the last signatory. The ISC and the Entity are collectively referred to herein as “the Parties.”

**RECITALS**

WHEREAS, the Entity was created by a Joint Powers Agreement effective as of July 27, 2015 for the purposes of planning, designing, building, operating and maintaining a New Mexico Unit of the Central Arizona Project (“NM Unit”) as envisioned by the Arizona Water Settlements Act of 2004, Pub. L. 108-451 (“AWSA”); and

WHEREAS, the ISC is part of the executive branch of government of the State of New Mexico, and is a non-voting member of the Entity; and

WHEREAS, in order to proceed without delay to meet the December 31, 2019 deadline contained in the AWSA for completion of the National Environmental Policy Act (“NEPA”) process that will culminate in the issuance of a Record of Decision, the ISC has issued a request for proposals (“RFP”) for up-to-30% engineering design to select an appropriate engineer to design 30% or less of a NM Unit; and

WHEREAS, the engineer selected pursuant to this RFP shall be paid out of the monies deposited in the New Mexico Unit Fund pursuant to Section 107 of the AWSA, which are

controlled by the ISC pursuant to the AWSA and the New Mexico Unit Fund statute, NMSA 1978, Section 72-14-45; and

WHEREAS, at its public meeting of November 24, 2015, the Entity approved Resolution No. 15-03-11-15 to allow the ISC to proceed with negotiations and award of the up-to-30% engineering design RFP for the NM Unit; and

WHEREAS, in its Resolution No. 15-03-11-15, the Entity also resolved that an MOU will be executed between the Entity and the ISC to establish the Entity's involvement and authority to approve the scope of work and tasks for the engineer to be selected pursuant to the RFP.

### **AGREEMENT**

THEREFORE, the Parties agree as follows:

1. The ISC will negotiate a draft contract with the engineer whose proposal under the RFP was rated highest ("Selected Engineer") subject to the requirements of the Procurement Code and the Open Meetings Act. This draft contract will determine how the Selected Engineer will conduct the work necessary to design up to 30% of the NM Unit. The contract shall be between the Selected Engineer and the ISC as First Fiscal Agent for the Entity. If negotiations with the highest-rated engineer do not produce a contract, the ISC will negotiate a draft contract with the engineer whose proposal under the RFP was rated second highest, and, if those negotiations produce a contract, that engineer will then become the Selected Engineer for purposes of this Agreement.
2. The Entity, through its technical subcommittee, will assist the ISC in developing and approving the scope of work to be attached to the contract for the Selected Engineer.

As part of this effort, the technical subcommittee of the Entity will give recommendations as to what deliverables need to be provided by the Selected Engineer. The technical subcommittee of the Entity will also help the ISC determine the reporting requirements for the Selected Engineer, including frequency of reporting and manner of reporting. During the negotiation process between the ISC and the Selected Engineer, the technical subcommittee of the Entity will review and provide feedback on every draft of the scope of work, including any alternatives the Selected Engineer will be tasked to evaluate. If the technical committee provides a favorable recommendation, the Entity will then vote on whether to approve the scope of work to be attached to the contract.

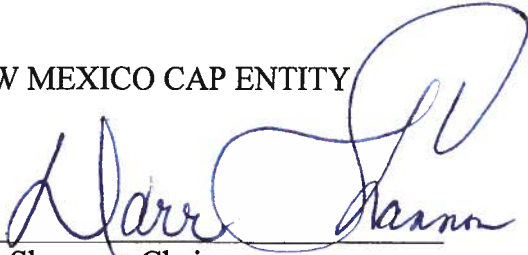
3. Once the language of the contract has been finalized, the ISC has voted in a public meeting to approve entering into the contract with the Selected Engineer, and the technical subcommittee of the Entity and the ISC agree to the contents of the scope of work for the Selected Engineer, the ISC may execute the contract with the Selected Engineer. The final award of the contract is subject to approval by the Department of Finance and Administration (“DFA”).
4. The Entity will appoint a representative (“Entity Representative”) to work with the Selected Engineer and the ISC staff. The Entity Representative will be part of the team that will work with the Selected Engineer and the ISC regarding fulfillment of the deliverables. The Entity Representative will:
  - a. Review and approve all the deliverables under the contract, including draft and final reports within a mutually-acceptable time-frame of receiving such

documents. All deliverables and reviews must be received by the ISC by June 30<sup>th</sup> (the end of the fiscal year);

- b. Attend meetings with the Selected Engineer;
  - c. Be copied on all communications between the ISC and the Selected Engineer;  
and
  - d. Review all documentation pertaining to billing and payment of bills and provide feedback to the ISC, as necessary, within five (5) days of receiving the documentation.
5. This MOU shall become effective upon signature by all the Parties and shall remain in effect for the duration of the engineering design work under the RFP. The technical subcommittee must provide a recommendation for the scope of work to the NM CAP Entity in early January 2016, for a vote by the Entity on the proposed scope of work at the Entity's January 2016 public meeting. The Entity must vote on the scope of work to ensure milestones are met.
6. This Agreement may be terminated earlier than completion of the engineering design work by either Party. A Party wishing to terminate this Agreement early must provide written notice to the other Party at least thirty (30) days before the intended date of termination. By terminating this Agreement, neither party may nullify obligations incurred prior to the termination date.
7. Neither Party to this Agreement is responsible for the acts or omissions of the other Party, or the other Party's employees or agents, subject to the limitations of the New Mexico Tort Claims Act.

In witness whereof, the Parties have executed this Agreement as of the date shown below.

NEW MEXICO CAP ENTITY



Darr Shannon, Chair

12/15/15

Date

INTERSTATE STREAM COMMISSION



Deborah Dixon, Director

12/24/2015

Date