

**AMENDMENT No. 1 TO  
CONSTRUCTION FUNDING AGREEMENT  
BETWEEN  
THE NEW MEXICO INTERSTATE STREAM COMMISSION  
AND THE TOWN OF HURLEY**

The New Mexico Interstate Stream Commission (“ISC or Commission”) and the Town of Hurley (the “Town”) entered into a Construction Funding Agreement (the “Agreement”) on March 26, 2018. The ISC and the Town (collectively the “Parties”) now wish to amend the Agreement to reflect changed conditions, and to correct certain inaccuracies in the Agreement.

WHEREAS, in December 2016, the Commission approved an allocation of \$2.1 million of the funds from the Arizona Water Settlements Act to the Town for Phase 1-A of the regional water supply project, as described in the “Plan Details for Phase 1” of the project presented to the ISC; and

WHEREAS, the Agreement pertained exclusively to Phase 1-A of the project, consisting of one fully equipped deep freshwater well, one pipeline for 40,500 linear feet, one tank, and the associated appurtenances; and

WHEREAS, in September 2018, the Town advertised for construction bids. The project advertised included a base bid which was identical to Phase 1-A, and one additive alternate, identified as Phase 1-B. Phase 1-B included a second well and 2,200 linear feet of additional pipeline; and

WHEREAS, the base bids received were lower than the Town’s estimate, and allowed the Town to include the entire Phase 1 (including both Phase 1-A and Phase 1-B) in the construction contract. The Town awarded the contract in February 2019; and

WHEREAS, the construction began in April 2019 and was financed using funds from various funding sources; and

WHEREAS, in July 2019, the Town informed ISC staff that the construction activities included drilling both wells; and

WHEREAS, at the same time, the Town requested that the scope of the Agreement be expanded to allow the ISC allocation to be used for the entire Phase 1. Hurley has assured the ISC staff that the project will be completed on time and within the available construction budget; and

WHEREAS, on August 26, 2019, the Commission approved the Town’s request to incorporate scope changes in the Agreement while meeting the goal of the project and not exceeding the \$2.1 million allocated by the ISC; and

WHEREAS, the Agreement entered into by the Parties, and some exhibits, must be modified to reflect how the ISC allocation may be spent; and

WHEREAS, the ISC understands that construction activities have continued after August 26, 2019, the date the Commission approved the scope change. Activities related to the modified scope are subject to this amendment.

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

1. The text of Article I.A. is hereby withdrawn and replaced with the following text:

“Project Description. This Agreement pertains exclusively to Phase 1 of the regional water supply project, as described in the “Plan Details for Phase 1” of the project presented to the ISC in December 2016, which is for the benefit of the Town of Hurley. Specifically, Phase 1 (“Project”) includes construction of a production and transmission system for the Town of Hurley, including two (2) fully equipped water wells approximately 1,200 feet deep, a fresh water booster station with 250,000 gallon head tank, a 12” diameter fresh water transmission line, approximately 42,700 feet long with connections to the existing fresh water distribution tanks at Hurley. The Town will own and operate the entire infrastructure.”

2. Exhibit C to the Agreement is hereby withdrawn and replaced with the new Exhibit C – Amended attached to this Amendment No. 1. All references in the Agreement to Exhibit C shall henceforth be construed as references to Exhibit C – Amended.
3. Article III is hereby modified to add Mr. Ali Effati as an Alternate Representative for the ISC. Mr. Effati’s contact information is as follows:

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

4. The text of Article V.B. is hereby withdrawn and replaced with the following text:

“The funds provided by the ISC to perform this Agreement reside in the New Mexico Treasury. While these funds were not appropriated to the Treasury by the New Mexico Legislature, the Legislature may, in its discretion, un-appropriate or withdraw authorization for the expenditure of these funds. If the Legislature un-appropriates funds that the ISC has earmarked for this Agreement, or withdraws authorization for the expenditure of these funds, the ISC shall have the sole discretion to terminate this Agreement prior to the Reversion Date, as of the effective date of the law un-appropriating the funds. The ISC’s decision as to whether sufficient appropriations or authorizations exist shall be accepted by the Town and shall be final. The Town hereby waives any right 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.”

5. The text of Article IX.C.(ii) is hereby modified to read as follows:

“Pursuant to the limitations stated in Article XIV of this Agreement, approval of a Request for Payment by the ISC shall not be interpreted as a warranty or guarantee of any kind.”

6. The text of Article X.A.(i) is hereby modified to read as follows:

“The Funding Amount 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 ordinances.”


7. The text of Article X.B.(v) is hereby modified to read as follows:

“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 NMSA 1978, Section 13-1-62, a section of the New Mexico Procurement Code.”

All terms of the Agreement not expressly amended by this Amendment No. 1 remain in full force and effect upon enactment of this Amendment No. 1.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 effective as of August 26, 2019.

**TOWN OF HURLEY**

  
\_\_\_\_\_  
Ed Stevens, Mayor

**INTERSTATE STREAM COMMISSION**

  
\_\_\_\_\_  
Rolf Schmidt-Petersen, Director

Approved as to legal sufficiency:

  
\_\_\_\_\_  
Dominique Work  
Office of the ISC General Counsel



STATE OF NEW MEXICO  
INTERSTATE STREAM COMMISSION  
Arizona Water Settlements Act of 2004  
Non-NM Unit Project  
Scope of Work & Budget Form  
Amended Exhibit C



**Entity:** Town of Hurley

**Mailing Address:** P.O. Box 65, 101 Cortez Ave.  
Hurley, NM 88043

**Telephone:** (575)537-2287

**Email:** townclerk@townofhurleynm.us

**Contact Name:** Lori Ortiz

**Funding Amount:**

\$2,100,000

**Project Description:**

This Agreement pertains exclusively to Phase 1 of the regional water supply project, as described in the "Plan Details for Phase 1" of the project presented to the ISC in December 2016, which is for the benefit of the Town of Hurley. Specifically, Phase 1 ("Project") includes construction of a production and transmission system for the Town of Hurley, including two (2) fully equipped water wells approximately 1,200 feet deep, a fresh water booster station with 250,000 gallon head tank, a 12" diameter fresh water transmission line, approximately 42,700 feet long with connections to the existing fresh water distribution tanks at Hurley. The Town will own and operate the entire infrastructure.

**Details:**

The wellfield will be located within a Town of Silver City water right, in N1/2 SE1/4 Section 22 R13W, T19S. The Town of Silver City has granted the Town of Hurley a 40-year, no cost lease for access to the water right and use of 270 ac-ft/yr water.

Site improvements, consisting of the construction of a base course access road approximately 1,200 feet long and a 1' thick base course pad beneath the well head collars, the booster pump station and the head tank, will provide elevated surfaces to promote safe access during wet periods and elevate construction and working surfaces away from mud and surface water flow.

The production well #3 and booster station will be located on the east side of Cameron Creek. The production well #4 will be located on the west side of Cameron Creek. The wells will be drilled to 16", cased to 12" and equipped with appropriate sized submersible pump based on the well pumping drawdown and performance testing results. The booster station will be equipped with a 2 @ 300 gpm pump skid and tablet disinfection system. The head tank will be glass-fused to steel bolted construction for longevity and low maintenance.

The 12" PVC transmission pipeline will be constructed around the north edge of the Grant County airport property, then eastward to the property fence between Chino Mines Company and SWRR, then northward on the Chino Mines side of the fence to the approximate extension of E Street in Hurley, thence eastward beneath US Hwy 180, the SWRR and Hurley Diaz Ave. to the existing Town of Hurley distribution tanks. Pipe will be graded according to working pressures to save capital costs.

The operating plan is to pump during off-peak hours to minimize power costs. A SCADA control system will be installed onto the pump and tank controls to maintain minimum tank levels and prevent potential overfilling and waste of water.

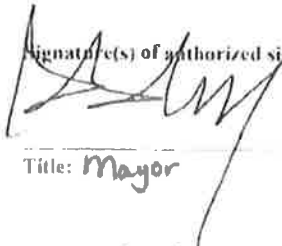
Project Funding

NMFA/Colonias Infrastructure Loan	\$ 179,371
NMFA/Colonias Infrastructure Grant	\$ 1,614,339
NMISC/AWSA Grant	\$ 2,100,000
Applicant Contribution	\$ 80,000
USDA RD Loan	\$ 1,572,000
USDA RD Grant	\$ 1,167,500
Total Project Funding	\$ 6,713,210

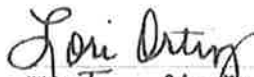
The most important infrastructure is the wells. It would be planned that the wells be started as soon as a rig can be mobilized and the casing is available. For site safety and efficiency in constructing the wells, the construction of the booster station would be delayed until the wells are drilled, cased, and mostly completed.


APPROXIMATE COST ALLOCATION PER MAJOR INFRASTRUCTURE COMPONENT					
TASK #	DESCRIPTION	DELIVERABLES	COST	FUNDING SOURCE	DATE COMPLETED OR ANTICIPATED
1	Mobilization and Site Improvements	Road, Gates, Site Preparation and Mobilization	\$ 427,471.70	Colonias	June, 2019
2	Pipeline	11,300 Linear Feet of 12" Pipe	\$ 743,651.17	Colonias	June, 2019
3	Well #3	Drilling and Casing	\$ 493,412.55	Colonias	June, 2019
4	Well #4	Drilling and Casing	\$ 63,553.88	Colonias	June, 2019
5	Power and SCADA system		\$ -		
6	Booster Station	Underground Piping	\$ 7,368.08	Colonias	May, 2019
7	250,000 Gallon Steel Tank	Store Material - Piping	\$ 10,965.46	Colonias	April, 2019
8	Engineering and Additional Services	Const. Management and Const. Obs.	\$ 47,287.16	Colonias	June, 2019
9	Mobilization and Site Improvements		\$ -		
10	Pipeline		\$ -		
11	Well #3	Drilling and Casing	\$ 80,000.00	Town Match	June, 2019
12	Well #4		\$ -		
13	Power and SCADA system		\$ -		
14	Booster Station		\$ -		
15	250,000 Gallon Steel Tank		\$ -		
16	Engineering and Additional Services		\$ -		
17	Mobilization and Site Improvements		\$ -		
18	Pipeline		\$ -		
19	Well #3	Drilling and Casing	\$ 68,018.84	Town to be reim. By USDA	June, 2019
20	Well #4		\$ -		
21	Power and SCADA system		\$ -		
22	Booster Station		\$ -		
23	250,000 Gallon Steel Tank		\$ -		
24	Engineering and Additional Services		\$ -		
25	Mobilization and Site Improvements	Booster Station Site Preparation	\$ 75,746.04	ISC Funding	October, 2019
26	Pipeline	11,400 Linear Feet of 12" Pipe	\$ 752,460.12	ISC Funding	September, 2019
27	Well #3	Installation of Well Equipment	\$ 100,000.00	ISC Funding	October, 2019
28	Well #4	Drilling Casing and Installation of Well Equipment	\$ 640,207.94	ISC Funding	October, 2019
29	Power and SCADA system	Installation of Electrical Cable and Conduit	\$ 236,970.13	ISC Funding	September, 2019
30	Booster Station	Construction of Building and Building Foundation	\$ 155,598.11	ISC Funding	October, 2019
31	250,000 Gallon Steel Tank	Tank Foundation	\$ 28,041.79	ISC Funding	October, 2019
32	Engineering and Additional Services	Const. Management and Const. Obs.	\$ 110,975.87	ISC Funding	September, 2019
33	Mobilization and Site Improvements	Re-seeding Pipe Corridor	\$ 127,725.54	USDA	April, 2020
34	Pipeline	19,800 Linear Feet of 12" Pipe	\$ 1,305,960.29	USDA	January, 2020
35	Well #3	Installation of Well Equipment	\$ 107,009.28	USDA	October, 2019
36	Well #4	Installation of Well Equipment	\$ 105,026.94	USDA	October, 2019
37	Power and SCADA system	installation of SCADA System	\$ 272,091.55	USDA	January, 2020
38	Booster Station	Construction of Building	\$ 127,168.54	USDA	November, 2019
39	250,000 Gallon Steel Tank	Construction of Water Tank	\$ 346,381.73	USDA	November, 2019
40	Engineering and Additional Services	Const. Management and Const. Obs.	\$ 280,117.30	USDA	April, 2020

Signature(s) of authorized signatories from the Town of Hurley:



Title: Mayor


  
Title: Town Clerk

  
Title: MAYOR PRO TEM

Date: 9/27/19

ISC Use Only

This Proposal is hereby approved / not approved.

  
Name

Oct 21, 2019  
Date

Title GILA ENGINEER  
NM Interstate Stream Commission