

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

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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

November 9, 2016

Kristina Ortiz, Clerk Treasurer
City of Bayard
PO Box 728
Bayard, NM 88023

RE: Municipal Conservation Funding Agreement – City of Bayard/Cobre Consolidated School District

Dear Ms. Ortiz,

This letter shall serve as official notice to proceed up to \$176,295 of the City of Bayard's Municipal Conservation Funding Agreement.

Please make sure that all invoices that are submitted under this agreement reference the Purchase Order number 55000-0000016334.

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,

A handwritten signature in blue ink that reads "Kim Abeyta-Martinez".

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: 0000054309
BAYARD, CITY OF
P O BOX 728
BAYARD NM 88023-0000

| | | | |
|---|---|-----------------------------|------------------|
| Purchase Order 55000-0000016334 | Date 11/01/2016 | Revision | Page 1 |
| Payment Terms Pay Now | Freight Terms FOB Destination | Ship Via Best Way | |
| Buyer STEVEN BAROS | Phone | | |

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 | FY17, Finance the design, construction, and installation of irrigation pipelines to run from existing treated effluent water lines to City and school district sports fields. | | 1.00 | EA | 176,295.00 | 176,295.00 | 11/01/2016 |
|------|---|--|------|----|------------|------------|------------|

55000-30810-A150100-547400- - - -91648-50000

Schedule Total 176,295.00

Item Total 176,295.00

Total PO Amount 176,295.00

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
INTERSTATE STREAM COMMISSION
CITY OF BAYARD ON BEHALF OF
COBRE CONSOLIDATED SCHOOL DISTRICT
MUNICIPAL WATER CONSERVATION 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 Bayard, hereinafter called the “City.” Collectively, the Commission and the City 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 City applied for \$196,145.00 to finance the design, construction, and installation of irrigation pipelines to run from existing treated effluent water lines to sports fields owned by the City and the Cobre Consolidated School District; and

WHEREAS, at its April 21, 2016 public meeting, the Commission approved an allocation of \$176,295.00 from the municipal conservation funds to finance the design, construction, and installation of irrigation pipelines to run from existing treated effluent water lines to City and school district sports fields; and

WHEREAS, in accordance with the Commission’s decision regarding municipal conservation, 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 the design, construction, construction management, and installation of pipelines from existing treated effluent water lines to City and the Cobre Consolidated School District sports fields for irrigation, as well as an overflow line from a storage tank that will hold treated effluent. This project will include installation of approximately three thousand (3000) linear feet of pipeline, four water meters, and electrical instrumentation and controls. The fields to be serviced by the pipelines include the football, baseball, and practice fields and the golf course at Cobre High School; the baseball and soccer fields at Bayard Elementary School; the practice field at Snell Middle School; Rominger baseball field; Bayard tee-ball field; and Bayard Little League field.

This pipeline construction 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 City 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 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 hundred and seventy-six thousand, two hundred and ninety-five dollars \$176,295.00 (the “Municipal Conservation Award”). In addition, pursuant to the ISC’s decision on November 24, 2014, the City hereby commits to securing additional funding for the Project from sources other than the New Mexico Unit Fund.
- C. **Reversion Date.** Project funds must be expended by the City 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 City will revert to the New Mexico Unit Fund and will no longer be available to the City.

D. Project Budget

(i) Project Budget Generally

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

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

(3) The City 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 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 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 City 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 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 to seek reimbursement from the Municipal Conservation Award and all the tasks from which the City plans to obtain additional funding from other sources.

ARTICLE II. REIMBURSEMENTS TO THE CITY

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the ISC will reimburse the City 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 City 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 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, or the services will have been rendered to the City before the Reversion Date or, if applicable, the Early Termination Date.

- (ii) The total amount reimbursed by the ISC to the City or City's contractors shall not exceed the Municipal Conservation Award identified in Article I(B).
- (iii) The City 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 City'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 the 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 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.
- (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 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 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. 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 BAYARD:

Primary Representative:

Name: Kristina Ortiz
Title: Clerk treasurer, City of Bayard
Address: PO Box 728
Bayard, NM 88023
Email: cityclerk@cityofbayardnm.com
Telephone: (575) 537-3327
Fax: (575) 5375271

Alternate Representative:

Name: Mary Binder
Title: Deputy Clerk, City of Bayard
Address: PO Box 728
Bayard, NM 88023
Email: deputyclerk@cityofbayardnm.com
Telephone: (575) 537-3327
Fax: (575) 5375271

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 City 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 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. 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 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.

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 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.

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 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 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 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 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 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 AND INSPECTION

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 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 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 signed by the Project's design engineer who is charged with construction oversight of the Project and shall be submitted by the City 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 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 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 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 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 City 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 City must submit one original and one copy of each Request for Payment.
- (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.
- (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 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. 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 City 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 City'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 City, 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 City.

- (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 (\$60,000.00) 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 Municipal Conservation Award 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 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 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 City is found not to be in compliance with these requirements during the life of this Agreement, the City shall 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 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 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 to assure satisfactory operation of the Project and service to the City. The City'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 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 Municipal Conservation Award.
- (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. No officer or employee of the City or its designees or agents, no member of the governing body, and no public official of the City 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 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 the New Mexico Procurement Code, NMSA 1978, Section 13-1-62.
- (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 third party obligation. The City 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 City shall be strictly accountable to the ISC for receipts and disbursements relating to the Municipal Conservation Award. 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 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 City 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 City 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 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 Municipal Conservation Award, 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.
- E. The City 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 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 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 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 or other contractor hired by the City, 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 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 all Project cost overruns. 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. NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED UNDER THIS AGREEMENT

The City shall include the following termination 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 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 City of Bayard may immediately terminate this Agreement by giving the Contractor written notice of such termination. The City'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 City of Bayard or the Interstate Stream Commission or the State of New Mexico in the event of immediate or early termination of this Agreement by the City pursuant to lack of Commission funds.”

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

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 Interstate Stream Commission. Should the Interstate Stream Commission terminate the agreement providing those funds before the scheduled termination date, the City of Bayard 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’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 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 oral between the Parties hereto with regard to the Municipal Conservation Award from the ISC to the City on behalf of the Cobre Consolidated School District.

[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 BAYARD

Charles L. Kelley, Mayor
[NAME]
[TITLE]

8-18-2016
Date

NEW MEXICO INTERSTATE STREAM COMMISSION

Deborah K. Dixon
Deborah Dixon, P.E.
Director

10-17-2016
Date

for Amy I. Haas
Amy I. Haas
General Counsel

9-23-16
Date

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

9/29/16
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 Bayard, New Mexico
Mailing Address: P.O. Box 728 Bayard, NM 88023
Telephone: 575-537-3327
Contact Name: Kristy Ortiz

Award:
\$ 176,295.00

Local Match:
\$ 0.00

Project Description: Included in this project are service lines and connections to meters at Snell Middle School and Cobre High School. Meters at Cobre High are provided with the project. Instrumentation and controls for tank level control are also provided under this project.

| Task # | Description | Deliverables | Est. Cost (\$) | Funding Source (AWSA/ Other) | Estimated Completion Date |
|-------------------------|-------------------------------------|---|-------------------|------------------------------|---------------------------|
| 1 | Engineering Design | Construction Contract Documents | 3,519.69 | AWSA | 3/25/2017 |
| 2 | Construction of Project; AWSA Funds | Facilities as Described in the Contract Documents. Initial portion paid by the City of Bayard. See Attachment I | 172,775.31 | AWSA | 11/28/2017 |
| Grand Total (\$) | | | 176,295.00 | | |

**CITY OF BAYARD PHASE 2B EFFLUENT REUSE COBRE CONSTRUCTION ESTIMATE
ATTACHMENT I**

| Item | Description | Unit | Unit Price | Quantity | Total |
|-------------|--|-------------|-------------------|-----------------|---------------|
| 1 | 3-in. Service Lines - Estimate | lf | \$ 10.00 | 1780 | \$ 17,800.00 |
| 2 | 3-in. Service Lines Trench and Backfill - Estimate | lf | \$ 12.00 | 1780 | \$ 21,360.00 |
| 3 | 2-in. Service Lines - Estimate | sy | \$ 7.87 | 123 | \$ 968.50 |
| 4 | 2-in. Service Lines Trench and Backfill - Estimate | ls | \$ 10.00 | 123 | \$ 1,230.00 |
| 5 | Water meter installations at Cobre High School | ea | \$ 9,500.00 | 4 | \$ 38,000.00 |
| 6 | Electrical / Instrumentation and Controls | ea | \$ 30,000.00 | 1 | \$ 30,000.00 |
| 7 | 8-in PVC Overflow Line at Tank | lf | \$ 19.00 | 938 | \$ 17,822.00 |
| 8 | 8-in PVC Overflow Line at Tank Trench and Backfill | ea | \$ 20.00 | 938 | \$ 18,760.00 |
| 9 | | | | | |
| 10 | Subtotal | | | | \$ 145,940.50 |
| 11 | Contingency | | | 10.00% | \$ 14,594.05 |
| 12 | Subtotal | | | | \$ 160,534.55 |
| 13 | NMGRT on construction | | | 7.6250% | \$ 12,240.76 |
| 14 | Total Construction | | | | \$ 172,775.31 |

NOTE: Per Article II. iii. of the Cobre MUNICIPAL WATER CONSERVATION FUNDING AGREEMENT:
"The City 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."

Signatures of members of the governing body:

Charles Kelley Quoddy _____
Chair Treasurer Secretary

Date: _____

ISC Use Only _____

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

Helen Sobier 9/22/16
Name Date
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

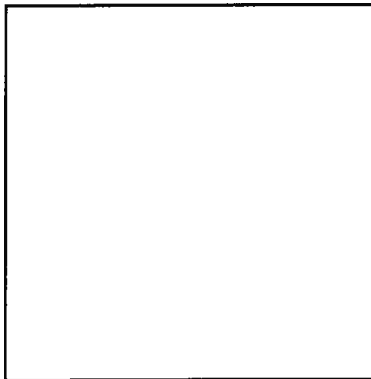
I hereby certify that the aforementioned AWSA funds are being expended in accordance with all requirements of the Funding Agreement, and in compliance with other applicable requirements.

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

