

**AMENDMENT No. 1 TO THE IRRIGATION DIVERSION STRUCTURE
DESIGN AND ENGINEERING FUNDING AGREEMENT
BETWEEN THE INTERSTATE STREAM COMMISSION, THE GILA BASIN
IRRIGATION COMMISSION AND THE GRANT SOIL & WATER CONSERVATION
DISTRICT**

The New Mexico Interstate Stream Commission (“ISC”), the Gila Basin Irrigation Commission (“GBIC”) and the Grant Soil & Water Conservation District (the “Fiscal Agent”) entered into a design and engineering Funding Agreement (the “Agreement”) on April 4, 2016. The ISC, GBIC and the Fiscal Agent (collectively the “Parties”) now wish to amend the Agreement to reflect changed conditions and to correct inaccuracies in the Agreement.

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

1. Article I.D. is hereby amended to read as follows:

“Reversion Date. The Parties agree that the Funding Amount must be expended by November 30, 2019. That date is referred to throughout the remainder of this Agreement as the “Reversion Date.” This Agreement shall be effective as of the date of execution by the last signatory (the “Effective Date”). It shall terminate on November 30, 2019, the Reversion Date, unless terminated by any Party before the Reversion Date (“Early Termination”), pursuant to Article VI herein. On the Reversion Date, any part of the Funding Amount not expended will revert to the New Mexico Unit Fund and may be available to GBIC and the Fiscal Agent for construction of the Project.”

2. Article I.E. (ii) is hereby amended to read as follows:

“Submitting the Design and Engineering Proposal. GBIC has submitted to the ISC staff an executed Proposal on a form provided by the ISC staff and attached hereto as Exhibit A. This Proposal is hereby incorporated into, and made a part of, this Agreement. The Proposal lists how GBIC proposed to complete the design and engineering phase for the Project. The Proposal outlines all the tasks for which GBIC, through the Fiscal Agent, plans on seeking reimbursement from the Funding Amount. As of May 31, 2018, items 1 through 3 on the Exhibit A attached to this document have been completed. The Proposal was signed by the GBIC before it was submitted to the ISC.”

3. The title of Article V is hereby modified to read as follows: “**EXPENDITURE OF FUNDS**”.

4. The text of Article VI.B. is hereby withdrawn and replaced with the following text: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 are available shall be accepted by GBIC and the Fiscal Agent and shall be final. GBIC and the Fiscal Agent hereby waive 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 VII.A.(i) is hereby withdrawn and replaced with the following text:

"Upon the date when either GBIC or the Fiscal Agent receives written notice of Suspension from the ISC, GBIC and the Fiscal Agent are both obligated to immediately suspend entering into new or further written obligations with third parties; and"

6. The text of Article VII.C is hereby modified to read as follows:

"A suspension of new or further obligations under this Agreement shall remain in effect until the date the GBIC or the Fiscal Agent, whichever comes first, receives written notice from the ISC informing them that the Suspension has been lifted or that the Agreement has been terminated early in accordance with Article VI herein. If the Suspension is lifted, the ISC will consider further requests for NTPs."

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

"Each Request for Payment shall contain proof of payment by the Fiscal Agent, or proof of liabilities incurred by GBIC, in the form of copies of invoices and a certification by the Fiscal Agent's representative as designated in Article IV herein. The certification must state that the expenditures are valid liabilities incurred by GBIC for services rendered or goods received by GBIC for the implementation of the Proposal."

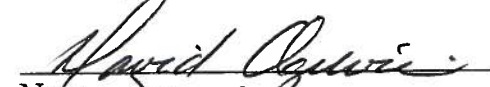
8. The Parties wish to amend Exhibit B to the Agreement to reflect the certification language amended through paragraph 8 above. Therefore, Exhibit B to the Agreement is replaced in its entirety with the revised Exhibit B that is attached to this Amendment.

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

"Pursuant to the limitations stated in Article XV, any approval of a Request for Payment by the ISC will not be interpreted as any warranty or guarantee of any kind."

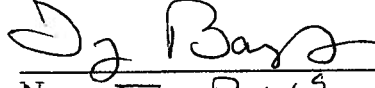
IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 on the date of last signature.

GILA BASIN IRRIGATION COMMISSION

By: 
Name: DAVID OGILVIE
Title: CHAIRMAN

Date: 6/13/18

GRANT SOIL AND WATER CONSERVATION DISTRICT

By: 
Name: TY BAYS
Title: Supervisor

Date: 6/14/18

INTERSTATE STREAM COMMISSION

By: 
John W. Longworth, P.E., Director


Date: 6/20/18

Approved as to Agency budget sufficiency:

By: 
Jeff Primm, Director of Program Support

Date: 6/19/18

Approved as to legal sufficiency:

By: 
Dominique Work
ISC Office of the General Counsel

Date: 6-19-18



STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
Arizona Water Settlements Act of 2004
Non-NM Unit Project
Proposal Form
Exhibit A



Entity: Gila Basin Irrigation Commission (GBIC)
Mailing Address: c/o Grant SWCD
3082 32nd Street Bypass, Suite C, Silver City, NM 88061
Telephone: 575-388-1569
Email: grantswcd@zianet.com
Contact Name: Rebecca Benavidez
Project Description: Design of improved irrigation diversions for the Gila Basin Irrigation Commission (GBIC)

Funding Amount:
\$250,000.00

Project Description:

Normal seasonal flooding routinely washes out the earthen Upper Gila, Fort West and Gila Farm diversion structures, reducing the periods of time that the structures are functional, sometimes during the heart of the growing season. The GBIC has hired Telesto Solutions, Inc. (Telesto) to undertake a series of studies that will assist the GBIC in selecting the most appropriate replacement diversion system type, size, and location. Once the final diversion structure type(s) and location(s) have been selected, Telesto will complete final engineering design for each of the selected locations. Under this project Telesto will complete the following tasks:

1. Study previous investigations and sites to identify viable project alternatives. Under this tasks Telesto will:
 - a. Compile project references, including reports, maps, images and river flow data and deliver a listing of project references
 - b. Perform a site reconnaissance to evaluate potential diversion configurations in the field
 - c. Identify screening-level project alternatives to be further evaluated in Task No. 2 based on prior steps and will deliver a screening-level project alternatives report and present the results to the GBIC
2. Perform a conceptual-level engineering investigation and analysis. Under this task Telesto will:
 - a. Complete a conceptual-level location study and deliver a draft and final conceptual diversion location alternative(s) analysis

- b. Complete conceptual-level site mapping and deliver topographic maps generated through existing imagery
 - c. Complete a conceptual-level geotechnical analysis and deliver a conceptual diversion site(s) geotechnical report
 - d. Complete conceptual-level hydraulic modeling and deliver a conceptual diversion site(s) hydraulic modeling report and present the results to the GBIC
3. Identify viable diversion structure alternatives. Under this task Telesto will:
- a. Identify and rank conceptual diversion structure alternatives based on the results of Task No. 2 which:
 - i. Minimize disruption to ongoing crop production throughout the year
 - ii. Require minimal maintenance
 - iii. Achieve about 25-30 cfs diversion capacity for each ditch
 - iv. Is compatible with Gila River ecology
 - v. Is cost effectiveUnder this task Telesto will deliver a draft and final conceptual-level diversion structure alternatives report, incorporating rankings for presentation to GBIC to select preferred alternatives
 - b. Further investigate gabion-style diversion weirs as a potentially viable diversion alternative and deliver a presentation to GBIC with the results of the investigation
4. Complete final diversion design. Under this task Telesto will:
- a. Refine the site-specific data collected in Tasks No. 2 and 3 to produce final design and deliver a draft and final diversion design report including any permits needed for additional field investigations
 - b. Update diversion construction cost estimates and deliver total project probable cost estimation including construction oversight costs
 - c. Obtain and deliver all permits required for construction
 - d. Produce required contractor procurement documentation and deliver construction drawings, technical specifications and bid schedule
5. Perform general project management. Under this task Telesto will:
- a. Coordinate and hold internal project meetings as required
 - b. Coordinate and hold external project meetings as requested by GBIC
 - c. Complete revisions to the project scope of work as requested by GBIC
 - d. Complete monthly project reports, project schedule maintenance and project accounting

Task #	Description	Deliverables	Est. Cost Pre Tax (\$)	Est. Cost After Tax (\$)	Funding Source (AWSA/ Other)	Completion Date
1	Identification of Potentially-Viable Project Alternatives	Report and Presentation to Members of the GBIC	\$28,500	\$30,780	AWSA	completed 6/1/2017
2	Conceptual-Level Engineering Investigation and Analysis	Report and Presentation to Members of the GBIC	\$22,000	\$23,760	AWSA	completed 8/31/2017
3a	Diversion Structure Alternatives Investigation	Report and Presentation to Members of the GBIC	\$45,000	\$48,600	AWSA	completed 8/31/2017
3b	Investigate Gabion Style Weirs	Presentation to GBIC	\$6,500	\$7,020	AWSA	completed 5/30/2018
4	Final Diversion Design	Report, Construction Plans, Construction Permits, Updated Cost Estimate, Bid Schedule, Technical Specifications	\$66,200	\$71,496	AWSA	anticipated 12/31/2018
5	Project Management (Telesto)	Monthly Project Reports	\$48,003.70	\$51,844	AWSA	anticipated 12/31/2018
6	NMISC Admin/Audit	N/A	\$16,500	\$16,500	AWSA	anticipated 12/31/2018
Grand Total (\$)				\$250,000		

Signature(s) of authorized signatories:

David Palmer

GILA BASIN IRRIGATION COMMISSION CHAIRMAN

Date: 6/19/2018

ISC Use Only

This Proposal is hereby approved/ not approved.

Ali Effati 

6/20/18

Name

Date

Title Gila Basin Manager

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 the expenditures listed on this Request are valid liabilities incurred by the Payee for services rendered or goods received for the implementation of the Design Proposal.

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.*).

September 17, 2015

Signature of Payee's Officer

Signature of Fiscal Agent

September 17, 2015

