

AMENDMENT No. 1
TO THE MUNICIPAL CONSERVATION FUNDING AGREEMENT
BETWEEN THE VILLAGE OF SANTA CLARA AND THE NEW MEXICO
INTERSTATE STREAM COMMISSION

The New Mexico Interstate Stream Commission (“ISC”) and the Village of Santa Clara (“Village”) entered into a Municipal Conservation Funding Agreement (the “Agreement”) on September 8, 2016. The ISC and the Village (collectively the “Parties”) now wish to amend the Agreement to reflect changed conditions and to correct inaccuracies in the Agreement.

WHEREAS, when the Agreement was first entered into, the Village’s overall planning approach focused on utilizing the tertiary treated Class 1A wastewater effluent from the Bayard Water Reclamation Facility in the most efficient manner possible to increase financial operation feasibility; and

WHEREAS, engineering evaluation of the infiltration gallery in Twin Sisters Creek has highlighted that characterization of the gallery’s water capture efficiency is not proven at this time; and

WHEREAS, as of May 21, 2018, items 1 through 10 on the original Exhibit A attached to the September 2016 Agreement have been completed and paid for; and

WHEREAS, significant surface water treatment equipment will also be necessary before transporting finished treated water to storage tanks; and

WHEREAS, in light of the above information, the evaluation of groundwater aquifer replenishment has been expanded to include a lower elevation discharge point; and

WHEREAS, engineering reporting will be separated into two (2) phases: (1) Preliminary Engineering Report, and (2) Thirty percent Design Report.

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

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 Article I.A. is hereby withdrawn and replaced with the following text:

“The project that is the subject of this Agreement is the partial design of a pipeline and all necessary appurtenances to transport treated effluent from the City of Bayard municipal wastewater treatment plant to irrigate public properties in and near the Village and/or Fort Bayard, and/or to discharge into an ephemeral creek near the Village where the water can recharge the aquifer or create riparian pond habitat for wildlife. Further treatment of the effluent may be required.

The Village will hire an engineering firm to develop a Preliminary Engineering report (“PER”) that evaluates various locations and methods for the beneficial use of the treated effluent. The PER will follow the format detailed in USDA RUS Bulletin 1780-2. The PER will be signed and

stamped by an engineer licensed to practice in the State of New Mexico. A draft copy of the PER will be submitted to the ISC for review and approval before the final PER is released.

As part of the work associated with developing the PER, the engineering firm will communicate as necessary with the U.S. Forest Service, the New Mexico Environment Department Surface Water, Groundwater, Mine Compliance and Drinking Water Divisions, the Office of the State Engineer, the City of Bayard and Grant County. The PER will include information on existing conditions, including depth to water and soil conductivity. The PER will discuss any permits and other regulatory requirements required for construction and operation, including renewal of existing permits and acquisition of new permits under the Federal Clean Water Act, Safe Drinking Water Act, and the New Mexico Water Quality Act, and any other applicable laws. The PER will address the quality, and if necessary, treatment of water that may be withdrawn from Twin Sisters Gallery. The PER will determine property ownership along the pipeline corridor and discuss any need for acquisition of property and easements. The PER will include a cost estimate for the pipeline and any treatment system, including costs of final engineering design, mobilization and demobilization, construction, construction management, materials, fees and taxes, a twenty percent (20%) cost contingency and annual operation and maintenance costs.

Should the Village elect to pursue construction of one of the alternatives developed by the PER, then the engineering firm will develop a thirty percent (30%) design of the project, including, but not limited to, a project description; specifications on the size, materials, depth and alignment of the pipeline, including arroyo and road crossings, details on the size, location, capacity and power needs of pump stations, location of power lines, and size and location of other appurtenances, details of the outfall design, engineering drawings, maps, calculations and hydraulic grade line plots and analyses.

2. Exhibit A to the Agreement is hereby withdrawn and replaced with the new Exhibit A attached to this Amendment No. 1.

3. Article I.D.(ii) is hereby withdrawn and replaced with the following:

“Submitting the Project Budget. Prior to execution of the Agreement, the Village submitted to the ISC staff an executed Proposal on a form provided by the ISC staff. Work proceeded under that Proposal and budget. The engineering evaluation under that Proposal highlighted unforeseen issues with the original Proposal. Therefore, the Village has submitted, and the ISC has approved, a revised proposal and associated budget (the “Revised Budget”) attached to this Amendment No. 1 as Exhibit A. This Revised Budget is hereby incorporated into, and made a part of, the Agreement. The Revised Budget outlines all the tasks for which the Village plans on seeking reimbursement from the Municipal Conservation Award.”

4. Article II.B. is hereby modified to read as follows:

“The Village shall implement the Project in all respects. The Village shall provide all necessary qualified personnel, material and facilities to implement the Project. The Village shall finance its share, if any, of the costs of the Project, including all Project overruns.”

5. Article III is hereby modified to substitute Mr. Ali Effati as the ISC Alternate Representative instead of Mr. Craig Roepke. 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
Email: Ali.Effati@state.nm.us
Telephone: (505) 827-5801
Fax: (505) 827-6188

6. The text of Article V.A is hereby withdrawn and replaced with the following text:

“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.”

7. The text of Article V.C 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 the Village and shall be final. The Village 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.”

8. The text of Article IX.A.(ii) is hereby withdrawn and replaced with the following text:

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

9. 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.

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

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

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

“The Municipal Conservation Award 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.”

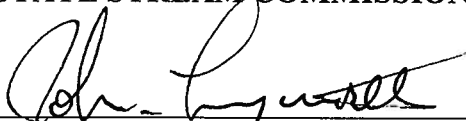
IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 on the date of last signature.

VILLAGE OF SANTA CLARA

By: 
Name:
Title


Date: 6-18-18

INTERSTATE STREAM COMMISSION

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


Date: 6-22-18

Approved as to Agency budgeted sufficiency:

By: 
Jeff Primm, Director of Program Support

Date: 6/21/18

Approved as to legal sufficiency:

By: 
Dominique Work
ISC Office of the General Counsel

Date: 6-21-18



**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: Village of Santa Clara **Award:** \$ 100,000
Mailing Address: P.O. Box 316, Santa Clara, NM 88026 **Local Match:** \$
Telephone: 575-537-2443

Contact Name: Sheila Hudman

Project Description: Partial design of a pipeline and, if necessary, a water treatment plant, to transport treated effluent from the City of Bayard municipal wastewater treatment plant, which provides tertiary treatment, to an ephemeral tributary to Twin Sisters Creek near the bottom of Snake Hill, north of the Village. The Village will hire an engineering firm to develop a partial (30 percent) design of the pipeline project to be prepared as a Preliminary Engineering Report. UPDATE May 21, 2018 - Overall planning approach has focused on utilizing the tertiary treated Class 1A wastewater effluent from the Bayard Water Reclamation Facility in the most efficient manner possible to increase financial operation feasibility. Reuse irrigation techniques will still be planned to minimize groundwater well use where possible. Engineering evaluation of the infiltration gallery in Twin Sisters Creek has highlighted that characterization of the gallery's water capture efficiency is not proven at this time. In addition, significant surface water treatment equipment including nitrate removal will also be necessary before transporting finished treated water to storage tanks. The evaluation of groundwater aquifer replenishment with Class 1A or lower-class effluent has been expanded to include a lower elevation discharge point within Cameron Creek south of Santa Clara. Engineering reporting will be separated into 2 phases: 1- Preliminary Engineering Report, and 2 - Thirty-percent Design Report.


Task #	Description	Deliverables	Est. Cost (\$)	Funding Source (AWSA/ Other)	Date Completed or Anticipated
1	Notice to Proceed	Authorization Letter		AWSA	Completed September 14, 2016
2	Issue RFP	Advertisement		AWSA	November 2016
3	Select consultant			Village	January 2017
4	Develop Scope of Work	SOW that includes		Village	May 2017

		deliverables each month, e.g., Gant Chart, report table of contents, chapters of the final report, cost tables of elements, letters from NMED listing permits, and facilities required, etc.			
5	Hire consultant and negotiate costs of 30% Design of Pipeline, outfall, drinking water treatment, other as required by NMED.	Contract between town and consultant		Village	Completed June 2017
6	Kickoff meeting	Gantt Chart, meeting minutes and notes, report introducing engineering team and project plan	5,000	AWSA	October 2017
7	Review existing conditions, physical, hydrological and financial	Report Section in PER	5,000	AWSA	December 2017
8	Define Permits required including immediate and on-going costs, monitoring and facilities required by NMED-DWB/GWB	Report Section in PER	7,500	AWSA	December 2017
9	Alternative development	Report Section in PER	15,000	AWSA	December 2017
10	Submit Financial and Operational Information Request to Bayard for Coordination	Request Letter	6,500	AWSA	March 2018
11	Submit Preliminary PER to Santa Clara Approval	Review Meeting minutes and notes, use input to refine recommendations	4,500	AWSA	Anticipated May 2018
12	Submit Final Draft PER for review	Submit PER to Village, ISC, Forest Service, NMED for review and comment	2,500	AWSA	June 2018
13	Revisions to PER	Incorporate revisions	2,500	AWSA	July 2018

		from reviewers			
14	Submit Final PER for review and acceptance		500	AWSA	Anticipated July 2018
15	Receive Authorization to Complete 30% Design				July 2018
16	Complete 30% Construction Document Design		42,000		September 2018
17	Consultant Tax		6500		
Grand Total (\$)			\$100,000		

Signatures of members of the governing body:


Chair


Treasurer


Secretary

Date: 6-13-18

ISC Use Only

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



June 14, 2018

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 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

September 17, 2015

