February 7, 2018

Kate Fletcher
Catron County Manager
PO Box 507
Reserve, NM 87830

RE: Construction Funding Agreement between NM Interstate Stream Commission, the Kiehne-Middle Frisco Ditch Association and Catron County

Dear Ms. Fletcher,

This letter shall serve as official notice to proceed up to $400,000 of the Construction Funding Agreement between NM Interstate Stream Commission, The Kiehne-Middle Frisco Ditch Association and Catron County.

Please make sure that all invoices that are submitted reference the Purchase Order number 55000-0000017567.

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 Ali Effati at (505) 827-5801.

Sincerely,

Marcos Mendiola
Administrative Manager
Interstate Stream Commission

Copy to:
Ali Effati
Marcos Mendiola
Sammy Bustamante
State of New Mexico  
Purchase Order  

PO Number to be on all Invoices and Correspondence  
Page: 1

Office of State Engineer  
P.O. Box 25102  
Santa Fe NM 87504-5102  
United States

Supplier: 0000054377  
CATRON COUNTY  
P.O. BOX 407  
RESERVE NM 87830-0000  
United States

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

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<th>Item/Description</th>
<th>Mfg ID</th>
<th>Quantity</th>
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<td>Funding Agreement to design improvements to the diversion structure on the Kiehne Middle Frisco Ditch</td>
<td>55000-30810-A150100-548900- - - - -91648-50000</td>
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<td>EA</td>
<td>$400,000.00</td>
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Schedule Total  
$400,000.00  

Item Total  
$400,000.00  

Total PO Amount  
$400,000.00  

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 regulations. 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  

2/2/18sjb
CONSTRUCTION FUNDING AGREEMENT
BETWEEN THE STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION,
THE KIEHNE-MIDDLE FRISCO DITCH
ASSOCIATION AND CATRON COUNTY

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”, the Kiehne-Middle Frisco Ditch Association, hereinafter called the “Ditch Association,” and Catron County, hereinafter called the “County.” Collectively, the Commission, the Ditch Association, and the County are referred to as the “Parties.” The Effective Date of this Agreement is the date it is executed by the last signatory.

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 be administered by 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 (“NM Unit Fund”), a fund created by the New Mexico Legislature in the New Mexico Treasury for the specific purpose of receiving AWSA money; and

WHEREAS, at its November 24, 2014 public meeting, the Commission approved an allocation of $500,000 from the NM Unit Fund to finance in part the County’s proposal to provide money for improvements to qualifying ditches within the County; and

WHEREAS, in May 2016, the Commission and the County entered into a Ditch Improvement Design and Engineering Funding Agreement whereby the Commission provided One Hundred Thousand Dollars ($100,000) to the County to design improvements to the diversion structure on the Kiehne Middle Frisco Ditch; and

WHEREAS, the Parties are ready to proceed with funding construction of the improvements on the Kiehne Middle Frisco Ditch pursuant to the design prepared with the previous funding; and

WHEREAS, on December 14, 2017, the County passed Resolution No. 026-2018 (copy attached as Exhibit □), allocating Four Hundred Thousand Dollars ($400,000) to fund construction of the improvements to the Kiehne Middle Frisco Ditch; and


1
WHEREAS, in accordance with the Commission’s funding decision of November 24, 2014 and the County’s resolution of December 14, 2017, the ISC will provide funds to the County, 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.

This project is to increase water efficiency and conservation on main ditches through infrastructural improvements by constructing a permanent point of diversion (collector). Specifically, construction will entail the installation of a pipeline from the diversion point along the main ditch for the entire length of ditches, approximately 2.89 miles, with cleanouts and gates as deemed necessary by the engineer.

This project is referred to throughout the remainder of this Agreement as the “Project.” The description contained in this Article I(A) is referred to throughout the remainder of this Agreement as the “Project Description.”

B. Amount of Funding. Total reimbursements by the ISC to the County shall not exceed Four Hundred Thousand Dollars ($400,000) (the “Construction Amount”). In addition, pursuant to the ISC’s decision on November 24, 2014, which required a minimum of 10% local match (“Local Match”), the County hereby commits to securing at least Forty Thousand Dollars ($40,000) from sources other than the NM Unit Fund, to represent the Local Match on this project. The Local Match can be provided “in-kind”. The Local Match must be expended before the ISC begins reimbursing the County for costs of construction. In addition, the County and/or the Ditch Association expressly commit to securing all additional funding that may be necessary to complete construction of this project, above and beyond the Construction Amount and the Local Match.

C. Reversion Date. The Parties agree that the Construction Amount must be expended by June 30, 2020. This date is referred to throughout the remainder of this Agreement as the “Reversion Date.” This Agreement is in effect from the Effective Date until June 30, 2020, the Reversion Date, unless terminated by either Party before the Reversion Date (“Early Termination”), pursuant to Article V herein. On the Reversion Date, any part of the Construction Amount not expended will revert to the NM Unit Fund and will no longer be available for construction of the Project without a new allocation from the ISC.
D. Project Budget.

(i) Project Budget, Generally.

(1) The Project Budget shall consist of the Local Match, the Construction Amount, and any other additional funding that may be necessary to complete construction of this project.

(2) The County agrees that it will expeditiously initiate and complete the Project in a timely fashion.

(3) The County agrees that it will prepare a Project Budget ("Project Budget"), which will outline all steps to be completed to pursue and finance construction of the Project, including, but not limited to, detail regarding how the Construction Amount will be spent.

(4) The Parties agree that the County is precluded from utilizing the Construction Amount for engineering oversight for this Project. The County currently has funds available for construction oversight through the Design and Engineering Funding Agreement currently in place between the County and the ISC.

(5) No funds from the NM Unit Fund shall be expended towards the Project until the Project Budget has been approved by the ISC staff.

(6) The County will not be reimbursed from the NM Unit Fund for any part of any expenditure that is not included in the Project Budget approved by the ISC staff.

(7) The County agrees to make no change to the Project Budget, without first submitting to the ISC staff for its 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 County shall submit to the ISC an executed Project Budget on the Scope of Work and Budget Form, attached hereto as Exhibit A. This Project Budget shall be incorporated into, and made a part of, this Agreement. The Project Budget shall list all the proposed tasks that the County believes are reasonably necessary to accomplish the Project. Out of that list, the Project Budget shall outline all the tasks which will be paid by the Local Match, all of the tasks for which the County plans on seeking reimbursement from the Construction Amount and all the tasks for which the County and/or the Ditch plans on obtaining additional funding from other sources.
ARTICLE II. LIMITATION ON THE ISC'S OBLIGATION TO MAKE REIMBURSEMENTS TO THE COUNTY

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the County shall be reimbursed by the ISC for certain expenses associated with the Project, as defined in the Project Description, up to the limit of the Construction Amount. No reimbursement shall be made unless the County has received a Notice to Proceed ("NTP") from the ISC. This Agreement and the disbursement of any and all amounts of the above-referenced Construction Amount are expressly conditioned upon the following:

(i) The County's expenditures shall be made pursuant to the County's legal procurement in accordance with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-21 through 13-1-199, and 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; and

(ii) The County 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 the Agreement; and

(iii) The County'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, and/or the services will have been rendered before the Reversion Date or, if applicable, the Early Termination Date; and

(iv) The total amount reimbursed by the ISC to the County or the County's contractors shall not exceed the Construction Amount identified in Article I(B) above; and

(v) The County commits to obtaining or providing the Local Match of $40,000; and

(vi) The County commits to working with the Kiehne Middle Frisco Ditch to obtain or provide any additional funds necessary to complete the Project if the Local Match and the Construction Amount are insufficient to pay for the entire cost of the Project; and

(vii) In the event capital assets acquired with Project funds are to be sold, leased, or licensed to, or operated by a private entity, the sale, lease, license, 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 County, within the limits of the Construction Amount, 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 County shall be solely responsible for the construction, and the Ditch Association solely responsible for maintenance and operation of all equipment and improvements associated with the Project. The County shall provide all necessary qualified personnel, material, and facilities to implement the Project as it relates to construction. The Ditch Association shall provide all necessary qualified personnel, material, and facilities to implement the Project as it relates to operation and maintenance. The County shall finance its share, if any, of the costs of the Project, including all Project overruns, as it relates to construction. The Ditch Association shall finance its share, if any, of the costs of the Project, including all Project overruns, as it relates to operation and maintenance.

C. The Construction Amount 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 County 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. NOTICE PROVISIONS; 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:

**CATRON COUNTY:**

Name:       Kate Fletcher  
Title:      Catron County Manager  
Address:    P.O. Box 507  
            Reserve, NM 87830
KIEHNE MIDDLE FRISCO DITCH ASSOCIATION

Name: Sammy Bustamante
Title: President, Kiehne Middle Frisco Ditch Association
Address: P.O. Box 452
         Reserve, NM 87830
E-mail: ldelgado@gilanet.com
Telephone: (575) 533-6314
Fax:

INTERSTATE STREAM COMMISSION:

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

The Parties agree that they shall send all notices related to this Agreement to the above-named persons by regular mail, e-mail or facsimile. In the case of 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. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation page, indicating a successful transmission of all pages included in the transmission.

ARTICLE IV. EXPENDITURE OF FUNDS

The Construction Amount must be expended on or before the Reversion Date or, if applicable, by the date of Early Termination of this Agreement. For purposes of this Agreement, it is not sufficient for the County to encumber the Construction Amount 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 particular quantity of goods are delivered and received, or title to the goods is transferred, or as of the date particular services are rendered to the County. Funds are not expended, and an expenditure has not occurred as of the date the funds are encumbered by the County pursuant to a contract or purchase order with a third party.
ARTICLE V. EARLY TERMINATION

A. 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 Construction Amount 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 and conflicts of interest.

Any Party 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 County 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.

B. Early Termination Due to Non-Appropriation

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, appropriate, 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 County and shall be final. The County hereby waives any rights to assess 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. 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 County 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 County to suspend entering into new and further obligations to be paid by the ISC pursuant to this Agreement (“Suspension”). The ISC shall provide written notice of the Suspension to the County in accordance with the provisions of this Agreement.

If a Suspension directive is issued:

(i) Upon the date the County receives written notice of Suspension from the ISC, the County shall immediately suspend entering into new or further written obligations 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 County 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 County 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 County receives written notice from the ISC informing the County 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 County under this Agreement, the ISC may, but is not obligated to, require the County 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 County 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 be amended only by a written instrument duly executed by all the Parties hereto.

ARTICLE VIII. REPORTS

A. Periodic Reports

In order that the ISC staff may adequately monitor Project activity, the County shall submit to the ISC Periodic Reports for the Project. The Periodic Report shall be submitted by the County, but must be also signed by the design engineer charged with construction oversight of the Project. The Periodic Report shall be submitted on a form prescribed by the ISC. The Periodic Report form is attached hereto as Exhibit C.

The Periodic Report shall be due quarterly one week after the last day of each quarter, beginning with the first full quarter following execution of this Agreement by the last signatory 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 County 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 County shall submit to the ISC a Final Report for the Project. The Final Report shall be submitted by the County, but must be also signed by the design engineer charged with construction oversight of the Project. The Final Report shall be submitted on a form prescribed by the ISC and identical to the form used for the Periodic Reports. The Final Report form is the form attached hereto as Exhibit C. The Final Report shall contain such information as the ISC may require. The ISC shall provide the County 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 the Project’s Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

C. Requests for Additional Information/Project Inspection

During the term of this Agreement, and for the entire period of time during which the County 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 County shall respond to such requests for additional information within a reasonable period of time, as established by
the ISC. 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 and any other grant requirements. ISC inspection, review and approval shall not be interpreted as a warranty or guarantee of any kind.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. Request for Payment

The County shall request payment by submitting a Request for Payment, using the form attached hereto as Exhibit B. Payment requests are subject to the following procedures:

(i) The County must submit one original and one copy of each Request for Payment; and

(ii) Each Request for Payment shall contain proof of payment by the County, or proof of liabilities incurred by the County, in the form of copies of invoices and a certification by the County’s representative as designated in Article III herein. The certification must state that the expenditures are valid liabilities incurred by the County, for services rendered by a third party or goods received for the implementation of the Project; and

(iii) Each Request for Payment must be certified as approved for payment by the ISC representative who is managing this Agreement; and

(iv) When the County 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 County, if the invoices comply with the provisions of this Agreement and are a valid liability of the County, the County shall make payment to those contractors or vendors upon the invoice within fifteen (15) calendar days from the date of cashing or deposition the payment from the ISC.

B. Deadlines

Requests for Payments shall be submitted by the County to the ISC within thirty (30) days of the date each respective invoice is received by the County from a contractor, or within thirty (30) days from the date this Agreement expires or is terminated. Provided, however, that, due to New Mexico fiscal year deadlines imposed by the New Mexico Department of Finance and Administration, for work completed by June 30th of any given year, the County must submit
all invoices by July 15th of that same year in order to be reimbursed. Any invoice covering expenses incurred prior to June 30th received after July 15th may not be reimbursed.

C. Payment Processing

(i) The County's failure to abide by the requirements set forth in Article II herein may result in the denial of its Request 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 Scope of Work, and that the expenditures and the County are otherwise in compliance with this Agreement. The ISC's ability 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 County.

(ii) Pursuant to the limitations contained in Article XIV, any approval of a Request for Payment, as described above, by the ISC will not be interpreted as a warranty or guarantee of any kind.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Construction 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, or any local procurement ordinance, where applicable. As mentioned above, the County is precluded from utilizing the Construction Amount for engineering oversight for this Project. The County currently has funds available for construction oversight through the Design and Engineering Funding Agreement currently in place between the County and the ISC.

(ii) The construction phase of the Project must be implemented in accordance with the New Mexico Public Works Minimum Wage 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) that the County 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 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 County shall not at any time convert any property acquired or developed with the Construction Amount to uses other than those specified in the Project Description without the ISC’s express advance written approval.

(v) The County 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 County agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with the County, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed pursuant to this Agreement. If the County is found not to be in compliance with these requirements during the life of this Agreement, the County agrees to take appropriate steps to correct any deficiencies. The County’s failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

(vi) Contractors hired to construct 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 County shall be solely responsible for the construction, and the Ditch Association shall be solely responsible for maintenance and operation of all equipment and improvements associated with the Project. The Parties agree that the State of New Mexico and its agencies, including the ISC and its employees, are not in any way responsible for the operation, management, replacement, construction, or supervision of any aspect or part of the Project. This provision shall survive termination of this Agreement.

(viii) The Ditch Association shall perform all operations and maintenance for the Project for the design life of the Project after completion and acceptance of
the work under the construction contract(s) to assure satisfactory operation of the Project and service to the County. The Ditch Association’s obligation to maintain the Project will 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 County hereby represents and warrants the following:

(i) The County is recognized as a political subdivision of the state pursuant to NMSA 1978, Chapter 6 and has the legal authority to receive and expend the Construction Amount.

(ii) This Agreement has been duly authorized by the County. The County’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 County to sign this Agreement and to sign Requests for Payment pursuant to this Agreement. Once executed by the County, this Agreement shall constitute a binding obligation on the County, enforceable according to its terms.

(iii) This Agreement and the County’s obligations hereunder do not conflict with any federal or state law, ordinance or resolution applicable to the County, the County’s charter, if applicable, or any judgment or decree to which the County is subject.

(iv) The County shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The County specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no public official of the locality who exercises any function or responsibility with respect to this Construction Amount, during that public official’s tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, of the periods thereof, for work to be performed pursuant to this Agreement. Further, the County shall require all its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(v) The County certifies that no funds have been paid, or will be paid, by or on behalf of the County, to spouses, children, parents, brothers and sisters of members of the County’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.

(vi) The County certifies that no funds have been paid or will be paid, by or on behalf of the County, 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 of any contract or work to a third party and that the County shall require certifying language prohibiting lobbying to be included in the award documents for all sub-awards, including sub-contracts, loans and cooperative agreements. All sub-recipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The County shall be strictly accountable to the ISC for receipts and disbursements relating to the Construction Amount. The County shall follow Generally Accepted Accounting Principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds related to the Project, to ensure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project’s completion, the County shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contacts and sub-contracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and any such other records as the ISC shall prescribe.

C. The County 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 Construction Amount, if the State Auditor finds that any or all of these funds were improperly expended, the County may be required to reimburse the New Mexico Unit Fund of the ISC for any and all amounts found to be improperly expended.

D. The County agrees to 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 Construction Amount was improperly reimbursed to the County, including but not limited to, Project funds reimbursed to the County based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the County, or
violation of this Agreement, the County 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, including the work conducted pursuant to the Project Description, Project plans or designs, Periodic and Final Reports, or approval of any Payment Requests are only for purposes of compliance with the terms of the Agreement and any other grant requirements. ISC inspection, review and approval will not be interpreted as a warranty or guarantee of any kind. The County 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 County or any professional engineer hired by the County of legal responsibility for the overall integrity of the Project, adequacy of the design, safety, or compliance with all applicable laws and regulations. This provision shall survive termination of this Agreement.

B. The County shall implement construction of the Project in all respects. The County shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Project is the County’s and Ditch Association’s 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. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The County acknowledges and agrees that the County shall include the following “non-appropriations” clause in all contracts between the County 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 and/or available to the ISC for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and/or available to the ISC, Catron County may immediately terminate this Agreement by giving the contractor written notice of such termination. Catron County’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 claim or a breach of contract claim against Catron County or the ISC or the State of New Mexico in the event of immediate or Early Termination of this Agreement by Catron County pursuant to lack of ISC funds.”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The County acknowledges and agrees that the County 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 ISC. Should the ISC terminate the agreement providing those funds before the scheduled termination date, Catron County 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, Catron County’s only liability shall be to pay the contractor for acceptable goods delivered and services rendered before the termination date.”

**ARTICLE XVII. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the County 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 verbal between the Parties hereto with regard to the subject matter hereof.

[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.

CATRON COUNTY

[Signature]

Signature of Official with Authority to Bind the County

By: Glyn Griffin

(Type or Print Name)

Chmn-Catron County Commission

(Type or Print Title)

Date: 1/14/18

KIEHNE MIDDLE FRISCO DITCH ASSOCIATION

[Signature]

Sammy Bustamante, President

[Date]

NEW MEXICO INTERSTATE STREAM COMMISSION

[Signature]

John W. Longworth, Acting Director

[Date]

Jeff Primm, Program Support

[Date]

Dominique Work, Office of the ISC General Counsel

[Date]
Entity: Catron County
Mailing Address: P.O. Box 507 Reserve N.M. 87830
Telephone: (575)533-6423 Email: kate.fletcher@catroncountynm.gov
Contact Name: Kate Fletcher
Project Description:
Construction of a new subsurface perforated steel collector pipe and a HDPE transmission pipe and required appurtenances along the Keihne-Middle Frisco ditch to allow for production of irrigation water when the surface streamflow is at a height insufficient to feed the existing ditch inlet structure.

Construction Proposal Description (include description of deliverables, need for third-party contractors, cost and completion date – can include additional attachments):
The Scope of Work for the completion of this project includes approximately 7,000 C.Y. of earthwork in site preparation by Catron County personnel as the in-kind contribution, the construction of approximately 1,570 L.F. of 30" diameter corrugated HDPE transmission line, the construction of a 430 feet long perforated infiltration pipe with fittings and installation to construct a fully operable system.

Site preparation primarily includes the removal and relocation of approximately 7,000 C.Y. of flood deposited sediment that is located within the entrance channel and in front of the existing diversion structure for the Keihne-Mid-Frisco ditch. This flood-deposited sediment is preventing surface water flow to reach the diversion and must be removed prior to the start of the construction of the perforated infiltration pipe. This work will be performed in wet conditions with poor underfoot load capacity. Because of the wet and poor underfoot conditions and the requirement that an excavator and hauler work in tandem, we expect this work task to require 15 working days. This work will be performed by the Catron County Road Department.

The construction of the 30" diameter corrugated HDPE transmission line will commence at its south terminus, at the junction box at the Sewer Plant Road culvert. The line will be constructed within the existing ditch easement to the downstream side of the existing diversion structure.
The construction of the 18" diameter perforated infiltration pipe will be performed within the area upstream of the existing diversion structure and will require the penetration and repair of the dam structure.

The combination of the 18" infiltration pipe and the 30" transmission line was chosen to fit the project funding.

**Bid Items:**

- Bid Lot #1 - 18" Collector Pipe  $ 188,048.37
- Bid Lot #4 - 30" Transmission Line  $ 138,069.82
- Bid Lot #6 - 18" Collector to 30" Transmission Adaptor  $ 12,974.40
- Total Amount of Bid  $ 339,092.59
- NMGRT on Bid Award @ 5.6875%  $ 19,285.89
- Total Cost Bid Scope of Work  $ 358,378.48

**Contracted construction is contracted to be completed within 90 days of commencement.**

- Existing Construction Contingency  $ 41,621.52
- Total ISC Funds  $ 400,000.00

**Catron County Match:** Based on opinion of volume and published operating costs

- In-kind Site Preparation; Equipment & Labor  $ 41,632.78

**Total Project**  $ 441,632.78

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**Signature(s) of authorized signatories:**

Kati Jillicc

Date: 1/26/18

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**ISC Use Only**

This Proposal is hereby approved/ not approved:

Ali Effati

Name: Gila Basin Manager
Title: Interstate Stream Commission

Date: 1/26/18

Proposal Form
Form Last Modified January 4, 2016
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
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. PROPOSAL STATUS

A. Third Party Obligations

Name of Contractor or Vendor: ________________________________

Amount of Third Party Obligation: ________________________________

Third Party Obligation Termination Date: ________________________________

B. Proposal Progress (provide anticipated date of commencement and completion for each phase, along with the percentage of Work completed to date)

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 proposal 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

__________________________________________________________________________
Signature of Fiscal Agent

__________________________________________________________________________
Date
WHEREAS, the Board of County Commissioners met at a special meeting at 9:00 a.m. December 14, 2017, in the Catron County Commission Chambers, 100 Main Street, Reserve, New Mexico; and,

WHEREAS, NMSA 1978, Section 4-37-1 (1995) provides that Counties have the power to, “provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants”; and,

WHEREAS, the Anti-Donation Clause, Article IX, Section 14 of the New Mexico Constitution, generally prohibits the County from directly or indirectly lending or pledging its credit or making any donation to or in aid of any person, association or public or private corporation; and,

WHEREAS, in 2011, the Board of County Commissioners requested that all ditch associations that were interested in benefiting from the ISC grant come forward and present their proposed improvements to the County; and,

WHEREAS, at its meeting on November 24, 2014, the Interstate Stream Commission ("ISC") awarded $500,000.00 for certain improvements to Catron County Ditches; and,

WHEREAS, during the course of 2015, the Catron County Administration held three workshops to identify ditch associations and acequias whose proposed projects could be legally funded; and,

WHEREAS, there were no ditches aside from the Kiehne Middle Frisco Ditch Association that came forward that were capable of benefiting from the governmental funds;

WHEREAS, after meetings with ISC staff, the County made a determination to proceed with the funding of $100,000 for engineering design for the Kiehne Middle Frisco Ditch;

NOW, THEREFORE, BE IT RESOLVED by the Catron County Board of Commissioners that the Board hereby allocates $400,000.00 from the AWSA grant by the ISC to fund construction of the improvements to the Kiehne Middle Frisco Ditch Association.
APPROVED, ADOPTED, AND PASSED on this 14th day of December 2017.

Glyn Griffin  
Chairman, District II

Anita A. Hand  
Vice-Chairman, District I

Van J. "Bucky" Allred  
Commissioner, District III

ATTEST:

M. Keith Hagle  
Catron County Clerk