March 8, 2018

David Ogilvie, Chairman
Gila Basin Irrigation Commission
PO Box 351
Gila, NM 88038

RE: Funding Agreement - State of New Mexico Interstate Stream Commission, Gila Basin Irrigation Commission, and Grant Soil and Water Conservation District Irrigation Diversion Structure Design and Engineering

Dear Mr. Ogilvie:

This letter shall serve as official notice to proceed up to $250,000.00 of the State of New Mexico Interstate Stream Commission, Gila Basin Irrigation Commission, and Grant Soil and Water Conservation District Irrigation Diversion Structure Design and Engineering Funding Agreement.

Please make sure that all invoices that are submitted reference Purchase Order number 55000-0000015924.

All deliverables under this contract will be due to the ISC as stated in the agreement.

If you have concerns or questions relating to this work request please contact Ali Effati at 505-827-5801.

Sincerely,

3/8/2018

Marcos Mendiola
Administrative Manager
Interstate Stream Commission

Attachment

Copy to:
Ali Effati
Ty Bays
Marcos Mendiola
## State of New Mexico
### Purchase Order

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

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<td>Pay Now</td>
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<td>STEVEN BAROS</td>
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**Supplier:** 0000050106
GRANT SOIL/WATER
CONSERVATION
DISTRICT
3082 32ND ST BYPASS
STE C
SILVER CITY NM 88061
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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| FY'17 Capitol Outlay Agreement for Design and Engineering  
Irrigation Diversion  
Structure Funding Agreement | 1.00 | EA | $150,000.00 | $150,000.00 | 07/01/2016 |

Schedule Total  
$150,000.00

Reduce PO amount by $1,100,000 to leave a balance of $150,000. Per Kim  
10/31/16 sjb

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Schedule Total  
$100,000.00

Item Total  
$100,000.00

Agreement attached. 7/1/16 sjb

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**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 uncommitted 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,
GILA BASIN IRRIGATION COMMISSION, AND
GRANT SOIL AND WATER CONSERVATION DISTRICT
IRRIGATION DIVERSION STRUCTURE DESIGN AND ENGINEERING
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”, the Gila Basin Irrigation Commission, hereinafter “GBIC”, and the Grant Soil and Water Conservation District. Collectively, the ISC, GBIC and the Grant Soil and Water Conservation District shall be 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, GBIC is comprised of six ditch associations who are all voting parties according to a September 25, 2007 Joint Powers Agreement; and

WHEREAS, the Grant Soil and Water Conservation District is a political subdivision of the state as defined in Section 73-20-44, NMSA 1978; and

WHEREAS, at its November 24, 2014 public meeting, the ISC approved an allocation of $1,250,000 from the New Mexico Unit Fund for the construction of permanent diversion structures to replace earthen diversions in the Cliff-Gila Valley, as proposed by GBIC; and

WHEREAS, part of the funding allocation from the ISC is intended for design and engineering for the permanent diversion construction project; and

WHEREAS, GBIC has authorized the Grant Soil and Water Conservation District (hereinafter referred to as the “Fiscal Agent”) to act as its fiscal agent and the
Fiscal Agent has agreed to act as the fiscal agent for the money awarded to GBIC by the Commission from the New Mexico Unit Fund for the project, as described more in depth below; and

WHEREAS, in accordance with the Commission’s decision, the ISC will provide funds to GBIC, through the Fiscal Agent, for design and engineering work 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. DESIGN PROPOSAL, AMOUNT OF FUNDING, REVERSION DATE AND PROJECT BUDGET

A. Project Description. The project that is the subject of this Agreement is an agricultural water conservation and environmental improvement project. Specifically, GBIC plans to improve water delivery to the respective ditches and minimize the environmental impact from frequent repairs to earthen diversion dams by replacing them with permanent structures, to accomplish the following:

- Minimize disruption of water delivery after high water events
- Minimize disturbances in river channel caused by point of diversion reconstruction
- Minimize disturbance of the riparian zone caused by reconstruction and/or repairs to diversion dams

This Agreement is limited to the design and engineering phase of the herein described project.

B. This irrigation diversion structure project is referred to throughout the remainder of this Agreement as the “Project.” The information contained in Article I(A) and in the Proposal Form, attached hereto as Exhibit A, is referred to collectively throughout the remainder of this Agreement as the “Proposal.” The Proposal is limited to the design and engineering for the Project and shall be incorporated into, and made a part of, this Agreement. GBIC and the Fiscal Agent shall reference the Proposal in all correspondence with, and submissions to, the ISC concerning the Proposal, including, but not limited to, Requests for Payment and reports.
C. **Amount of Funding.** Total reimbursements by the ISC to GBIC through the Fiscal Agent for the design and engineering phase shall not exceed One Hundred Fifty Thousand Dollars ($150,000) (the "Funding Amount"). Provided that if additional funds are needed by GBIC to carry out the work identified in the Proposal, the ISC may, in its sole discretion, reimburse GBIC through the Fiscal Agent up to a total of Two Hundred Fifty Thousand Dollars ($250,000). GBIC shall request these additional funds from the ISC in writing. If additional funds are provided pursuant to the terms of this Paragraph, those funds are included in the definition of the Funding Amount.

(i) **Administrative Fee for Fiscal Agent.** The Fiscal Agent shall receive an administrative fee for the documented services provided as fiscal agent to GBIC. The administrative fee shall include a percentage of the Funding Amount and costs necessary for any additional audit costs incurred by the Fiscal Agent. The percentage of the administrative fee must be approved by a vote of GBIC. For the design and engineering phase of the project the administrative fee approved by GBIC is five percent (5%) of the Funding Amount plus up to Four Thousand Dollars ($4,000) of any additional audit costs incurred by the Fiscal Agent due to their involvement in the Project.

D. **Reversion Date.** The Parties agree that the Funding Amount must be expended by June 30, 2018. 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 June 30, 2018, the Reversion Date, unless terminated by either 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 will no longer be available to GBIC or the Fiscal Agent. In the event of a conflict among the Funding Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Agreement, the Reversion Date herein shall control.

E. **Design and Engineering Proposal.**

(i) **Proposal, Generally.**

(1) GBIC agrees that it will expeditiously initiate and timely complete the design and engineering work for the Project, subject to third party contracting obligations between it and the Fiscal Agent as set forth below in Article III.

(2) GBIC will prepare and sign the Proposal, defined above, which will outline all steps to be completed to pursue and finance the design and engineering work for the Project, including, but not limited to, how the Funding Amount will be spent and any third party contracting required. The Fiscal Agent shall sign the Proposal before it is submitted to the ISC.
(3) No funds from the New Mexico Unit Fund shall be expended towards the design and engineering phase of the Project until the Proposal has been approved by the ISC.

(4) Except for the administrative fee addressed in Article I(C)(i) above, the Fiscal Agent will not be reimbursed from the New Mexico Unit Fund for any part of any expenditure that is not included in the Proposal approved by the ISC.

(5) GBIC agrees to make no change to the Proposal, without first submitting to the ISC for its approval a written amendment to the Proposal. Any written amendment must also be signed by the Fiscal Agent prior to submission to the ISC.

(ii) Submitting the Design and Engineering Proposal, GBIC shall submit to the ISC staff an executed Proposal on a form provided by the ISC staff and attached hereto as Exhibit A. This Proposal shall be incorporated into, and made a part of, this Agreement. The Proposal shall list how GBIC proposes to complete the design and engineering phase for the Project. The Proposal shall outline all the tasks for which GBIC, through the Fiscal Agent, plans on seeking reimbursement from the Funding Amount and all the tasks from which GBIC plans on obtaining additional funding or services from other sources. The Proposal shall be signed by the Fiscal Agent before it is submitted to the ISC.

F. GBIC shall commit to obtaining or providing any additional funds necessary if the Funding Amount is insufficient to pay for the entire cost of the tasks outlined in the Proposal.

ARTICLE II. LIMITATION ON ISC’S OBLIGATION TO MAKE REIMBURSEMENTS TO THE FISCAL AGENT

A. The Fiscal Agent shall be responsible for invoicing the ISC for all expenditures for goods and services received in connection with the Proposal approved by the ISC for completion of the design and engineering phase of the Project.

B. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Proposal, the Fiscal Agent shall be reimbursed by the ISC for certain expenses associated with the Proposal up to the limit of the Funding Amount. No reimbursement shall be made unless GBIC and the Fiscal Agent have received a Notice to Proceed (“NTP”) from the ISC. This Agreement and the disbursement of any and all amounts of the above-referenced Funding Amount are expressly conditioned upon the following:

i. The Fiscal Agent’s expenditures under this Agreement shall be made pursuant to the Fiscal Agent’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 and real property; and

ii. The Fiscal Agent 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; and

C. The Funding Amount shall not be used for purposes other than those specified in the Proposal and Scope of Work.

D. All purchases under this Agreement shall be made 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.

E. The Fiscal Agent shall not request reimbursement for any expenditures made on or after 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.

F. The Fiscal Agent shall not request reimbursement from the ISC in excess of the Funding Amount identified in Article I(C).

ARTICLE III. CONTRACTOR MANAGEMENT

The Fiscal Agent and GBIC shall jointly manage any third party contractor selected to complete the work set forth in the Proposal according to the terms set forth below.

A. The Fiscal Agent shall conduct all legal procurement required by the Proposal. Provided that the Fiscal Agent shall include a representative from GBIC on the evaluation committee for selection of any third party contractor required to complete the work set forth in the Proposal.

B. GBIC shall manage the work conducted by any third party contractor selected to complete the work set forth in the Proposal. Provided that the Fiscal Agent is responsible for all Requests for Payment submitted to the ISC, as set forth more fully in Article X.

ARTICLE IV. 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:
GILA BASIN IRRIGATION COMMISSION

Name: David Ogilvie  
Address: P.O. Box 351  
   Gila, NM 88038  
Email: dogilvie1@hotmail.com  
Telephone: (575) 574-4860

GRANT WATER AND SOIL CONSERVATION DISTRICT

Name: Ty Bays  
Address: 3082 32nd Bypass, Suite C  
   Silver City, NM 88061  
Email: grantswcd@zianet.com  
Telephone: (575) 388-1569

INTERSTATE STREAM COMMISSION

Name: Ali Effati  
Address: P.O. Box 25102  
   Santa Fe, NM 87504-5102  
Email: ali.effati@state.nm.us  
Telephone: (505) 827-5801

The Parties agree that they shall send all notices related to this Agreement to the above-mentioned persons by regular mail or e-mail. 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.

ARTICLE V. EXPENSION OF FUNDS

The Funding Amount must be “expended” on or before the Reversion Date, set forth in Article I or, if applicable, the Early Termination Date of this Agreement, set forth in Article VI, below. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Fiscal Agent or GBIC pursuant to a contract or purchase order with a third party.

ARTICLE VI. EARLY TERMINATION

A. Circumstances of Early Termination

Early Termination includes:
(i) Termination due to completion of the tasks outlined in the Proposal before the Reversion Date;
(ii) Termination due to expenditure of the total Funding 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 of the Parties may terminate this Agreement prior to the Reversion Date. Early Termination can be accomplished by providing the other Parties with a minimum of fifteen (15) days’ advance written notice of Early Termination. The Fiscal Agent and GBIC hereby waive 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 this Agreement.

B. Early Termination Due to Non-Appropriation

The terms of this Agreement appear to be independent of appropriations and authorization being made by the Legislature of the State of New Mexico, and available to the ISC, for the performance of this Agreement. However, the Legislature may, in its discretion, appropriate or un-appropriate funds for projects. If the Legislature un-appropriates funds that are earmarked for this Agreement, the ISC shall have the sole discretion to terminate this Agreement earlier than its Reversion Date, as of the effective date of the law making an un-appropriation. 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. The Fiscal Agent and GBIC hereby waive 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. 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 any Party, the ISC’s sole obligation to reimburse the Fiscal Agent and GBIC is expressly conditioned upon the limitations set forth in this Agreement.

ARTICLE VII. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. Suspension.

The ISC may choose, in its absolute discretion, to direct the Fiscal Agent and GBIC 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 Fiscal Agent and GBIC in accordance with the provisions of this Agreement.

If a Suspension directive is issued:

(i) Upon the date the GBIC and the Fiscal Agent receive written notice of Suspension from the ISC, they 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.

(iii) The ISC may direct the GBIC and the Fiscal Agent 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 Fiscal Agent 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 GBIC and the Fiscal Agent receive 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.

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 GBIC and the Fiscal Agent under this Agreement, the ISC may, but is not obligated to, require GBIC and the Fiscal Agent 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 Fiscal Agent and GBIC 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 VIII. AMENDMENT

This Agreement can only be amended by a written instrument duly executed by all the Parties hereto.

ARTICLE IX. REPORTS AND INSPECTION

A. Periodic Reports

In order that the ISC staff may adequately monitor the Proposal, GBIC shall submit to the ISC Periodic Reports giving status updates on the work in the Proposal. The Periodic Report shall be submitted by GBIC but shall also be signed by the Fiscal Agent and shall be submitted on a form prescribed by the ISC, attached hereto as Exhibit C.

The Periodic Report shall be due quarterly on 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 as set forth below. The ISC may, in its discretion, change the reporting period from time to time by giving the Fiscal Agent and GBIC 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

GBIC shall submit to the ISC a Final Report for the Proposal, including the full design and engineering report procured under the Proposal. The Final Report shall be submitted by GBIC and also signed by the Fiscal Agent. The Final Report shall be submitted on a form provided by the ISC and identical to the form used for Periodic Reports, and shall contain such information as the ISC may require. The Final Report form is attached hereto as Exhibit C. The ISC shall provide GBIC 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 Reversion Date or within twenty (20) days of the date of Early Termination, whichever occurs first.

C. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Fiscal Agent must maintain records pursuant to this Agreement, the ISC may (i) request such additional information regarding the work conducted under the Proposal as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, on-site inspections. GBIC shall respond to such requests for additional information within a reasonable period of time, as established by the ISC. The ISC may inspect progress under the Proposal 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 IX.

D. ISC Oversight

Pursuant to the limitations stated in Article XV, any inspection, review and approval of the Proposal 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 will not be interpreted as any warranty or guarantee of any kind.

ARTICLE X. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. Request for Payment.

The Fiscal Agent shall request payment by submitting a Request for Payment, in the format of the document attached hereto as Exhibit B. Requests for Payment are subject to the following procedures:

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

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

(iii) Each Request for Payment must be certified as approved for payment by the ISC representative who is currently providing oversight of the Project; and

(iv) When the Fiscal Agent submits a Request for Payment to the ISC based upon invoices from a third party contractor or vendor received, the Fiscal Agent 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 Fiscal Agent to the ISC within thirty (30) days of the date each respective invoice is received by the Fiscal Agent from a third party contractor, or within thirty (30) days from the date this Agreement expires or is terminated. Provided, however, 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 Fiscal Agent 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 will not be reimbursed.

C. Payment Processing.

(i) The Fiscal Agent’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 of Requests for Payment. The ISC has the right to reject a Request for Payment unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Proposal and that the expenditures, and the Fiscal Agent and GBIC, 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 Fiscal Agent or GBIC.

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

ARTICLE XI. CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to both GBIC and the Fiscal Agent:

(i) The Funding Amount must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, or any local procurement ordinance, where applicable.

(ii) The Project, including the work set forth in the Proposal, 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) to which the Fiscal Agent or GBIC is a party 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) GBIC and the Fiscal Agent shall not, at any time, convert any property acquired or developed with the Funding Amount to uses other than those specified in the Proposal without the ISC’s express, advance, written approval.

(v) The Fiscal Agent and GBIC 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 Fiscal Agent and GBIC agree to assure that no person shall be excluded from employment with Fiscal Agent and GBIC, 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 Fiscal Agent or GBIC is found not to be in compliance with these requirements during the life of this Agreement, they agree to take appropriate steps to correct any deficiencies. The Fiscal Agent and GBIC’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 obtain any necessary easements and all required permits required by public entities.

(vii) The Fiscal Agent and GBIC shall be solely responsible for the construction, maintenance, and operation of all equipment and improvements associated with the Project. The Fiscal Agent and GBIC agree that the State of New Mexico and its agencies, including the OSE/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, including the work set
forth in the Proposal. This provision shall survive termination of this Agreement.

(viii) GBIC 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(s) to assure satisfactory operation of the Project and service to the members of GBIC. GBIC’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 Fiscal Agent hereby represents and warrants the following:

(i) The Fiscal Agent is recognized as a political subdivision of the state pursuant to NMSA 1978, Chapter 73, Article 20, and has the legal authority to receive and expend Project funds.

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

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

(iv) The Fiscal Agent shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Fiscal Agent specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Funding Amount, during his/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 Fiscal Agent shall require all of
its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(v) The Fiscal Agent certifies that no funds have been paid, or will be paid, to spouses, children, parents, brothers and sisters of members of the Fiscal Agent'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 Fiscal Agent certifies that no funds have been paid or will be paid, by, or on behalf, of the Fiscal Agent, 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 Third Party Obligation. The Fiscal Agent 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.

(vii) The Fiscal Agent 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.

C. GBIC hereby represents and warrants the following:

(i) This Agreement has been duly authorized by GBIC. GBIC'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 GBIC to sign this Agreement, the Proposal, and the Periodic and Final Reports. Once executed by GBIC, this Agreement shall constitute a binding obligation on GBIC, enforceable according to its terms.

(ii) This Agreement, and GBIC's obligations hereunder, do not conflict with any federal or state law, ordinance or resolution applicable to the GBIC, GBIC's governing documents, or any judgment or decree to which GBIC is subject.

(iii) GBIC shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. GBIC specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Funding Amount, during his/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, GBIC shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(iv) GBIC certifies that no funds have been paid, or will be paid, to spouses, children, parents, brothers and sisters of members of the GBIC’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.

(v) GBIC certifies that no funds have been paid or will be paid, by, or on behalf, of GBIC, 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 Third Party Obligation. GBIC 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 XII. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS: PROJECT RECORDS

A. The Fiscal Agent shall be strictly accountable to the ISC for receipts and disbursements relating to the Project’s funds. The Fiscal Agent 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, to ensure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project’s completion, the Fiscal Agent shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, 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 Fiscal Agent 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, if the State Auditor finds that any or all of these funds were improperly expended, the Fiscal Agent may be required to reimburse the New Mexico Unit Fund of the ISC for any and all amounts found to be improperly expended.
ARTICLE XIII. IMPROPERLY REIMBURSED FUNDS

If the ISC determines that part, or all, of the Funding Amount was improperly reimbursed to the Fiscal Agent, including, but not limited to, funds reimbursed to the Fiscal Agent based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Fiscal Agent or GBIC, or violation of this Agreement, the Fiscal Agent shall be required to return such funds to the ISC for disposition in accordance with law.

ARTICLE XIV. LIABILITY

None of the Parties shall be responsible for liability incurred as a result of another 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 XV. LIMITATIONS

A. Any inspection, review and approval of the Project itself, 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 any warranty or guarantee of any kind. The GBIC and the Fiscal Agent’s contractors and consultants will remain responsible for the completion and success of the project. Inspection, review or approval by the ISC or ISC staff does not relieve the Fiscal Agent, GBIC, or any professional engineer hired by the Fiscal Agent 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. GBIC and the Fiscal Agent shall implement the Project in all respects. GBIC and the Fiscal Agent shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Fiscal Agent and GBIC shall finance or provide Project engineering, permitting, and all Project cost overruns. The Project is GBIC’s and the Fiscal Agent’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 XVI. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR IN PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Fiscal Agent acknowledges and agrees that it shall include the following termination clause in all contracts between it and third parties that are (i) funded in whole or in part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

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"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and/or by the State of New Mexico, and available to the ISC for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and/or by the State of New Mexico, and available to the ISC, the Grant Soil and Water Conservation District may immediately terminate this Agreement by giving written notice of such termination. The 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 Grant Soil and Water Conservation District, or the ISC, or the State of New Mexico in the event of immediate or early termination of this Agreement by the Grant Soil and Water Conservation District pursuant to lack of ISC funds."

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

The Fiscal Agent acknowledges and agrees that the Fiscal Agent shall include the following termination clause in all contracts that are (i) funded in whole or in 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, the Grant Soil and Water Conservation District 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 Grant Soil and Water Conservation District’s only liability shall be to pay the Contractor for acceptable goods delivered and services rendered before the termination date."

**ARTICLE XVIII. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the GBIC, the Fiscal Agent, 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 executed this Contract as of the date of last signature.

GILA BASIN IRRIGATION COMMISSION

By: ___________________________ Date: 3/15/2016
Name: DAVID OGILvie
Title: CHAIRMAN GILA BASIN IRR. COM.

GRANT SOIL AND WATER CONSERVATION DISTRICT

By: ___________________________ Date: 3/14/2016
Name: ___________________________
Title: CHAIRMAN

INTERSTATE STREAM COMMISSION

By: ___________________________ Date: 4/4/2016
Deborah Dixon, P.E., Director
Interstate Stream Commission

Approved as to Agency budget sufficiency:

By: ___________________________ Date: 3/23/16
Curtis Eckhart, Director
Program Support

Approved as to legal sufficiency:

By: ___________________________ Date: 3/21/16
Amy I. Haas
ISC General Counsel
Entity: 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).

Design and Engineering Proposal Description (include description of deliverables, need for third-party contractors, cost and completion date – can include additional attachments):

- Consultations between selected engineer and GBIC.
- Design investigations and planning.
- Develop and apply screening criteria.
- Evaluate and rank alternative designs.
- Provide conceptual design drawings.
- Provide 30% designs.
- Provide draft and final PER.
- Estimated Cost for Design and Engineering: $150,000
- Due date: No later than December 31, 2020.

Signature(s) of authorized signatories:

[Signature]
Assistant Secretary

Date: August 7, 2016

ISC Use Only

This Proposal is hereby approved/ not approved.

[Signature]
Name: [Name]
Title: Water Resource Specialist, Sr.
Interstate Stream Commission

Date: 8/12/16
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 ☐ ___________________________

Percent of Proposal Work Completed to Date ___________________________

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: ___________________________

September 17, 2015
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

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

Engineer's seal

Printed name

September 17, 2015