

**AMENDMENT No. 1 TO
EFFLUENT RE-USE FUNDING AGREEMENT
BETWEEN
THE NEW MEXICO INTERSTATE STREAM COMMISSION
AND THE CITY OF DEMING**

The New Mexico Interstate Stream Commission (“ISC”) and the City of Deming (the “City”) entered into an Effluent Re-Use Funding Agreement (the “Agreement”) on December 10, 2015. The ISC and the City (collectively the “Parties”) now wish to amend the Agreement to reflect changed conditions, and to correct certain inaccuracies in the Agreement.

WHEREAS, in November 2013, Souder Miller and Associates (“SMA”), an engineering firm, prepared an appraisal level engineering report (“PER”) for the ISC regarding the City’s proposed effluent re-use system expansion project; and

WHEREAS, the City has found better approaches for treating and storing the effluent than originally envisioned in the PER. These approaches, which largely utilize existing infrastructure in the Waste Water Treatment Plant (“WWTP”), have resulted in a more cost-effective project that achieves the main goal of delivering Class 1A effluent to the high school field, Hooten Park and Scout Park for irrigation ;and

WHEREAS, the PER indicated that, in order for the expansion of the City’s existing effluent re-use system to function, an electronic control system (“SCADA system”) is necessary for the meters, pumps and valves; and

WHEREAS, as of March 31, 2019, items 1 through 10, and item 15 on the original Exhibit A attached to the Agreement have been completed and paid for; and

WHEREAS, the City has informed the ISC that it plans on using the funds remaining under the Agreement to begin construction of the SCADA system; and

WHEREAS, any potential changes in the future will continue to be verified by the ISC to ensure consistency with the main goal of the project, while not adding to the scope of the portion of the project funded by the ISC, or not exceeding the overall allocation by the ISC.

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

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 The text of Article I.A. is hereby withdrawn and replaced with the following text:

“Project Description. The project that is the subject of this Agreement is the expansion of the City’s existing effluent reuse system. Specifically, the project includes design, bid and construction of the following items based on the general approach of the PER prepared by SMA: A new pipeline along Poplar Street from Country Club Road to near the high school (“trunk line”), including pipes and valves to connect the trunk line to the existing system, a new pipeline around the fields to be connected to the trunk line; and a new SCADA system.

This effluent re-use system expansion project is referred to throughout the remainder of this Agreement as the "Project." The information contained in this Amended Article I.A. and in the revised Scope of Work and Budget Form attached to this Amendment No. 1 as Exhibit A – Amended, is referred to collectively in the Agreement as the "Project Description." This revised Scope of Work shall be incorporated into and made a part of the Agreement. The City agrees to make no changes to the Scope of Work and Budget Form without first submitting to the ISC staff, for its approval, a written amendment to the Form. The City shall reference the project's number in all correspondence with, and submissions to, the ISC concerning the project, including, but not limited to, Requests for Payment, and reports."

2. Exhibit A to the Agreement is hereby withdrawn and replaced with the new Exhibit A – Amended attached to this Amendment No. 1.
3. Article I.C. is hereby amended to reflect that the Reversion Date for the Agreement is June 30, 2020. All references in the Agreement to the Reversion Date henceforth refer to June 30, 2020.
4. Article III is hereby modified to add Mr. Ali Effati as an Alternate Representative for the ISC. Mr. Effati's contact information is as follows:

Name: Ali Effati
Title: Gila Basin Manager
Address: 407 Galisteo Street (87501)
P.O. Box 25102
Santa Fe, NM 87504-5102
E-mail: Ali.Effati@state.nm.us
Telephone: (505) 827-5801
Fax: (505) 827-6188

5. The text of Article V.B. is hereby withdrawn and replaced with the following text:

"The funds provided by the ISC to perform this Agreement reside in the New Mexico Treasury. While these funds were not appropriated to the Treasury by the New Mexico Legislature, the Legislature may, in its discretion, un-appropriate or withdraw authorization for the expenditure of these funds. If the Legislature un-appropriates funds that the ISC has earmarked for this Agreement, or withdraws authorization for the expenditure of these funds, the ISC shall have the sole discretion to terminate this Agreement prior to the Reversion Date, as of the effective date of the law un-appropriating the funds. The ISC's decision as to whether sufficient appropriations or authorizations exist shall be accepted by the City and shall be final. The City hereby waives any right to assert an impairment of contract claim or a breach of contract claim against the ISC or the State of New Mexico in the event of Early Termination of this Agreement by the ISC pursuant to this section of the Agreement."

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

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

7. The Parties wish to amend Exhibit B to the Agreement to reflect the certification language amended through paragraph 6 above. Therefore, Exhibit B to the Agreement is replaced in its entirety with the revised Exhibit B that is attached to this Amendment No. 1.
8. The Parties wish to amend Exhibit C to the Agreement to provide an updated form to the City. Therefore, Exhibit C to the Agreement is replaced in its entirety with the revised Exhibit C that is attached to this Amendment No. 1.
9. The text of Article IX.C.(ii) is hereby modified to read as follows:

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

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

“The AWSA 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, and any applicable local procurement ordinances.

All terms of the Agreement not expressly amended by this Amendment No. 1 remain in full force and effect upon enactment of this Amendment No. 1.

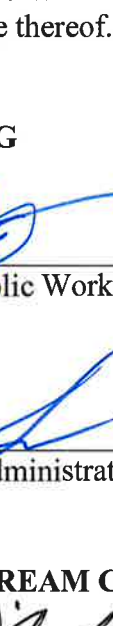
IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date of last signature thereof.

CITY OF DEMING



Jim Massengill, Public Works Director

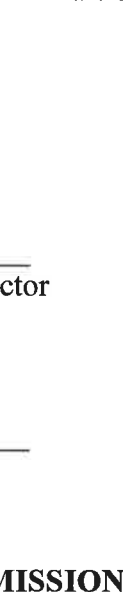
4/24/2019
Date



Aaron Sera, City Administrator

4/24/2019
Date


INTERSTATE STREAM COMMISSION



John H. Blanton
for, ISC Director
STATE ENGINEER

5/29/19
Date

Approved as to legal sufficiency:



Dominique M. Work
ISC Office of the General Counsel

5/13/19
Date



**STATE OF NEW MEXICO
 INTERSTATE STREAM COMMISSION
 Arizona Water Settlements Act of 2004
 Non-NM Unit Project
 Scope of Work and Budget Form
 Exhibit A- Amended**



Name: City of Deming Effluent Reuse	Project #: AWSA 1010
Mailing Address: 309 S. Gold Avenue	AWSA Amount: \$1,750,000
Deming, NM 88030	
Telephone: 575-546-8848 x 131	
Contact Name: Jim Massengill	

Project Description:

Design, bid and construction of the following items based on the general approach of the PER prepared by SMA: A new pipeline along Poplar Street from Country Club Road to near the high school ("trunk line"), including pipes and valves to connect the trunk line to the existing system, a new pipeline around the fields to be connected to the trunk line; and a new SCADA system.

Task #	Description	Deliverables	Est. Cost Pre Tax (\$)	Est. Cost After Tax (\$)	Funding Source (AWSA/ Other)	Date Completed or Anticipated
1	NM DOT Permits	Permits	600.00	643.21	City	COMPLETE Mar 2017
2	Environmental & Soils	Report, application, permit	10,000	10,831.25	City	Aug 2016
3	Topologic Survey	Report, drawings	11,000	11,914.37	City	May 2016
4	30% Engineering Design	Report	52,300	56,429.28	City	Jan 2017
5	60% Engineering Design	Report	23,685.27	25,654.11	City	Sept 2017
6	Bid Assistance	Bid Package, Pre-bid and bid Openings Meetings, Bid summary and Recommendation	1625	1,760.08	City	Jun 2017
7	60% Engineering Design	Report	28,614.73	30,787.66	AWSA Grant	Sept 2017
8	Bid Assistance	Bid Package, Pre-bid and bid Openings Meetings, Bid summary and Recommendation	4,875	5,280.23	AWSA Grant	Sept 2018

9	90% Engineering Design	Drawings, material list, walk-through	37,180	40,222.81	AWSA Grant	July 2018
10	Final Engineering Design	Estimate of probable construction costs, construction documents package	10,000	10,831.25	AWSA Grant	Aug 2018
11	Electrical system design	Professional Services	7,140	7,733.52	AWSA Grant	June 2018
12	Construction Services	Change Orders, Pay applications, Contractor's questions, Request for Information (RFI)	28,000	30,327.50	AWSA Grant	ANTICIP. May 31, 2019
13	Construction Observation	Inspection reports, review and approval of contractor invoices.	37,000	40,075.62	AWSA Grant	ANTICIP. May 31, 2019
14	Record drawings	Drawings	3000	3,249.38	AWSA Grant	ANTICIP. May 31, 2019
15	Construction Costs	Installation of project elements as detailed in Engineering drawings and Engineers' estimates of probable construction costs.	1,460,962	1,581,492	AWSA Grant	ANTICIP. May 31, 2019
Subtotal AWSA Grant (items 7-15)				\$1,750,000		
Subtotal City's Local Match (items 1-6)				\$107,232		
Water Trust Board Funding (WTB310) used for Alt E of PER				\$800,356		
City's Local Match for WTB310				\$141,000		
Grand Total for the Overall Project				\$2,798,588		

Signatures of members of the governing body:



Public Works Director



City Administrator

Date: 4/3/2019

ISC USE ONLY

This Scope of Work and Budget is hereby approved / not approved. (Circle one.)



Name



Date

GILA ENGINEER

Title

Interstate Stream Commission