

## **Generic Term Sheet for Lower Rio Grande Water Conservation Pilot Program**

*The following sets forth generic terms for Grant Agreements for Participants in the Lower Rio Grande Water Conservation Pilot Program. Actual terms of Grant Agreements may vary depending on a number of factors including, but not limited to, the number of applications received, the number of grants awarded, the Award Tiers (defined below) proposed and awarded, and the nature of an applicant's ownership/control over Participating Acreage (defined below). The final terms of grant awards and grant agreements are subject to acceptance and approval by the New Mexico Interstate Stream Commission ("Commission").*

### **Background Statement: Goal and Objectives of the Water Conservation Pilot Program**

- Program's objective is to implement a groundwater conservation pilot program beginning in the Fourth Quarter 2020 for the Lower Rio Grande Underground Water Basin through grants for voluntary cessation of water diversions for irrigation. The grants will be funded through a Five Million Dollar (\$5,000,000) appropriation for the Program made by the New Mexico Legislature.

### **Draft Terms for Grant Agreement**

- **Key Definitions:**
  - *"Grant Activity"* means the voluntary cessation of water diversions for irrigation of the Participating Acreage pursuant to the term of a Grant Agreement between the Participant and the Commission.
  - *"Participating Acreage"* shall mean the acreage/fields identified in the Grant Agreement.
  - *"Subject Water"* shall mean the water available under the water right(s) identified in the Grant Agreement.
  - *"Term"* the twelve (12) month term to be identified in the Grant Agreement.
  - *"Qualifying Acreage"* means, for purposes of this Term Sheet, acreage that (i) has surface water and groundwater rights, or groundwater only water rights, (ii) has been actively farmed for at least 4 of the last 5 (either 2015-2019 or 2016-2020), and (iii) consist of ten or more acres that meet the previous criteria.

- **Amount of Grant Award:** The amount of the Grant Award will depend on the amount of Qualifying Acreage and Award Tier(s) accepted by Commission for participation in the Program:

Award Tiers
\$400/acre
\$500/acre
\$600/acre
\$700/acre
\$800/acre

- **Conditions of Grant:**
  - Full and faithful performance of the Grant Activity during the entire Term.
  - Cooperation in efforts to verify performance of Grant Activity.
  - Truthfulness of statements and representations in Grant applications and warranties in Grant Agreement.
- **Payment of Grant Awards:**
  - An initial payment of 25% of the annual Grant Award will be immediately processed for payment after of full execution of Grant Agreement (including acceptance of same by Commission) and receipt of all documentation required to establish Participant as a vendor of Commission.
  - A second payment of 50% of the Grant Award at month three of the Term.
  - And a final payment of 25% of the Grant Award at the end of the Term.

**ALL PAYMENTS ARE CONTINGENT UPON VERIFICATION OF PERFORMANCE OF GRANT ACTIVITY. IN THE EVENT OF NON-PERFORMANCE OF THE GRANT ACTIVITY, PARTICIPANT MAY BE REQUIRED TO REPAY ALL OR A PORTION OF THE GRANT AWARD BASED UPON PRO-RATA PORTION OF THE TERM AND/OR PARTICIPATING ACREAGE IMPLICATED BY NON-PERFORMANCE OF THE GRANT ACTIVITY. THE COMMISSION SHALL HAVE A LIEN TO SECURE REPAYMENT OBLIGATIONS AND SHALL BE ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEYS FEES INCURRED TO RECOVER GRANT AWARD PAYMENTS IN THE EVENT OF NON-PERFORMANCE OF THE GRANT ACTIVITY.**

- **Verification Process.** The verification process may include, among other things, physical property inspections, meter readings, inspection of books and records, audit examinations and such other activities as may be reasonably necessary in order to verify performance of Grant Activity, as determined by the Commission in its sole discretion from time to time. Participant will be provided with 48 hours advance notice of inspections. Anticipated inspection times:
  - 1<sup>st</sup> within 2 months of beginning of Term

- 2<sup>nd</sup> early in growing season
  - 3<sup>rd</sup> mid-late growing season
  - 4<sup>th</sup> towards end of the growing season
- **Warranties and Representations:**
    - *Rights to Use Water and Property:*
      - The Participant has the legal right and authority to use the Subject Water and the Participating Acreage under New Mexico law to perform the Participant's obligations under the Grant Agreement. To the best of the Participant's knowledge, no legal impediment exists regarding the Participant's ability to perform the Participant's obligations under the Grant Agreement; and
      - Other than the Lower Rio Grande Adjudication, Case No. D-307-CV-96-888, there is no known or anticipated claim, nor any known or anticipated action or proceeding before any court, tribunal, or other body, that could affect the Participant's right, title, and/or interest to the water or the land that are the subject of this Grant Agreement.
    - *Intent to Use Water.* The Participant had the intent, and all necessary rights, to divert the Subject Water, for beneficial consumptive use, during the Term. The Subject Water was diverted in the past as described in the Grant Agreement.
    - *Participant Obligated to Submit Correct Information.* All information submitted by the Participant in the Grant application and provided in support of the Grant Agreement is true and correct as of the time of submittal and as of the Effective Date. Participant will notify the Commission in writing of any changes to the information provided including, but not limited to, changes in ownership of the Participating Acreage and/or Subject Water.
  - **Recorded Notice.** A Notice of Grant Agreement providing record notice of the Grant Activity and Commission remedies upon default will be recorded in the county or counties where the Qualifying Acreage is located.