

**STATE OF NEW MEXICO  
INTERSTATE STREAM COMMISSION  
FUND 12-1397 ACEQUIA CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this 6 day of February, 2013, by and between the New Mexico Interstate Stream Commission, 407 Galisteo, St Santa Fe, New Mexico, 87501, hereinafter called the "NMISC", and Santa Cruz Acequia, located in Rio Arriba/Santa Fe County and hereinafter called the "Acequia". The Effective Date of this Agreement is the date of last signature by both the NMISC and the Acequia.

**RECITALS**

**WHEREAS**, in the Laws of 2012, Chapter 64, the Legislature made an appropriation to the NMISC, funds from which the NMISC is making available to the Acequia pursuant to this Agreement; and

**WHEREAS**, the NMISC is granting to Acequia, and the Acequia is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

**WHEREAS**, under NMSA § 72-14-3 (1978), the NMISC is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all things necessary to protect, conserve and develop the water and stream systems of this state.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

Thirty Thousand Dollars (\$30,000.00)  
APPROPRIATION REVERSION DATE: 30-JUN-2016  
Laws of 2012, Chapter 64, Section 15, Paragraph 6 Thirty Thousand Dollars (\$30,000.00) to make improvements, including cementing, for the Santa Cruz Acequia in Rio Arriba and Santa Fe County.

The Acequia's total reimbursements shall not exceed the appropriation amount of Thirty Thousand Dollars (\$30,000.00) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, (Not applicable) hereinafter referred to as "Adjusted Appropriation Amount."

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<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." See, Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation 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 herein Article I. A., the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Acequia shall reference the Project's number in all correspondence with and submissions to the NMISC concerning the Project, including, but not limited to, requests for payment and reports.

#### B. Project Budget and Scope of Work

##### (1) Project Budget, Generally.

- (a) The Acequia agrees that it will expeditiously initiate and timely complete in all respects, the Project as outlined in the Project Budget ("Project Budget").
- (b) The Acequia shall not proceed with the Project until it receives written approval from ISC approving the Project Budget.
- (c) No funds shall be expended until the Project Budget is approved by ISC and attached hereto and made part of this Agreement as Exhibit 3.
- (d) The Acequia will not be reimbursed from the Funds for all or any part of an expenditure that is not included in the approved Project Budget.
- (e) The Acequia agrees to make no change to the Project Budget Exhibit 3, without first submitting a written request to ISC and obtaining an Amended Capital Project Agreement.

- (2) Submitting the Project Budget. The Acequia shall submit to ISC an executed Project Budget on a form provided by ISC, Exhibit 3, that shall be attached to, incorporated into, and made a part of this Agreement. Exhibit 3 shall list the proposed tasks that the Acequia believes are reasonably necessary to accomplish the Project and for which the Acequia will seek reimbursement from the appropriated funds.

## **ARTICLE II. LIMITATION ON NMISC'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO ACEQUIA**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Acequia shall only be reimbursed monies for which the NMISC has issued and the Acequia has received a Notice of NMISC's

Obligation to Reimburse<sup>2</sup> Acequia (hereinafter referred to as “Notice of Obligation”). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (1) Irrespective of any Notice of Obligation, the Acequia’s expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Acequia and/or the services have been rendered for the Acequia); and
- (2) The total amount received by the Acequia shall not exceed the lesser of: (a.)The Adjusted Appropriation Amount identified in Article I. A., herein or (b.)The total of all amounts stated in the Notice(s) of Obligation evidencing that the NMISC has received and accepted the Acequia’s Third Party Obligation(s); and
- (3) The Acequia’s expenditures were made pursuant to the Acequia’s legal procurement in accordance, but without limitation, to the New Mexico Procurement Code, NMSA §§ 13-1-28 through 13-1-199 (2006) 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, hereinafter referred to as “Third Party Obligations”; and
- (4) The Acequia’s submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein; and
- (5) The Acequia’s submittal of documentation of all Third Party Obligations and amendments thereto (including terminations), to the NMISC and the NMISC’s issuance and the Acequia’s receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
  - (a) The Acequia shall submit to the NMISC one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Acequia.
  - (b) Acequia acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
  - (c) The NMISC may, in its absolute discretion, issue to Acequia a Notice of Obligation for the particular amount of that Third Party Obligation that

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<sup>2</sup> “Reimburse” as used throughout this Agreement includes NMISC payments to the Acequia for invoices received, but not yet paid, by the Acequia from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Acequia.

only obligates the NMISC to reimburse Acequia's expenditures made on or before the Reversion Date or an Early Termination Date.

- (d) The date the NMISC sends, by mail or email, the Notice of Obligation is the date that the NMISC's Notice of Obligation is effective. After that date, the Acequia is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Acequia shall implement, in all respects, the Project. The Acequia shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Acequia shall finance its share (if any) of the costs of the Project, including all Project overruns except as otherwise provided by the U.S. Army Corp of Engineers Section 215 and Section 1113 Acequia Programs, and under the ISC's Acequia 80/20 Acequia Grant Program (if applicable, Exhibit 4)..

C. Project funds shall not be used for purposes other than those specified in the Project Description and the tasks described in the Project Budget. All Project expenditures will conform to the Project Budget, attached hereto as Exhibit 3.

D. The Acequia 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 §§ 13-1-28 through 13-1-199 (2006) and the OSE's rules and regulations that govern such projects. Failure to observe the New Mexico Procurement Code is a misdemeanor and may result in criminal and civil penalties.

Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

E. The NMISC will make no payment for a percentage of a task cost that is greater than the percentage of the task completed pursuant to the Agreement and certified in the Project Budget, Exhibit 3, and the Request For Payment Form, Exhibit 2. For example, Project payments will be made as follows: when the Acequia certifies on the Request for Payment Form Exhibit 2 that it has completed 50% of a task listed on the Project Budget Exhibit 3, the ISC will reimburse the Acequia for 50% of the allowable costs of the task, but in no instance will ISC reimburse the Acequia for an amount greater than the Project task completion percentage certified in the Request for Payment, Exhibit 2.

F. Additional Obligations of the Acequia:

- (1) The contractor for the Project will be required to post a performance bond in accordance with the requirements of NMSA § 13-4-18 (1978), and obtain any necessary easements and all permits, as required by public entities.
- (2) Operation and Maintenance.

- (a) The Acequia shall be solely responsible for the construction, maintenance, and operation of all equipment and improvements associated with the Project. The Acequia agrees that the State of New Mexico and its agencies, including the OSE/ISC and their 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.
- (b) The Acequia 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 the Acequia. The Acequia's obligation to maintain the Project will survive Project Close Out, and last for the Project's design life.

**ARTICLE III. NOTICE PROVISIONS AND ACEQUIA AND NMISC DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Acequia and the NMISC hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Acequia: ACEQUIA DE SANTA CRUZ  
 Name: MEL MARTINEZ  
 Title: TREASURER  
 Address: 1513 MARTINEZ LAKE ESP. N.M. 87532  
 Email: \_\_\_\_\_  
 Telephone: 1-505-253-4544  
 FAX: \_\_\_\_\_

NMISC: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_

The Acequia and the NMISC agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular 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 shall first occur. 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 indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Acequia, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the NMISC. It shall terminate on June 30, 2016 (the Reversion Date) unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V. herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Acequia to "encumber" the Project funds 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 a particular quantity of goods are delivered to and received by the Acequia or title to the goods is transferred to the Acequia and/or as of the date particular services are rendered for the Acequia. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Acequia pursuant to a contract or purchase order with a third party.

**ARTICLE V. EARLY TERMINATION**

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (1) Termination due to completion of the Project before the Reversion Date; or

- (2) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (3) Termination for violation of the terms of this Agreement; or
- (4) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the NMISC or the Acequia may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Acequia hereby waives any rights to assert an impairment of contract claim against the NMISC or the State of New Mexico in the event of Early Termination of this Agreement by the NMISC pursuant to Article V. A.

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement and available to the NMISC. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the NMISC shall early terminate this Agreement for non-appropriation by giving the Acequia written notice of such termination, as of the effective date of the law making the non-appropriation. The NMISC’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Acequia and shall be final. Acequia hereby waives any rights to assert an impairment of contract claim against the NMISC or the State of New Mexico in the event of Early Termination of this Agreement by the NMISC pursuant to Article V.B.

**C. Limitation on NMISC’s Obligation to Make Grant Disbursements to Acequia in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the NMISC’s sole obligation to reimburse the Acequia is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The NMISC may choose, in its absolute discretion, to direct the Acequia to suspend entering into new and further obligations.

- (1) The Acequia shall immediately suspend entering into new or further written obligations with third parties upon the date the Acequia receives written notice given by the NMISC; and

- (2) The NMISC is, upon the date the Acequia receives written notice given by the NMISC, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (3) The NMISC may direct the Acequia to implement a corrective action plan in accordance with Article VI. D. herein.

B. In the event of Suspension of this Agreement, the NMISC's sole obligation to reimburse the Acequia is expressly conditioned upon the limitations set forth in Article II, herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Acequia receives written notice given by the NMISC informing the Acequia that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the NMISC will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the NMISC chooses, in its absolute discretion to direct the Acequia to suspend entering into new or further written obligations with third parties pursuant to Article VI.A., the NMISC may, but is not obligated to, require the Acequia to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the NMISC and be signed by the Acequia. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

A. Paper Periodic Reports

In order that the NMISC may adequately monitor Project activity, the Acequia shall submit to the NMISC Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the NMISC. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The NMISC shall provide the Acequia with a minimum of thirty (30) days advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the NMISC and ending upon the submission of a Paper Final Report for the Project. The NMISC may, in its discretion, change the reporting period from time to time by giving Acequia 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. Paper Final Report**

The Acequia shall submit to the NMISC and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the NMISC and contain such information as the NMISC may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The NMISC shall provide Acequia with a minimum of thirty (30) days advance, written notice of any change to the Final Report format or content. The Paper 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, which ever first occurs.

**C. Paperless Reporting**

In lieu of the paper reports described in subparagraphs A and B of this Article, the NMISC may, in its discretion, require Acequia to report periodic and final Project activity by entering such Project information as the NMISC and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The NMISC shall give Acequia a minimum of thirty (30) days advance, written notice of the switch to or from paperless reporting. The NMISC shall also give Acequia a minimum of thirty (30) days advance written notice of any changes to the information the Acequia is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the NMISC and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper 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, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Acequia must maintain records pursuant to Article VIII., the NMISC may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Acequia shall respond to such requests for additional information within a reasonable period of time, as established by the NMISC. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Acequia shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (1) The Acequia must submit one original and one copy of each Request for Payment; and
- (2) Each Request for Payment must contain proof of payment by the Acequia or liabilities incurred by the Acequia in the form of a notarized certification by Acequia's designated representative in Article III. herein, that the expenditures are valid or are liabilities incurred by the Acequia in the form of actual unpaid invoices received by the Acequia of services rendered by a third party or items of tangible personal property received by the Acequia for the implementation of the Project.
- (3) In cases where the Acequia is submitting a Request for Payment to the NMISC based upon invoices received, but not yet paid, by the Acequia from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Acequia, the Acequia shall make payment to those contractors or vendors within 15 calendar days from the date of cashing or depositing of the State warrant.

### **B. Deadlines**

Requests for Payments shall be submitted by Acequia to the NMISC on the earlier of:

- (1) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Acequia was incurred as evidenced by an unpaid invoice received by the Acequia from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (2) Twenty (20) days from date of Early Termination; or
- (3) Twenty (20) days from the Reversion Date.

C. The Acequia's failure to abide by the requirements set forth in Article II, herein, will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The NMISC has the right to reject a payment request 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 that the expenditures and the Acequia are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II, herein, to provide Third Party Obligations. The NMISC'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 NMISC due to Acequia's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS;**  
**REPRESENTATIONS AND WARRANTIES**

A. The Acequia hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

- (1) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (2) The Acequia insures compliance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Acequia 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 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 Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (3) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (4) During the term of this Agreement, the Acequia shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the NMISC's express, advance, written approval.
- (5) The Acequia, recognized as political subdivision of the State under NMSA (1978) Chapter 73, Article 2, has the legal authority to receive and expend the Project's funds.

- (6) This Agreement has been duly authorized by the Acequia, the person(s) executing this Agreement has authority to do so, and, once executed by the Acequia, this Agreement shall constitute a binding obligation of the Acequia, enforceable according to its terms.
- (7) This Agreement and the Acequia's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Acequia, the Acequia's charter (if applicable), or any judgment or decree to which it is subject.
- (8) The Acequia has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (9) The Acequia'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 Acequia to sign the Agreement and to sign Requests for Payment.
- (10) The Acequia shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and federal whistleblower laws. The Acequia 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 Grant, 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 Grant. Further, Acequia shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (11) The Acequia certifies that no funds have been paid, or will be paid to spouses, children, parents, brothers and sisters of members of the governing body otherwise defined as "immediate family members" under §13-1-62 of the New Mexico Procurement Code.
- (12) The Acequia certifies, to the best of its knowledge and belief, no funds have been paid or will be paid, by or on behalf of the Acequia, 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 and that the Acequia shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.
- (13) The Acequia 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 Acequia 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 Acequia, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Acequia is found to be not in compliance with these requirements during the life of this Agreement, Acequia agrees to take appropriate steps to correct any deficiencies. The Acequia's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

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

A. The Acequia shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Acequia shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Acequia 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 such other records as the NMISC shall prescribe.

C. The Acequia shall make all Project records available to 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 Acequia may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

**ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the NMISC determines that part of all of the Appropriation Amount was improperly reimbursed to Acequia, including but not limited to, Project funds reimbursed to Acequia based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Acequia, or violation of this Agreement, the Acequia shall return such funds to the NMISC 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 immunities and limitations of the New Mexico Tort Claims Act.

**ARTICLE XIV. LIMITATION**

NMISC review of projects, plans and designs shall not be interpreted as any warranty or guarantee. Any defects in the Project's design, plan, materials, or workmanship, and their corrections shall be the responsibility of the Acequia and its contractors and consultants. The Acequia and its contractors and consultants shall remain responsible for the completion and success of the Project.

**ARTICLE XV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Acequia and NMISC concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

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

The Acequia acknowledges and agrees that Acequia shall include a "non-appropriations" clause in all contracts between it 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 that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and available to the NMISC for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and available to the NMISC, the Santa Cruz Acequia may immediately terminate this Agreement by giving Contractor written notice of such termination. The acequia's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Santa Cruz Acequia or the NMISC or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Santa Cruz Acequia or the NMISC."

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

Acequia acknowledges and agrees that Acequia shall include the following or a 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 New Mexico Interstate Stream Commission Capital Appropriation Project Grant Agreement. Should the NMISC early terminate the grant agreement, the Santa Cruz Acequia may early terminate this contract by providing contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Santa Cruz Acequia the acequia’s only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date.”

Acequia hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVIII. SEVERANCE TAX BOND PROJECT CLAUSES**

A. Acequia acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department of Finance Administration. Acequia acknowledges and agrees that (i) it is Acequia’s sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the NMISC’s failure to inform Acequia of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the NMISC funds subject to the condition(s); and (vi) the NMISC’s obligation to reimburse Acequia from the Project is contingent upon the then current BOF conditions being satisfied.

B. Acequia acknowledges and agrees that this Agreement is subject to the BOF’s Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the NMISC.

**SANTA CRUZ ACEQUIA IRRIGATION SYSTEM**

Joseph Merhege  
Signature of Official with Authority to Bind Acequia

By: Joseph Merhege  
(Type or Print Name)

Its: Chairman  
(Type or Print Title)

Oct. 11, 2012  
Date

[Signature]  
Signature of Official with Authority to Bind Acequia

By: Lonnie Montoya  
(Type or Print Name)

Its: Secretary  
(Type or Print Title)

Oct. 11, 2012  
Date

[Signature]  
Signature of Official with Authority to Bind Acequia

By: MEL MARTINEZ  
(Type or Print Name)

Its: TREASURER  
(Type or Print Title)

Oct. 11 2012  
Date

**NEW MEXICO INTERSTATE STREAM COMMISSION**

By: Christina G. Scott

Its: Program Support Director

Date 1/17/13

**NEW MEXICO INTERSTATE STREAM COMMISSION**

By: Christopher DeSousa

Its: Chief Counsel

Date January 22, 2013

**NEW MEXICO INTERSTATE STREAM COMMISSION**

By: John H. Fagg

Its: Executive Director

Date 2/6/13

Exhibits

1. Periodic and Final Report Form for Project
2. Request for Payment Form
3. Acequia Project Budget
4. [U.S. Army Corps of Engineers, ISC, and [Acequia name] Section 1113 Cost-Share Obligations; U.S. Army Corps of Engineers, ISC, and [Acequia name] Section 215 Cost-Share Obligations; or ISC and [Acequia name] 80/20 Program Cost-Share Obligations]