

**STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
FUND D2782 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this 30th day of JUNE, 2020, by and between the New Mexico Interstate Stream Commission, hereinafter called the "NMISC", and the Acequia de Santa Cruz, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the NMISC.

RECITALS

WHEREAS, in the Laws of 2019, Chapter 277, Section 33, Paragraph 50, the Legislature made an appropriation to the NMISC, funds from which the NMISC is making available to the Grantee pursuant to this Agreement; and

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

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:

D2782 \$90,000.00

APPROPRIATION REVERSION DATE: 30-JUN-2023

Laws of 2019, Chapter 277, Section 33, Paragraph 50, Ninety Thousand Dollars (\$90,000.00), to plan, design and construct improvements to the Acequia de Santa Cruz in Santa Fe County.

The Grantee's total reimbursements shall not exceed Ninety Thousand Dollars (\$90,000.00) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")¹, if applicable, which equals (the "Adjusted Appropriation Amount").

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 above in this Article I(A), the language of the laws cited herein shall control.

¹ 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)." Section 13-4A-4 NMSA 1978.

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." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee 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.

ARTICLE II. LIMITATION ON NMISC'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the NMISC has issued and the Grantee has received a Notice of NMISC's Obligation to Reimburse² Grantee (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:

- (i) Irrespective of any Notice of Obligation, the Grantee'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 Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee 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 Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code 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
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the NMISC must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the NMISC may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the NMISC and the NMISC's issuance and the Grantee's receiving of a

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

Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee 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 Grantee.**
- b. Grantee 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 obligations.
- c. The NMISC may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the NMISC to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the NMISC signs the Notice of Obligation is the date that the NMISC's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE 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 Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: Acequia de Santa Cruz

Name: Lonnie Sanchez

Title: Treasurer

Address: 611 S. McCurdy Road, Espanola, NM 87532

Email: santacruzditch@gmail.com

Telephone: (505) 753-9694

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The NMISC designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMISC

Name: Jonathan Martinez
Title: Acequia Program Manager
Address: P.O. Box 25102, Santa Fe, NM 87504-5102
Email: JonathanC.Martinez@state.nm.us
Telephone: (505) 827-6134

The Grantee and the NMISC agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by 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 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, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, 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, 2023 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 Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. 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 Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee 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:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (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.

Either the NMISC or the Grantee 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. Grantee 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. 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 in Article I and, if that occurs, the NMISC shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective 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 Grantee and shall be final. Grantee 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 Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the NMISC's sole and absolute obligation to reimburse the Grantee 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 sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The NMISC will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The NMISC may direct the Grantee 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 and absolute obligation to reimburse the Grantee 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 Grantee receives written notice given by the NMISC informing the Grantee 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 sole and absolute discretion to direct the Grantee 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 Grantee 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 Grantee. 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. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the NMISC and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The NMISC shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due 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 the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee 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.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the NMISC.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the NMISC, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the NMISC.
- (iii) In cases where the Grantee is submitting a Request for Payment to the NMISC based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the NMISC or such shorter period of time as the NMISC may prescribe in writing. The Grantee is required to certify to the NMISC proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the NMISC.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX 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 Grantee 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 and the Deadlines set forth in Article IX herein. 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 Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
 - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee 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.
 - (iii) 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 "Anti-Donation Clause."
 - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the NMISC's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
 - (v) The Grantee 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 Grantee 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 Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee 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.
- (v) The Grantee'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 Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee 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 their 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 or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, 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 Grantee 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.

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

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee 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 Grantee 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 Grantee shall make all Project records available to the NMISC, 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 or the Department of Finance and Administration finds that any or all of

these funds were improperly expended, the Grantee 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 or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee 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. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee 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 XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee 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 for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Acequia de Santa Cruz may immediately terminate this Agreement by giving Contractor written notice of such termination. The Acequia de Santa Cruz'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 Acequia de Santa Cruz or the NMISC or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Acequia de Santa Cruz or the NMISC."

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

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a NMISC Grant Agreement. Should the NMISC early terminate the grant agreement, the Acequia de Santa Cruz may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Acequia de Santa Cruz’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee 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.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

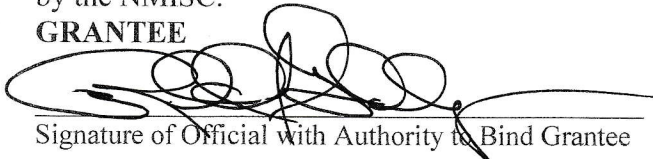
B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the NMISC may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

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

GRANTEE



Signature of Official with Authority to Bind Grantee

Acequia de Santa Cruz

Entity Name

By: Ron Gallegos

(Type or Print Name)

Its: Chairman/President

(Type or Print Title)

6/10/2020

Date



Signature of Official with Authority to Bind Grantee

Acequia de Santa Cruz

Entity Name

By: Ernie Velarde

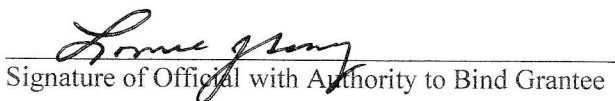
(Type or Print Name)

Its: Secretary

(Type or Print Title)

6/10/2020

Date



Signature of Official with Authority to Bind Grantee

Acequia de Santa Cruz

Entity Name

By: Lonnie J. Sanchez

(Type or Print Name)

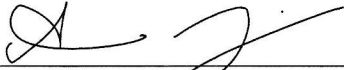
Its: Treasurer

(Type or Print Title)

6/10/2020

Date

NEW MEXICO INTERSTATE STREAM COMMISSION

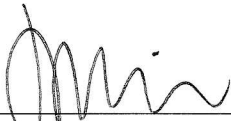


By: Arianne Singer

Its: Attorney

June 23, 2020

Date

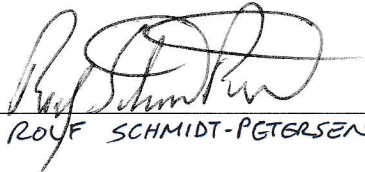


By: JEFF PRIMM

Its: Program Support Director

6/29/20

Date



By: ROYF SCHMIDT-PETERSEN

Its: Director

6/30/20

Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1**

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)
- _____ City State Zip
- C. Phone No: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

- A. Payment Request No. _____
- B. Grant Amount: _____
- C. AIPP Amount (If Applicable): _____
- D. Funds Requested to Date: _____
- E. Amount Requested this Payment: _____
- F. Reversion Amount (If Applicable): _____
- G. Grant Balance: _____
- H. GF GOB STB (attach wire if first draw)
- I. Final Request for Payment (if Applicable)

III. Fiscal Year : _____
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Reporting Certification: I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or Fiscal Agent (if applicable)

Grantee Representative

Printed Name

Printed Name

Date:

Date:

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: NMISC Representative: _____

FROM: Grantee: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the NMISC for Grant Agreement number _____ entered into between Grantee and the NMISC, I certify that the Grantee has submitted to the NMISC the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

NMISC Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

¹ Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**ATTACHMENT A
SPECIAL CONDITIONS**

PROJECT BUDGET AND SCOPE OF WORK

A. Project Budget, Generally.

- (i) The Grantee agrees that it will expeditiously initiate and timely complete in all respects, the Project as outlined in the Project Budget ("Project Budget").
- (ii) The Grantee shall not proceed with the Project until it receives approval from NMISC approving the Project Budget.
- (iii) No funds shall be expended until the Project Budget is approved by NMISC. The Project Budget form is attached to this Agreement as Exhibit 3.
- (iv) The Grantee will not be reimbursed for all or any part of an expenditure that is not included in the approved Project Budget.
- (v) If the Grantee changes the scope of work, the Grantee must submit an updated Project Budget and must obtain NMISC approval.

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

ADDITIONAL LIMITATIONS ON NMISC'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. The Grantee shall obtain all necessary easement(s) and/or permit(s) required for the Project.

B. 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.

C. The Grantee shall comply with the requirements of New Mexico law, including without limitation, the Office of the State Engineer's (OSE) rules and regulations that govern such projects.

D. 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 Grantee 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 NMISC will reimburse the Grantee for 50% of the allowable costs of the task, but in no instance will NMISC reimburse the Grantee for an amount greater than the Project task completion percentage certified in the Request for Payment, Exhibit 2.

E. Additional Obligations of the Grantee:

- (i) Contractor of the Project will be required to post a performance bond in accordance with the requirements of NMSA § 13-4-18 (1978), and obtain any additional necessary easements and permits, as required.
- (ii) Operation and Maintenance
 - a. The Grantee shall be solely responsible for the construction, maintenance, and operation of all equipment and improvements associated with the Project. The Grantee agrees that the State of New Mexico and its agencies, including the NMISC 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 Grantee 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 Grantee. The Grantee's obligation to maintain the Project will survive Project completeness, and last for the Project's design life.

ADDITIONAL REPRESENTATIONS

- A. The Grantee hereby represents and affirms the following:
- (i) The Grantee, recognized as a political subdivision of the state under Chapter 73 of the New Mexico Statutes Annotated (1978), has the legal authority to receive and expend the Project's funds.
 - (ii) The Grantee 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.

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 Grantee and its contractors and consultants. The Grantee and its contractors and consultants shall remain responsible for the completion and success of the Project.

ADDITIONAL CONDITIONS

The Grantee agrees to notify NMISC if any further action by NMISC is deemed necessary by the Independent Public Accountant or any of the state control agencies regarding resolution of the findings of their 2011 and 2016 Agreed Upon Procedures.

**CAPITAL APPROPRIATION PROJECT
BUDGET FORM**

Exhibit 3

ACEQUIA NAME: Acequia de Santa Cruz
 CONTACT PERSON: Lonnie J. Sanchez
 ADDRESS: 611 S McCurdy Rd
Espanola, N.M. 87532
 PHONE #: 505-753-9694

APPROPRIATION YEAR: 2019
 APPROPRIATION NUMBER: D2782
 APPROPRIATION AMOUNT: \$90,000

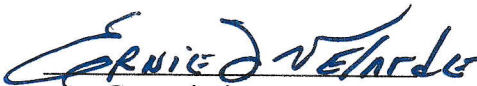
PROJECT DESCRIPTION: Replace 3 ea. 175' x 2' Culverts - Intersection of State Rd 76 and Camino La Paz
 Note: The culverts run under Camino La Paz road.

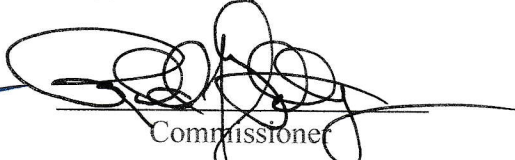
Preliminary Budget


Task	Description of Task	Estimated Cost (\$)	Estimated Completion Date
1	Engineering Service Request (design and survey requirements, etc.)	\$10,000	15 July 2020
2	Mobilization, removal of existing structures including disposal of structures and accumulated sediment/debris.	\$ 15,000	30 Sept. 2020
3	Misc utility service relocations	\$ 5,000	30 Oct. 2020
4	Purchase 3 ea. 175' x 2' culverts, which includes delivery. Culverts will be in sections.	\$ 8,000	30 Sept. 2020
5	Replace suspended culverts and fabricate screens to prevent branches and debris from entering new culverts	\$50,000	30 Dec. 2020
6	Final inspection and cleanup	\$ 2,000	30 Dec.2020

Grand Total: \$90,000

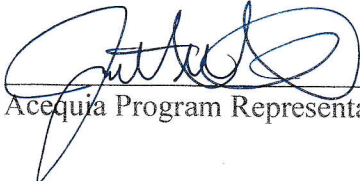
ACEQUIA COMMISSION SIGNATURES:


 Commissioner


 Commissioner


 Commissioner

NM ISC Acequia Program Use Only:


 Acequia Program Representative

6/19/2020
 Date

Interstate Stream Commission
 Acequia Program Manager
 PO Box 25102
 Santa Fe, NM 87504-5102
 Phone: (505) 827-6160