

SANTA FE COUNTY
RESOLUTION 2024-015

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on June 11, 2024 did request the following budget adjustment:

Department / Division: Public Works Department, Facilities and Projects Division
Budget Adjustment Type (drop down): Line-Item Transfer (between cost centers) Fiscal Year: 2024 (July 1, 2023 - June 30, 2024)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXXX	DEPARTMENT DIVISION XXXX	ACTIVITY BASIC/OTH XXXX	ELEMENT OBJECT XXXX	LINE DESCRIPTION	INCREASE AMOUNT	DECREASE AMOUNT
505	1422	372	10-01	USEPA / NM Environment Department - PFAS	\$ 459,000	
505	0000	385	00-00	Water - Budgeted Cash	1,028,269	
Total					\$ 1,487,269	\$ -

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXXX	DEPARTMENT DIVISION XXXX	ACTIVITY BASIC/OTH XXXX	ELEMENT OBJECT XXXX	LINE DESCRIPTION	INCREASE AMOUNT	DECREASE AMOUNT
359	7010	481	80-01	GRT 2019 ADA Improvements - Capital Buildings & Structures		\$ 4,117
359	7129	486	80-01	GRT 2019 Behavioral Health Triag Ctr - Capital Buildings & Structures	\$ 4,117	
313	7124	481	80-01	Admin Building Upgrades - Capital Purchases Buildings & Structures		372,058
313	2219	481	80-01	Grant Street Complex - Capital Purchases Buildings & Structures	372,058	
505	1422	444	50-03	Water - PFAS Contractual Services	459,000	
505	1488	484	80-10	Water Rights Acquisition - Capital Purchases Infrastructure	1,028,269	
Total					\$ 1,863,444	\$ 376,175

Requesting Department Approval: P.J. Griego Title: Public Works ASD Director Date: 05/23/24 Log # 79

Capital/Grants Approval: [Signature] Date: 6/3/2024 Budget Administrator: [Signature] Date: 6/3/24

Finance Dept Approval: [Signature] Date: 6/3/2024 Entered by: _____ Date: _____

County Mgr Approval: [Signature] Date: 6/11/2024 Updated by: _____ Date: _____

**SANTA FE COUNTY
RESOLUTION 2024-015**

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT

(If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.)

1	Please summarize the request and its purpose in the area below.		
	The Public Works Department needs additional funds for the purchase of water rights, to budget a grant for perfluoroalkyl and polyfluoroalkyl substances (PFAS) contamination and the reallocation of funding between approved projects.		
2	Is this Budget Action for a Recurring or Non Recurring Expense(one-time)	Recurring	Non-Recurring
			X

3	Does this request impact a revenue source?	Yes	No
		X	

A.	Is this a State Special Appropriation? If Yes, cite Statute and attach a copy		X
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B.	Does this include state or federal funds? If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget. 2024-03-19 Santa Fe County Grant Agreement CWSRF EC 138	X	
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C.	Is this request a result of Commission action? If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.) Contract 2024-0237-PW Water Rights Purchase	X	
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D.	Is a match required? If Yes, please identify funding source in the line below.		X
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PLEASE PROVIDE THE LINE ITEM OF THE MATCH BELOW

FUND	DEPARTMENT	ACTIVITY	ELEMENT	CATEGORY/LINE ITEM	AMOUNT	BUDGETED (Supply)

SANTA FE COUNTY
RESOLUTION 2024- 015

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the New Mexico Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 11th Day of June, 2024.

Santa Fe Board of County Commissioners

Hank Hughes

Hank Hughes, Chairperson

ATTEST:

Katharine E. Clark

Katharine E. Clark, County Clerk



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS

PAGES: 46

I Hereby Certify That This Instrument Was Filed for Record On The 18TH Day Of June, 2024 at 10:18:12 AM And Was Duly Recorded as Instrument # **2035995** Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
County Clerk, Santa Fe, NM

Alester Garcia
Deputy County Clerk





Clean Water State Revolving Loan Fund

Interim Grant Agreement

Santa Fe County

CWSRF EC 138



SFC CLERK RECORDED 06/18/2024

**INTERIM LOAN AGREEMENT
 NEW MEXICO ENVIRONMENT DEPARTMENT
 CONSTRUCTION PROGRAMS BUREAU
 CLEAN WATER STATE REVOLVING LOAN FUND (CWSRF) –also known as-
 WASTEWATER FACILITY CONSTRUCTION LOAN PROGRAM**

100% Grant

Agreement Number: CWSRF EC 138

Santa Fe County

Funding Amount: \$459,000 Subsidy Grant Amount

This Interim Grant Agreement (Agreement) between the New Mexico Environment Department (NMED) of the State of New Mexico and Santa Fe County (Recipient) becomes effective on the date signed by the NMED. Recipient has enacted Grant Resolution No.2024-23(Grant Resolution) approved on February 13, 2024, which authorizes execution of this Agreement and authorizes the Recipient to accept subsidy grant funds (Funds) from NMED.

Listed below are agency contacts.

<p>Recipient’s Name and Address: Santa Fe County PO Box 276 Santa Fe New Mexico 87504-0276</p>	<p>NMED: New Mexico Environment Department Clean Water State Revolving Fund Program P.O. Box 5469 Santa Fe, NM 87502-5469 NMENV-cpbinfo@state.nm.us</p>
<p>Recipient’s Contact Information: Paul Choman, Utilities Division Director Santa Fe County 505-992-9872 pchoman@santafecountynm.gov</p> <p>Sam Montoya, Grants Manager Santa Fe County 505-986-6323 slmontoya@santafecountynm.gov</p>	<p>NMED Contact Information: Andrea Telmo, P.E., Project Manager 505-469-2687 Andrea.Telmo@env.nm.gov</p> <p>Maria Molina Program Administrator (505) 670-3876 maria.molina2@env.nm.gov</p> <p>Jason Esparza, Loan Manager (505) 629-6770 jason.esparza@env.nm.gov</p>

Incorporated as part of this Agreement as though fully set forth in this Agreement is the following:

Recipient's Resolution
Project Description Form
Project Budget Form

I. Project Description:

- a. Santa Fe county will use this funding to investigate, model, and plan for known PFAS contamination.
- b. The Recipient agrees that it will implement, in all respects, the project outlined in the attached Project Description.
- c. The Recipient agrees to make no change in the Project Description without first submitting a written request to NMED and obtaining NMED's written approval of the required change, and if necessary, an amended agreement.

II. Subsidy Grant Award Amount:

NMED agrees to provide funds to the Recipient to pay for approved project costs in an amount not to exceed **Four Hundred Fifty-Nine Thousand Dollars (\$459,000)**.

Provided the Recipient complies with the Agreement Conditions the subsidy grant amount will be available for a period of **two years (2)** from the date of this Agreement.

NMED has received a federal grant award from the Environmental Protection Agency (EPA). By executing this Agreement and accepting Subsidy Grant funds, the Recipient is a sub-recipient of the federal grant award and subject to the EPA Sub-recipient Conditions enumerated below.

III. Project Conditions:

- A. Subsequent to the date of this Agreement, but prior to NMED's approval of the Contract Documents, for any phase, the Recipient's attorney shall provide an opinion satisfactory to NMED that the Recipient is an incorporated entity.
- B. Upon execution of this Agreement, the Recipient shall follow the procedures

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listed below unless waived in writing by NMED. Disbursement by NMED may be withheld if any of these procedures are not followed by the Recipient.

1. If these Funds are to be used for engineering and/or other professional services, the Recipient shall submit documentation regarding the hiring process to be used and the (RFP), to NMED for review and approval prior to selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must comply with the New Mexico Procurement Code. NMSA 1978, Sections 13-1-21 et seq. Engineering Services must be chosen based on a qualification-based request for proposal process regardless of the anticipated cost. A minimum of three proposers must be interviewed as part of the selection process. The Recipient is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB email ptab@acecnm.org.)
2. If these Funds are to be used for engineering and/or other professional services, the Recipient shall submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the Recipient's staff will perform the engineering and/or other professional services, to NMED for review and approval prior to executing the agreement/contract or using Recipient's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at <https://www.env.nm.gov/construction-programs/cpb-forms-and-documents-2/>.
3. If these Funds are to be used for engineering design or for construction, the Recipient shall submit all plans, specifications, and any addenda for this project to NMED for review and approval before the project is advertised for construction bids. Plans, specifications, and addenda shall be prepared by a registered New Mexico Professional Engineer.
4. Following NMED approval of the proposed award, the Recipient shall submit to NMED for review the notice of the award and the minutes of meeting in which award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed. The selected contractor will be required to post a performance and payment bond in accordance with requirements of NMSA 1978, Section 13-4-18.
5. The selected contractor will be required to submit a construction

schedule to the Recipient at the pre-construction conference.

6. The Recipient will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. NMED's written decision approving or disapproving the modification shall be rendered promptly to the Recipient. If immediate action is needed, a verbal notification of NMED's decision will be made, followed by written notification.
7. The Recipient shall provide a full-time construction inspector during construction of the project. The Recipient shall submit the inspector's résumé and inspection reports to NMED for review and approval.
8. NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans.
9. NMED may require proof of deposit and/or proof of payments to contractors and consultants, including the disbursement of funds other than those provided by the Agreement.
10. The Recipient (or the system owner) shall employ properly certified utility operators and shall comply with all provisions of the New Mexico Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 et seq.
11. With the exception of easements (See Section V.H), when real property is acquired by the Recipient, either through purchase or donation as a part of this project and within the project period, the Recipient will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED prior to the acquisition of any real property. After real property acquisition, the Recipient will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this agreement.
12. If the Funds are to be used for construction of wastewater collection lines or water distribution lines, the existing population served by the project shall be connected to the collection system or distribution system within a reasonable time after project completion. This will be

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accomplished by adoption and annual review of an Ordinance/Resolution and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

13. Notwithstanding the other provisions of this Agreement the Recipient shall comply with the Prompt Payment Act, NMSA 1978, Sections 57-28-1 et seq. The Project will not be considered complete until the work as defined in this Agreement has been fully performed, and finally and unconditionally accepted by the Recipient and NMED.
14. If the Funds are to be used for construction, final disbursement will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
 - (a) Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals.
 - (b) A final reimbursement request including the final certified construction pay request prepared by the Recipient's project engineer and approved by the Recipient.
 - (c) A certificate of substantial completion including punch list items.
 - (d) A letter certifying project acceptance by the Recipient and the Recipient's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Recipient, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Recipient and contractors will be submitted to NMED for final review and approval.
 - (e) Certification letter by the Recipient that the Labor Standards Contract Provisions have been met.
 - (f) Record drawings prepared by the Recipient's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings.
 - (g) Complete and legally effective releases or waivers (satisfactory to the Recipient) of all liens arising out of the contract documents

and the labor services performed and the materials and equipment furnished thereunder. In lieu thereof and as approved by the Recipient, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Recipient or its property might in any way be responsible, have been paid or otherwise satisfied.

- (h) A written consent of the surety, if any, to final payment; and
- (i) Recipient's ledger sheets including all payments made by the Recipient may be requested with the final disbursement request and before the final disbursement request can be processed by NMED.
- (j) Verification to NMED of FSP and written certification that a FSP is in place.

- 15. If these Funds are to be used for the purchase of equipment, final payment will be made after approval by NMED of appraisal reports and equipment title for used equipment.
- 16. The Recipient must ensure that each procurement contract contain the following term and condition: The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of the contract which may result in the termination of the contract or other legally available remedies.

- C. The Recipient shall require the Contractor of the Project to post a performance and payment bond approved by NMED in the amount of the bid.
- D. Bid tabulation and supporting documents (Contract Documents) shall be prepared and furnished to NMED within fifteen (15) days of bid opening. The Recipient shall not proceed with construction of the Project until NMED has approved the Contract Documents.
- E. Any change order to the Project construction contract which results in a change

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to the Project's contract amount, scope of work, or schedule must be approved by NMED.

- F. Recipient agrees to implement environmental recommendations that will be supplied by NMED prior to final Plan approval.
- G. The Recipient must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. The Recipient must certify in writing that this has been done prior to the award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the Recipient's attorney is required.
- H. The Recipient agrees to obtain a single audit annually from an Independent Professional Auditor.
- I. The Recipient shall achieve Project Completion by the end of the agreement term. Project Completion means the date the operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments. If the Recipient is unable to complete the project by the Agreement termination date, the Recipient must notify NMED at least 30 days prior to the termination date, otherwise, NMED may terminate this Agreement or may withhold Funds. If NMED terminates this Agreement, the Recipient shall refund any Funds disbursed to the Recipient by NMED within ninety (90) days of termination.

V. General Conditions

- A. This Agreement is made pursuant to and in accordance with the provisions of the Wastewater Facility Construction Loan Act, NMSA 1978, § 74-6A-1 et seq., as amended, the New Mexico Water Quality Control Commission Regulations, 20.7.5 NMAC, and the New Mexico Environment Department Regulations, 20.7.6 – 20.7.7 NMAC.
- B. Pursuant to the Ordinance/Resolution of the Recipient, the Recipient is authorized to enter into this Agreement. a. The terms of the Ordinance/Resolution are incorporated as part of this Agreement as though fully set forth in this Agreement.
- C. For the purposes of this Agreement, NMED's inspection, review and approval of the Project are only for the purposes of determining compliance with applicable State regulations. NMED approval shall not be interpreted as any warranty or guarantee. Approval of the plans and design of the Project means

only that plans are complete. NMED will bring to the Recipient's attention any obvious defects in the Project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the Recipient and its contractors. Any questions raised by NMED shall be resolved exclusively by the Recipient and its contractors, who shall remain responsible for the completion and success of the Project.

- D. The Recipient warrants, represents and agrees that it, and its contractors, subcontractors, employees, and representatives will comply with all applicable State and Federal laws and regulations, and the requirements set forth in this Agreement or any amendment to the Agreement.
- E. If the Recipient seeks additional funding from any other entity for the Project, the Recipient agrees that the Recipient is solely responsible for satisfying any requirements arising as a result of funding from that other entity.
- F. The Recipient warrants that the internal financial statements provided to NMED by the Recipient for funding approval do not contain false material statements, representations, certifications, or omissions of material fact.
- G. The Recipient shall submit all future audited financial reports to the State Auditor as required by the State Auditor's Rules.
- H. The proceeds of the Agreement shall be used for the Project and for no other purpose. Unallowable uses of the proceeds of the Agreement include but are not limited to paying administrative expenses (including applications for funding), costs of Recipient employees, late fees, interest, or penalties. Those costs shall be paid by the Recipient.
- I. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and related to the efficient achievement of the objectives of this Agreement. The Recipient must justify all expenditures for which it requests reimbursement, according to accepted NMED criteria and procedures. NMED may withhold reimbursement of any item or expenditure and may reclaim improperly documented reimbursement until the Recipient provides sufficient justification. NMED may not disburse any funds if the Recipient fails to adhere to the schedule described in Section IV. above.
- J. For any phase of the Project which requires National Environmental Policy Act (NEPA) review, NMED shall not disburse any funds for that phase until a NEPA review is completed.
- K. The Recipient agrees to abide by all required Equal Employment Opportunity laws, both State and Federal.

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- L. The Recipient agrees that it will take affirmative action to ensure that the Project is constructed in compliance with Federal and State occupational health and safety laws and that inspectors authorized by NMED's Occupational Health and Safety Bureau will be given free access to the Project sites.
- M. The Recipient agrees to make all fiscal records related to the Project available to NMED, the United States Environmental Protection Agency, the United States General Accounting Office (GAO), and the State Auditor for inspection and audit.
- N. The obligations of the Recipient under the Agreement are the special limited obligations of the Recipient as set forth in the Agreement. The Agreement shall not constitute indebtedness or debt within the meaning of any constitutional, charter or statutory provision, or limitation, nor shall the Agreement be considered or held to be a general obligation of the Recipient. The obligations of the Recipient under the Agreement are payable and collectible solely out of the Pledged Funds as defined in the Agreement, and NMED or any other holders of the Agreement may not look to any general or municipal fund for the payment due on the Agreement.
- O. The Recipient agrees to operate and maintain the Project so that the Project will function properly over the structural and material design life of the Project.
- P. The funds will not be used by the Recipient on any project constructed in fulfillment, in whole or in part, of requirements made of a subdivider by the provisions of the Land Subdivision Act, NMSA 1978, § 47-5-1 to 47-5-8 NMSA 1978.
- Q. The Recipient understands and agrees that the Project is subject to Federal and State regulations and acceptance of any disbursement pursuant to the Agreement constitutes an agreement by the Recipient that the amounts have been properly accounted for and expended in accordance with applicable Federal and State regulations.
- R. The Recipient agrees to maintain separate Project accounts in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB) including standards relating to the reporting of infrastructure assets. If requested by NMED, the Recipient shall conduct an audit of the financial records pertaining to the Project.

VI. Covenants

- A. Disbursements (payment of funds) to the Recipient made pursuant to the Agreement will be available on and after the date of the execution of the Agreement if the Recipient is compliant with the Conditions and Covenants of the Agreement. Disbursements will be made only for actual costs incurred by the Recipient to plan, design, construct or acquire the Project, or any phase thereof. The Recipient shall request disbursements on forms acceptable to NMED on at least a quarterly basis and such requests shall be prepared by and certified by the Recipient. All disbursements to the Recipient will be made in accordance with applicable Federal and State regulations. Eligible planning, design and associated pre-building costs that are within the scope of the project and were incurred prior to signing the Agreement are payable under the Agreement and shall be submitted for reimbursement immediately upon execution of the Agreement. Interim disbursements will be made as the work progresses. Interim disbursement requests shall be submitted by the Recipient within ninety (90) days after the liability of the Recipient was incurred as evidenced by the date of the invoice for which disbursement is being requested.
- B. The Recipient shall not sell, lease, or transfer any property related to the Project except as permitted by the Ordinance/Resolution, as amended, and supplemented.
- C. The Recipient shall not obligate the Pledged Funds for this Agreement except as set forth in the Ordinance/Resolution as adopted at the time of execution of the Agreement.
- D. The Recipient hereby irrevocably agrees that the Recipient has fixed and collected, or will fix and collect, adequate rates, fees, and other charges for the use of the System (as defined in the Ordinance/Resolution) which will be sufficient to satisfy the Agreement.
- E. The Recipient shall not provide any free services of the Water and Wastewater System. The Recipient shall, to the full extent permitted by law, collect payment for water and wastewater services provided. The Recipient shall notify NMED should delinquent users impact their ability to service this agreement as defined.
- F. The Recipient shall maintain property, liability and fidelity insurance coverage on the Project as required by NMED and provide written proof of such insurance coverage to NMED.
- G. NMED retains the right to seek enforcement of the terms of the Agreement. If

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the parties cannot reach agreement regarding disputes as to the terms and conditions of this Agreement, such disputes are to be resolved in the district court of Santa Fe County. The parties agree that the district court for Santa Fe County shall have exclusive jurisdiction over the parties and the subject matter of this Agreement and waive the right to challenge such jurisdiction.

- H. This Agreement and the Resolution incorporate all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement and the Resolution. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement and the Resolution.
- I. This Agreement shall be binding upon and inure to the benefit of the Recipient, NMED and their respective successors. The rights and obligations under the Agreement may not be assigned by the Recipient.
- J. No change shall be made to the Agreement except in writing signed by NMED and the Recipient.

New Mexico CWSRF Loan Agreement Provision LA 1: Anti-Discrimination Laws (Super Cross-Cutters)

All recipients of CWSRF financial assistance are required to comply with the following provisions:

Civil Rights Laws (i.e., Super Crosscutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability, or age, in programs or activities receiving federal financial assistance. All recipients of CWSRF financial assistance must agree, and required their contractors and subcontractors to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age.

New Mexico CWSRF Loan Agreement Provision LA2: Generally Accepted Governmental Accounting

All recipients of CWSRF financial assistance (Assistance Recipients) are required to comply with the following provisions:

Section 602(b)(9) of the Federal Water Pollution Control Act (FWPCA) states:

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets;

The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB. CWSRF assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

Pursuant to Section 602(b)(9) of the FWPCA, all CWSRF Assistance Recipients must agree to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), using standards relating to the reporting of infrastructure assets.

LA 18 Cost and Effectiveness—Government Requirement

Under the Federal Water Pollution Control Act (FWPCA) section 602(b)(13), the CWSRF program requires that all assistance recipients certify that they have conducted the studies and evaluations described in 602(b) (13 (A) and (B) herein referred to collectively as a cost and effectiveness analysis. The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for conducting the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, considering—
 - the cost of constructing the project or activity.
 - the cost of operating and maintaining the project or activity over the life of the project or activity; and
 - the cost of replacing the project or activity.

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LA 19 Loan Agreement Provision for Equivalency and Subsidy

SUSPENSION AND DEBARMENT: Sub-recipient shall fully comply with 2 CFR Part 180 Subpart C as implemented and supplemented by 2 CFR Part 1532. Sub-recipient is responsible for ensuring that any lower tier covered transaction as described in 2 CFR Part 180 Subpart B, includes a term or condition requiring compliance with Subpart C. Sub-recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Sub-recipient acknowledges that failing to disclose the information as required at 2 CFR Part 180.335 may result in the delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

Sub-recipient may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49.

LA 17 Federal Procurement (A/E) Equivalency and Subsidy Requirement

Engineering Procurement

The Borrower agrees that architectural and engineering (A/E) contracts for projects comply with the elements of the procurement processes for A/E services as identified in 40 U.S.C. 1101 *et seq.*

- Public announcement of the solicitation (e.g., a Request for Qualifications).
- Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation).
 - Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required).
- Selection of at least three firms considered to be the most highly qualified to provide the services required. The top three firms must be interviewed to consider anticipated concepts and compare the proposals.
- Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered.
 - If a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

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New Mexico CWSRF Loan Agreement Provision LA7: Prohibition on Certain Telecomm

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Recipients of SRF financial assistance in an amount equal to the capitalization grant ("equivalency projects") must be in compliance with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. Produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. Provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

Entities on the excluded parties list can be found in the System for Award Management (www.sam.gov). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

New Mexico CWSRF Loan Agreement Provision LA6: Single Audit Act Requirements

SINGLE AUDIT REPORTING

****Applies to both CWSRF and DWSRF****

Sponsors of equivalency projects are required to comply with the requirements of the Single Audit Act ("SAA") (31 USC 7501 et seq.), 2 CFR Part 200, subpart F.

Each SRF equivalency assistance recipient who expends \$750,000 or more of any type or combination of Federal financial assistance within their fiscal year is required to complete and file a Single Audit or a project specific audit within 9 months of the end of the fiscal year the Federal funds were expended. SRF financings for equivalency projects are considered to be Federal financial assistance under the SAA.

The following summarizes some of the key responsibilities for SRF assistance recipients with regard to NMED:

1. Maintain an accounting system that is capable of identifying all expenditures of Federal financial assistance, not just from the SRF programs;
2. Determine annually whether expenditures of Federal funds exceeded \$750,000 within the fiscal year of the project sponsor. If Federal expenditures exceeded \$750,000, then a Single Audit or program-specific audit should be prepared within 9 months of the end of the fiscal year. The Single Audit or the program-specific audit should address the CWSRF or DWSRF, as appropriate. The CFDA number for the CWSRF is 66.458. The CFDA number for the DWSRF is 66.468. Federal guidance on 2 CFR Part 200, Subpart F3 can be found on the following link: https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf
3. Submit a copy of the Single Audit or program-specific audit to the Federal Audit Clearinghouse when finalized; and
4. Initiate corrective actions for Single Audits or program-specific audits with findings and recommendations that impact the SRF financial assistance. NMED should be informed of such corrective actions, findings and recommendations related to the SRF contained in any Single Audits.

2023-05-25

New Mexico CWSRF Contract Provision #LA4: Cross-Cutting Federal Authorities

CROSS-CUTTING FEDERAL AUTHORITIES

Recipients of SRF financial assistance for projects identified as Equivalency Projects are required to comply with various federal laws, regulations, and executive orders commonly referred to as the federal cross-cutters, which are presented below.

Environmental Authorities

- National Environmental Policy Act, Pub. L. No. 91-190 (1970), 42 U.S.C. § 4321 *et. seq.*
- Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 913 (1968), 16 U.S.C. § 1271 *et. seq.*
- Endangered Species Act, Pub. L. 93-205 (1973), as amended, 16 U.S.C. § 1531 *et. seq.*
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265 (1976), as amended, 16 U.S.C. § 1801 *et. seq.*
- Clean Air Act Conformity, Pub. L. 95-95 (1977), as amended, 42 U.S.C. § 7401 *et. seq.*
- Safe Drinking Water Act, Pub. L. 93-523 (1974), as amended, 42 U.S.C. §300f *et. seq.*

Historic Resources

- National Historic Preservation Act, Pub L. 89-665, as amended, 80 Stat. 917 (1966), 16 U.S.C. § 470 *et. seq.*
- Archeological and Historic Preservation Act, Pub. L. 93-291 (1974), 16 U.S.C. § 469a-1

Environmentally Sensitive Lands

- Protection of Wetlands, Executive Order 11990 (1977), as amended by Executive Order 12608 (1997)
- Floodplain Management, Executive Order 11988 (1977), as amended by Executive Order 12148 (1979)
- Establishment of a Federal Flood Risk Management Standard, Executive Order 13690, as reinstated by Executive Order 13990 (2021)
- Farmland Protection Policy Act, Pub. L. 97-98 (1981), 7 U.S.C. § 4201 *et. seq.*

Coastal Area Protection

- Coastal Zone Management Act, Pub. L. 92-583 (1972), as amended, 16 U.S.C. § 1451 *et. seq.*
- Coastal Barriers Resources Act, Pub. L. 97-348, 96 Stat. 1653 (1982), 16 U.S.C. § 3501 *et. seq.*

Social Policy Authorities

Civil Rights Laws (i.e., Super Cross-Cutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102
- Equal Employment Opportunity, Executive Order 11246 (1965)

Disadvantaged Business Enterprise Provisions

- Promoting the use of Small, Minority, and Women-Owned Businesses, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 Pub. L. 102-389
- Environmental Justice Executive Order No. 12898 (1994), 59 FR 7629

Economic and Miscellaneous Authorities

- Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754 (1966), as amended, 42 U.S.C. § 3331 et. seq.
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646 (1971), as amended, 42 U.S.C. §§ 4601-4655
- Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects Executive Order 13202 (2001), as amended by Executive Order 13208 (2001)
- Federal Funding Accountability and Transparency Act, Pub. L 109-282

Prohibitions Relating to Violators of the Clean Air Act and the Clean Water Act with Respect to Federal Contracts, Grants, or Loans

- Executive Order No. 11738 (1973)
- Section 306 of the Clean Air Act, 42 U.S.C. § 7606, and
- Section 508 of the Clean Water Act, 33 U.S.C. § 1368
- Debarment and Suspension, Executive Order 12549 (1986)

Revised 05/25/2023

New Mexico CWSRF Loan Agreement Provision LA12: BIL Public Awareness (Signage) Requirement

Assistance recipients for the follow types of CWSRF projects must display project signs in accordance with the guidelines found at <https://www.epa.gov/invest/investing-america-signage>

- Construction projects identified as “equivalency projects” for BIL general supplemental capitalization grants;
- Construction projects that receive additional subsidization (grants or forgivable loans) made available by BIL general supplemental capitalization grants;
- All construction projects funded with BIL emerging contaminants capitalization grants;
- All construction projects funded with BIL lead service line replacement capitalization grants.

Summary: The BIL signage term and condition requires a physical sign displaying the official *Building a Better America* emblem and EPA logo be placed at construction sites for BIL-funded projects. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable SRF expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the official Building a Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable SRF expenses, provided the costs are reasonable.

1. Signage Requirements

- a. **Building A Better America Emblem:** The recipient will ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law.” Construction is defined at 40 CFR 33.103 as “erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.” The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at: <https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf>

EPA Logo: The recipient will ensure that signage displays the EPA logo along with the official Building A Better America emblem. The EPA logo must not be displayed in a manner that implies that

BIL-1

SFC CLERK RECORDED 06/18/2024

New Mexico CWSRF Loan Agreement Provision LA11: Uniform Grant Guidance (2 CFR 200)

Assistance recipients for CWSRF projects receiving additional subsidy (grant) funds must comply with the Uniform Grant Guidance requirements established by 2 CFR 200.

UNIFORM GRANT GUIDANCE REQUIREMENTS PER 2 CFR 200

The following requirements apply to recipients of CWSRF grants (referred to below as "CWSRF grant recipient").

- Subaward procurement requirements in 2 CFR 200.317 through 2 CFR 200.327, and the

Subaward Procurement Requirements

Attachment A lists the provisions of 2 CFR 200.317 through 2 CFR 200.327. In summary, these provisions require sub-awardees and state programs to have, among other requirements:

- Transparent and fair competition on the use of these funds,
- Oversight of subawards and contractors to ensure terms are met,
- Records for third party verification of compliance, and
- Solicited proposals from minority and women owned businesses.

Subaward Monitoring Requirements

Attachment B lists the provisions of 2 CFR 200.331 through 2 CFR 200.333. In summary, these provisions require sub-awardees and state programs to have, among other requirements:

- Their risk assessed in receiving federal funds and proper steps taken to protect those funds, including subaward monitoring, subaward training, and special conditions as needed to ensure funds are used appropriately, and
- State documentation of their subaward assessment process and oversight efforts.

Attachment A: Procurement Requirements for CWSRF Grant Recipients

All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR § 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

~~(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.~~

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and

claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

2 CFR § 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient

requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

2 CFR § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases -

(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases -**

(i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present: (A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in

procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

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(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

2 CFR § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2 CFR § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2 CFR § 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 CFR § 200.325 Federal awarding agency or pass-through entity review. 12

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 CFR § 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 CFR § 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/invest/investing-america-signage>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the [Using the EPA Seal and Logo page](#).

- b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

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LA 16 Loan Agreement Provision For Equivalency and Subsidy

Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception, or highlights a requirement.

1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).
2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C Pursuant to 40 CFR Section 33.301, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f). However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR Section 33.304). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.
3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302 The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302 (a)- (d) and (i).
4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c) Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.
5. FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 1500.3(b). Notwithstanding Subpart D of 40 CFR, Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.
6. MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf. Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services, and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion

LA 16 Loan Agreement Provision For Equivalency and Subsidy

which exceeds the SAT. Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

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The parties have executed this Agreement on the dates set forth by their respective names.

By executing this Agreement, the undersigned represents authorization to act on behalf of the Recipient.

BY:



Signature of duly authorized Recipient Official
Community Name

GREGORY S. SHAFFER

Print Name

COUNTY MANAGER

Title

3/4/2024

Date

Issued and administered by:

New Mexico Environment Department
Wastewater Facility Construction Loan Program
Clean Water State Revolving Loan Fund

Judith L Kahl

Digitally signed by Judith L Kahl
Date: 2024.03.19 12:52:20
-06'00'

BY:

Judi Kahl, Constructions Programs Bureau, Bureau Chief

Signed pursuant to March 24, 2023, Secretary of Environment Delegation Order

WATER RIGHTS PURCHASE AGREEMENT

THIS WATER RIGHTS PURCHASE AGREEMENT ("Agreement") is entered into by **Suerte del Sur, LLC** a New Mexico limited liability company, with a mailing address of P.O. Box 908, Santa Fe, New Mexico 87504 ("Seller") and **Santa Fe County**, a political subdivision of the State of New Mexico (the "County") (collectively the "Parties" and individually "Party"), for valuable consideration, as of the date of last signature below ("Effective Date"). The County and Seller may hereinafter be referred to as "Party" or collectively as "Parties."

WHEREAS, Seller is the owner of 44.803 acre-feet per year ("afy") of consumptive use pre-1907 priority surface water rights, which are a portion of the water rights under New Mexico Office of the State Engineer ("OSE") File No. SD-06468 that have been approved for transfer into the City of Santa Fe well field for offset purposes under OSE Permit No. SD-06468 into SP-4842 into RG-20516, et al. ("Water Rights");

WHEREAS, the Water Rights were initially permitted for direct diversion at the Buckman Direct Diversion ("BDD") under OSE Permit No. SD-06468 into SP-4842 but were then transferred as offsets to the Buckman Wellfield under OSE Permit No. SD-06468 into SP-4842 into RG-20516, et al.;

WHEREAS, County desires to purchase the Water Rights for direct diversion at the BDD, and Seller desires to sell the Water Rights, in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **WATER RIGHTS**: Seller agrees to sell, and the County agrees to purchase all of Seller's right, title and interest in and to the Water Rights as described herein, free and clear of any and all liens or encumbrances.

2. **CONDITIONS PRECEDENT FOR THE COUNTY'S OBLIGATION TO CLOSE**: The obligation of the County and Seller to close the Transactions contemplated by this Agreement shall be expressly subject to satisfaction or waiver of each of the following contingencies:

A. The County determines to its satisfaction that the Water Rights are surface water rights with a priority date of pre-1907 acceptable for use within the service area of the County water utility.

B. Within 10 days of the execution of this Agreement the Seller shall provide to the County, for the County's review, a complete copy of OSE File No. SD-06468, including OSE Permit No. SD-06468 into SP-4842 and OSE Permit No. SD-06468 into SP-4842 into RG-20516, et al.

C. Within 10 days of the execution of this Agreement the Seller shall provide to the County copies of title work showing that the Water Rights were severed from their original place of use and there are no liens or encumbrances on the Water Rights.

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D. Prior to Closing, the County must be satisfied, in its sole discretion, that either (1) the permit approving transfer of the Water Rights to the Buckman Wellfield, OSE Permit No. SD-06468 into SP-4842 into RG-20516, can be cancelled, leaving OSE Permit No. SD-06468 into SP-4842 in place so that the County may divert the Water Rights at the BDD or (2) other permitting or use arrangement is put in place satisfactory to the County.

E. At Closing the Water Rights shall be free and clear of all liens and encumbrances, assessments, or other operational obligations as well as any and all financial liens, encumbrances, and obligations.

3. PURCHASE PRICE FOR THE WATER RIGHTS: If the conditions precedent have been met, the purchase price for the Water Rights shall be One Million Six Hundred and Twelve Thousand Nine Hundred and Eight Dollars and No/100s (\$1,612,908.00), paid by the County to Seller in funds acceptable to Seller at Closing. The purchase price has been calculated based upon 44.803 afy of consumptive use Water Rights at Thirty-Six Thousand Dollars and No/100s (\$36,000.00) per acre-foot. In addition, the County will pay a commission of \$80,645.40 plus gross receipts tax as set forth in Paragraph 4, which will be included in the total purchase price.

4. PAYMENT OF BROKERAGE AND OTHER FEES: The Parties agree that Bogle Reality is the only broker of this transaction, and that the County shall pay at Closing to Bogle Reality a five percent commission of \$80,645.40, plus gross receipts tax. Seller shall pay all other fees and charges for services provided to Seller or other parties at Seller's request. Both Parties agree to pay for their own legal fees and other professional services fees required by either party in connection with the purchase and sale of the Water Rights hereunder.

5. CLOSING AND PAYMENT:

A. Consummation of the transactions ("Closing") shall occur no later than 45 days after Effective Date, unless extended by written mutual agreement of the Parties ("Closing Date").

B. At Closing, the County shall pay to the Seller the total Purchase Price for the Water Rights. Seller shall deliver to the County an executed general warranty deed conveying all right, title and interest in and to the Water Rights to the County ("Warranty Deed"), in a form agreed to by the Parties.

6. SELLER'S REPRESENTATIONS, COVENANTS, WARRANTIES AND OBLIGATIONS:

A. Seller warrants lien free, unencumbered, and marketable title to the Water Rights at the time of Closing, which warranty shall arise at Closing, and shall continue and survive Closing.

B. Seller represents and warrants that, to the best of its knowledge, Seller has complied with, and the Water Rights are in good standing and in compliance with, the requirements of all

New Mexico laws including the requirements of the New Mexico Office of State Engineer as demonstrated by the Office of State Engineer documentation provided by the Seller to the County pursuant to Paragraphs 2.B. and 2.C of this Agreement.

C. Seller agrees to cooperate in effecting the transaction by signing all necessary and appropriate documents required for the County to complete, file, and process required applications with the New Mexico Office of State Engineer for the change in ownership for the Water Rights.

7. **CLOSING DOCUMENTS:** On or before the closing date, Seller shall draft, execute, acknowledge (as appropriate), and deliver the following documents: (a) the Warranty Deed and (b) such other documents as may reasonably be required by the County, to consummate the transaction which is the subject matter of this Agreement.

8. **APPLICABLE LAW:** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of New Mexico. The County and Seller agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Santa Fe County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court.

9. **BINDING EFFECT:** This Agreement, including all representations and warranties, shall bind and inure to the benefit of the respective heirs, representatives, successors, and permitted assigns of the County and Seller.

10. **NOTICES:** All notices and other communications, required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

The County: Santa Fe County
Utilities Department
424 NM SR 599, Frontage Road,
Santa Fe, New Mexico, 87509

With copies to: Santa Fe County Attorney
P.O. Box 276
Santa Fe, NM 87504-0276

and

John Utton
Utton & Kery PA
675 Alto Street
Santa Fe, NM 87501
John@uttonkery.com
505-699-1445

Seller: Suerte del Sur, LLC
c/o Soren Peters
P.O. Box 908

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Santa Fe, NM 87504
(505) 699-5345

With copies to: Seth Fullerton
Santa Fe Law Group
123 E. Marcy Street, Suite 200
Santa Fe, NM 87501
srf@santafelawgroup.com

and to any other address or addresses as may be hereafter specified by notice given to all of the others by anyone desiring a change of address.

11. **ENFORCEMENT**: The Parties shall first attempt to settle any claim, controversy, or dispute arising out of this Agreement by non-binding mediation. The mediator shall be chosen by mutual agreement of the parties. In the event that any claim, controversy, or dispute arising out of this Agreement cannot be resolved by mediation, then any Party to this Agreement may initiate a legal proceeding to resolve such claim, controversy, or dispute but only in the district court in Santa Fe County, New Mexico. In any action between the County and Seller seeking enforcement of any of the terms and provisions of this Agreement, or in connection with any of the Water Rights described herein, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

12. **INDEMNIFICATION**. Seller shall indemnify and hold the County harmless from and against any and all claims, demands, cause of action, debts, or liabilities arising out of or on account of Seller's breach of any provision of this Purchase Agreement including without limitation, the making of a false representation or breach of any covenant or warranty contained herein.

13. **INTERPRETATION**: The Parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof.

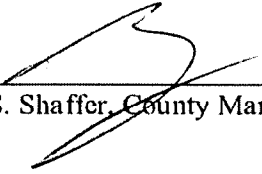
14. **SURVIVABILITY**: All covenants of the County and Seller which are intended hereunder to be performed in whole or in part after Closing shall survive Closing and be binding upon and inure to the benefit of the respective Parties.

15. **AUTHORITY OF PARTIES**: Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation.

16. **COUNTERPARTS**: This Agreement and any other agreement delivered pursuant hereto may be executed in one or more counterparts. All such counterparts shall, when taken together, constitute one and the same agreement.

BUYER


SANTA FE COUNTY



Gregory S. Shaffer, County Manager

3/18/2024
Date

APPROVED AS TO FORM:



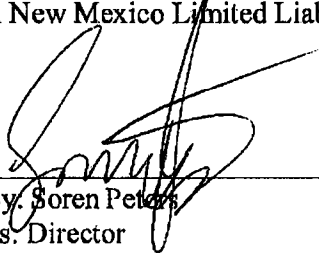
Cristella Calles for
Jeff Young, County Attorney

03/07/2024
Date

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SELLER

Suerte del Sur, LLC
A New Mexico Limited Liability Company



By: Soren Peters
Its: Director