

**RESOLUTION 2007-26**

**WHEREAS**, the Town Council of the Town of Silver City, Grant County, New Mexico is desirous of entering into a Grant Agreement with the State of New Mexico Environment Department, identified as SAP Project 07-4475-GF Water and Wastewater System Improvements; and

**WHEREAS**, the Town Council believes this Agreement is beneficial to the health, safety, and welfare of the Town.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Silver City that:

The Town shall enter into a Grant Agreement with the State of New Mexico Environment Department, identified as SAP Project 07-4475-GF Water and Wastewater System Improvements.

James R. Marshall, Mayor, is authorized to sign the agreement for this project, and

Alex C. Brown, Town Manager-Finance Director, or his successor is the GRANTEE REPRESENTATIVE who is authorized to submit any documents pertaining to the project and act as the single point of contact, and

Alex C. Brown, Town Manager-Finance Director, or his successor is the SIGNATORY AUTHORITY who is authorized to sign reimbursement requests and other documents requiring a signature for submittal to the New Mexico Environment Department.

**PASSED, APPROVED, AND ADOPTED** on this 28th day of August 2007.

(Seal)

/s/

\_\_\_\_\_  
James R. Marshall, Mayor

Attest:

/s/

\_\_\_\_\_  
Ann L. Mackie, Town Clerk

|            |
|------------|
| Amendment  |
| No. _____  |
| Date _____ |

EXHIBIT A  
NEW MEXICO ENVIRONMENT DEPARTMENT  
CONSTRUCTION PROGRAMS BUREAU

PROJECT DESCRIPTION

NAME OF GRANTEE: Town of Silver City

PROJECT NO: SAP 07-4475-GF / water & ww sys improve

**The GRANTEE agrees to accomplish the project as described below:**

The Town of Silver City will contract with Smith Engineering to prepare the plans and specifications for the construction of one aerobic digester cell. Smith Engineering will be required to submit the plans and specifications to the NMED for approval. In addition, the engineer will perform all functions related with the bidding process for construction of the digester cell. This will include preparation of the bid documents, advertisement of the project, evaluation of the bids, and recommendation for award. Upon award by the Town Council, a pre-construction meeting will be held to discuss the project and finalize all necessary construction documents. Following this, a notice to proceed with construction will be issued and the contractor will begin construction. It is anticipated that construction will take 6-8 months. Upon completion of the project all closeout documents will be submitted by the Engineer and the Contractor to the Town of Silver City and the NMED.

X X  
Grantee Signatory Authority NMED Project Manager Approval

|                          |           |
|--------------------------|-----------|
| <input type="checkbox"/> | Amendment |
| No.                      | _____     |
| Date                     | _____     |

**EXHIBIT B**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**  
**CONSTRUCTION PROGRAMS BUREAU**  
**PROJECT BUDGET**

**NAME OF GRANTEE:** Town of Silver City

**PROJECT NO:** SAP 07-4475-GF / water & ww sys improve

| CLASSIFICATION                  | NMED-Program<br>(07-4475-GF) | OTHER FUNDS | TOTAL              |
|---------------------------------|------------------------------|-------------|--------------------|
| Administrative Expenses         | Ineligible                   | \$          | \$                 |
| Engineer Fees                   | \$ 69,388.                   | \$ 0        | \$ 69,388.         |
| Other Professional Service Fees | \$ 0                         | \$ 0        | \$ 0               |
| Inspection Fees                 | \$ 24,019.                   | \$ 0        | \$ 24,019.         |
| Property Acquisition            | \$ 0                         | \$ 0        | \$ 0               |
| Construction Cost               | \$ 369,203.                  | \$ 0        | \$ 369,203.        |
| Equipment                       | \$ 0                         | \$ 0        | \$ 0               |
| Other Costs ( )                 | \$ 0                         | \$ 0        | \$ 0               |
| Contingencies                   | \$ 37,390.                   | \$ 0        | \$ 37,390.         |
| <b>TOTAL:</b>                   | <b>\$500,000</b>             | <b>\$ 0</b> | <b>\$ 500,000.</b> |

Identify Sources of Other Funds (Include matching requirements): n/a

Are the other funds committed? (Yes/No)

If not, when do you expect commitment?

Grantee Signatory Authority       NMED Project Manager Approval

NEW MEXICO ENVIRONMENT DEPARTMENT  
CONSTRUCTION PROGRAMS BUREAU

SPECIAL APPROPRIATION PROJECT NUMBER  
SAP 07-4475-GF  
SILVER CITY WATER/WASTEWATER SYSTEM IMPROVEMENTS  
GRANT AGREEMENT

**THIS GRANT AGREEMENT** is made and entered into by New Mexico Environment Department (NMED) and the Town of Silver City (grantee).

**WHEREAS**, the New Mexico Legislature has enacted Laws of 2007, Chapter 42, Section 59, sub section 67 (Chapter 42), appropriating \$500,000 to NMED for expenditure from the General Fund (GF) "to plan, design and construct improvements to the water and wastewater system in Silver City in Grant county" (project), further defined in Exhibits A and B of this agreement.

**WHEREAS**, NMED is empowered pursuant to Section 74-1-6.B NMSA 1978 to contract in its own name;

**NOW THEREFORE**, in consideration of the premises and mutual obligations in this agreement, the parties agree to the following:

**ARTICLE 1 FUNDING**

Pursuant to Chapter 42, NMED hereby grants funds in the amount of \$500,000 to the grantee for the project. Such funds will only be paid by way of reimbursement for allowable costs as defined in Article 9.

**ARTICLE 2 GRANTEE CONTRIBUTION**

The parties recognize that the costs of the project may exceed \$500,000. In such event, the grantee will contribute the amount of the difference between the total cost of the project and the funds available from NMED plus any matching funds or the scope of work will be reduced so as not to exceed funds available from NMED and any matching funds.

**ARTICLE 3 SCOPE OF WORK**

- A. The grantee agrees that it will implement the project outlined in its Project Description, attached as Exhibit A.
- B. The grantee agrees to make no change in the Project Description without:
  - i. Submitting a written request to NMED Construction Programs Bureau and obtaining the written approval of the NMED Construction Programs Bureau, and
  - ii. Amending this agreement, if necessary.

#### ARTICLE 4 ADMINISTRATIVE PROCEDURES

Upon execution of this grant agreement, the grantee will follow the procedures listed below unless waived in writing by NMED (payment by NMED may be withheld if any of these procedures are not followed by the grantee).

- A. The grantee must submit copies of all executed contracts entered into by the grantee prior to this grant agreement that are related to the project to NMED for review and, if necessary, approval.
- B. If these grant funds are to be used for engineering and/or other professional services, the grantee must submit documentation regarding the hiring process to be used and the Request for Proposals (RFP), if applicable, 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 be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If, for any one circumstance, engineering fees will exceed \$25,000, excluding gross receipt taxes, the Grantee is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB: phone (505) 881-1257, fax (505) 830-1670, and e-mail ptab@acecmm.org.)
- C. If these grant funds are to be used for engineering and/or other professional services, the grantee must submit a draft form of any engineering agreement and/or other professional services contract, or a letter certifying that the grantee's staff will be used for design, to NMED for review and approval **prior to** executing the agreement/contract or using grantee's staff. The preferred engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at [www.nmenv.state.nm.us/cpb/cbtop.html](http://www.nmenv.state.nm.us/cpb/cbtop.html).
- D. A preliminary engineering report (PER) or study by a registered New Mexico Professional Engineer may be required. If this is required, the grantee must submit the PER and/or study to NMED for review and approval **before** preparation of plans and specifications. The purpose of the PER and/or study is to analyze and choose the most technically feasible and cost effective solution for the project. The PER must follow RUS Bulletin 1780-2 for water or 1780-3 for wastewater. Grantee agrees not to start the preparation of plans and specifications until NMED approval of the PER, study or waiver of the report requirement has been received.
- E. If the grant funds are to be used for engineering design or for construction, the grantee must submit all plans, specifications, and any addenda for this project (prepared by a registered New Mexico Professional Engineer) to NMED for review and approval **before** the project is advertised for construction bids.
- F. The grantee 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 grantee must certify in writing that this has been done prior to award of the construction contract. A site certificate addressing the property upon or through which the facility is being constructed and prepared by the grantee's attorney may be required.
- G. The grantee must submit the recommendation of award, certified bid tabulation, a copy of bid bond for the selected contractor and evidence of full project financing to NMED for review and approval **prior to** awarding the contract. Grantee will not award the contract until NMED has concurred with the award in writing. Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in Section 13-4-11 NMSA 1978), will be used for awarding construction contracts. Contracts will be awarded to the responsive bidder who submits the lowest acceptable bid, or as provided for by State Law.

- H. Following NMED approval of the proposed award, the grantee will submit 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 to NMED for review. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.
- I. The selected contractor will be required to submit a construction schedule to the grantee at the pre-construction conference.
- J. The grantee 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. The decision by NMED will be rendered promptly in writing to the grantee. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written confirmation to the grantee.
- K. The grantee will provide a full-time construction inspector during construction of the project. The grantee will be required to submit the inspector's résumé to NMED for review and approval.
- L. Notwithstanding the inspections performed by the grantee and its engineer, NMED will 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, but will be in the nature of general NMED review as described in Article 5.
- M. NMED may require proof of deposit and/or applicable proof of payments to contractors and consultants, including the disbursement of funds other than those described in Article 1.
- N. If applicable, the grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.
- O. If the grant funds are to be used for construction of wastewater collection lines or water distribution lines, the grantee will assure NMED that the existing population will connect to the collection system or distribution system within reasonable time after project completion. This will be accomplished by adoption and annual review of an ordinance and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.

**ARTICLE 5 NMED REVIEW**

NMED inspection, review and approval are only for purposes of compliance with applicable state grant requirements, procedures and regulations. NMED approval will not be interpreted as any warranty or guarantee. Approval of plans and design of the project means only that plans are complete and in compliance with applicable state grant requirements, procedures and regulations. NMED will bring to the grantee's attention, any obvious defects in the project's design, materials or workmanship, but all such defects and their correction will be the responsibility of the grantee and its contractors and consultants. Any questions raised by NMED during its inspections and reviews will be resolved exclusively by the grantee. The grantee and its contractors and consultants will remain responsible for the completion and success of the project. Approval does not relieve the owner or engineer of legal responsibilities for the overall integrity of the project, adequacy of the design, or compliance with all applicable regulations.

## **ARTICLE 6 OPERATION AND MAINTENANCE**

The grantee certifies that all operation and maintenance of the project will be performed after completion and acceptance of the work under the construction contract(s) to assure satisfactory operation/services to the users. The grantee further certifies that user fees are sufficient to fully fund operation, maintenance, and replacement of the system. If the grantee is not the system owner, the grantee will enter into a memorandum of understanding (MOU) with the system owner certifying that all operation and maintenance of the project will be performed. This grant agreement will not be executed until the MOU is in effect.

## **ARTICLE 7 EFFECTIVE DATE AND TERMS OF AGREEMENT**

This agreement will become effective upon execution by the NMED Secretary and will terminate on **June 30, 2011**, unless extended, shortened, or cancelled by the Legislature or unless terminated by NMED as provided in Article 17 of this agreement. The grantee agrees to complete construction and administrative close out of the project described in Exhibit A prior to the date of termination.

## **ARTICLE 8 COMPENSATION AND METHOD OF PAYMENT**

A. NMED will reimburse the grantee (or its designated payee) its actual costs incurred for satisfactory performance of all work and services to be performed under the terms of this agreement, up to the limit set forth in Article 1. The grantee may submit requests for reimbursement at its discretion, but not more than once in any thirty-day period during the term of this agreement. NMED will reimburse the grantee (or its designated payee) when NMED determines, in its sole discretion, that expenditures have been properly documented. If applicable, copies of all pay request vouchers will be submitted to NMED with requests for reimbursement. All requests for reimbursement will be submitted on the appropriate form with original signature and will be accompanied by appropriate documentation to assure that those costs being reimbursed are correct and within the approved scope of work and budget. Requests will include expenditures to date by category and engineering construction status reports submitted on the form provided by NMED. Payments are subject to processing time and requirements of the New Mexico Department of Finance and Administration.

B. Interim payments will be made as the work progresses. Interim payments will be based upon requests for payment prepared and certified by the grantee and/or grantee's engineer to include value of work performed, materials on hand, and materials in place in accordance with the construction contract. Interim payments for engineering, inspection, legal services or other approved services will be made in accordance with the approved contracts or agreements for those services. The proper signatory authority must sign all reimbursement requests. A transmittal letter is required with every reimbursement request and all requests will be prepared on the NMED Disbursement Request form.

C. The grantee will complete a Project Budget (Exhibit B) form when signing and returning this Agreement to NMED. When multiple funding sources are being used to complete the project, the grantees must identify the sources and may have to certify that they are committed for this project.

D. The unexpended balance that remains after all conditions of this agreement have been satisfied, will revert to the General Fund (GF).

E. The funds referred to in Article 1 will constitute full and complete payment of monies to be received by the grantee from NMED under this Agreement.

- F. Notwithstanding the other provisions of this Article the grantee will comply with the Retainage Act [Section 57-28-1 et seq. NMSA 1978] if money is to be withheld during construction. 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 grantee and NMED.
- G. If the grant funds are to be used for preparation of a PER, a study, or plans and specifications, final payment will be made after approval by NMED of the PER, study, or plans and specifications. Payments do not constitute approval of any of these documents.
- H. If the grant funds are to be used for purchase of equipment, final payment will be made after approval by NMED of appraisal reports and equipment title for used equipment.
- I. If the grant funds are to be used for construction, final payment 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:
  - i. Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals;
  - ii. A final reimbursement request including the final certified construction pay request prepared by the grantee's project engineer and approved by the grantee;
  - iii. A certificate of substantial completion including punch list items;
  - iv. A letter certifying project acceptance by the grantee and the grantee'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 grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the grantee and contractors will be submitted to NMED for final review and approval;
- V. Certification letter by the grantee that the Labor Standards Contract Provisions have been met;
- vii. Record drawings prepared by the grantee's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings;
- viii. Complete and legally effective releases or waivers (satisfactory to the grantee) 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 grantee, 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 grantee or its property might in any way be responsible, have been paid or otherwise satisfied;
- viii. A written consent of the surety, if any, to final payment; and
- ix. Grantee's ledger sheets including all payments made by the grantee may be requested with the final reimbursement request and before the final reimbursement request can be processed by NMED.

**ARTICLE 9 ALLOWABLE AND UNALLOWABLE COSTS**

- A. The parties agree that allowable costs will be limited to those costs that are necessary, reasonable, and directly related to the efficient achievement of the objectives of this agreement. The grantee 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 grantee provides sufficient justification.
- B. Unallowable costs include but are not limited to: administrative expenses (including grant applications), costs of grantee employees, late fees, interest or penalties and other ineligibile costs as stated in Article 13, Special Terms and Conditions. Those costs will be paid by the grantee.

**ARTICLE 10 ACCOUNTING**

Funds received by the grantee from NMED and all other funds for the project will be established as separate identifiable ledger accounts or be deposited in separate bank accounts. The grantee will comply with generally accepted accounting principles, to account for all funds.

**ARTICLE 11 RECORDS/AUDIT AND INSPECTION**

The grantee will maintain books, records, documents, and other evidence sufficient to reflect properly all costs incurred in the performance of this agreement. The project site and grantee facilities which are in any part, the subject of this agreement and such books, records, documents, ledgers, and other evidence required by this Article will be preserved and made available to NMED, the State Auditor and/or his agent(s) during the agreement period and for a period of six (6) years from date of final payment. If, upon termination of this agreement, questions exist concerning proper expenditure of funds, the grantee will preserve and make available all books, records, documents, ledgers, and other evidence relating to this agreement until such questions are settled and the grantee has received written notice, to that effect from NMED. All contracts let by the grantee the cost of which are to be claimed for reimbursements will include the substance of this record/audit and inspection clause.

**ARTICLE 12 CERTIFICATION**

The grantee gives assurance and certifies, by signing this agreement that:

- A. The grantee possesses legal authority to make application for these funds and to execute this agreement.
- B. The grantee's current governing body has duly adopted or passed a resolution authorizing the person(s) identified as the official representative of the grantee to submit the final documents and any other documents pertaining to the project, along with all understanding and assurance contained in this agreement; the same official resolution identifies the person(s) with signatory authority for the grantee (the person(s) authorized to submit and sign reimbursement requests to NMED); the grantee will submit a copy of the official resolution to NMED when the grantee returns the signed grant agreement.
- C. The grantee will provide all necessary qualified personnel, material, and facilities to implement the project within the term of this Agreement.

- D. The grantee will comply with federal and state law and with federal, state and local regulations, policies, guidelines and requirements with respect to the acceptance and use of funds for this project.
- E. With the exception of easements (See Article 4.F), when real property is acquired by the grantee, either through purchase or donation as a part of this project and within the project period, the grantee 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 grantee 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 grant agreement.
- F. No officer or employee of the grantee, or its designees or agents, or no member of the governing body of the locality in which the project is situated during his/her tenure or for one year thereafter, will have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the project assisted under this agreement. The grantee will incorporate in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification.
- G. All project signs will acknowledge assistance from the State of New Mexico. Each project sign will include the name of the project, the name of the grantee, and the total cost of the project.

### **ARTICLE 13 SPECIAL TERMS AND CONDITIONS**

The grantee agrees to abide by the following:

- A. None of these grant funds will be used to pay, refund, renew, roll over, retire or replace any other obligations previously issued or incurred by the grantee.
- B. NMED will reimburse grantee for expenditures only as described in Article 8 and only if incurred after **January 14, 2007**.

### **ARTICLE 14 OCCUPATIONAL SAFETY**

The grantee covenants that it will take affirmative action to ensure that the project will be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. Authorized inspectors from the NMED Occupational Health and Safety Bureau will have unobstructed access to project sites and will not be impeded in any way from performance of their duties. These provisions will be included in any contract entered into by the grantee and its contractor(s).

### **ARTICLE 15 EQUAL EMPLOYMENT OPPORTUNITY**

The grantee agrees to abide by all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with grantee, be excluded from participation in the project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this agreement. If grantee is found to be not in compliance with these requirements during the life of this agreement, grantee agrees to take appropriate steps to correct any deficiencies.

