

STATE OF NEW MEXICO
DEPARTMENT OF Information Technology
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Information Technology at 715 Alta Vista Street, Santa Fe, New Mexico, 87502, hereinafter called the “Department” or abbreviation such as “DoIT”, and Navajo Nation at 100 Parkway Post Office Box 7440, Window Rock, AZ 86515, hereinafter called the “Grantee”.

RECITALS

WHEREAS, in the Laws of 2020, Chapter 81, Section 31, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement;

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

WHEREAS, the Grantee is an Indian nation, tribe or pueblo, or is a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation to enter into this agreement.

AGREEMENT

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

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

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

Project # 35513
Severance Tax Bonds Fund Code
Appropriation ID E2269
Year 2020
Chapter/Section 81/31
Appropriation Title “NAVAJO NATION BROADBAND PRJT”

APPROPRIATION REVERSION DATE: 30-JUN-2024

Laws of 2020, Chapter 83, Section 31, Paragraph 2, three million dollars (\$3,000,000.00), to acquire easements and rights of way and to plan, design and construct improvements, including conducting archaeological and environmental studies and enhanced 911 and rural

addressing, for the broadband internet access project across the Navajo Nation in McKinley, San Juan, Rio Arriba, Sandoval, Bernalillo, Cibola and Socorro counties;

The Grantee's total reimbursements under this Agreement shall not exceed three million dollars (\$3,000,000.00) which is hereinafter referred to as "Appropriation Amount."

B. In the event the Appropriation Amount in this Agreement is greater than the amount stated in the laws cited in Article I.A. above, Grantee acknowledges and agrees that the amount stated in those laws is the maximum amount available to it under this Agreement.

In the event of a conflict between the Reversion Date and/or the purpose of the Project and/or the Reversion Date as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the "Project Description." Scope of work description: To procure easements and rights of way and to plan, design and construct improvements, including conducting archaeological and environmental studies and enhanced 911 and rural addressing, for the broadband internet access to include fiber optics.

The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, this Grant Agreement and the disbursement of any and all amounts of the above referenced Appropriation Amount are expressly conditioned upon the following:

- (i) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
 - a. A "Third Party Obligation" is a written obligation between Grantee and a third party contractor or vendor, including force account labor as defined in Article XVII. herein, for the provision of services, including professional services, or for the purchase of tangible personal property and/or for real property for the Project.
 - b. A Notice of Obligation is a writing issued by the Department that establishes its obligation to reimburse the Grantee for a specified amount of qualifying expenditures incurred pursuant to a specific Third Party

Obligation, in accordance with the terms and conditions of this Agreement.

- c. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - d. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation for the Third Party Obligation, it shall be solely responsible for expenditures under the Third Party Obligation in the event the Department does not issue a Notice of Obligation.
 - e. The Department may not unreasonably refuse to issue a Notice of Obligation; provided however, that this restriction in no way limits the Department's discretionary rights under Article VI. By way of illustration, the following are examples of circumstances under which the Department's refusal to issue a Notice of Obligation would be reasonable:
 - i. This Agreement is suspended or a notice of termination has been issued;
 - ii. The amount of the Third Party Obligation plus the amounts of previously issued Notice(s) of Obligation exceeds the Appropriation Amount;
 - iii. The Third Party Obligation is not within the Project Description;
 - iv. The Third Party Obligation was not incurred in accordance with the Grantee's procurement code and/or procurement policies; or
 - v. The Grantee has not provided affirmative proof of the existence of the Third Party Obligation.
 - f. If there are not questions about or deficiencies in Grantee's request and supporting material or questions about the Grantee's compliance with this Agreement, Notices of Obligation shall ordinarily be issued within seven (7) business days of the Department's receipt of Grantee's request. The Department shall not be liable in the event Notices of Obligation are issued later than seven (7) days.
 - g. The date the Department sends by mail, facsimile, or email the Notice of Obligation is the date that the Department's Notice of Obligation is effective.
- (ii) Irrespective of any Notice of Obligation, the Grantee's expenditures, as defined in Article IV, shall be incurred on or before the Reversion Date and, if applicable, an Early Termination Date.
 - (iii) The total amount received by the Grantee shall not exceed the total of all amounts stated in the Notice(s) of Obligation.
 - (iv) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding Third Party Obligations.
 - (v) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein.

(vi) In the event that capital assets acquired with Project funds are to be leased or licensed to or operated by another entity, the Department must approve of the lease, license, or operating agreement as complying with law and as providing the Grantee with adequate consideration in exchange for the capital assets. Prior to the Department approving the lease, license, or operating agreement, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the lease, license, or operating agreement commercially feasible, such as plan and design expenditures.

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

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: Navajo Nation
Name: Jonathan Nez
Title: President
Address: 100 Parkway Post Office Box 7440, Window Rock, AZ 86515
Email: jonathannez@navajo-nsn.gov
Telephone: 928-871-7000
Fax: 928-871-4025

Department: New Mexico Department of Information Technology
Name: Mr. John L. Salazar
Title: Cabinet Secretary & State Chief Information Officer (CIO)
Address: 715 Alta Vista Street, Santa Fe, NM 87505
Email: JohnL.Salazar@state.nm.us
Telephone: 505-827-0000

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. The Effective Date of this Agreement is the date of last signature by either the Department or the Grantee.

B. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." This Agreement shall terminate on the Reversion Date in Article I.A. unless Terminated before Reversion Date ("Early Termination") pursuant to Article V. herein.

C. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement.

- (i) For purposes of this Agreement, an entity has "expended funds" and made an "expenditure" on the day it accepts services rendered or accepts title for goods or property.
- (ii) Entering into a contract for services, goods, or property does not constitute funds being expended or an expenditure being made. "Encumbering" Project funds on the Grantee's books to pay for services, goods, or property not yet rendered or the title to which the Grantee has not yet accepted does not constitute funds being expended or an expenditure being made.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement for the reasons described above prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination.

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

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final.

C. Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may direct the Grantee to suspend entering into new and further Third Party Obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI.D. herein.

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

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

D. Corrective Action Plan in the Event of Suspension

In the event that the Department directs the Grantee to suspend entering into new or further Third Party Obligations pursuant to Article VI.A. and the reason for such suspension is Grantee's action or inaction, the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department, which approval shall not be unreasonably withheld, and be signed by the Grantee. Failure to develop a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Periodic Reports

1. In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Periodic Reports for the Project. Periodic Reports shall be submitted by entering such Project information as the Department may require directly into a database maintained by the Department of Finance and Administration. The information currently required to be reported into the database is set forth in Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Department may change the reporting period by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

2. A Grantee may request to submit paper reports in lieu of reporting of information directly into the database. Such requests shall be submitted in writing to the Department. If the Department approves a request to submit Paper Periodic Reports, the reports shall be submitted on a form prescribed by the Department and shall be due monthly on the last day of each month, beginning with the first full month following approval of the request to submit Paper Periodic Reports.

B. Paper Final Report

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Final Report form is attached hereto as Exhibit 2. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever ever first occurs.

C. Requests for Additional Information/Project Inspection

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 3 or such other form as the Department may prescribe. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment.
- (ii) Each request for payment must contain a notarized certification that:
 - a. The information contained in the request is accurate;
 - b. The expenditures included in the request are valid and for proper purposes under this Agreement;
 - c. The expenditures included in the request have been paid or, if the expenditures have been incurred but not yet paid, the Grantee's representation that the expenditure will be paid within fifteen (15) calendar days of receiving payment from the Department;
 - d. None of the expenditures included in the request has been previously reimbursed;
 - e. That the Project activity is in full compliance with the Grant Agreement; and
 - f. Such other representations as the Department may reasonably require.
- (iii) All notarized certifications must be made by the Grantee's designated representative in Article III. of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.

- (iv) As an additional condition precedent to payment, the Department may, in its discretion, require the Grantee to submit with its Request(s) for Payment invoices showing the amount and type of expenditures and proof of payment (e.g., cancelled warrant or check).

B. Deadlines

Requests for Payment shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred, if total unreimbursed expenditures at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous State fiscal year, which runs from July 1 to June 30; provided, however, that, if Requests for Payment cannot be submitted by July 15 despite Grantee's good faith and reasonable efforts to do so, the Department may allow the Grantee to:
 - i. submit a good faith and documented estimate of its unreimbursed expenditures by July 15; and
 - ii. submit Requests for Payment with all required supporting documentation by a later date established by the Department in accordance with deadlines promulgated by the Department of Finance and Administration Financial Control Division.
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department under this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- (i) The Project's funds must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to, the Grantee's procurement code and/or processes.
- (ii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."

- (iii) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
- (iv) Ownership of property acquired with funds made available under this Agreement shall remain with the tribal entity and/or its local governmental entities throughout the useful life of the property.
- (v) The Grantee has the legal authority to receive and expend the Project's funds.
- (vi) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (vii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's constitution or federal law (if applicable), or any judgment or decree to which it is subject.
- (viii) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (ix) The Grantee's governing body has duly adopted or passed as an official act a law, resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement.
- (x) If applicable to the Project, the Grant will be conducted and administered in conformity with:
 - a. The policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act and as issued pursuant to section 104 (g) of the Housing and Urban Development Act and contained in 24 CFR Part 58.
 - b. The requirements of the Flood Disaster Protection Act of 1973 (Public Law 93-234; as amended) and if necessary with the participation requirements of the National Flood Insurance Program.
 - c. The prohibition against the use of lead-based paint of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)). Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures.
- (xi) The Grantee shall abide by all applicable federal whistleblower laws.
- (xii) The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid to or for the benefit of an elected official, officer,

or employee of the Grantee in connection with the awarding of any Third Party Obligation.

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

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

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records related to the Project as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act. Any liability of the Grantee is subject to immunities and limitations of applicable federal and tribal law.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of the parties to this Agreement, shall

apply to them to the same extent while engaged extraterritorially in the performance of any of their functions and duties under the provisions of this Agreement.

The Parties agree to attempt to resolve any and all disputes arising under, related to, or in connection with this Agreement first through voluntary negotiations.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

The Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the [Grantee’s name] may immediately terminate this Agreement by giving the Contractor written notice of such termination. The [Grantee’s name]’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.”

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

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

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

ARTICLE XVII. FORCE LABOR ACCOUNTS

The Grantee may utilize force labor accounts for the Project and such force labor accounts constitute Third Party Obligations within the meaning of this Agreement. Force

labor accounts are defined as the hiring of temporary employees to work specifically on the Project. In the case of force labor accounts, the Department shall issue a Notice of Obligation in accordance with the following:

- A. The Grantee must submit a notarized certification stating:
 - i. the amount to be used to pay force labor working on the Project;
 - ii. that the labor is being hired specifically for the Project;
 - iii. that the labor is being hired in accordance with the Grantee's procurement or employment code and/or processes; and
 - iv. that the labor will be hired within a reasonable time after the Grantee's receipt of a Notice of Obligation.

The certification required under this paragraph must be made by the Grantee's designated representative in Article III. of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.

- B. Grantee shall submit Requests for Payment concerning force labor account expenditures in accordance with the provisions in Article IX, above, and the Department will accept pay stubs in lieu of invoices.
- C. Grantee must submit in the final report required by Article VIII written documentation, such as a labor distribution report, that shows all force labor account expenditures;
- D. In the event that the Grantee will expend less on force labor account than is stated in the Notice of Obligation concerning such labor, it must immediately notify the Department of such fact. In that event, the Department shall issue an amended Notice of Obligation reflecting the reduced level of force labor account expenditures.
- E. A Notice of Obligation issued for force labor account expenditures cannot be used for any other purpose unless the tribal entity has obtained an amended or new Notice of Obligation for another Third Party Obligation.

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Throughout the term of this Agreement, Grantee shall:
 - 1. timely submit to the federal government all forms and federal single audit documentation required under the federal Single Audit Act of 1984, as amended, and Office of Management and Budget Circular No. A-133. The parties acknowledge and agree that a federal single audit report is timely submitted for purposes of this subparagraph if submitted by any extended due date granted by the Grantee's federal cognizant agency;
 - 2. notify the Department if Grantee requests from its federal cognizant agency an extension to the federal single audit report submission due date and the reasons for the request;
 - 3. in the event the publicly available Data Collection Form for Reporting on federal single audits (Form SF-SAC or its successor forms) demonstrates that the Grantee's audit report for its most recent fiscal year contained an opinion other than an unqualified opinion, a significant deficiency, a material weakness, a material

noncompliance, or questioned costs, provide the Department, upon request, copies of the relevant sections of the single audit report and documentation and information concerning the development and implementation of any corrective action(s); provided, however, that the Grantee is not required to provide the Department with copies of the financial statements, notes to financial statements, or supplementary information sections of the single audit report; and

4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds. “Adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds” means that the design and operation of the Grantee’s internal controls allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, on a timely basis: (i) noncompliance with applicable laws, policies, and procedures related to the expenditure of grant funds, including, but not limited to, expending grant funds after expiration of the expenditure period; (ii) misstatements regarding grant funds, including, but not limited to, the failure to timely and accurately record and report grant revenue and expenditures; (iii) unauthorized or unsupported expenditures of grant funds; and (iv) the misappropriation of grant funds or assets acquired by grant funds, including, but not limited to, theft of grant funds or assets acquired by grant funds and the use of grant funds or assets acquired by grant funds for other than allowable purposes.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVIII, the Department may, depending upon the nature and cause of the noncompliance, take one or more of the following actions:

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

The Department shall provide Grantee with written notice of the noncompliance and, prior to taking one of the actions specified in subparagraphs 2, 3, and 4 of this Paragraph B, an opportunity to respond to the notice of noncompliance and proposed action.

ARTICLE XIX. THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS

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

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

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

GRANTEE

Jonathan Nez
Signature of Official with Authority to Bind Grantee

By: Jonathan Nez

Its: President, Navajo Nation

May 22, 2020
Date

NEW MEXICO DEPARTMENT OF INFORMATION TECHNOLOGY

By: John L. Salazar

Its: Cabinet Secretary Designate & State CIO Date: 5/29/20

This document was reviewed, by the individual, for financial sufficiency:

By: Andrea E. Martinez
Andrea E. Martinez

Its: Chief Financial Officer Date: 5/27/2020

This document was reviewed, by the individual, for legal sufficiency:

By: Paul Kippert
Paul Kippert

Its: GSD General Counsel Date: 5/26/20

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
DATABASE PERIODIC REPORT
EXHIBIT 1**

The Capital Projects Monitoring Systems (CPMS) can be found at: <http://cpms.dfa.state.nm.us>. Below are screenshots from the website on required fields for Local Entities. Please contact your program manager for Login and Password information.

ICIP Project # 35513

Local Data	
ICIP Project #	
ICIP Priority	
Expended Amount (Local Entity)	\$0
Current Balance (Local Entity)	\$0
Project Status (Local Entity)	
Project Phase (Local Entity)	
Goal/Milestone achieved last quarter	
Goal/Milestone for next quarter	
Valid Contracts in Place (True/False)	
No activity for month being reported (True/False)	
Last Submission Date (Local)	
Last Update (Local)	

	Date Completed, Expected Completion Date or N/A	Amount Funded to Date	Future Funding Amounts	Funding Sources	Contractor Name	Contract Amount	Comments
Grant Agreement Issued							
Water Rights							
Easement & ROW							
Acquisition							
Archaeological Studies							
Environmental Studies							
Planning							
Design							
Construction							
Furnish/Equipment							
Total							

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
PAPER PERIODIC/FINAL REPORT
EXHIBIT 2**

PERIODIC REPORT **FINAL REPORT**

Grantee: _____

Project Number: _____ **Reporting Period:** _____

1. Please provide a detailed status of project referenced above.

A. Third Party Obligations

Purchase Order or Contract # _____

Name of Contractor or Vendor: _____

Amount of Third Party Obligation: _____

Date Executed: _____

Termination Date: _____

B. Project Phase

Bonds Sold Plan/Design Bid Documents Construction
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: _____

Total Amount of all Notices of Obligation to Reimburse: _____

Total Grant Amount Expended by Grantee to Date: _____

Grant Balance as of this Date: _____

Amount of Other Unexpended Funding Sources: _____

PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

Grantee Representative/Title

Date

STATE OF NEW MEXICO
 CAPITAL GRANT PROJECT
 Request for Payment Form
 Exhibit 3

I. Grantee Information				II. Payment Computation			
(Make sure information is complete & accurate)				A. Grant Amount:			
A. Grantee:				B. AIPP Amount (If Applicable)			
B. Address:				C. Funds Requested to Date:			
Complete Mailing, including Suite, if applicable				D. Amount Requested this Payment:			
City State Zip				E. Grant Balance: \$0.00			
C. Phone No:				F. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if 1st draw)			
D. Grant No:				G. Payment Request No.			
E. Project Title:							
F. Grant Expiration Date:							
III. Fiscal Year Expenditure Period Ending:				(Jan-Jun) <input type="checkbox"/>		Fiscal	
(check one)				(Jul-Dec) <input type="checkbox"/>		Year	

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

Grantee Fiscal Officer				Grantee Representative			
Printed Name				Printed Name			
Date:				Date:			
SWORN TO AND SUBSCRIBED				SWORN TO AND SUBSCRIBED			
before me on this _____ day				before me on this _____ day			
of _____, 20____				of _____, 20____			
Notary Public _____				Notary Public _____			
My Commission expires _____				My Commission expires _____			

(Department Use Only)

Vendor Code: _____		Fund No.: _____	
Loc No.: _____			
Division Fiscal Officer Date		Division Project Manager Date	
I certify that the Grantee financial and vendor file information agree with the above submitted information.		I certify that the Grantee records and related appropriation laws agree with the above submitted information.	