



The Navajo Nation **DR. BUU NYGREN** *PRESIDENT*

Yideeskáadi Nitsáhákees | *Think for the Future*

MEMORANDUM

TO: Dr. Buu Nygren, President, The Navajo Nation  
Honorable Crystalyne Curley, Speaker, 25<sup>th</sup> Navajo Nation Council  
Honorable Members, 25<sup>th</sup> Navajo Nation Council  
Officials, 110 Navajo Nation Chapters and Kayenta Township  
Division Directors, Navajo Nation Divisions

FROM:

Sean McCabe, Controller  
Office of the Controller

Lisa Jymm, Executive Director  
Fiscal Recovery Fund Office

Candice Yazzie, Division Director  
Division of Community Development

Mel M. Rodis, Assistant Attorney General  
Tax & Finance Unit, NNDOJ

RE: Guidance on Revenue Replacement Reserve Delegate Region Projects

DATE: April 18, 2025

**I. INTRODUCTION**

The purpose of this jointly issued memorandum is to provide clear guidance regarding Delegate Region Projects that were previously funded with Fiscal Recovery Funds (FRF) and that were moved under the Revenue Replacement Reserve (RRR) of the General Fund pursuant to Council Resolution CMY-28-24. Our offices have received a series of inquiries recently from Council Delegates, Chapter Officials, and Navajo Nation government employees. Unfortunately, up to this point, there may have been some inconsistent information provided from various entities that resulted in general confusion and a delay in funds from the Unreserved, Undesignated Fund Balance (UUFB) flowing to RRR Delegate Region Projects. This memorandum is intended to eliminate that confusion and to remove obstacles to accessing funding from the UUFB so that RRR Delegate Region Projects can continue without further delay.

## **II. LEGAL AND FACTUAL BACKGROUND**

In 2021, the Navajo Nation received \$2,079,461,464 of FRF allocated under the American Rescue Plan Act (ARPA). The Navajo Nation, through Council Resolution CJN-29-22, approved an allocation of \$211,256,148 of Navajo Nation FRF for the Chapter and Regional Projects Expenditure Plan. These funds were divided equally among the 24 Delegate Regions in the amount of \$8,802,340 per Delegate Region. Council delegates selected projects within their Delegate Region to be included in a Delegate Region Projects Plan to be legislatively approved. The Division of Community Development (DCD) and other Navajo Nation divisions and departments managed and administered funds and Delegate Region Projects on behalf of non-Local Governance Act-certified (Non-LGA-Certified) Chapters. The Navajo Nation awarded funds from the NNFRF to some Local Governance Act-certified (LGA-Certified) Chapters through subrecipient agreements to allow such Chapters to implement and manage projects directly.

The Nation was faced with the federally imposed deadlines of December 31, 2024 for the obligation of FRF, and December 31, 2026 for the expenditure of FRF. Failure to meet the deadlines would have required the Nation to return the funds to the U.S. Treasury. The Navajo Nation enacted Council Resolution CMY-28-24, which recaptured approximately \$737,520,438 from the NNFRF previously allocated to projects and programs that the Navajo leadership determined were unlikely to meet the federal deadlines. The Navajo Nation established the Revenue Replacement Reserve (RRR) as a committed fund balance in the General Fund to house, protect, and reserve certain FRF funding until a statutory trust fund was established to govern the use of the trust fund for governmental services and long-term infrastructure development. The Nation transferred \$521,857,353 of unobligated and unspent Navajo Nation FRF funding to the RRR and will also transfer all realized investment income generated from investment of funds in the NNFRF.

The intent of Council Resolution CMY-28-24 is that once the statutory trust fund is created, the balance of the RRR funds housed in the General Fund will be transferred and allocated to the statutory trust fund. The provisions of Council Resolution CMY-28-24 that mandated the recapture of unobligated and unspent FRF and the reallocation of those funds to the RRR resulted in the recapture and reallocation of \$150,075,413 previously approved for Delegate Regions Projects in Council Resolution CJN-29-22. Further, until the statutory trust fund is established, the Controller is allowed to utilize funds from the UUFB to temporarily fund any immediate encumbrances for approved Delegate Region Projects that were previously funded through the NNFRF, and that once established, the statutory trust fund would reimburse the UUFB for any expenditures. Following the enactment of CMY-28-24, the Office of Management and Budget (OMB), FRF Office (FRFO), and OOC worked together to set up business units for each RRR Delegate Region Project and to link such business units to the UUFB. Therefore, no additional procedures by OMB, FRFO, or OOC are required to fund RRR Delegate Region Project business units with funds from the UUFB since the business units are already linked to the UUFB.

### **III. CLARIFICATION ON PROCEDURES AND REQUIREMENTS FOR RRR DELEGATE REGION PROJECTS**

#### **A. What is the difference between FRF Delegate Region Projects and RRR Delegate Region Projects?**

##### **1) FRF Delegate Region Projects**

If the FRF funding for a Delegate Region Project was obligated on June 17, 2024, the effective date of Council Resolution CMY-28-24, the project remained a FRF Delegate Region Project. On June 17, 2024, 12 LGA-Certified Chapters had executed FRF subrecipient agreements with the Nation. These subrecipient agreements obligated the FRF funding for the Chapter's projects included on the subrecipient agreements. Therefore, the projects included on the subrecipient agreements for these 12 Chapters remained funded by FRF. FRF Delegate Region Projects are subject to all federal requirements and restrictions under the ARPA and Treasury Guidance. FRF Delegate Region Projects must fully expend their FRF funding by the federal expenditure deadline of December 31, 2026.

##### **2) RRR Delegate Region Projects**

If the FRF funding for a Delegate Region Project was not obligated on June 17, 2024, CMY-28-24 mandated the monies be reallocated to the RRR. Thereby, Delegate Region Projects that were previously funded by FRF, but whose FRF was not obligated by June 17, 2024, became RRR Delegate Region Projects. RRR Delegate Region Projects are not subject to federal requirements and restrictions under the ARPA and Treasury Guidance. RRR Delegate Region Projects are not subject to the federal expenditure deadline. Funds from the UUFB are available for RRR Delegate Region Projects.

#### **B. How can DCD and Chapters access funds from the UUFB for RRR Delegate Region Projects prior to establishment of the statutory trust fund contemplated in CMY-28-24?**

Council Resolution CMY-28-24 prohibits the immediate allocation and use of the RRR until the statutory trust fund is established. However, CMY-28-24 provides that the Controller is allowed to utilize funds from the UUFB to temporarily fund any immediate encumbrances for legislatively approved RRR Delegate Region Projects that were previously funded through the NNFRF, and that once established, the statutory trust fund will reimburse the UUFB for any expenditures. Several Council Delegates and Chapter Officials have asked OOC, FRFO, and DCD how their Chapters can access funds from the UUFB to continue their RRR Delegate Region Projects. The response depends on the LGA-certified status of the Chapter.

##### **1) Non-LGA-Certified Chapters**

RRR Delegate Region Projects for Non-LGA-Certified Chapters are managed and administered by DCD (or other Navajo Nation divisions and departments designated in an expenditure plan). DCD (or other Navajo Nation divisions or departments designated in an expenditure plan) can immediately access the UUFB funds in the Delegate Region Project's business unit to fund project expenditures. OOC will communicate with DCD to identify those business units. Non-LGA-Certified Chapters should communicate and coordinate with DCD

regarding the implementation of their RRR Delegate Region Project. A grant agreement is not required for Non-LGA-Certified Chapters because all funds for such Chapters are administered by the Navajo Nation central government, and it will be DCD (or other Navajo Nation divisions and departments designated in an expenditure plan) to implement such RRR Delegate Region Projects on behalf of the Non-LGA-Certified Chapters. DCD can only administer projects that are included on a legislatively approved Delegate Region Project Plan expenditure plan.

## 2) LGA-Certified Chapters

With respect to RRR Delegate Region Projects for LGA-Certified Chapters, such Chapters can elect to leave their monies with the Navajo Nation central government to administer the project or it can enter into a grant agreement with DCD (or other Navajo Nation divisions and departments designated in an expenditure plan). Through an RRR Grant Agreement, UUFB funds can be transferred to the LGA-Certified Chapter and the Chapter will administer the project(s) itself. The Navajo Nation Department of Justice (DOJ) has already drafted an RRR Grant Agreement template and has provided such template to DCD. The template is attached to this memo as **Attachment A**. If DCD (or other Navajo Nation divisions and departments designated in an expenditure plan) determines that the RRR Grant Agreement and exhibits are in order, it will initiate the 164 review process. At the end of the 164 review process, President Nygren will sign the RRR Grant Agreement with the LGA-Certified Chapter. OOC will assign a contract number to the LGA-Certified Chapter's RRR Grant Agreement. Executed RRR Grant Agreements will be forwarded to: (1) the Chapter; (2) FRFO; (3) OOC; (4) DCD; and (5) DOJ. OOC will then officially notify the Chapter of the N-Account available, and the amount of UUFB funds available for expenditure. LGA-Certified Chapters should communicate and coordinate with DCD (or other Navajo Nation divisions and departments designated in an expenditure plan) with questions on the RRR Grant Agreement. RRR Grant Agreements can only be entered into for projects that are included on a legislatively approved Delegate Region Project expenditure plan.

### C. What is the process to modify Delegate Region Project expenditure plans?

The process to modify a Delegate Region Project expenditure plan differs depending on whether it is an RRR Delegate Region Project funded with UUFB funds or whether it is an FRF Delegate Region Project.

#### 1) Modification of RRR Delegate Region Project expenditure plans.

Pursuant to Council Resolution CMY-28-24, an RRR Delegate Region Project expenditure plan, for Non-LGA or LGA-Certified Chapters, can only be modified with legislative approval from the RDC and BFC. Currently, the process to modify an RRR Delegate Region Project expenditure plan is as follows. If a Chapter or DCD (or other Navajo Nation division or department designated as oversight in an RRR Delegate Region Project expenditure plan) wishes to modify a Delegate Region Project expenditure plan, such entity should communicate with the Council Delegate that represents that Delegate Region. If the Council Delegate wishes to modify the RRR Delegate Region Project expenditure plan, the Delegate should submit a legislative request to the Office of Legislative Counsel (OLC). OLC will ask for information and supporting documentation and will draft legislation. The legislation will be subject to a five-day public comment period. Then the legislation will require approval by the RDC and the BFC.

## 2) Modification of FRF Delegate Region Project expenditure plans.

Council Resolution CD-54-24 and the related Interagency Agreement authorize the Controller to administratively approve modifications to legislatively-approved FRF expenditure plans, including FRF Delegate Region Project expenditure plans. Modifications will only be approved if the Controller determines that the modifications are consistent with Treasury Guidance. CD-54-24 requires the Controller to provide 48 hours of written notice to the OPVP and the BFC prior to granting administrative approval of a modification to a legislatively-approved FRF expenditure plan. The Controller's approval must be in writing. The resolution also states that the Controller shall determine the form of the modification request and the documents to be submitted for review and approval of modifications. The OOC, FRFO, and DOJ intend to issue another memo in the near future to provide more specific guidance regarding requirements for submitting requests to OOC for administrative approval of a modification of a legislatively-approved FRF expenditure plan.

## IV. CONCLUSION

The OOC, FRFO, DCD, and DOJ have jointly issued this memo because these entities want to resolve any misunderstandings and confusion. The information and analysis in Section III above can be summarized as follows.

- Through CMY-28-24, the Nation recaptured \$150,075,413 of unobligated and unspent FRF from legislatively-approved Delegate Region Projects. The Nation reallocated those funds to the RRR, such that many Delegate Regions Projects that were previously funded by FRF became RRR Delegate Region Projects.
- RRR Delegate Region Projects are not subject to federal FRF requirements and restrictions from the ARPA or from Treasury guidance on FRF, such as FRF eligibility requirements, federal procurement standards, and the FRF expenditure deadline.
- Pursuant to CMY-28-24, a statutory trust fund must be established before RRR funds can be allocated and expended. However, the Controller is authorized to use funds from the UUFB to temporarily fund immediate expenditures for RRR Delegate Region Projects. The N-accounts for RRR Delegate Region Projects are already linked to the UUFB.
- DCD (or other Navajo Nation divisions and departments designated in an expenditure plan) will manage and administer UUFB funds and will implement RRR Delegate Region Projects on behalf of Non-LGA-Certified Chapters.
- The Navajo Nation can grant UUFB funds to LGA-Certified Chapters through RRR Grant Agreements to allow such LGA-Certified Chapters to implement and manage RRR Delegate Region Projects directly. A DOJ template of the Grant Agreement for RRR Delegate Region Projects is attached hereto as **Attachment A**.
- RDC and BFC approval is needed in order to modify RRR Delegate Region Project expenditure plans, whereas modifications to FRF Delegate Region Projects can be approved administratively by the Controller.
- DCD's point of contact for RRR and FRF Delegate Region Projects shall be designated in a memorandum by Ms. Yazzie, Division Director of DCD, and may be updated as needed.

If you have any questions regarding this memorandum, please do not hesitate to contact our offices by phone or email.



## ATTACHMENT A

**GRANT AGREEMENT  
BETWEEN  
THE NAVAJO NATION AND LOCAL GOVERNANCE CERTIFIED CHAPTER  
FOR  
REVENUE REPLACEMENT RESERVE FUNDS**

<b>Name of Grantee</b>	<b>Phone Number</b>
<b>Name and Title of Person Authorized to accept funding for the Grantee ("Designated Official")</b>	<b>Designated Official Email Address</b>
<b>Grantee Mailing Address</b>	
<b>Grantee Employer Identification Number</b>	
<b>Grantee's DUNS Number &amp; Unique Entity Identifier ("UEI") Number</b>	
<b>Project(s) Name(s)</b>	
<b>Amount and Business Units:</b>	

This Grantee Agreement includes and incorporates:

1. Terms and Conditions;
2. Appendix A –Scope of Works
3. Appendix B –Budgets
4. Appendix C – Grantee's W9
5. Appendix D – Proof of Insurance

A complete Grantee Agreement, including all Appendices, must be submitted prior to disbursement of Subaward Funds.

## **TERMS AND CONDITIONS**

This Grant Agreement (“Agreement”) is made and entered into by and between the Navajo Nation, hereinafter called the “**NATION**” and the Local Governance Certified Chapter hereinafter called the “**GRANTEE**.” Collectively, the **NATION** and the **GRANTEE** are the “**PARTIES**.” The **PARTIES** agree as follows:

### **1. Definitions.**

- a. “Disburse / Disbursement” is defined as when the Office of the Controller (“**OOC**”) has provided notification via email and/or by phone to the **GRANTEE** that a check for the Grant Funds is available for pick-up, or when the Office of the Controller initiates the transfer of Funds into the **GRANTEE’S** account.
- b. “Expend” is defined as when an expense is actually paid by the **GRANTEE**.
- c. “Incur” is defined as the point in time when performance of services or delivery of goods occurs and the **GRANTEE** has an obligation to tender payment. For a cost to be considered incurred, performance or delivery must occur during the covered period, but payment of funds need not be made during the covered period, although it is generally expected that this will take place within ninety (90) calendar days of a cost being incurred.
- d. To “Obligate” funds means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the **GRANTEE** during the same or a future period.

### **2. Applicability of Grantee Agreement and Provisions.**

This Agreement, including all its Appendices, is intended to be the full and complete expression of, and shall constitute the entire agreement between the Parties. All prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, whether oral or written, are superseded and replaced by this Agreement.

### **3. Authorized Representative.**

- a. The **GRANTEE** shall work with the Navajo Nation Capital Projects Management Department (“**Program**”) under the Division of Community Development and its Authorized Representative.
- b. Each Party shall appoint an Authorized Representative who has authority and requisite experience to manage all Agreement related matters. Notice of the appointed Authorized Representative shall be provided to each Party within five (5) days of the execution of this Agreement. If either party changes its Authorized Representative or their authority, they shall immediately notify the other Party pursuant to Article 10.
- c. The Administrative Oversight shall serve as the administrative oversight of this Agreement including the **GRANTEE’S** compliance with applicable Navajo Nation laws, regulations, and policies; and financial reporting.

4. **Agreement Number.**

Contract number issued by the Office of the Controller shall cover this Agreement, and reference to this number shall be made on request for release of funds submitted by the **GRANTEE** to the **NATION** for payment.

5. **Term of Agreement.**

The term of the Agreement shall begin on the date of the Agreement's execution by the **NATION**, and shall expire within twenty-four months of the date of execution ("Expiration Date").

6. **Amount of Grant Award.**

- a. The **NATION** agrees to allocate and disburse the Grant Funds to the **GRANTEE** for purposes specified in the **Appendix A**—Scope of Work by paying a sum not to exceed \_\_\_\_\_ dollars per **Appendix B**—Budget(s).
- b. Payments of the Grant Funds shall be made in three installments:
  - i. The first payment shall be made at the beginning of the project, for fifty percent (50%) of the total project amount; and
  - ii. The second and third payment shall each be for twenty-five percent (25%) of the total project amount.
- c. No payment shall be made unless and until approved by said Authorized Representative. All payments shall be based on actual costs and supported by documentation, including work orders.
- d. The **GRANTEE** must provide documentation that it has obligated or expended 75% of its prior disbursement installment before OOC will release the next disbursement installment.
- e. The **NATION** may withhold or delay disbursements if the **NATION** determines that the **GRANTEE** has failed to comply with its obligations under this Agreement. This determination shall be made by the Program.
- f. The **GRANTEE** shall work with the Accounts Payable Section of OOC to set up ACH (Automated Clearing House) electronic fund transfers, and shall provide OOC with an updated W-9 form on an annual basis.
- g. The **GRANTEE** is not authorized to do work in excess of the funds allocated to a specific project. In the event a project requires additional funds in order to complete the **GRANTEE** will notify the **NATION**.

7. **Administrative Costs.**

In addition to the Grant Funds, the **NATION** agrees to allocate and disburse two percent (2%) of the total Grant Funds to the **GRANTEE** for administrative costs associated with administering the Grant Funds and completing the Scope of Work. The **GRANTEE** is permitted to charge both direct and indirect costs as administrative costs. If the administrative costs are not fully expended within the terms of the Agreement, the **GRANTEE** shall be required to immediately return to the **NATION** the remaining balance.

8. **Use and Return of Funds.**

- a. The **GRANTEE** affirms and agrees that it shall only incur costs under the Agreement and expend Grant Funds for the purposes outlined in **Appendix A – Scope of Work**.
- b. If any portion of Grant Funds remain unexpended on the Expiration Date, **GRANTEE** shall immediately return such portion of the Grant Funds to the **NATION**. Upon the termination of this Agreement, the **GRANTEE** may be required to immediately return the unexpended portion of the Grant Funds to the **NATION**.
- c. In the event additional funds are needed to complete the project, and the source contributors cannot secure the additional funds, the scope of the work shall be reduced to fit the total funds available in this Agreement.
- d. Where the **NATION** determines the **GRANTEE** expended Grant Funds in violation of this Agreement or any applicable laws and regulations, the **GRANTEE** shall immediately return such portion of the Grant Funds the **NATION** determined were improperly expended.
- e. If the **GRANTEE** fails to return such Grant Funds to the **NATION** when due, the **GRANTEE** will incur a delinquent accounts receivable debt, due and owing to the **NATION**. Further, the **NATION** may offset any future payments due to the **GRANTEE** by the amount owed, and may pursue all other available legal action against the **GRANTEE**.

9. **Pre-Agreement Costs.**

Costs incurred before the finalization of this Agreement that are within the scope of work of the Agreement and that the **NATION** deems reasonable, allowable, and allocable to performance of the Agreement may be paid under this Agreement. This determination shall be made by the Program. All pre-Agreement costs shall be subject to the terms of this Agreement as if such Agreement were in effect when the costs were incurred.

10. **Availability of Funds.**

The liability of the **NATION** under this Agreement is contingent upon the availability of funds pursuant to 2 N.N.C. §§ 223(A) and (B).

11. **Contact Information: Notice.**

Copies of all correspondence, reports, and notices under this Agreement shall be furnished to:

*Insert the **NATION's** and the **GRANTEE'S** contact information:*

Dwayne Waseta

Capital Projects Management Department

P.O. Box 1510

Window Rock, AZ 86515

12. **Reporting Requirements.**

- a. The **GRANTEE** shall adhere to the following reporting requirements and provide the

documentation requested on a quarterly basis, unless specified otherwise, to the Program within fifteen (15) days following the end of the quarter.

- b. The **NATION** requires the quarterly reporting requirements listed below from the **GRANTEE**:
  - i. A detailed report that compares budgeted expenditures to actual expenditures for costs incurred;
  - ii. Completion of the Office of Management and Budget (“OMB”) Program Performance Criteria Form;
  - iii. A narrative report providing quarterly project assessment, including a summary of project activities, accomplishments with dates, date costs were incurred, Chapter and Delegate Region where the project is located, impediments encountered, and impediments forecasted with planned responses;
  - iv. Other data, records, information, and maps related to the progress of the project, that document changes made to the project since the previous quarterly report.
- c. If the **GRANTEE** fails to timely submit such reports it shall be in default under this Agreement. The **NATION** shall not be required to pay any invoices until the required reports are submitted.
- d. The **GRANTEE** shall submit a Final Financial Closeout Report providing a final accounting of the uses of the Grant Funds, which should be supported by documentation, including but not limited to receipts, invoices, and payroll records. This final report must be submitted fifteen (15) days after the final inspection or termination of the Agreement. The **NATION** shall not pay the final invoice until the Final Financial Closeout Report is submitted.
- e. All financial reporting requirements shall survive the expiration and termination of this Agreement.

**13. Oversight.**

The Program responsible for overseeing the administration of the Grant Funds for the **GRANTEE** shall assist the OMB and OOC in monitoring the **GRANTEE’S** performance to ensure that the Grant Funds are spent in accordance with this Agreement and applicable Navajo Nation laws, and that the scope of the work is being met.

**14. Ownership of Work Product.**

- a. The **GRANTEE** shall retain title and complete ownership of certain improvements including but not limited to facilities and equipment (herein after “improvements”) installed, constructed, repaired, or replaced under this Agreement, unless such improvements are owned by other third-party.
- b. The **GRANTEE** or other third party will be responsible for the operation and maintenance of the improvements awarded under this Agreement and the **GRANTEE** will not seek additional operation and maintenance costs of the project awarded within this Agreement.
- c. The **GRANTEE** shall not use Navajo Nation work product, proprietary information,

trademarked information, logos, or seals, in any manner without written permission of the NATION.

**15. The Nation's Right to Inspect Places of Business and to Inspect and Audit Books and Records.**

- a. The GRANTEE agrees that the NATION may, at reasonable times, inspect the part of the plant or place of business and the project worksites of the GRANTEE that are related to the performance of this Agreement; and the GRANTEE further agrees that the NATION, its auditors may, at reasonable times and places, inspect and audit the GRANTEE books and records to the extent that such books and records relate to the performance of this Agreement. The GRANTEE shall maintain such books and records, and such books and records of any Subcontractor, for at least five (5) years from the date of final payment under this Agreement.
- b. Further, the GRANTEE agrees to include in any contractor agreement it enters into for the expenditure of the Grant Funds, that the contractor agrees (i) that the NATION may, at reasonable times, inspect the part of the plant or place of business of the contractor that is related to the performance of this Agreement; (ii) that the NATION may, at reasonable times and places, inspect and audit the contractor's books and records to the extent that such books and records relate to the performance of this Agreement; and (iii) that the contractor shall maintain its books and records related to the performance of this Agreement for at least five (5) years from the date of the GRANTEE final payment under this Agreement.

**16. Debarment, Suspension, and Other Responsibility Matters.**

The GRANTEE, either in its present form or in any other identifiable capacity, including its owners, partners, officers, members, employees, officials, agents, or parties-in-interest, to the best of the Designated Official's knowledge:

- a. Is not debarred, suspended, or otherwise slated for debarment, ineligible and/or excluded from participation in any federal, state, or tribal government contracting opportunities;
- b. Is not presently nor has been under criminal indictment or civilly charged by a governmental entity (federal, state, or tribal government) for fraud, forgery, falsification, theft, bribery, destruction of records, receiving stolen property, or other criminal offenses in the administration of a government contract;
- c. Has not been terminated for cause or convenience by a governmental entity (federal, state, or tribal government) in the administration of a government contract;
- d. That there is no outstanding money judgment against the GRANTEE in favor of the NATION from a court of competent jurisdiction, or a valid delinquent accounts receivable debt which is due and owing to the NATION from the GRANTEE, either in its present form or in any other identifiable capacity;
- e. There is no evidence of default, materially deficient business practices, or failure to meet a material contractual or financial obligation to the NATION under any transaction, contract, or legal relationship with the NATION;

- f. There has been no failure to materially comply with applicable laws, or other material delay by the **GRANTEE**, resulting in monetary damages to or other detriment to the **NATION** that remains uncured; and
- g. Has not been found to have engaged in unlawful or criminal actions or other activities which adversely reflect on the honesty and moral character of the **GRANTEE**, so as to make any dealings with the Navajo Nation undesirable.

**17. False Statements by Grantee.**

By acceptance of this Agreement, the **GRANTEE** makes all the statements, representations, warranties, guarantees, certifications, and affirmations contained herein. If any of the statements, representations, warranties, guarantees, certifications, and affirmations are false or if the **GRANTEE** in any other way executes the Agreement including false statements, or it is subsequently determined that the **GRANTEE** has violated any of the statements, representations, warranties, guarantees, certifications, or affirmations included in this Agreement, the **NATION** may consider such an act a default under this Agreement and may terminate or void this Agreement for cause and pursue other remedies available to the **NATION** under this Agreement and all applicable laws.

**18. Conflict of Interest Safeguards.**

The **GRANTEE** will establish safeguards to prohibit its officers, agents, employees, and members from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, self-dealing, or personal gain, whether for themselves or others, particularly those with whom they have family, business, or other ties. The **GRANTEE** will operate with complete independence and objectivity without potential, actual, or apparent conflict of interest with respect to its performance under this Agreement.

**19. Fraud, Waste, and Abuse.**

The **GRANTEE** understands that the **NATION** will not tolerate any type of fraud, waste, or misuse of Subaward Funds received from the **NATION**. The **GRANTEE** understands and agrees that misuse of Subaward Funds shall be considered an act of default under this Agreement as grounds for the **NATION** to terminate this Agreement, and may further result in a range of penalties, including suspension of current and future funds, ineligibility for, suspension, or debarment from Navajo Nation contract opportunities, recoupment of monies provided under an award, and civil and/or criminal penalties. In the event the **GRANTEE** becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from the **NATION**, made against the **GRANTEE**, the **GRANTEE** shall immediately notify the **NATION** of said allegation or finding and continue to inform the **NATION** of the status of any on-going investigations into the allegations or steps being taken to remedy the finding.

**20. Taxes.**

The **GRANTEE** shall comply with all applicable Navajo Nation tax laws under Title 24 of the Navajo Nation Code and corresponding regulations as amended from time to time. The **GRANTEE** is subject to and shall be liable for payment of the Navajo Nation Sales Tax, at the prevailing rate, on gross receipts for all work performed within the territorial jurisdiction of the Navajo Nation pursuant to 24 N.N.C. § 601 *et seq.*, and the Navajo Nation Sales Tax Regulations § 6.101 *et seq.*, as amended from time to time. In addition to being subject to Navajo Nation Sales Tax, the **GRANTEE** is subject to local sales tax on gross receipts for all work performed within

a governance-certified chapter that imposes a local sales tax pursuant to a duly enacted local tax ordinance and the Uniform Local Tax Code, 24 N.N.C. § 150 *et seq.* The **GRANTEE** is solely responsible for the payment of all applicable taxes related to this Agreement, and the **NATION** is not responsible for withholding or paying any income taxes, Federal Insurance Contributions Act (FICA) taxes, unemployment taxes, or any other taxes, from any payments owed to the **GRANTEE**, nor shall the **NATION** be responsible for remitting the **GRANTEE'S** share of employment taxes to the federal or any state governments.

**21. Third Party Work.**

**GRANTEE** is authorized to utilize a third party to complete work under this Agreement. The **GRANTEE** shall comply with the its' procurement policies in procuring third party workers.

**22. Insurance Coverage.**

**GRANTEE** shall obtain and maintain adequate insurance coverage as recommended and verified by the Navajo Nation Risk Management Program ("RMP"). **GRANTEE** shall provide a verification of insurance from the Navajo Risk Management Program as part of **Appendix D**. The **GRANTEE** shall notify the Program and the RMP, c/o The Navajo Nation, P.O. Box 1690, Window Rock, Arizona 86515 within five (5) days of any change in the insurance policy. Failure to fully comply with this provision shall render this Agreement voidable by the **NATION** at its sole discretion.

**23. Modifications.**

The **NATION** and the **GRANTEE** may agree to modify the Agreement. Such modifications include, but are not limited to, modifying the scope of work, adding funds to previously un-awarded cost items or categories, changing funds in any awarded cost item or category, de-obligating awarded funds, or changing the **GRANTEE'S** Designated Official. The terms of any such modifications must be made in writing, and must be signed by both the **GRANTEE** and the **NATION** to take effect.

**24. Remedies for Non-Compliance.**

- a. If the **NATION** determines that the **GRANTEE** materially fails to comply with any term of this Agreement, whether stated in a Navajo Nation statute, regulation, an assurance, legislation, a notice of award, or any other applicable requirement, the **NATION** will issue a Notice of Failure to Comply, of Suspension, or of Termination. The Notice shall state the term of the Agreement **GRANTEE** has failed to comply with.
- b. Upon issuance of a Notice of Failure to Comply, of Suspension, or of Termination, the Nation may take action, in its sole discretion, including but not limited to:
  - i. Temporarily withholding cash payments pending correction of the deficiency;
  - ii. Disallowing or denying use of funds for all or part of the cost of the activity or action not in compliance;
  - iii. Disallowing claims for reimbursement;
  - iv. Wholly or partially suspending this Agreement;
  - v. Requiring return or offset of previous reimbursements;
  - vi. Prohibiting the **GRANTEE** from applying for or receiving additional funds for other programs administered by the Navajo Nation until repayment to the

- NATION** is made and any other compliance or audit finding is satisfactorily resolved;
- vii. Reducing the allocation award maximum liability of the **NATION**;
  - viii. Imposing a Corrective Action Plan;
  - ix. Withholding further awards;
  - x. Terminating this Agreement; or
  - xi. Taking other enforcement action or remedies, including imposing sanctions without first requiring a Corrective Action Plan or pursuing other legal remedies.
- c. **GRANTEE** shall have fifteen (15) calendar days from receipt of Notice of Failure to Comply or of Suspension to correct the issue identified in the Notice. If the issue cannot be corrected within fifteen (15) calendar days, **GRANTEE** shall enter into a plan with the Program to correct the issue.
- d. **GRANTEE's** failure to correct the issue identified in the Notice of Failure to Comply or of Suspension may result in the **NATION** issuing a Notice of Termination.
- e. The **GRANTEE'S** costs resulting from obligations incurred during a suspension or after termination of this Agreement will not be allowable unless the **NATION** expressly authorizes such costs in the Notice of Failure to Comply, of Suspension, or of Termination. Absent such express authorization, the **GRANTEE** shall return that portion of the Subaward Funds to the **NATION**.

**25. Non-Waiver**

No failure on the part of the **NATION** to act, and no delay in exercising any right hereunder shall operate as a waiver thereof; nor shall any single or partial act or exercise by the **NATION** of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the **NATION** at law or in equity.

**26. Expiration or Termination of the Agreement.**

- a. The **NATION** may, at its sole discretion, terminate this Agreement, without recourse, liability, or penalty against the **NATION**, upon written Notice of Termination to the **GRANTEE**, without further notice to or opportunity to cure by the **GRANTEE**. Such notification of termination will be effective on the date of the notification, if no other effective date is specified in the Notice of Termination;
- b. **GRANTEE** may terminate for violation of the terms of this Agreement by providing the **NATION** with a minimum of fifteen (15) days advance written notice of termination.
- c. The **NATION** and the **GRANTEE** may mutually agree to terminate this Agreement. The **NATION** in its sole discretion will determine if, as part of the agreed termination, the **GRANTEE** is required to return any or all of the disbursed Grant Funds within fifteen (15) business days of termination. This determination and its terms shall be communicated in writing to the **GRANTEE**;
- d. Termination is not an exclusive remedy for the **NATION**, but will be in addition to any other rights and remedies provided in equity, at law, or under this Agreement. Following

termination by the **NATION**, the **GRANTEE** shall continue to be obligated to the **NATION** for an accounting of and the return of Grant Funds in accordance with applicable provisions of this Agreement. In the event of termination under this Section, the **NATION's** obligation to reimburse the **GRANTEE** is limited to allowable costs incurred and paid by the **GRANTEE** prior to the effective date of termination, and any costs determined by the **NATION** in its sole discretion to be allowable, reasonable, and necessary for cost-effective wind up of the allocation.

- e. Termination of this Agreement for any reason, or expiration of this Agreement shall not release the **PARTIES** from any liability or obligation set forth in this Agreement that is expressly stated to survive any such termination or expiration. The rights and obligations pertaining to the allocation, close-out, cooperation, and provision of additional information, return of funds, audit rights, records retention, public information, and any other provision implying survivability shall remain in effect after the expiration or termination of this Agreement.

**27. Disputes: No Waiver of Sovereign Immunity.**

Any and all disputes arising under, related to, or in connection with this Agreement shall be resolved first through negotiation between the **PARTIES** under the laws of the **NATION**. If negotiation does not resolve the dispute, the **NATION** may pursue legal action. Nothing herein shall be construed as a waiver of the **NATION'S** or **GRANTEE'S** sovereign immunity.

**28. Applicable Law and Jurisdiction.**

The **GRANTEE** shall comply with all Navajo Nation laws. Failure to comply with Navajo Nation law shall be an act of default, and grounds for termination by the **NATION**..

**29. Force Majeure.**

Neither the **GRANTEE**, nor the **NATION** shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, or interruption of utilities from external causes including fiber line breaks. The **GRANTEE** must inform the **NATION** of any force majeure events delaying performance of its obligations in writing, with proof of receipt of notice, within three (3) business days of the commencement of such force majeure or acts of God, or will otherwise waive this right as a defense.

**30. No Agency or Employment Relationship.**

The **GRANTEE** is a Political Subdivision the **NATION** and therefore shall not be considered an employee or agent of the **NATION**.

**31. Rights of Other Parties.**

Nothing in this Agreement shall be interpreted to create any rights in any third party that is not an entity or subdivision of the Navajo Nation government.

**32. Conflicting and Additional Terms.**

All additional terms and conditions of the **GRANTEE** are attached hereto and incorporated

into this Agreement, provided however that in the event of any conflict between these Terms and Conditions and any additional terms and conditions offered by the **GRANTEE**, these Terms and Conditions shall control and govern. Any additional terms and conditions not attached to this Agreement shall have no force or effect.

**33. Severability.**

If any provision of this Agreement is held invalid by the Courts of the **NATION**, all remaining provisions which can be implemented shall remain in force and be given full force and effect.

**IN WITNESS WHEREOF**, we the undersigned hereby execute this Agreement:

**For the GRANTEE:**

**For The NAVAJO NATION:**

_____	_____
Chapter President	Date
_____	
_____	
_____	

_____	_____
Buu Nygren, President	Date
The Navajo Nation	
Post Office Box 9000	
Window Rock, Arizona 86515	