

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



March 28, 2022

TRANSMITTAL

TO : Jason John, Director
Navajo Department of Water Resources (DWR) / DNR

FROM : CMS
Cordell Shortey, Contracting Officer
Contracts and Grants Section / OMB

SUBJECT : DWR - Water Transmission and Distribution; Fiscal Recovery Funds (FRF)- Defunded CARES Act

I. Information on Contract (per Original Award):

| Department of Water Resources | U.S. Treasury American Recovery Plan Act (ARPA) | 21.019 |
|-------------------------------|---|---------------------------|
| Title of Contract | Funding Agency | CFDA No. - Federal |
| CJY-41-21 | 2022 | 03/11/2021 to 12/31/2026 |
| Grant No. | Amount | Term - Begin and End Date |

II. Data Entered in FMIS Regarding:

☒ New Contract or Grant Company No. 8059 Business Unit (K#) K211543

☐ Contract Mod No. _____

☐ Amt of Award _____ to _____
AMOUNT FROM TO

☐ Budget Period - Extend End Date: From _____ To _____

☐ Other, specify: _____

Authorizing Document - Attached:

☐ Contract / Agreement - Date executed _____

☐ NNC / Committee Resolution - No. & Date _____

☒ Other, specify: NN Council Resolution CJY-41-21

III. Comments by CGS:

Budget received on March 24, 2022 is authorized for implementation pursuant to FY 2022 NN BIM Appendix L Section II.B and approved by Mr. Tom Platero. CGS made minor edits to NNBF 1 and 4 to reflect amount allocated by President Nez on October 9, 2021.

Attachment

Copy: Contract files

Contract Accounting / OOC / DPM

Tom Platero, Interim E.D. - NN FRF Office

Revised April 2018



Office of Management and Budget ♦ Post Office Box 646 ♦ Window Rock, AZ 86515
(928) 871-6470 Telephone ♦ (928) 871-6567 Facsimile

FY 2022

THE NAVAJO NATION
PROGRAM BUDGET SUMMARY

Page 1 of 4
BUDGET FORM 1

K211543

| | | | | | |
|--|-------------------|---|------------|---|---------------|
| PART I. Business Unit No.: <u>new</u> | | Program Title: <u>DWR Water Transmission and Distribution</u> | | Division/Branch: <u>Natural Resources/Executive</u> | |
| Prepared By: <u>Jason John</u> | | Phone No.: <u>(928)349-1198</u> | | Email Address: <u>jasonjohn@navajo-nsn.gov</u> | |
| PART II. FUNDING SOURCE(S) | Fiscal Year /Term | Amount | % of Total | PART III. BUDGET SUMMARY | |
| CJY-41-21 ARPA Defunded CARES | 10/1/22 - 9/30/25 | 31,556,346 | 100% | 2001 Personnel Expenses | |
| | | | | 3000 Travel Expenses | |
| | | | | 3500 Meeting Expenses | |
| | | | | 4000 Supplies | |
| | | | | 5000 Lease and Rental | |
| | | | | 5500 Communications and Utilities | |
| | | | | 6000 Repairs and Maintenance | |
| | | | | 6500 Contractual Services | 6 |
| | | | | 7000 Special Transactions | |
| | | | | 8000 Public Assistance | 6 |
| | | | | 9000 Capital Outlay | |
| | | | | 9500 Matching Funds | |
| | | | | 9500 Indirect Cost | |
| | | | | TOTAL | \$0.00 |
| | | | | | 31,556,346.22 |
| | | | | | 31,556,346 |
| TOTAL: | | \$31,556,346 | 100% | | |
| PART IV. POSITIONS AND VEHICLES | | | | (D) | (E) |
| Total # of Positions Budgeted: | | | | | 0 |
| Total # of Vehicles Budgeted: | | | | | 0 |
| PART V. I HEREBY ACKNOWLEDGE THAT THE INFORMATION CONTAINED IN THIS BUDGET PACKAGE IS COMPLETE AND ACCURATE. | | | | | |
| SUBMITTED BY: <u>Jason John, Department Manager III</u> | | APPROVED BY: <u>Rudolph R. Shebala, Executive Director</u> | | | |
| Program Manager's Printed Name | | Division Director / Branch Chief's Printed Name | | | |
| <u>2-16-2022</u> | | <u>2/16/22</u> | | | |
| Program Manager's Signature and Date | | Division Director / Branch Chief's Signature and Date | | | |

* Edited by U.S. 02/16/22

THE NAVAJO NATION PROGRAM PERFORMANCE CRITERIA

PART I. PROGRAM INFORMATION:

Business Unit No.: new

Program Name/Title:

DWR Water Transmission and Distribution

PART II. PLAN OF OPERATION/RESOLUTION NUMBER/PURPOSE OF PROGRAM:

Pursuant to RDCO-79-16: A) The Department of Water Resources shall provide stewardship to manage, provide comprehensive water planning, compile information on existing surface and groundwater resources, coordination of the development and utilization of the Navajo Nation's waters to manage existing uses and to plan for future adequate water resources for domestic, industrial, agricultural, recreation, wildlife, aquatic life and other beneficial uses for maximum beneficial use to enhance the natural and human environment and exercise the sovereignty of the Navajo Nation over its waters, etc.

PART III. PROGRAM PERFORMANCE CRITERIA:**1. Goal Statement:**

Contract for Construction of Tohajiilee Inside Chapter Distribution Improvements

Program Performance Measure/Objective:

Seek Bids and Process Contract for Construction

2. Goal Statement:

Construction of Tohajiilee Inside Chapter Distribution Improvements

Program Performance Measure/Objective:

Oversee Contract for and Construction of Tohajiilee Inside Chapter Distribution Improvements

3. Goal Statement:

Contract for Construction of Newcomb Emergency Water Hauling Station

Program Performance Measure/Objective:

Seek Bids and Process Contract for Construction of Newcomb Water Hauling Station

4. Goal Statement:

Construction of Newcomb Water Hauling Station

Program Performance Measure/Objective:

Administer Construction Contract and Oversee Construction

5. Goal Statement:

Contract for Purchase of Strategic Stockpile of Supplies for Water Projects

Program Performance Measure/Objective:

Seek Bids and Process Contract(s) for Supplies

| FY2022 | | FY2023 | | FY2024 | | FY2025 | |
|--------|--------|--------|--------|--------|--------|--------|--------|
| Goal | Actual | Goal | Actual | Goal | Actual | Goal | Actual |

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PART IV. I HEREBY ACKNOWLEDGE THAT THE ABOVE INFORMATION HAS BEEN THOROUGHLY REVIEWED.

Jason John, Department Manager III

Program Manager's Printed Name

Rudolph R. Shebela, Executive Director

Division Director/Branch Chief's Printed Name

Program Manager's Signature and Date

Robert D. Allen 7/16/22
Division Director/Branch Chief's Signature and Date

FY 2022

THE NAVAJO NATION PROGRAM PERFORMANCE CRITERIA

Page 3 of 4
BUDGET FORM 2

PART I. PROGRAM INFORMATION:

Business Unit No.: New

Program Name/Title: _____

DWR Water Transmission and Distribution

PART II. PLAN OF OPERATION/RESOLUTION NUMBER/PURPOSE OF PROGRAM:

Pursuant to RDCO-79-16: A) The Department of Water Resources shall provide stewardship to manage, provide comprehensive water planning, compile information on existing surface and groundwater resources, coordination of the development and utilization of the Navajo Nation's waters to manage existing uses and to plan for future adequate water resources for domestic, industrial, agricultural, recreation, wildlife, aquatic life and other beneficial uses for maximum beneficial use to enhance the natural and human environment and exercise the sovereignty of the Navajo Nation over its waters, etc.

PART III. PROGRAM PERFORMANCE CRITERIA:

Continued from Page 2.

| FY2022 | | FY2023 | | FY2024 | | FY2025 | |
|--------|--------|--------|--------|--------|--------|--------|--------|
| Goal | Actual | Goal | Actual | Goal | Actual | Goal | Actual |

6. Goal Statement:

Procure Strategic Stockpile of Water Supplies for Water Projects

Program Performance Measure/Objective:

Complete Delivery of Supplies to the Navajo Nation

7. Goal Statement:

Contract for Design of Whitehorse Lake Sand Springs Water Supply Project

Program Performance Measure/Objective:

Project Design

8. Goal Statement:

Planning/Design for Albuquerque Bernalillo County Utility Authority - Tohajiilee Waterline

Program Performance Measure/Objective:

Project Design

9. Goal Statement:

Program Performance Measure/Objective:

Goal Statement:

Program Performance Measure/Objective:

PART IV. I HEREBY ACKNOWLEDGE THAT THE ABOVE INFORMATION HAS BEEN THOROUGHLY REVIEWED.

Jason John, Department Manager III

Program Manager's Printed Name

Program Manager's Signature and Date 2-16-2022

Rudolph R. Shebela, Executive Director

Division Director/Branch Chief's Printed Name

Division Director/Branch Chief's Signature and Date 2/16/22

FY 2022

THE NAVAJO NATION
DETAILED BUDGET AND JUSTIFICATION

Page 4 of 4
BUDGET FORM 4

PART I. PROGRAM INFORMATION:

Program Name/Title: DWR Water Transmission and Distribution

Business Unit No.: new

PART II. DETAILED BUDGET:

| (A) Object Code (LOD 6) | (B) | (C) Total by DETAILED Object Code (LOD 6) | (D) Total by MAJOR Object Code (LOD 4) |
|----------------------------------|--|---|--|
| 6500 | Contractual American Rescue Plan Act 2021 -Defunded Cares -DWR Water Transmission and Distribution | | 1,578,445 |
| 6830 | Other Technical Services 6865 Technical Services Expense 6865 Technical Services Expense 6865 Technical Services Expense | 1,578,445 | 22 |
| | Newcomb Water Hauling Station Design Whitehorse Lake Sand Springs Water Supply Project Tohajiilee Albuquerque Water Supply Line Design | 75,000.00 803,445.22 700,000.00 | |
| | TOTAL | 1,578,445.22 | |
| 8500 | 8000 ASSISTANCE Infrastructure (non-cap) 8550 Water/Wastewater 8550 Water/Wastewater 8550 Water/Wastewater | 225,000.00 175,000.00 29,577,901.00 | 29,977,901 |
| | Tohajiilee Inside Chapter Distribution Improvements Newcomb Emergency Water Hauling Station Strategic Stockpile of Supplies for Water Projects | | 29,977,901 |
| | TOTAL | 29,977,901.00 | |
| | TOTAL | 4,556,346 | .22 |

* Edit by GCS.
9/3/22

THE NAVAJO NATION


JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



October 1, 2021

MEMORANDUM

TO: ALL DEPARTMENT MANAGERS
DIVISION OF NATURAL RESOURCES


FROM: 
Rudolph R. Shebala, Executive Director
Division of Natural Resources

SUBJECT: Delegation of Authority for Fiscal Year 2022

Please be advised that in the event that I, Division Director of the Division of Natural Resources, is not in the office or otherwise unavailable, Mr. Robert O. Allan, Principal Attorney, Division of Natural Resources, shall be delegated authority as Acting Division Director of the Division of Natural Resources. This is a standing authority until further notice.

Please cooperate with Mr. Allan in this standing delegation of authority. Should you have any questions, please contact me.

ACKNOWLEDGED:


Robert O. Allan, Principal Attorney
Division of Natural Resources

**THE NAVAJO NATION
PROJECT BUDGET SCHEDULE**

RECEIVED
2:06 pm, Mar 24 2022

PART I. Business Unit No.: new

Project Title: DWR Water Transmission and Distribution

Project Description Tohajilee Inside Chapter Distribution Improvements (\$225k); Newcomb Emergency Water Hauling Station (\$250k); Strategic Stockpile (\$29,577,901); Whitehorse Lake Sand Springs Water Supply Project (\$803,445,22); Tohajilee Albuquerque Water Supply Line (\$700k)

Check one box: ☒ Original Budget ☐ Budget Revision ☐ Budget Reallocation ☐ Budget Modification

Office of **PART II.** Department and Budget **Project Information**
Project Type: water/wastewater

Planned Start Date: 3/1/2022

Planned End Date: 9/30/2025

Project Manager: Jason John

PART III.

List Project Task separately, such as Plan, Design, Construct, Equip or Furnish.

PART IV. Use Fiscal Year (FY) Quarters to complete the information below. O = Oct.; N = Nov.; D = Dec., etc.

| List Project Task separately, such as Plan, Design, Construct, Equip or Furnish. | 2022 | | | | | | | | 2023 | | | | | | | | Expected Completion Date if project exceeds 8 FY Qtrs. | | | | | | | |
|--|----------|---|---|---|----------|---|---|---|----------|-----|---|---|----------|---|---|---|--|---|---|---|---|-----|---|---|
| | 1st Qtr. | | | | 2nd Qtr. | | | | 3rd Qtr. | | | | 4th Qtr. | | | | 2025 | | | | | | | |
| | O | N | D | J | F | M | A | M | J | Jul | A | S | O | N | D | J | F | M | A | M | J | Jul | A | S |
| 1 Tohajilee Water Distribution Construct | | | | | | | | X | | | | | | | | | | | | | | | | |
| 2 Newcomb Water Hauling Station Design Construct | | | | | | | | | | | | | | | | | | X | | | | | | |
| 3 Strategic Stockpile Supplies Plan Purchases | | | | | | | | | X | | | | | | | | | | | | | | | |
| Purchase and Deliver | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 Whitehorse Lake Sand Springs Design | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 Tohajilee-Albq. Waterline Design | | | | | | | | X | | | | | | | | | | | | | | | | |
| PART V. | | | | | | | | | | | | | | | | | | | | | | | | |
| Expected Quarterly Expenditures | | | | | | | | | | | | | | | | | | | | | | | | |
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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DOREEN N. MCPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

DEPARTMENT OF JUSTICE
INITIAL ELIGIBILITY DETERMINATION
FOR NAVAJO NATION FISCAL RECOVERY FUNDS

RFS/HK Review #: HK0029

Date & Time Received: 9/24/21 9:10am

Date & Time of Response: 10/01/2021 3:45 pm MDT

Entity Requesting FRF: Department of Water Resources

Title of Project: Drinking Water Transmission and Distribution Projects

Administrative Oversight: Navajo Tribal Utility Authority

Amount of Funding Requested: \$31,556,346.22

Eligibility Determination:

- ☒ FRF eligible
☐ FRF ineligible
☐ Additional information requested

FRF Eligibility Category:

- ☐ (1) Public Health and Economic Impact
☐ (2) Premium Pay
☐ (3) Government Services/Lost Revenue
☒ (4) Water, Sewer, Broadband Infrastructure

U.S. Department of Treasury Reporting Expenditure Category: 5.11

Returned for the following reasons (Ineligibility Reasons / Paragraphs 5. E. (1) - (10) of FRF Procedures):

- | | |
|--|--|
| <input type="checkbox"/> Missing Form | <input type="checkbox"/> Expenditure Plan incomplete |
| <input type="checkbox"/> Supporting documentation missing | <input type="checkbox"/> Funds will not be obligated by 12/31/2024 |
| <input type="checkbox"/> Project will not be completed by 12/31/2026 | <input type="checkbox"/> Incorrect Signatory |
| <input type="checkbox"/> Ineligible purpose | <input type="checkbox"/> Inconsistent with applicable NN or federal laws |
| <input type="checkbox"/> Submitter failed to timely submit CARES reports | |
| <input type="checkbox"/> Additional information submitted is insufficient to make a proper determination | |

Other Comments: _____

Name of DOJ Reviewer: _____ Kristen A. Lowell

Signature of DOJ Reviewer: _____ 

Disclaimers: This Initial Eligibility Determination is based on the documents provided which we have assumed are true, correct, and complete. Should the Project or Program change in any material way after this initial determination, the requestor must seek the advice of NNDOJ. This initial determination is limited to review of the Project or Program as it relates to whether the Project or Program is a legally allowable use – it does not serve as an opinion as to whether or not the Project or Program should be funded, nor does it serve as an opinion as to whether or not the amount requested is reasonable or accurate.

NAVAJO NATION DEPARTMENT OF JUSTICE



☐ RESUBMITTAL

REQUEST FOR SERVICES

DOJ

DATE / TIME

RFS #: _____

UNIT: _____

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 9/22/2021 ENTITY/DIVISION: Executive Branch
 CONTACT NAME: Paulson Chaco, Chief of Staff DEPARTMENT: Office of President & Vice President
 PHONE NUMBER: (928) 955-6453 E-MAIL: paulsonchaco@navajo-nsn.gov
 COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):
Subject to CJY-41-21 - Section 5 for UUFB and Sihasin Reimbursements _Request DOJ review of Fiscal Recovery Fund expenditure plan for eligibility determination for DWR's CARES Reimbursements.

| | | | |
|-----------|---|---------|--|
| DEADLINE: | Click here to enter a date. | REASON: | |
|-----------|---|---------|--|

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: _____ REVIEWING ATTORNEY/ADVOCATE: _____
 DATE TIME OUT OF UNIT: _____ PREPARED BY (initial): _____

DOJ ATTORNEY / ADVOCATE COMMENTS

| | |
|-----------------------------|--|
| REVIEWED BY: (PRINT) | DATE / TIME: |
| DOJ Secretary Called: _____ | for Document Pick Up on _____ at _____ By: _____ |

| | |
|-----------------------|--------------|
| PICKED UP BY: (PRINT) | DATE / TIME: |
|-----------------------|--------------|

THE NAVAJO NATION
SIHASIN, UUFB, AND CARES PROJECT DESCRIPTION FORM

- 1) This form needs to be submitted separately for each project type being proposed.
- 2) This form needs to be returned to: paulsonchaco@navajo-nsn.gov

Part 1. Identification of parties.Entity Requesting Funds: Department of Water Resources

(NN Governmental Unit, Enterprise, Chapter, Etc.)

Entity Mailing Address: P.O. Box 678 Fort Defiance, AZ 86504Form Prepared by: Jason John phone/email: jasonjohn@navajo-nsn.govTitle & type of Project: Drinking Water Transmission and Distribution ProjectsAmount of FRF Funds Being Requested: \$31,556,346.22**Part 2. Project details.**

- (a) Describe the Program(s) and/or Project(s) to be funded, including how the funds will be used, for what purposes, the location(s) to be served, and what COVID-related needs will be addressed:

Projects include water distribution line upgrades in To'Hajiilee, water supply pipeline from Albuquerque to To'Hajiilee, emergency water hauling station for Newcomb, water transmission line from Whitehorse Lake to Sand Springs, and strategic stockpile of pipes, valves and other materials to be used in various water transmission and distribution projects throughout the Navajo Nation.

These projects will provide first-time water service to Navajo families, provide reliable water supplies to chapters and sub-communities, and/or provide local water hauling sources for families who currently drive long distances to haul water.

☐ document attached

- (b) Explain how the Project will benefit the Navajo Nation, Navajo Communities, or the Navajo People:

Distribution projects will provide water service to Navajo People who currently haul water. Water hauling station will reduce distance Navajo People have to drive to haul water. Water supply (transmission) projects will provide safe, reliable water supplies to entire chapters and sub-communities.

☐ document attached

- (c) Provide a prospective timeline showing the estimated date of completion of the Project and/or each phase of the Project. Disclose any challenges that may prevent you from incurring costs for all funding by December 31, 2024 and/or fully expending funds and completing the Program(s) or Project(s) by December 31, 2026:

Tohajiilee Distribution: Currently under construction, Construction completion June 2022.

Tohajiilee ABQ WSP: Construction start June 2022, Construction completion June 2023.

Newcomb Water Hauling Station: Construction start June 2023, completion December 2023. Whitehorse Sand Springs WSP: Design under contract by June 2022, completion December 2025.

Strategic Stockpile: Enter contract for materials June 2022, complete delivery December 2023.

☐ document attached

(d) Identify who (person within the Entity) will be responsible for implementing the Project:

☐ document attached

(e) Explain who will be responsible for operations and maintenance costs for the Project once completed, and how such costs will be funded prospectively:

To'Hajiilee distribution project will be operated and maintained by To'Hajiilee Chapter. Project will reduce O&M costs below current levels.

To'Hajiilee-ABQ waterline will be operated and maintained by ABQ Bernalillo County Water Utility Authority, via MOU between NN and ABCWUA (See attached).

Newcomb water hauling station will be operated by Newcomb Chapter using revenues generated by water purchases from the hauling station. Revenues will be used to pay NTUA water bill.

Whitehorse Lake Sand Spgs project will be operated and maintained by NTUA using revenue from customers' water bills.

Stockpile will be used to reduce construction costs of multiple water transmission and distribution projects. ☒ document attached

(f) State which of the (66) Fiscal Recovery Fund eligibility expenditure categories in Exhibit B the proposed Project or Program falls under, and explain the reasons why:

5.11 - Drinking Water: Transmission and Distribution

These projects will construct water transmission and distribution infrastructure to serve multiple chapters.

☐ document attached

Part 3. Additional documents.

List here all additional supporting documents attached to this request (or indicate N/A):

Table indicating CARES NNFRF balance for each specific project

MOU between Navajo Nation and ABCWUA for operation and maintenance of To'Hajiilee water supply project

Line-item budget for Strategic Stockpile of materials for water projects

Part 4. Affirmation by Funding Recipient.

Funding Recipient affirms that its receipt of Fiscal Recovery Funds and the implementation of this project shall be in accordance with Resolution No. CJY-41-21, the ARPA, ARPA Regulations, and with all applicable federal and Navajo Nation laws, regulations, and policies:

Signature of Preparer:



Printed Name of Preparer

Jason John

**THE NAVAJO NATION
PROGRAM BUDGET SUMMARY**

| | | | | | |
|---------------------------------------|--|---|--|--|--|
| PART I. Business Unit No.: <u>NEW</u> | | Section 6 CARES: 5.10 Water Transmission and Distribution | | Division/Branch: <u>DNR - DWR</u> | |
| Prepared By: <u>Jason John</u> | | Phone No.: <u>928.349.1198</u> | | Email Address: <u>jasonjohn@navajo-nsn.gov</u> | |
| Program Title: _____ | | | | | |

| PART II. FUNDING SOURCE(S) | Fiscal Year /Term | Amount | % of Total | PART III. BUDGET SUMMARY | Fund Type Code | (A) NNC Approved Original Budget | (B) Proposed Budget | (C) Difference or Total |
|----------------------------|-------------------|---------------|------------|-----------------------------------|----------------|----------------------------------|---------------------|-------------------------|
| NN Fiscal Recovery Funds | | 31,556,346.22 | | 2001 Personnel Expenses | | | | |
| | | | | 3000 Travel Expenses | | | | |
| | | | | 3500 Meeting Expenses | | | | |
| | | | | 4000 Supplies | | | | |
| | | | | 5000 Lease and Rental | | | | |
| | | | | 5500 Communications and Utilities | | | | |
| | | | | 6000 Repairs and Maintenance | | | | |
| | | | | 6500 Contractual Services | | \$ 4,240,446.22 | | |
| | | | | 7000 Special Transactions | | | | |
| | | | | 8000 Public Assistance | | | | |
| | | | | 9000 Capital Outlay | | \$ 27,315,900.00 | | |
| | | | | 9500 Matching Funds | | | | |
| | | | | 9500 Indirect Cost | | | | |
| | | | | TOTAL | | \$ 31,556,346.22 | 0.00 | 0 |

| PART IV. POSITIONS AND VEHICLES | (D) | (E) |
|---------------------------------|-----|-----|
| Total # of Positions Budgeted: | 0 | 0 |
| Total # of Vehicles Budgeted: | 0 | 0 |

PART V. I HEREBY ACKNOWLEDGE THAT THE INFORMATION CONTAINED IN THIS BUDGET PACKAGE IS COMPLETE AND ACCURATE.

| | |
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| SUBMITTED BY: _____ Jason John, Department Manager Program Manager's Printed Name 9-22-2021 Program Manager's Signature and Date | APPROVED BY: _____ Dr. Rudy Shebala, Division Director Division Director / Branch Chief's Printed Name _____ Division Director / Branch Chief's Signature and Date |
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**MEMORANDUM OF UNDERSTANDING BETWEEN
BERNALILLO COUNTY, ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY AND THE NAVAJO NATION**

PREAMBLE

This Memorandum of Understanding ("MOU") is entered into with an effective date of October 6, 2020 as agreed to among the Parties by and between the County of Bernalillo ("Bernalillo County" or the "County"), a New Mexico political subdivision whose address is One Civic Plaza NW, 10th Floor, Albuquerque, New Mexico 87102; Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), a New Mexico political subdivision whose address is P.O. Box 568, One Civic Plaza NW, 5th Floor, Room 5012, Albuquerque, New Mexico 87102; and the Navajo Nation ("Nation"), on behalf of its To'Hajiilee Chapter, and through its Department of Water Resources whose address is P.O. Box 678, Fort Defiance, AZ 86504. The County, Water Authority and Nation may be referred to jointly herein as the "Parties" or each individually as a "Party."

RECITALS

WHEREAS, the To'Hajiilee Chapter has had recurring potable water supply problems over a number of years that have prevented residents of To'Hajiilee from having a safe healthy and sustainable water supply from any source; and

WHEREAS, the water produced by the To'Hajiilee well does not meet potable standards; and

WHEREAS, in the last five years To'Hajiilee's well has failed three times. Each well failure results in the entire community being without water service for five to ten days; and

WHEREAS, during the times of outage To'Hajiilee's residents are forced to travel significant distances to obtain potable water; and

WHEREAS, recently the Department of Homeland Security and Emergency Management and the Albuquerque Bernalillo County Water Utility Authority have sent tanker trucks to the community for residents to line up and fill water containers for personal use; and

WHEREAS, because of the existing COVID-19 pandemic having large numbers of people congregating at a central tap to obtain drinking water could lead to increased risk of COVID-19 transmission; and

WHEREAS, because of the existing COVID-19 pandemic having large numbers of people travel to other parts of the state for purposes of obtaining water could lead to increased risk of COVID-19 transmission; and

WHEREAS, To'Hajiilee's residents are thus forced to either haul water from untreated water sources such as livestock ponds, purchase bottled water in Albuquerque, or visit neighbors to share water; and

WHEREAS, the use of non-potable water for domestic water needs can expose users to waterborne diseases and keeps residents from observing COVID safe social distancing practices; and

WHEREAS, the community's health care facility is also at risk for shutting down given the lack of a clean potable water supply; and

WHEREAS, a safe and readily available water supply is important for public health, whether it is used for sanitation, drinking, domestic use, or food production; and

WHEREAS, there is an urgent need to resolve the To'Hajiilee water crisis, which has been more acute during the COVID-19 pandemic; and

WHEREAS, the Water Authority is willing and able to treat water that is provided by the Nation and convey said water through a dedicated transmission line to the distribution system within the To'Hajiilee Chapter once easements and right-of-ways are obtained from private owners and construction is completed (the "Project"); and

WHEREAS, both water and financial resources for the Project are immediately available requiring the Parties to work together; and

WHEREAS, the County has approved proceeding with the Project and obtaining easements and rights of way by a unanimous vote of the Commissioners on April 14, 2020; and

WHEREAS, the County and the Water Authority will work with the Nation and its To'Hajiilee Chapter and Department of Water Resources to develop MOU's/MOA's (Memorandum of Agreements) or other agreements with the Nation and other Parties to this MOU to finalize all requirements for Project completion; and

WHEREAS, consistent with that Cooperative Agreement dated August 28, 2006 by and between the Navajo Nation, the Water Authority and To'Hajiilee Chapter, the Water Authority is prepared and willing to facilitate and manage the construction of the necessary infrastructure as described in this MOU but under no circumstance will the Water Authority incur any net new expenses for such construction or provide water rights for the Project; and

WHEREAS, the Project will ultimately be owned and operated by the Water Authority up to the connection with the To'Hajiilee Chapter water distribution system; and

WHEREAS, the County is prepared, upon completion of construction of the necessary infrastructure and the approval of all easements and right of ways consistent with this MOU, to grant title and easements to the Water Authority to operate and maintain the infrastructure up to the point of the To'Hajiilee Chapter distribution.

NOW THEREFORE, the County, the Water Authority and the Nation agree to the following terms and conditions:

TERMS AND CONDITIONS

The aforementioned Preamble and Recitals are incorporated herein and are given the same weight as each of the additional terms and conditions listed below.

1. The County shall be responsible for obtaining all easements from the connection point of the Water Authority's existing infrastructure to the boundary of To'Hajiilee Chapter.
2. The Nation shall supply surveys and valuations for the following easements from the connection point of the Water Authority to the boundary of To'Hajiilee Chapter:
 - a. Lands of Caroline Armijo Butler, as described in attached Exhibit A;
 - b. Lands of Sunset Ranch Partners, as described in attached Exhibit B; and
 - c. Lands of Western Albuquerque Land Holdings, as described in attached Exhibit C.
3. As may be necessary to acquire the above identified easements, the County shall be responsible for pursuing and completing an eminent domain action, including the posting of any necessary funds, subject to reimbursement for such postings by the Nation.
4. The Water Authority will be responsible for construction of the necessary infrastructure up to the connection with the water distribution system at To'Hajiilee Chapter using the Water Authority's on-call vendors available at the time of this MOU, provided that all costs of such construction and design thereof shall be at no net expense to the Water Authority and its ratepayers.
5. The Parties agree that the Water Authority shall not provide or subsidize the funding necessary for the Project; however, the Water Authority agrees to assist in pursuing outside funding sources where available, such as the New Mexico Water Trust Board or other similar programs.
6. The Water Authority will enter into the appropriate agreement with the Nation for construction, operation and maintenance of the dedicated water line and transmission of Navajo Nation water supplied for the benefit of To'Hajiilee Chapter, which water supply will be expressly limited to meet current To'Hajiilee demands of 135,000 gallons per day and a maximum amount of 350,000 gallons per day in the next 40-year period, to be implemented on an agreed-upon schedule.
7. The Water Authority's commitment to deliver any water to To'Hajiilee Chapter under this MOU is expressly conditioned upon all such water being provided by the Navajo Nation for said delivery in a method acceptable to the Water Authority.
8. The Water Authority will be the ultimate owner of any easements obtained over private properties to accommodate the dedicated water line to convey water to To'Hajiilee Chapter.

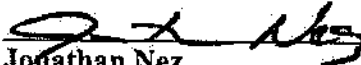
9. The Nation will be responsible for the distribution of water within To'Hajiilee Chapter.
10. The Nation, through its Department of Water Resources, will advance sums for construction, transmission and right-of-way acquisition costs using Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funds, Navajo Nation budgeted appropriations, grants, or other sources of funds.
11. The Nation ensure compliance with Navajo Nation laws and other requirements.
12. All Parties will coordinate with New Mexico's Congressional delegation for federal support.
13. This MOU cannot be amended or modified except by a written instrument executed by all Parties.
14. In the event that one or more of the provisions contained in this MOU or any application thereof shall be found to be invalid, illegal or unenforceable in any respect, the validity legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.
15. By entering into this MOU, the Parties do not intend to create any right, title or interest in or for the benefit of any person or entity other than the Parties to this MOU. No person or entity shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third-party beneficiary of this MOU.

WHEREFORE, the Parties hereby execute and enter into this MOU on the dates entered below, with the effective date being October 6, 2020 as agreed to by the Parties.

Albuquerque Bernalillo County Water Utility Authority

By: 
Mark S. Sanchez, Executive Director 

Navajo Nation President

By: 
Jonathan Nez

County of Bernalillo

By: 
Julie Morgas Baca, County Manager

Approved as to Form

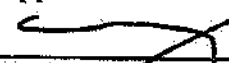

W. Ken Martinez, County Attorney

Exhibit A – Navajo Nation Strategic Stockpile for Water Infrastructure

Conceptual Description:

CARES Act funds must be expended by December 30, 2020. However, many chapter water projects currently being planned cannot be constructed by this date. The Strategic Stockpile will partially solve this problem by allowing construction funds to be expended on purchasing construction materials before December 30, 2020, even if actual construction will occur after this date.

The solution is to purchase very large quantities of commonly used materials for water projects, such as 2-, 4-, 6-, and 8-inch PVC pipe and valves, and other materials deemed appropriate by NTUA, NDWR, NECA, and IHS, to create a “strategic stockpile” for water infrastructure on the Navajo Nation. Larger sized pipes and valves for specific projects which are already planned but not yet ready for construction can also be included. Future water projects would then draw from this strategic stockpile as the projects become “shovel-ready”.

This approach will allow the Nation to expend CARES Act funding before the December 30, 2020 deadline, and at the same time facilitate water projects beyond this date. It will greatly reduce the construction cost of future water projects. It could also be counted as matching funds for future TIF, USDA, or other funding applications to leverage additional funding for the Navajo Nation beyond 2020. Some of the materials could also be used by NTUA to maintain existing waterlines.

Logistically, purchasing large amounts of materials makes sense. Pipe extruders must re-tool their plants every time they change pipe size classification. A typical project uses only a few miles of each pipe size, so manufacturers put the project in the queue waiting for other projects to build up a large enough pipe run, and charge based on the small quantity. But if the Nation were to purchase hundreds of miles of pipe at a time, manufacturers could dedicate production runs exclusively to the Navajo Nation, speeding up delivery times and resulting in volume discounts. Moreover, if the pipe is purchased in 2020 but installed in, say 2022, the price of PVC may go up, but the Nation will be protected from the price inflation because the material will already be stockpiled.

The risk of waste, loss, or damage with this stockpile is minimal. All materials would be compliant with NTUA, IHS and/or BOR standards. The stockpile will include both commonly-used materials and sizes to ensure they will be used, as well as less common pipe and valve sizes where the Navajo Nation has specific projects planned that will use them. NECA currently has adequate storage facilities to store these large volumes of material safely and protect them from deterioration.

This purchase could be executed simply by issuing a contract to NECA to purchase and store the material. NECA has the bonding, insurance, storage, and security in-place to facilitate this.

Detailed Line-Item Budget – See Next Page

| Code | Expenditure Category Description | Project Name | CARES Amt | Encumbered Via CIA-01-21 | Balance for CARES NMFRE | Comments |
|------|---|---|------------------|-----------------------------|----------------------------|---|
| 5.11 | Drinking Water: Transmission & Distribution | Tohajiilee Inside Chapter Distribution Improvements | \$ 500,000.00 | \$ 275,000.00 | \$ 225,000.00 | |
| 5.11 | Drinking Water: Transmission & Distribution | Newcomb Emergency Water Hauling Station | \$ 250,000.00 | \$ - | \$ 250,000.00 | |
| 5.11 | Drinking Water: Transmission & Distribution | Strategic Stockpile of Supplies for Water Projects | \$ 29,577,501.00 | \$ - | \$ 29,577,901.00 | |
| 5.11 | Drinking Water: Transmission & Distribution | Whitehorse Lake Sand Springs Water Supply Project | \$ 937,712.00 | \$ 134,266.78 | \$ 803,445.22 | |
| 5.11 | Drinking Water: Transmission & Distribution | Tohajiilee Albuquerque Water Supply Line | \$ 2,000,000.00 | \$ 1,822,000.00 | \$ 700,000.00 | CYA-01-21 appropriation was \$2,522,000; unencumbered amount was \$700,000 |
| | | Drinking Water: Transmission & Distribution TOTAL | | | \$ 31,556,346.22 | |