

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



January 6, 2023

Hon. Otto Tso
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CD-61-22, *An Action Relating to Naabik'iyáti' Committee and Navajo Nation Council; Approving the Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Honorable Vince R. James' Delegate Region (Chapters: Jeddito, Cornfields, Ganado, Kinlichee, Steamboat)*

Dear Speaker Tso,

The Nez/Lizer Administration supports the Chapters' endeavors to work collaboratively with their respective Council Delegate in completing the process to access funding made available with the \$211,256,148 allocated for regional expenditure plans under CJN-29-22.

The process to secure funding also involves collaborative efforts between the Chapters, the Division of Community Development, Navajo Nation Fiscal Recovery Fund (NNFRF) Office and the Navajo Nation Department of Justice (NNDOJ). Per BFS-31-21, each proposed expenditure must obtain NNDOJ verification that each proposed project is an eligible expense within ARPA/NNFRF regulations. Each of the projects within CD-61-22 has met all the requirements.

The ARPA/NNFRF process is still evolving since the inception of this funding. Within the United States Treasury and the Navajo Nation, processes have been updated at various times. An example is the Treasury guidelines referenced within Navajo Nation Council resolutions CJY-41-21 and CJN-29-22; the Treasury guidelines exhibit was updated by the United States Treasury on September 20, 2022. Accordingly, the legal guidance provided by NNDOJ and Office of Legislative Counsel is modified to comply with the Treasury guidelines.

One such modification of legal guidance involved the processing of regional expenditure plans. Originally, the guidance was that all projects had to equal \$8,802,340 to be considered as completed and ready for legislative action. This guidance was modified in December 2022 to allow partial funding of the \$8,802,340 allocations so that proposed ARPA/NNFRF projects ready for legislative action could be processed by Office of Legislative Counsel. Because of the time constraints for the 24th Navajo Nation Council to act on proposed legislation, programs did not have sufficient time to provide written verification to Chapters regarding the change in legal guidance.

THE NAVAJO NATION




JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

Pursuant to the authority vested in the Navajo Nation President, I am signing Resolution CD-61-22 into law.

Sincerely,


Jonathan Nez, *President*
THE NAVAJO NATION


Myron Lizer, *Vice President*
THE NAVAJO NATION

**RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022**

AN ACTION

**RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL;
APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND DELEGATE REGION
PROJECT PLAN FOR HONORABLE VINCE R. JAMES' DELEGATE REGION
(CHAPTERS: JEDDITO, CORNFIELDS, GANADO, KINLICHEE, STEAMBOAT)**

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council with the delegated responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- C. Navajo Nation Council Resolution No. CJN-29-22, incorporated herein by reference, mandates that Navajo Nation Fiscal Recovery Fund ("NNFRF") Delegate Region Project Plans be approved by Navajo Nation Council resolution and signed into law by the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION TWO. FINDINGS

- A. Navajo Nation Council Resolution No. CJN-29-22, AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ALLOCATING \$1,070,298,867 OF NAVAJO NATION FISCAL RECOVERY FUNDS; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND EXPENDITURE PLANS FOR: CHAPTER AND REGIONAL PROJECTS; PUBLIC SAFETY EMERGENCY COMMUNICATIONS, E911, AND RURAL ADDRESSING PROJECTS; CYBER SECURITY; PUBLIC HEALTH PROJECTS; HARDSHIP ASSISTANCE; WATER AND WASTEWATER PROJECTS; BROADBAND PROJECTS; HOME ELECTRICITY CONNECTION AND ELECTRIC CAPACITY PROJECTS; HOUSING PROJECTS AND MANUFACTURED HOUSING FACILITIES; BATHROOM ADDITION PROJECTS; CONSTRUCTION CONTINGENCY FUNDING; AND REDUCED ADMINISTRATIVE FUNDING, was signed into law by the President of the Navajo Nation on July 15, 2022.

B. CJN-29-22, Section Three, states, in part and among other things, that:

1. The Navajo Nation hereby approves total funding for the NNFRF Chapter and Chapter Projects Expenditure Plan from the Navajo Nation Fiscal Recovery Fund in the total amount of two hundred eleven million two hundred fifty-six thousand one hundred forty-eight dollars (\$211,256,148) to be divided equally between the twenty-four (24) Delegate Regions in the amount of eight million eight hundred two thousand three hundred forty dollars (\$8,802,340) per Delegate Region . . . and allocated through Delegate Region Project Plans approved by Navajo Nation Council resolution and signed into law by the President of the Navajo Nation See CJN-29-22, Section Three (B).
2. The Delegate Region Project Plan funding will be allocated to the Navajo Nation Central Government, specifically the Division of Community Development or other appropriate Navajo Nation Division or Department, to implement the projects rather than directly to the Chapters. See CJN-29-22, Section Three (D).
3. The Navajo Nation Central Government, specifically the Division of Community Development or other appropriate Navajo Nation Division or Department, shall manage and administer funds and Delegate Region Project Plans on behalf of Non-LGA-Certified Chapters. The Navajo Nation Central Government may award funding to LGA-Certified Chapters through sub-recipient agreements to implement and manage specific projects, but shall maintain Administrative Oversight over such funding and Delegate Region Project Plans. See CJN-29-22, Section Three (E).
4. Each Navajo Nation Council delegate shall select Fiscal Recovery Fund eligible projects within their Delegate Region to be funded by the NNFRF Chapter and Regional Projects Expenditure Plan through a Delegate Region Projects Plan. The total cost of projects selected by each Delegate shall not exceed their Delegate Region distribution of eight million eight hundred two thousand three hundred forty dollars (\$8,802,340). See CJN-29-22, Section Three (F).
5. Each Delegate Region Project shall identify its Administrative Oversight entity and its Oversight Committee(s) and be subject CJY-41-21's NNDOJ initial eligibility determination. See CJN-29-22, Section Three (L)(5) and (L)(6).

- C. All projects listed in the Hon. Vince R. James' Delegate Region Projects Plan, attached as **Exhibit A**, have been deemed Fiscal Recovery Fund eligible by NNDOJ. In addition, Hon. Vince R. James' Delegate Region Projects Plan does not exceed the amount of \$8,802,340, as set forth in CJN-29-22, Section Three (F).
- D. The Navajo Nation Council hereby finds that it is in the best interest of the Navajo Nation and the Hon. Vince R. James' Delegate Region Chapters and communities to approve and adopt the Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Hon. Vince R. James' Delegate Region (Chapters: Jeddito, Cornfields, Ganado, Kinlichee, Steamboat) as set forth in **Exhibit A**.

SECTION THREE. APPROVAL OF HON. VINCE R. JAMES' DELEGATE REGION PROJECT PLAN

- A. The Navajo Nation hereby approves the Fiscal Recovery Fund Delegate Region Project Plan for Hon. Vince R. James' Delegate Region (Chapters: Jeddito, Cornfields, Ganado, Kinlichee, Steamboat) set forth in **Exhibit A**.
- B. The Delegate Region Project Plan approved herein shall comply with all applicable provisions of CJY-41-21, CJN-29-22, and BFS-31-21.
- C. Any inconsistencies between this legislation, the Delegate Region Project Plan, and the individual project appendix, shall be resolved in favor of the project appendix reviewed by Department of Justice during their eligibility determination(s).

SECTION FOUR. AMENDMENTS

Amendments to this legislation or to the Delegate Region Project Plan approved herein shall only be adopted by resolution of the Navajo Nation Council and approval of the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION FIVE. EFFECTIVE DATE

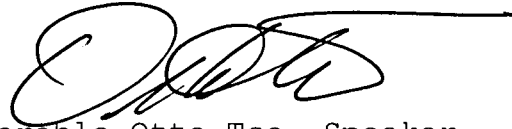
This legislation shall be effective upon its approval pursuant to 2 N.N.C. § 221(B), 2 N.N.C. § 164 (A)(17), and 2 N.N.C. §§ 1005 (C)(10), (11), and (12).

SECTION FIVE. SAVING CLAUSE

If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court, or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, those provisions of this legislation not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 20 in Favor, and 00 Opposed, on this 29th day of December 2022.



Honorable Otto Tso, Speaker
24th Navajo Nation Council

12.30.2022

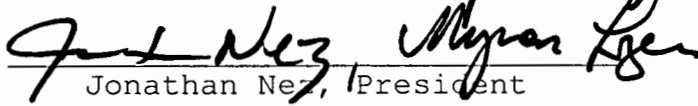
DATE

Motion: Honorable Paul Begay
Second: Honorable Edmund Yazzie

Speaker Otto Tso not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 6th day of January, 2023


Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

3. I, hereby, exercise line-item veto pursuant to the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009, on this _____ day of _____, 2022.

Jonathan Nez, President
Navajo Nation

NAVAJO NATION FISCAL RECOVERY FUND DELEGATE REGION PROJECT PLAN

COUNCIL DELEGATE: Delegate Vince R. James

CHAPTERS: Jeddito, Cornfields, Ganado, Kinlichee, Steamboat

FUNDING RECIPIENT	SUBRECIPIENT	EXPENDITURE PLAN / PROJECT	ADMIN OVERSIGHT	FRF CATEGORY	DOJ REVIEW #	AMOUNT
Division of Community Development	NONE IDENTIFIED	Jeddito Chapter House Wiring	Division of Community Development	2.18	HK0215	\$ 350,000.00
Division of Community Development	NONE IDENTIFIED	Jeddito Chapter Bathroom Additions	Division of Community Development	1.14	HK0216	\$ 400,000.00
Division of Community Development	NONE IDENTIFIED	Jeddito Chapter House Renovation	Division of Community Development	2.22	HK0217	\$ 260,000.00
Division of Community Development	NONE IDENTIFIED	Jeddito Chapter Cemetery Construction and Renovation	Rodger Paul, Chapter President	6.1	HK0218	\$ 185,000.00
Division of Community Development	NONE IDENTIFIED	Jeddito Chapter Housing Renovations	Division of Community Development	2.18	HK0226	\$ 595,000.00
Division of Community Development	*Steamboat Chapter	Steamboat Chapter Warehouse Project	Division of Community Development	1.14	HK0219	\$ 220,000.00
Division of Community Development	*Steamboat Chapter	Steamboat Chapter Scattered Water Line II	Department of Water Resources	5.15	HK0220	\$ 1,480,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter PPE/Food Supply Storage Building	Division of Community Development	1.14	HK0221	\$ 150,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Heating Source Assistance Program	Division of Community Development	2.2	HK0223	\$ 95,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Navajo Station Phase IV Powerline Extension	Division of Community Development	2.18	HK0224	\$ 225,000.00
					TOTAL:	\$ 3,960,000.00

*Per CJN-29-22, Section Three (E), the "Navajo Nation Central Government may award funding to LGA-Certified Chapters through sub-recipient agreements to implement and manage specific projects, but shall maintain Administrative Oversight over such funding and Delegate Region Project Plans."

NAVAJO NATION FISCAL RECOVERY FUND DELEGATE REGION PROJECT PLAN

COUNCIL DELEGATE: Delegate Vince R. James

CHAPTERS: Jeddito, Cornfields, Ganado, Kinlichee, Steamboat

FUNDING RECIPIENT	SUBRECIPIENT	EXPENDITURE PLAN / PROJECT	ADMIN OVERSIGHT	FRF CATEGORY	DOJ REVIEW #	AMOUNT
		TOTAL AMOUNT from PAGE 01				\$ 3,960,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Septic Tank Operation and Maintenance Cost	Division of Community Development	5.5	HK00225	\$ 95,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Cemetery Fencing	Division of Community Development	6.1	HK0228	\$ 75,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Technology Upgrade	Division of Community Development	3.5	HK0229	\$ 35,000.00
Division of Community Development	*Cornfields Chapter	Cornfields Chapter Food Assistance Program	Division of Community Development	2.1	HK0231	\$ 65,000.00
Division of Community Development	*KinDahLichii Chapter	KinDahLichii Chapter Renovation	Division of Community Development	1.4	HK0253	\$ 498,000.00
Division of Community Development	*KinDahLichii Chapter	KinDahLichii Chapter Bathroom Additions	Division of Community Development	1.14	HK0256	\$ 682,000.00
Division of Community Development	*Ganado Chapter	Ganado Chapter Waterline Extension Project	Department of Water Resources	5.13	HK0306	\$ 1,700,000.00
		UN-ALLOCATED AMOUNT				\$ 1,692,340.00
					TOTAL:	\$ 8,802,340.00

*Per CJN-29-22, Section Three (E), the "Navajo Nation Central Government may award funding to LGA-Certified Chapters through sub-recipient agreements to implement and manage specific projects, but shall maintain Administrative Oversight over such funding and Delegate Region Project Plans."



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 #: HK0225

Date & Time Received: 11/21/22 14:12

Date & Time of Response: 5 December, 2022; 9:41 am

Entity Requesting FRF: Cornfields Chapter

Title of Project: Septic Tank Operation and Maintenance Cost

Administrative Oversight: Division of Community Development

Amount of Funding Requested: \$95,000

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: 5.5, Clean Water:

Other Sewer Infrastructure

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: Adjua Adjei-Danso



Signature of DOJ Reviewer: _____

Disclaimers: An NNDOJ Initial Eligibility Determination will be based on the documents provided, which NNDOJ will assume are true, correct, and complete. Should the Project or Program change in any material way after the initial determination, the requestor must seek the advice of NNDOJ. An 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.

THE NAVAJO NATION
FISCAL RECOVERY FUNDS REQUEST FORM & EXPENDITURE PLAN
FOR GOVERNANCE-CERTIFIED CHAPTERS

Part 1. Identification of parties.

Governance-Certified Chapter requesting FRF: Cornfields Chapter Date prepared: 09/18/2022

Chapter's P.O. Box 478 phone & email: (928) 755-5912 aearle@nnchapters.org
mailing address: Ganado, Arizona 86505 website (if any): _____

This Form prepared by: Alfreda Earle phone/email: (928) 755-5912 aearle@nnchapters.org
Alfreda Earle, Chapter Manager (928) 755-5912 aearle@nnchapters.org
CONTACT PERSON'S name and title CONTACT PERSON'S info

Title and type of Project: Septic Tank Operation and Maintenance Cost

Chapter President: Morgan Cleveland, Sr. phone & email: (928) 755-5912

Chapter Vice-President: Wallace James, Jr. phone & email: (928) 755-5912 wjamesjr@naataanii.org

Chapter Secretary: Caleb Roanhorse phone & email: cr.horse@yahoo.com

Chapter Treasurer: Caleb Roanhorse phone & email: _____

Chapter Manager or CSC: Alfreda Earle phone & email: (928) 755-5912 aearle@nnchapters.org

DCD/Chapter ASO: Toni Mina phone & email: (928) 654-3933 tmina@nndcd.org

List types of Subcontractors or Subrecipients that will be paid with FRF (if known): Septic Service Companies
_____ document attached

Amount of FRF requested: 95,000.00 FRF funding period: September 30, 2022 - December 31, 2026
indicate Project starting and ending/deadline date

Part 2. Expenditure Plan 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:

This project will fund the septic tank operation and maintenance for the community of Cornfields. This project will provide a reliable and have better sanitation service.
 document attached

(b) Explain how the Program or Project will benefit the Navajo Nation, Navajo communities, or the Navajo People:

The community well have better sanitation service that are reliable and safe thus benefiting the community. The ability to maintain wastewater collection directly addresses one of the major sanitation needs that connected to the on going COVID-19 pandemic.
 document attached

(c) 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:

The project will have construction funds encumbered no later than December 31, 2024 and will be fully expended by December 31, 2026.

document attached

(d) Identify who will be responsible for implementing the Program or Project.

Cornfields Chapter.

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:

Homeowners are responsible for maintenance once it's completed.

document attached

(f) State which of the 66 Fiscal Recovery Fund expenditure categories in the attached U.S. Department of the Treasury Appendix 1 listing the proposed Program or Project falls under, and explain the reason why:

The project is covered under Expenditure Category, 5.5 Infrastructure: Water and Sewer; Clean Water: Other Sewer Infrastructure. This project will help address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Without regular clean outs, septic tanks will likely fail, and groundwater contamination logically follows. DOJ response to Directive in CJN-29-22 on FRF - Eligibility of Septic Tank Cleaning,

document attached

Part 3. Additional documents.

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

Expenditure Categories Table Indicating 5.5. Chapter Resolution.

Chapter Resolution attached

Part 4. Affirmation by Funding Recipient.

Funding Recipient affirms that its receipt of Fiscal Recovery Funds and the implementation of this FRF Expenditure Plan 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:

Chapter's Preparer:

Approved Eula
signature of Preparer/CONTACT PERSON

Approved by:

Nguyen Chantal Sr
signature of Chapter President (or Vice-President)

Approved by:

Approved Eula
signature of Chapter Manager or CSC

Approved by:

Sondata
signature of DOJ Chapter ASD

Approved to submit for Review

1, 7/17 11/1/2022
signature of D.C.D. Director

**THE NAVAJO NATION
PROGRAM BUDGET SUMMARY**

PART I. Business Unit No.: _____		New		Program Title: <u>Septic Tank Operation and Maintenance Cost</u>		Division/Branch: <u>DCD</u>	
Prepared By: <u>Alfreda Earle</u>		Phone No.: <u>(928) 755-6912</u>		Email Address: <u>aearle@nnchapters.org</u>			

PART III. BUDGET SUMMARY				Fund Type Code	(A) NNC Approved Original Budget	(B) Proposed Budget	(C) Difference or Total
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						
7000	Special Transactions						
8000	Public Assistance			0	95,000	95,000	
9000	Capital Outlay						
9500	Matching Funds						
9500	Indirect Cost						
TOTAL					\$0.00	95,000.00	95,000.00

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

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

SUBMITTED BY: <u>Alfreda Earle</u> Program Manager's Printed Name <u>Alfreda Earle</u> Program Manager's Signature and Date	APPROVED BY: <u>Paul J. Johnson</u> Division Director / Branch Chief's Printed Name <u>Paul J. Johnson</u> Division Director / Branch Chief's Signature and Date
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**THE NAVAJO NATION
 PROGRAM PERFORMANCE CRITERIA**

PART I. PROGRAM INFORMATION:
 Business Unit No.: New Program Name/Title: Cornfields Chapter Septic Tank O+M Costs

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

PART III. PROGRAM PERFORMANCE CRITERIA:

	1st QTR		2nd QTR		3rd QTR		4th QTR	
	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Actual
1. Goal Statement: Provide Financial Hardship and bring some measure of relief to many families as we continue to navigate these unprecedented times.								
Program Performance Measure/Objective: Assist community members with septic tank maintenance so they can have better sanitation service by the end of the quarter.							200	
2. Goal Statement: <u> </u>								
Program Performance Measure/Objective: <u> </u>								
3. Goal Statement: <u> </u>								
Program Performance Measure/Objective: <u> </u>								
4. Goal Statement: <u> </u>								
Program Performance Measure/Objective: <u> </u>								
5. Goal Statement: <u> </u>								
Program Performance Measure/Objective: <u> </u>								

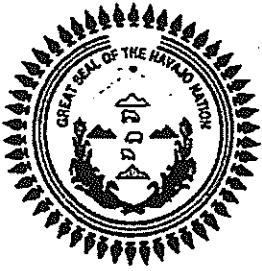
PART IV. I HEREBY ACKNOWLEDGE THAT THE ABOVE INFORMATION HAS BEEN THOROUGHLY REVIEWED.

Alberta Embe Program Manager's Printed Name
Alberta Embe Program Manager's Signature and Date

 Division Director/Branch Chief's Printed Name
 Division Director/Branch Chief's Signature and Date

**THE NAVAJO NATION
 DETAILED BUDGET AND JUSTIFICATION**

PART I. PROGRAM INFORMATION: Program Name/Title: _____ Business Unit No.: _____ New			
PART II. DETAILED BUDGET:			
(A)	(B)	(C)	(D)
Object Code (LOD 6) 8000 7150	Object Code Description and Justification (LOD 7) Assistance Assist 200 community members septic tank maintenance. Supplies: Purchase general office supplies for daily operation of the program. 5,000	Total by DETAILED Object Code (LOD 6) 90,000 5,000	Total by MAJOR Object Code (LOD 4) 95,000
TOTAL			95,000



**NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

DOREEN N. MCPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

**Confidential
Attorney-Client Privileged**

MEMORANDUM

TO: Honorable Seth Damon, Speaker, 24th Navajo Nation Council
Honorable Delegates, 24th Navajo Nation Council
Dr. Pearl Yellowman, Division Director, Division of Community Development
Tom Platero, Executive Director, NNFRF Office
All Navajo Nation Chapters

FROM: *Mel Rodis*
Mel Rodis, Assistant Attorney General
Tax & Finance Unit

DATE: July 27, 2022

SUBJECT: DOJ Response to Directive in CJN-29-22 on FRF-Eligibility of Septic Tank Cleaning

This memorandum is in response to the directive in Council Resolution CJN-29-22, which was signed into law by President Nez on July 15, 2022. Specifically, Council Resolution CJN-29-22 directed the Navajo Nation Department of Justice (DOJ) to “inform Delegates, Chapters, and the Division of Community Development, in writing, whether septic tank cleaning is an eligible FRF expenditure and whether septic tank clean outs can be included in Delegate Region Project Plans.” Although there is no governing authority that explicitly addresses septic tank clean outs, they are likely an eligible expenditure of Fiscal Recovery Funds, as more fully detailed below.

Fiscal Recovery Funds (FRF) under the American Rescue Plan Act (ARPA) are intended for the following purposes and must fall into one of the following four (4) eligible use categories:

- (1) To support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector;
- (2) To provide premium pay for eligible workers performing essential work;
- (3) To provide government services up to the amount of revenue loss due to the pandemic; or
- (4) To make necessary investments in water, sewer, and broadband infrastructure.

Memo to Honorable Speaker Seth Damon; Honorable Delegates, 24th Navajo Nation Council; Dr. Yellowman, Division of Community Development; Tom Platero, NNFRF Office; All Navajo Nation Chapters
From: Mel Rodis, Tax & Finance Unit, DOJ
RE: DOJ Response to Directive in CJN-29-22 on FRF-Eligibility of Septic Tank Cleaning
Date: July 27, 2022
Page 2

The U.S. Department of Treasury (Treasury) issued a Final Rule further discussing eligible uses of FRF and has also issued an Overview of the Final Rule and Frequently Asked Questions (FAQs). As a starting point to any analysis Treasury has advised that, “[t]he best way to begin evaluation of whether a specific use is an eligible use of [FRF] funds is to consider which of the four eligible use categories the use may fall into....The [FRF] program provides substantial flexibility for each jurisdiction to meet local needs within these eligible use categories. In general, recipients should think about what services they are trying to provide, and for which groups or populations, and assess whether this use of funds would fit within the parameters of the eligible use category as outlined in the Overview and the final rule.”¹

Under eligible use category number 4 - to make necessary investments in water and sewer - Treasury’s Final Rule states that any project that would be eligible under the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) would be eligible uses of FRF. Beyond CWSRF and DWSRF, Treasury states that FRF can also be used to fund projects that are “necessary.”² “Necessary” means: 1. Responsive to an identified need to achieve or maintain an adequate minimum level of service; and 2. is a cost effective means for meeting that need.³

The questions posed by Council therefore depend on whether septic tank clean outs can be funded by the CWSRF, DWSRF, or are otherwise “necessary” as defined by Treasury. The following provision regarding decentralized wastewater systems, including individual onsite systems, supports a determination by the Navajo Nation that constructing, repairing, or replacing private septic systems is an eligible FRF expenditure.

“The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA) [33 U.S.C. 1383(c)] provides that the CWSRF can provide assistance: ... (iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.”⁴

¹ Treasury FAQs from April 27, 2022. FAQ 4.1 “How do I know if a specific use is eligible?”

² *Id.* at FAQ 6.1. In Treasury’s Interim Final Rule, projects under the fourth eligibility category were limited to only those that could be funded with CWSRF or DWSRF. However, in response to public comment, the Final Rule expressly states that additional projects could be funded if they meet Treasury’s definition of “necessary.” Treasury FAQ on this topic reads, “[W]ith broadened eligibility under the final rule, SLFRF funds may also be used to fund additional types of projects — such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined on page 38 of the Overview.”

³ Treasury Final Rule at 266.

⁴ Treasury Final Rule at 276-78.

Memo to Honorable Speaker Seth Damon; Honorable Delegates, 24th Navajo Nation Council; Dr. Yellowman, Division of Community Development; Tom Platero, NNFRF Office; All Navajo Nation Chapters
From: Mel Rodis, Tax & Finance Unit, DOJ
RE: DOJ Response to Directive in CJN-29-22 on FRF-Eligibility of Septic Tank Cleaning
Date: July 27, 2022
Page 3

Treasury's Final Rule also states, "[c]onsistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment."⁵ Treasury does not add much additional guidance but mentions private septic tanks in the Overview to the Final Rule, which states, "[r]ecipients may fund a broad range of water and sewer projects, including those eligible under the [CWSRF] or the [DWSRF], *and certain additional projects*, including a wide set of lead remediation, stormwater infrastructure, and *aid for private wells and septic units*."⁶ (Emphasis added.)

DOJ previously reviewed an FRF application for a septic system installation program expenditure plan to utilize FRF allocated under Council Resolution CJY-41-21. DOJ determined that such project was FRF-eligible. That project consisted of constructing and installing new septic systems to outlying homes on the Navajo Nation that are too far from a centralized wastewater system to be connected. DOJ determined that such project was an eligible use of FRF. Specifically, DOJ determined that the project was eligible given the CWSRF's focus on septic system upgrades, repairs, or replacement, and the construction/installation of new systems.

Unfortunately, ARPA, Treasury guidance on FRF, and the CWSRF, do not explicitly address septic tank clean outs. Therefore, there is some uncertainty. However, as noted, the CWSRF allows funding decentralized wastewater systems, including individual onsite systems, for constructing, repairing, or replacing private septic systems, which supports a determination that septic tank clean outs are likely eligible. To the extent that septic tank clean outs constitute "operation and maintenance costs," EPA views such costs associated with individual septic systems as not eligible under the CWSRF; however EPA views capital costs associated with management programs, such as purchasing pump-trucks as eligible.⁷ It is therefore important to further define the program seeking FRF funding to ensure CWSRF eligibility.

Even if septic tank clean outs are outside the scope of the CWSRF, they still could be eligible as "necessary." Specifically, septic tank clean outs are responsive to an identified need for an adequate minimum level of service and maintenance - which includes cleaning, and is a cost effective means for meeting that need. Without regular clean outs, private septic tanks will likely fail, and groundwater contamination logically follows – the cost of which to clean up would be an eligible expense.

Additionally, septic tank clean outs may also be eligible under the eligible use category number 3 - provision of government services up to the amount of revenue loss due to the pandemic. Treasury FAQs provide, "[i]f a use does not appear to be eligible under the water, sewer, and

⁵ Treasury Final Rule at 282-83.

⁶ Treasury Overview of Final Rule at 7.

⁷ See EPA's website on CWSRF, found at [https://www.epa.gov/cwsrf/clean-water-state-revolving-fund-cwsrf-decentralized-wastewater-treatment#:~:text=Related%20Topics%3A-,Clean%20Water%20State%20Revolving%20Fund%20\(CWSRF\)%3A%20Decentralized%20Wastewater%20Treatment,%2C%20cluster%20systems%2C%20lagoons](https://www.epa.gov/cwsrf/clean-water-state-revolving-fund-cwsrf-decentralized-wastewater-treatment#:~:text=Related%20Topics%3A-,Clean%20Water%20State%20Revolving%20Fund%20(CWSRF)%3A%20Decentralized%20Wastewater%20Treatment,%2C%20cluster%20systems%2C%20lagoons)).

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Date: July 27, 2022
Page 4

broadband infrastructure, premium pay, or public health and negative economic impacts eligible use categories, then recipients should consider using funds under the revenue loss eligible use category. The revenue loss eligible use category provides recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue due to the pandemic.”⁸ In Treasury’s Final Rule with respect to government services, “generally speaking, services provided by the recipient governments are “government services” under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.”⁹

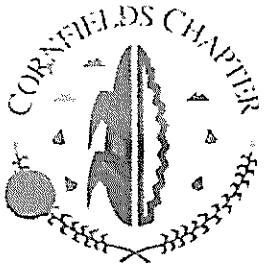
Septic tank clean outs are not prohibited under Treasury guidance. Although the Nation does not typically provide cleaning services for private septic tanks nor does the Nation typically provide financial assistance for homeowners to pay for private contractors to provide septic tank cleaning services, the Nation does provide funding for financial assistance to individual Navajo members for firewood, fuel, food, and other forms of emergency assistance. Full and overflowing septic tanks constitute a sanitation concern. Throughout the pandemic and beyond, the Nation has invested in improving public health conditions for its members.

In conclusion, FRF eligibility determinations require a careful analysis of the specific details of a proposed expenditure. To make a conclusive determination regarding the FRF eligibility of a proposed septic tank cleaning program, DOJ recommends that one or more Council Delegates work with the FRF Office and the Division of Community Development to develop an FRF expenditure plan and supporting documents for further review.

XC. Doreen N. McPaul, Attorney General, The Navajo Nation
Dana Bobroff, Chief Legislative Counsel, Office of Legislative Counsel
Stacy Allison, Chief Legal Counsel, Office of the President and Vice President

⁸ Treasury FAQ 4.1. “How do I know if a specific use is eligible?”.

⁹ Treasury Final Rule at 259-260.



CORNFIELDS CHAPTER

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Page 1

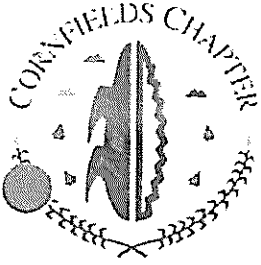
CF-SEPT2022-059

RESOLUTION OF THE CORNFIELDS CHAPTER

Approve and Request the Navajo Nation Office of the President and Vice-President, the Naabik'iyati' Committee, Navajo Nation Council, and the Budget and Finance Committee to Support and Approve the Cornfields Chapter Expenditure Plans for: Powerline Project, Community/Veterans Fencing Project, Assistance, Home Renovation/Improvement Project, Housing Projects, Technology Equipment, Medical Supply Storage Building and Special Duty/Premium Pay.

WHEREAS:

1. Cornfields Chapter is a recognized as certified chapter of the Navajo Nation and is vested with the authority and responsible to plan and implement all things that are in the best interest of its community; and
2. Cornfields Chapter realize that pursuant to CAP-34-98, the Local Governance Act allows all chapters to make decisions over local matters; this authority will improve community decision making, allow communities to excel and flourish, enabling Navajo Nation leaders to lead towards a prosperous future of its community; and improve the strength and sovereignty of the Navajo Nation; and
3. Cornfields Chapter is delegated to act within its authority to review all local matters affecting the Community members consistent with Navajo Nation law, including custom and tradition with compel the Chapter to govern with responsibility and accountability to the community members; and
4. Cornfields Chapter, at its recent Planning Meeting on August 02, 2022 discussed the Navajo Nation Fiscal Recovery Funds; and
5. Cornfields Chapter, knows that the Fiscal Recovery Funds are specifically intend to respond to the COVID-19 public health emergency and its negative economic impacts, including assistance to households, and respond to workers performing essential work during the COVID-19 public health emergency by providing hazard and premium pay to eligible workers, and make necessary investments in water, sewer, and/or broadband infrastructure; and
6. Pursuant to CJN-29-22 the Navajo Nation Central Government may award funding to LGA-Certified Chapters through sub-recipient agreements to implement and manage specific projects, Cornfields Chapter would like to exercise its LGA authority to receive the Navajo Nation Fiscal Recovery Fund and manage the projects; and



CORNFIELDS CHAPTER

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Page 2

CF-SEPT2022-059

7. Cornfields Chapter believes it is in the best interest of the community and its chapter to support and approve the Cornfields Chapter Expenditure Plans for the benefit of its community, especially during the on-going COVID-19 pandemic.


NOW THEREFORE BE IT RESOLVED THAT:

The Cornfields Chapter hereby approves and request the Navajo Nation Office of the President and Vice-President, the Naabik'iyati' Committee, Navajo Nation Council, and the Budget and Finance Committee to Support and Approve the Cornfields Chapter Expenditure Plans for: Powerline Project, Community/Veterans Fencing Project, Assistance, House Renovation/Improvement Project, Housing Projects, Technology Equipment, Medical Supply Storage Building and Special Duty/Premium Pay.

Furthermore, the Cornfields Chapter would like to exercise its LGA authority to receive the Navajo Nation Fiscal Recovery Fund and manage the projects.

CERTIFICATION

I hereby certify that the Cornfields Chapter duly considered the foregoing resolution at a duly called meeting at Cornfields Chapter, Navajo Nation (ARIZONA) at which a quorum was present and was passed by a vote of 10 in favor, 00 opposed and 07 abstained on this 12th day of September 2022.


Presiding Chapter President
CORNFIELDS CHAPTER

Motion: Mr. Murray Lee

Second: Mr. Bennett Dineyazhe