



**DR. BUU NYGREN** *PRESIDENT*  
**RICHELLE MONTOYA** *VICE PRESIDENT*

**The Navajo Nation | Yideeskáądi Nitsáhákees**

October 31, 2023

**TRANSMITTAL**

TO : Arbin Mitchell, Executive Director  
 Division of Community Development (DCD)

FROM : C Shortey  
 Cordell Shortey, Contracting Officer  
 Contracts & Grants Section (CGS) / OMB

SUBJECT : BU on Projects / Activities for Alamo Chapter, Ramah Chapter, and Tohajiilee Chapter- ARPA  
Funds Allocated to Delegate Norman Begay

**I. Information on Contract (per Original Award):**

Alamo Chapter, Ramah Chapter, and Tohajiilee Chapter	U.S. Treasury American Recovery Plan Act (ARPA)	21.027
Title of Contract	Funding Agency	CFDA No. - Federal
CJY-50-23; CAP-12-23	2022	03/11/2021 to 12/31/2026
Grant No.	Amount	Term - Begin and End Date
	\$ 8,802,340.00	

**II. Data Entered in FMIS Regarding:**

- New Contract or Grant Company No. 8059 Business Unit (K#) K2115280
- Contract Mod No. Internal Modification No. 1
- Amt of Budget Increase \$2,500,000.00 \$2,000,000.00 to \$4,500,000.00  
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-50-23

**III. Comments by CGS:**

This transmittal documents 2nd budget entered in FMIS on \$8.8 mil ARPA funds allocated to CD Norman Begay's Region. Y-T-D budget in FMIS for CD Normal Begay totals \$4,500,000. Information on Section I. of Transmittal above reflects \$8,802,340 ARPA funding allocated for distribution to Chapters the respective Council Delegate service aka Region and listing of Chapters.

*Attachment*  
 Copy: Contract files  
 Contract Accounting / OOC / DPM  
 Tom Platero, Executive Director - NN FRF Office

**NAVAJO NATION FISCAL RECOVERY FUND DELEGATE REGION PROJECT PLAN**

**Exhibit A**

COUNCIL DELEGATE: Hon. Norman M. Begay

CHAPTERS: Alamo, Ramah, Tohajiilee

FUNDING RECIPIENT	SUBRECIPIENT	EXPENDITURE PLAN / PROJECT	ADMIN OVERSIGHT	FRF CATEGORY	DOJ REVIEW #	AMOUNT
		TOTAL AMOUNT APPROPRIATED in CAP-12-23 on May 5, 2023				\$ 2,000,000.00
Division of Community Development	None Identified	Tohajiilee/Albuquerque Drinking Water Supply Pipeline Project	Department of Water Resources	5.11	HK0407	\$ 2,500,000.00
		UNALLOCATED AMOUNT				\$ 4,302,340.00

\*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."

**TOTAL: \$ 8,802,340.00**

ka/1/24/20



**The Navajo Nation** **DR. BUU NYGREN** **PRESIDENT**  
**Yideeskáądi Nitsáhákees** **RICHELLE MONTOYA** **VICE PRESIDENT**

August 4, 2023



Honorable Crystalyne Curley, Speaker  
Navajo Nation Council  
Post Office Box 3390  
Window Rock, AZ 86515

RE: *CJY-50-23 An Action Relating to the Naabik'iyáti Committee and Navajo Nation Council; Amending CAP-12-23, The Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Honorable Norman M. Begay's Delegate Region (Chapters: Alamo, Ramah, Tohajiilee), To Include Additional Projects for this Delegate Region*

Dear Speaker Curley,

I am pleased to sign into law this resolution CJY-50-23 approving the Fiscal Recovery Funds Delegate Regional Project Plan for Honorable Begay's Delegate Region in the amount of \$2,500,000.

My Administration supports the plans of these Chapters who have worked very hard to put together their Regional Plans and is working very closely with the Fiscal Recovery Fund Office to ensure that these funds are put to use. As such, when Chapters are running into roadblocks in expending their Fiscal Recovery Funds and the roadblock is coming from the Executive Branch, I encourage them to reach out to the Office of the President and Vice President and inform my office of the roadblock and we will work to overcome those roadblocks.

I do want to take the moment to express my concern that any amendments to the Regional Plans must be approved by the Council. In addition, the prior Navajo Nation Council has set the expectation that Fiscal Recovery Funds be encumbered by June 30, 2024. This deadline is not far off. As a construction expert, I know that there are unpredictable factors that can prevent even the best of plans from moving forward on the proposed timeline. We should be designing systems that are flexible, accountable, and transparent. We do not currently have that system and I look forward to working with you and the entire Council to improve the Navajo Nation systems, so we are supporting our communities to take advantage of this historic funding.

Now let's get to work!

Sincerely,

  
Dr. Buu Nygren, *President*  
**THE NAVAJO NATION**

RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
25<sup>th</sup> NAVAJO NATION COUNCIL - FIRST YEAR, 2023

AN ACTION

RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL;  
AMENDING CAP-12-23, THE NAVAJO NATION FISCAL RECOVERY FUND  
DELEGATE REGION PROJECT PLAN FOR HONORABLE NORMAN M. BEGAY'S  
DELEGATE REGION (CHAPTERS: ALAMO, RAMAH, TOHAJIILEE), TO INCLUDE  
ADDITIONAL PROJECTS FOR THIS DELEGATE REGION

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'iyáti' 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).
- D. Navajo Nation Council Resolution No. CAP-12-23, herein by reference, mandates that amendments to the Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Honorable Norman M. Begay's Delegate Region (Chapter: Alamo, Ramah, Tohajiilee) be approved by a Navajo Nation Council resolution and signed into law by 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 TWO. FINDINGS

- A. The 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. The Navajo Nation Council Resolution No. CAP-12-23, 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 NORMAN M. BEGAY'S DELEGATE REGION (CHAPTERS: ALAMO, RAMAH, TOHAJIILEE), was signed into law by the President of the Navajo Nation on May 5, 2023.
- D. CAP-12-23, Section Four, states that:
1. 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).
- E. All additional projects listed in the Hon. Norman M. Begay's Delegate Region Projects Plan, attached as Exhibit A, have been deemed Fiscal Recovery Fund eligible by NNDOJ. In addition, Hon. Norman M. Begay's Delegate Region Projects Plan does not exceed the amount of \$8,802,340, as set forth in CJN-29-22, Section Three (F).
- F. The Navajo Nation Council hereby finds that it is in the best interest of the Navajo Nation and the Hon. Norman M. Begay's Delegate Region Chapters and communities to approve and adopt the additional projects as part of the Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Hon. Norman M. Begay's Delegate Region (Chapters: Alamo, Ramah, Tohajiilee) as set forth in Exhibit A.

**SECTION THREE. AMENDING CAP-12-23, THE NAVAJO NATION FISCAL RECOVERY FUND DELEGATE REGION PROJECT PLAN FOR HONORABLE NORMAN M. BEGAY'S DELEGATE REGION (CHAPTERS: ALAMO, RAMAH, TOHAJIILEE), TO INCLUDE ADDITIONAL PROJECTS FOR THIS DELEGATE REGION**

- A. The Navajo Nation hereby approves the additional projects as part of the Navajo Nation Fiscal Recovery Fund Delegate Region Project Plan for Norman M. Begay's Delegate Region (Chapters: Alamo, Ramah, Tohajiilee) 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 SIX. 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 25<sup>th</sup> 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 21 in Favor, and 00 Opposed, on this 18<sup>th</sup> day of July 2023.



Honorable Crystalyne Curley, Speaker  
25<sup>th</sup> Navajo Nation Council

7/27/23

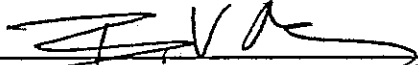
DATE

Motion: Honorable George H. Tolth  
Second: Honorable Rickie Nez

Speaker Crystalyne Curley 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 4 day of August, 2023.

  
\_\_\_\_\_  
Buu Nygren, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (11), on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Buu Nygren, 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 \_\_\_\_\_, 2023.

\_\_\_\_\_  
Buu Nygren, President  
Navajo Nation





NAVAJO NATION DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL



ETHEL B. BRANCH  
Attorney General

HEATHER CLAH  
Deputy Attorney General

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

RFS/HK Review #: HK0407

Date & Time Received: 3/17/23 at 10:33

Date & Time of Response: 03/27/23 at 15:35

Entity Requesting FRF: To'Hajiilee Navajo Chapter

Title of Project: To'Hajiilee - Albuquerque Water Supply Pipeline (Drinking Water Transmission) Project

Administrative Oversight: Navajo Nation Department of Water Resources

Amount of Funding Requested: \$2,500,000.00

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 Drinking Water: Transmission and Distribution

**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: \_\_\_\_\_  
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Name of DOJ Reviewer: Erika Pirotte, Attorney, NRU

Signature of DOJ Reviewer: Erika Pirotte

Digitally signed by Erika Pirotte  
Date: 2023.03.27 15:34:55 -06'00'

**Disclaimers:**

If additional information has been requested and you wish to provide it, please resubmit all the required forms updated to include the additional information. Full resubmission will expedite the Initial Eligibility Determination process. Therefore, please include a new RFS form indicating resubmission, revised Appendix A, Budget Form 1, and other supporting documents. Please email your resubmission to [arpa@nndoj.org](mailto:arpa@nndoj.org). Please be aware that under Resolution BFS-31-21 a Project or Program can only be reviewed twice, therefore it is critical that you include all the requested additional information for your second submission.

An NNDOJ Initial Eligibility Determination is 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 NON-GOVERNANCE CERTIFIED CHAPTERS**

**Part 1. Identification of parties.**

Non-Governance Certified Chapter requesting FRF: To'Hajiilee Navajo Chapter Date prepared: 09/08/2022

Chapter's mailing address: PO Box 3398 To'Hajiilee, New Mexico 87026 phone/email: 505-908-2732/2730 website (if any): tohajiilee@navajochapters.org

This Form prepared by: Jimmy R Secatero phone/email: 505-288-6525 / jsecatero@naataanii.org  
Sherrilyn Apache / CSC 505-908-2732/2730 sapache@nnchapters.org  
CONTACT PERSON'S name and title CONTACT PERSON'S info

Title and type of Project: To'Hajiilee - Albuquerque Water Supply Pipeline (Drinking Water Transmission) Project

- Chapter President: Jimmy R Secatero phone & email: 505-288-6525 jsecatero@naataanii.org
- Chapter Vice-President: Nora J Morris phone & email: 505-415-2700 nmorris@naataanii.org
- Chapter Secretary: Francesca Abeita phone & email: 505-321-2925 fabeita@navajochapters.org
- Chapter Treasurer: Francesca Abeita phone & email: 505-321-2925 fabeita@navajochapters.org
- Chapter Manager or CSC: Sherrilyn Apache phone & email: 505-908-2732 sapache@nnchapters.org
- DCD/Chapter ASO: Gurena Adeky phone & email: 505-488-8476 gadeky@nndcd.org

List types of Subcontractors or Subrecipients that will be paid with FRF (if known): \_\_\_\_\_  document attached

Amount of FRF requested: 2,500,000 FRF funding period: 1/1/23 - 12/31/2024  
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 construct a new water transmission pipeline from the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) to To'Hajiilee Chapter to replace the Chapter's failing Well No. 5. During the past six years, this well, which is the Chapter's only water source, failed four times, including one time during the pandemic. When the well fails, it leaves the entire community without water for days or weeks at a time. Even when it works, the existing well produces poor quality water that is brown or black and smells bad. The Project will provide a reliable, long-term source of high-quality drinking water for the entire Chapter of To'Hajiilee. Pipeline will run from ABQ Tank 7W to To'hajiilee Tanks 4&5. Reliable, quality drinking water is essential for human health.  document attached

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

This project will provide a reliable source of clean, drinkable water for all 1,600 Navajo people living in To'Hajiilee Chapter. Our current water source is poor quality, smells bad, corrodes pipes, and is subject to outages that leave our community high and dry. The project will solve all of these problems.  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:

Engineering funds will be encumbered by January 2023 and fully expended by December 2024.  
Construction funds will be encumbered by June 2023 and fully expended by December 2026.  
Design is already 95% complete and will be construction ready within 6 months.

document attached

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

Jason John, Director, NDWR

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:

The Project will be operated and maintained by the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) under an MOU between the Navajo Nation and ABCWUA (see attached). NNDOJ is currently working with ABCWUA's attorneys to negotiate a detailed Rate Agreement (draft attached).

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:

5.11 - Drinking Water: Transmission and Distribution  
This project will design and construct a water transmission pipeline to convey drinking water to To'Hajiilee Chapter.

document attached

**Part 3. Additional documents.**

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

MOU between Navajo Nation and ABCWUA for operation and maintenance of To'Hajiilee Water Supply Pipeline Project.  
DRAFT Rate Agreement between Navajo Nation and ABCWUA for payment for water service.

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 by:   
signature of Preparer/CONTACT PERSON signature of Chapter President (or Vice-President)

Approved by:  Approved by:   
signature of CSC signature of Chapter ASO

Approved to submit for Review:   
signature of DCD Director

FY 2023

THE NAVAJO NATION  
PROGRAM BUDGET SUMMARY

Page 1 of 3  
BUDGET FORM 1

PART I. Business Unit No.: <u>new</u> Program Title: <u>To'Hajilee Chpater <i>Waterline</i></u> Division/Branch: <u>DCD/ASC</u>								
Prepared By: <u>Jimmy Secatero</u> Phone No.: <u>505-908-2731</u> Email Address: <u>jsecatero@naataanii.org</u>								
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
CJY-41-21 ARPA NNFRF	1/1/23-12/31/24	2,500,000	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		2,500,000	2,500,000
				7000 Special Transactions				
				8000 Public Assistance				
				9000 Capital Outlay				
				9500 Matching Funds				
				9500 Indirect Cost				
				TOTAL		\$0.00	2,500,000.00	2,500,000
				PART IV. POSITIONS AND VEHICLES		(D)	(E)	
				Total # of Positions Budgeted:		0 AH	0 AH	
				Total # of Vehicles Budgeted:		0 AH	0 AH	
		TOTAL: 2,500,000	100%					
PART V. I HEREBY ACKNOWLEDGE THAT THE INFORMATION CONTAINED IN THIS BUDGET PACKAGE IS COMPLETE AND ACCURATE.								
SUBMITTED BY: <u>Sonlatsa Jim-Martin</u>			APPROVED BY: <u>Dr. Pearl Yellowman, Division Director</u>					
Program Manager's Printed Name			Division Director / Branch Chief's Printed Name					
<i>Sonlatsa Jim</i>			<i>Pearl Yellowman 12.5.22</i>					
Program Manager's Signature and Date			Division Director / Branch Chief's Signature and Date					

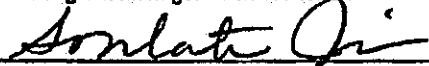

THE NAVAJO NATION  
PROGRAM PERFORMANCE CRITERIA

**PART I. PROGRAM INFORMATION:**  
 Business Unit No.: new Program Name/Title: To'Hajillee Chpater Waterline

**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:	FY2023		FY2024					
	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Actual
1. Goal Statement: <u>To construct a new water supply line for To'Hajillee</u>								
Program Performance Measure/Objective: <u>To construct a new water supply line for To'Hajillee</u>	X		X					
2. Goal Statement: _____								
Program Performance Measure/Objective: _____								
3. Goal Statement: _____								
Program Performance Measure/Objective: _____								
4. Goal Statement: _____								
Program Performance Measure/Objective: _____								
5. Goal Statement: _____								
Program Performance Measure/Objective: _____								

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

<u>Sonlatsa Jim-Martin</u> Program Manager's Printed Name  Program Manager's Signature and Date	<u>Dr. Pearl Yellowman, Division Director</u> Division Director/Branch Chief's Printed Name  Division Director/Branch Chief's Signature and Date
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THE NAVAJO NATION  
DETAILED BUDGET AND JUSTIFICATION

PART I. PROGRAM INFORMATION:			
Program Name/Title: <u>To'Hajiilee Chapter Water line</u>		Business Unit No.: <u>new</u>	
PART II. DETAILED BUDGET:			
(A)	(B)	(C)	(D)
Object Code (LOD 6)	Object Code Description and Justification (LOD 7)	Total by DETAILED Object Code (LOD 6)	Total by MAJOR Object Code (LOD 4)
6500 AH	Contractual Services AH Construction of water supply line.		2,500,000 AH
6520 AH	Consulting AH	2,500,000 AH	
	6530 - Consulting - Fees AH      1,250,000 x 1 = 1,250,000 AH		
	6540 - Consulting - Expenses AH      1,250,000 x 1 = 1,250,000 AH		
TOTAL		2,500,000 AH	2,500,000 AH

THE NAVAJO NATION  
PROJECT BUDGET SCHEDULE

<b>PART I. Business Unit No.:</b> <u>new</u> Project Title: <u>To'Hajilee Waterline Project - ARPA 5.11 Drinking Water: Transmission &amp; Distribution</u> Project Description <u>New Water Supply Line for To'Hajilee's Water System</u> Check one box: <input checked="" type="checkbox"/> Original Budget <input type="checkbox"/> Budget Revision <input type="checkbox"/> Budget Reallocation <input type="checkbox"/> Budget Modification													<b>PART II. Project Information</b> Project Type: <u>water/wastewater</u> Planned Start Date: <u>1/1/2023</u> Planned End Date: <u>12/31/2024</u> Project Manager: <u>Jason John</u>																	
<b>PART III.</b> List Project Task separately; such as Plan, Design, Construct, Equip or Furnish.	<b>PART IV. Use Fiscal Year (FY) Quarters to complete the information below. O = Oct.; N = Nov.; D = Dec., etc.</b>																								Expected Completion Date if project exceeds 8 FY Qtrs.					
	FY 2023												FY 2024																	
	1st Qtr.			2nd Qtr.			3rd Qtr.			4th Qtr.			1st Qtr.			2nd Qtr.			3rd Qtr.			4th Qtr.			Date					
	O	N	D	J	F	M	A	M	J	Jul	A	S	O	N	D	J	F	M	A	M	J	Jul	A	S	O	N	D	J	F	M
Construction of waterline							x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			
	\$			\$			\$			\$			\$			\$			\$			\$			PROJECT TOTAL					
Expected Quarterly Expenditures							400,000.00			400,000.00			400,000.00			400,000.00			400,000.00			500,000.00			\$2,500,000.00					

FOR OMB USE ONLY:    Resolution No: \_\_\_\_\_    FMIS Set Up Date: \_\_\_\_\_    Company No: \_\_\_\_\_    OMB Analyst: \_\_\_\_\_



TO'HAIJILEE NAVAJO CHAPTER

# Canoncito Band of Navajos

PO Box 3398 To'Hajiilee, New Mexico 87026

Phone: (505) 908-2732/2730 Email: To'hajiilee@Navajochapters.org

Jimmy R. Secatero, President  
Nora J. Morris, Vice-President  
Francesca Abelta, Secretary/Treasurer  
Evangeline Willie, Land Board  
Jamie Henio, Council Delegate  
Sherrilyn Apache, Community Service Coordinator

RESOLUTION: TNC-22-11-054

## RESOLUTION OF THE TO'HAIJILEE NAVAJO CHAPTER/CANONCITO BAND OF NAVAJOS TO APPROVE AND SUPPORT ARPA FUNDING FOR TO'HAIJILEE - ALBUQUERQUE SUPPLY PIPELINE AND AFFIRMING COMPLIANCE WITH ARPA AND OTHER APPLICABLE LAWS AND REGULATIONS

### WHEREAS:

1. To'Hajiilee Navajo Chapter/Canoncito Band of Navajos is a certified government, pursuant to 26 N.N.C., Section 3 (A) of the Navajo Nation Government, as listed as 11 N.N.C., Part 1, section 10, and delegated government authority with respect to local matters consistent with Navajo Law, including customs, traditions and fiscal matter; and
2. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos is empowered, pursuant to 26 N.N.C., Section 1 (B) is vested with authority to review all matters affecting the community and to make favorable decision when necessary and make recommendation(s) to Navajo Nation and other in the best interest of the community membership for appropriate actions; and
3. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos currently manages and protects 77,899 acres of Canoncito Band Land and provides services to 2,832 enrolled members of the Canoncito Band, who are experiencing significant hardship due to COVID-19 pandemic; and
4. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos finds that one the most critical needs facing our community is the lack of adequate water supply, which affects our public health, safety, and welfare; and
5. The Indian Health Service, Navajo Nation Department of Water Resources, and other authorities have investigated numerous alternatives and determined that the only feasible way to provide an adequate water supply to our community is by building a pipeline from Albuquerque; and
6. The Navajo Nation has received funds from the American Rescue Plan Act (ARPA) which may be used for water infrastructure that meets the urgent public health and safety needs of the community; and
7. The ARPA funds come with strict rules and regulations that must be complied with and the funding being requested is supplementing existing funding provided via CJN-29-22 legislation.

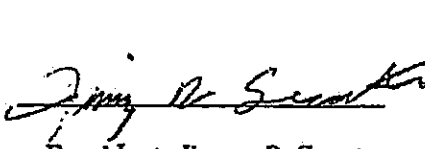
RESOLUTION: TNC-22-11-054

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos supports and requests ARPA funding for the To'Hajiilee – Albuquerque Water Supply Pipeline Project to mitigate the impact of COVID -19 in the community.
2. The To'Hajiilee Navajo Chapter/Canoncito Band of Navajos affirms that the Chapter will only use awarded funds in compliance with the ARPA, the ARPA regulations, and all other applicable Navajo Nation and Federal laws and regulations.

**CERTIFICATION**

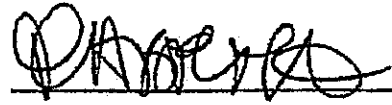
We hereby certify that this forgoing resolution was duly considered by the To'Hajiilee Chapter Membership at a duly called virtual meeting at which a quorum was present and that an approval was passed with a vote of 09 IN FAVOR, 00 OPPOSED and 01 ABSTENTION this 15th day of November 2022. Motion by: Nora J. Morris Second by: Evangelina Willie



President, Jimmy R. Secatero



Vice President, Nora J. Morris



Secretary/Treasurer Francesca Abeita

**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, 10<sup>th</sup> 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, 5<sup>th</sup> 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


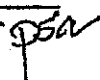
The aforementioned Preamble and Recitals are incorporated herein and are given the same weight as each of the additional terms and conditions listed below.

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

**INTERGOVERNMENTAL RATE AGREEMENT  
BETWEEN  
THE NAVAJO NATION  
AND  
THE ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY  
FOR THE  
TREATMENT AND DELIVERY OF WATER TO TO'HAIJILEE**

**PREAMBLE**

This Intergovernmental Rate Agreement ("Agreement") is entered into by and between 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 and the 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. The 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 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, for the health and safety of the To'Hajiilee Chapter, there is an urgent need to resolve the To'Hajiilee water crisis, particularly because the need has been more acute during the recent COVID-19 pandemic; and

WHEREAS, the Water Authority is able and willing to treat raw water that is conveyed to the Water Authority by the Nation and deliver the resulting potable water through a dedicated transmission line terminating at a bulk water wholesale meter connected to the distribution system within the To'Hajiilee Chapter (the Project); and

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

WHEREAS, the Nation has both the water and financial resources to complete the Project; and

WHEREAS, in support of the Project, the Bernalillo County Commission, by a unanimous vote of the Commissioners on April 14, 2020, approved proceeding with the Project and has obtained the appropriate easements and rights-of-way for the transmission line from private owners and transferred same to the Water Authority as necessary; 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 Agreement. The Parties agree that under no circumstance will the Water Authority incur any new net expenses for construction of the Project or provide water rights for the Project; and

WHEREAS, To'Hajiilee shall share in Water Authority system costs to the extent the Water Authority incurs costs to treat and deliver finished water to the To'Hajiilee bulk water meter, as determined by an independent rate consultant. To'Hajiilee shall not be responsible for and shall not share in Water Authority system costs which do not benefit To'hajiilee.

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

### **TERMS AND CONDITIONS**

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

1. **Authority of the Contracting Parties.** It is the understanding of each of the Parties, that other than their respective governing bodies, no other party is required to authorize the execution of this Agreement.
2. **Term.** This Agreement shall not become effective until executed by the President of the Navajo Nation and the Executive Director of the Water Authority. This Agreement shall expire on June 30, 2042, unless earlier terminated pursuant to Section(s) 7 and/or 11 herein.
3. **The Water Authority will treat and deliver potable water to To'Hajiilee.** Subject to the terms and conditions herein, the Water Authority shall operate and maintain the Project consisting of a dedicated water line to transmit a peak day design flow of 360,000 gallons per day (gpd) of treated potable water to To'Hajiilee. The Water Authority's commitment to deliver potable water to To'Hajiilee is expressly conditioned upon the Nation providing to the Water Authority treatable raw water in a quantity equal to the amount required to deliver potable water to To'Hajiilee including applicable conveyance losses.
4. **The Nation will provide raw water sufficient to produce the quantity of potable**



**water delivered.** The Water Authority's commitment to deliver potable water to To'Hajiilee is expressly conditioned upon the Nation conveying raw water to the Water Authority by a method acceptable to the Water Authority in sufficient quantity to produce the amount of potable water served at the bulk water meter maintained at entrance to the To'Hajiilee Chapter water distribution system including annual conveyance losses.

- a. Annually, in February of each year, the Nation shall cause 200 acre feet of San Juan-Chama water in Abiquiu Reservoir to be assigned to the Water Authority's Abiquiu Reservoir to meet the Nation's raw water delivery obligation under this Agreement.
  - b. If, at any time, for any reason, the Nation learns that it may not be able to assign a sufficient quantity of San Juan-Chama water in Abiquiu Reservoir to meet its obligations under this Agreement, the Nation shall immediately notify the Water Authority and commence reasonable best efforts including the purchase or lease of water from alternative water sources to cure the deficiency and repay any water owed to the Water Authority.
  - c. After assignment, the assigned raw water in Abiquiu Reservoir will be solely owned by the Water Authority and at any time may be released from or retained in Abiquiu Reservoir at the sole discretion of the Water Authority.
  - d. The Water Authority shall keep an annual accounting of the amount of raw water received from the Nation and the amount of potable water delivered to the bulk water meter at To'Hajiilee Chapter. If the annual 200 acre feet of San Juan-Chama water in Abiquiu Reservoir assigned by the Nation to the Water Authority exceeds the quantity of potable water delivered, after accounting for annual evaporation and conveyance losses, the excess shall be carried over to offset bulk water deliveries in subsequent years. If potable water deliveries to the bulk water meter at the To'Hajiilee Chapter exceed the raw water delivery in any year, the raw water deficit will be accounted for in subsequent years.
  - e. Conveyance losses from Abiquiu Reservoir to the Water Authority's point of diversion will be proportional to the total annual conveyance loss rates incurred by the Water Authority in the previous year.
5. **Rates to be Paid by To'Hajiilee for Water Service; Fixed Charges.** The Parties agree that To'Hajiilee is a wholesale water customer of the Water Authority and shall pay the water monthly fixed charge per section 1-1-3 (C) of the Water and Sewer Rate Ordinance, as the rate may change from time to time. The monthly fixed charge rate for To'Hajiilee will be adjusted only as a result of a rate study performed by an independent rate consultant qualified to determine which Water Authority system costs benefit To'Hajiilee.
6. **Commodity Charges.** The Nation and To'Hajiilee Chapter shall also be responsible for

any water commodity charges for water delivered to the Water Authority's bulk water meter per section 1-1-3 (F) of the Water and Sewer Rate Ordinance, as that rate may change from time to time. The Nation will be solely responsible for the distribution of the potable water delivered by the Water Authority at the bulk water meter to all points within To'Hajiilee Chapter.

7. **Availability of Funds.** The Water Authority is facilitating and managing the construction of the necessary infrastructure to serve treated potable water to the To'Hajiilee bulk water meter based on funding sources provided in partnership with the Nation. The Parties agree that under no circumstance will the Water Authority incur any unreimbursed expenses for construction of the Project or provide water rights for the Project. The Nation's obligation to pay for all aspects of the construction of the infrastructure and pay the monthly fixed charge and any water commodity charges, in full or any portion thereof, is contingent upon the availability of appropriations made by the Navajo Nation Council. In the event of early termination pursuant to this Section 7, the Nation shall be responsible to pay the Water Authority for all expenses and services incurred by the Water Authority up to the date of termination.
8. **Maintenance and Operations Costs.** The Water Authority shall have sole responsibility at its own cost to design, construct, operate and maintain the entirety of the Project up to and including the bulk water meter located at To'Hajiilee Chapter.
9. **Amendments.** This Rate Agreement may be amended, in writing, upon written agreement of both Parties, approved by their respective governing bodies, provided no amendment may supersede the Water Authority's Water and Sewer Rate Ordinance. A bi-annual adjustment to the calculated Fixed Charge as set by the Water Authority's Water and Sewer Rate Ordinance shall not be considered an amendment to this Rate Agreement.
10. **Assignment.** This Rate Agreement shall not be assignable without the express written consent of the Parties hereto, and if so assigned, shall extend to and be binding upon the successors and assigns of the Parties hereto.
11. **Default; Termination.**

Events of Default. Any of the following shall constitute an event of default upon its occurrence and no cure period shall apply, unless otherwise stated:

- a. The Nation fails to pay any amount due under this Rate Agreement and such failure has not been cured after completion of the Dispute Resolution proceedings contained in this Rate Agreement; or
- b. The Nation fails for thirteen (13) consecutive months to convey raw water equal to the amount of potable water the Water Authority has delivered to To'Hajiilee as required by this Agreement and such failure has not been cured after completion of the Dispute Resolution proceedings contained in this Agreement; or

c. The Water Authority dissolves or liquidates; provided, however, that division of the Water Authority into multiple entities shall not constitute dissolution or liquidation; or

d. The Water Authority breaches, or fails to perform or comply with, any material term of this Agreement if the Water Authority has not cured the breach after completion of the Dispute Resolution proceedings contained in this Agreement.

If an event of default shall have occurred and be continuing beyond the cure periods set out in Section 15, the non-defaulting Party may suspend performance under this Agreement and terminate this Agreement upon written notice to the defaulting Party.

12. **Parties Not Engaged in Joint Venture.** The Parties are not engaged in a joint venture, they are not agents for one another and neither Party is holding itself out as an agent or as being Party to a joint venture, partnership, or other legal relationship other than water supplier and a customer.
13. **Force Majeure.** Neither Party shall be considered to be in default in respect to any obligation hereunder if its delay in performing or failure to perform shall be due to a Force Majeure Event. "**Force Majeure Event**" means an event that is beyond the control of the Party affected that by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, including, without limitation, acts of God, flood, earthquake, storm, fire, lightning, pandemic, war, riot, civil disturbance, sabotage, or strikes. The Party whose performance hereunder is so affected shall immediately notify the other Party in writing of the pertinent facts and take all reasonable steps to promptly and diligently prevent such causes, if feasible to do so, or to minimize or eliminate the effects thereof.
14. **Indemnification.** Each Party agrees to assume all liabilities, losses, costs, damages, or expenses arising out of, or connected with, each Party's performance or obligations undertaken pursuant to this Agreement, including but not limited to any accident or injury to persons or property.
15. **Dispute Resolution.**
  - a. Any dispute arising out of, or in connection with this Agreement or its subject matter or formation (including non-contractual claims) will be resolved as follows: The Party will deliver notice of the dispute, including a detailed description of the dispute, together with relevant supporting documents. Senior officials of each Party will then attempt to resolve the dispute. If the Parties do not resolve the dispute within thirty (30) calendar days of the occurrence of the dispute notice, either Party may deliver notice to the other Party of a demand for mediation. The Parties will then try to resolve the dispute with a mediator chosen jointly by the Parties. If the Parties do not resolve the dispute within sixty (60) days of the mediation demand, each Party may begin litigation.

- b. Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
- c. If possible, using reasonable best efforts, the Water Authority shall continue providing potable water to the To'Hajiilee Chapter during the dispute resolution process described in this Dispute Resolution section.
16. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not alter, define, or be used to construe the text hereof.
17. **Governing Law.** The Parties shall comply with all applicable state, Navajo Nation, and federal laws and regulations pertaining to the performance of all obligations governed by this Agreement.
18. **Severability Clause.** If any provision of this Agreement is determined to be contrary to law or otherwise legally invalid, the provision shall be severed from this Rate Agreement, and the remaining provisions of this Agreement shall remain valid and binding on the Parties.
19. **Notices.** All required written notice(s) shall be provided by personal delivery or certified U.S. mail, return receipt requested. Notice by certified mail is effective upon mailing. The following addresses shall be used for notice:

**Navajo Nation:**

To'hajiilee Chapter  
[Mailing Address]

Department of Water Resources – Water Management Branch  
P.O. Box 678  
Fort Defiance, AZ 86504

Department of Justice – Natural Resources Unit  
P.O. Box 2010  
Window Rock, AZ 86515

**Water Authority:**

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**IN WITNESS WHEREOF**, the Parties have entered into this Rate Agreement with an effective date as stated in Section 2 herein.

**NAVAJO NATION DEPARTMENT OF JUSTICE**



**REQUEST  
FOR  
SERVICES**

DOJ
_____ DATE / TIME
RFS #: _____
UNIT: _____

RESUBMITTAL

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

<b>CLIENT TO COMPLETE</b>			
DATE OF REQUEST: <u>3/17/2023</u>	ENTITY/DIVISION: <u>OPVP</u>		
CONTACT NAME: <u>Michael M. Tsosie</u>	DEPARTMENT: <u>Fiscal Recovery Fund Office</u>		
PHONE NUMBER: <u>(928) 309-5540</u>	E-MAIL: <u>ARPA@nndoj.gov</u>		
COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):			
<i>Initial Eligibility Determination for To'Hajiilee Chapter, Water Supply Pipeline In Need in the amount of \$2,500,000.</i>			
DEADLINE:	<u>1/1/2023</u>	REASON:	<u>DOJ Review</u>
<b>DOJ SECRETARY TO COMPLETE</b>			
DATE/TIME IN UNIT:		REVIEWING ATTORNEY/ADVOCATE:	
DATE TIME OUT OF UNIT:		PREPARED BY (initial):	
<b>DOJ ATTORNEY / ADVOCATE COMMENTS</b>			
REVIEWED BY: (PRINT)		DATE / TIME:	
DOJ Secretary Called:	for Document Pick Up on	at	By:
PICKED UP BY: (PRINT)		DATE / TIME:	

NAVAJO NATION

Navajo Nation Council Summer Session

7/18/2023  
02:18:34 PM

<b>Amd# to Amd#</b>	<b>Consent Agenda: Legislations</b>	<b>PASSED</b>
MOT Tolth, G	0120-23, 0122-23, 0126-23,	
SEC Nez, R	0127-23, 0140-23, 0148-23,	
	0149-23, 0145-23, 0079-23...	

<b>Yeas : 21</b>	<b>Nays : 0</b>	<b>Excused : 2</b>	<b>Not Voting : 0</b>
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**Yea : 21**

Arviso, S	Crotty, A	Nez, A	Simpson, D
Aseret, L	Daniels, H	Nez, R	Slater, C
Begay, H	James, V	Notah, N	Tolth, G
Begay, N	Jesus, B	Parrish, S	Tso, O
Charles-Newton, E	Johnson, C	Simonson, G	Yazzie, C
Claw, S			

**Nay : 0**

**Excused : 2**

Yanito, C	Damon, S
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**Not Voting : 0**

**Presiding Speaker: Curley, C**