

**MEMORANDUM OF AGREEMENT
for
APPROVED SIHASIN FUND POWERLINE AND CHAPTER PROJECT(S)**

This Memorandum of Agreement (MOA) is made and entered into by and between the Capital Projects Management Department (CPMD) of the Division of Community Development (DCD) and [REDACTED] Chapter, a Local Governance Act (LGA) certified chapter (Chapter) with an approved Five Management System (FMS). CPMD and the Chapter will collectively be referred to as Party(ies).

WHEREAS, the Navajo Nation Council (NNC), through Legislation No. CAP-35-18 (Síhasin Legislation), adopted the Síhasin Fund Powerline and Chapter Projects Expenditure Plan. Through the Síhasin Legislation, the NNC approved 229 projects. Thereafter, on May 7, 2018, Navajo Nation President Russell Begaye line-item vetoed two (2) projects. As a result, there are 227 remaining projects.

WHEREAS, the Síhasin Legislation divided the projects into three (3) project base: (1) Chapter Projects; (2) Navajo Tribal Utility Authority (NTUA projects) Powerlines and Waterlines; and (3) non-NTUA Powerlines (Non-NTUA powerline projects).

WHEREAS, the Síhasin Legislation provides that funds for individual Chapter and non-NTUA powerline projects will be allocated to and administered by CPMD.

WHEREAS, the Síhasin Legislation allows CPMD, through a MOA, to transfer the project funds, accountability, and responsibility to a LGA certified Chapter at the Chapter's request.

WHEREAS, the Síhasin Legislation approved \$ [REDACTED].00 (Project Funds) for [REDACTED] (Project).

WHEREAS, the Chapter has requested, through a memorandum dated [REDACTED] to take over the accountability and responsibility of the Project and Project Funds (Exhibit A), and also submits Chapter Resolution No. [REDACTED] (Exhibit B), budget forms (Exhibit C), and information of what account number the Project Funds will be located in the Chapter's account.

WHEREAS, in the event the Chapter has match funds for the Project, the Chapter is required to submit a Chapter resolution that accepts and approves the match fund for this Project.

NOW, THEREFORE, the Parties agree to the following:

I. RESPONSIBILITIES OF THE PARTIES.

A. The Parties shall use their best faith efforts to communicate, coordinate and cooperate with each other and other involved Navajo Nation entities.

B. CPMD shall:

1. Remain involved throughout the duration of the Project;
2. Assign a Project Manager to the Project and provide technical assistance, including, but not limited to technical assistance with procurement, contract compliance and review, and project administration;
3. Assist the Chapter in coordinating with other Navajo Nation entities as appropriate;
4. Periodically review the Chapter's bank account and expenditures related to the Project Funds; and
5. Obtain written updates and meet with the Chapter on the Project Funds and Project(s) on a monthly basis.

C. The Chapter shall:

1. Expeditiously Expend and Encumber all Project Funds;
2. Account for all Project Funds;
3. Develop the scope of work for procurement purposes for the Project;
4. Prepare and advertise any Invitation for Bids, Request for Proposals, and/or Request for Statement of Qualification for the Project;
5. Manage, implement, and oversee the Project, including any services procured for the Project;
6. Ensure that Project costs are reasonable and remain within budget;
7. Consult with CPMD in determining whether the Project will require additional funds. If it is determined that additional funds are required to

complete the Project, it is the Chapter's responsibility to secure additional funds or amend the scope of work for the Project to meet funding realities;

8. Coordinate and consult as necessary with CPMD and other appropriate departments that have expertise or responsibility for any aspects or phases of that Project;
9. Provide CPMD read-only access to review the Chapter's bank account related to Project Funds;
10. Provide written updates and meet with CPMD on Project Funds and Project(s) on a monthly basis. The written updates should include the amount expended, status of the Project, and challenges that the Chapter may be encountering;
11. Comply, coordinate, and cooperatively work with the Office of the Auditor General for audits related to Project Funds;
12. Close-out the Project Funds by providing a Close-Out packet to CPMD, including a Final Close-Out Report, interior and exterior photographs of the Project, and for construction and renovation projects, a Release of Claims and a Certificate of Occupancy issued by a licensed Building Inspector; and
13. Comply with all Navajo Nation laws and policies, including, but not limited to the Chapter's FMS, Navajo Business Opportunity Act, Ethics in Government Law, and Navajo Nation Council Resolution No. CAP-35-18.

III. TERM.

This MOA shall become effective upon execution by both Parties, and shall remain in effect until one of the following: (1) the Parties mutually agree to terminate the MOA; (2) CPMD terminates the MOA pursuant to Section X of this MOA; or (3) If the Chapter does not Expend or Encumber Project Funds within 24 months after Distribution to the Chapter, as provided in Section V of this MOA, the MOA shall be terminated.

IV. DEFINITIONS.

- A. “Distribution” is defined as “when the Office of the Controller (OOC) has provided notification via email and by phone to the Chapter representative identified in Section VIII of this MOA that a check for the project funds is available for pick-up.”
- B. “Encumber” is defined as “a binding legal commitment of Project Funds for specific goods and/or services demonstrated through a fully executed contract, including purchase orders.” The “date encumbered” shall be the date that the contract was signed (executed) by (1) the Chapter official or employee with authority; and (2) the vendor.
- C. Expend/Spent is defined as “when a Project expense is actually paid by the Chapter.”

V. PROJECT FUNDS.

- A. The Chapter shall spend the Project Funds for the following Project purpose:

- B. The Chapter affirms and agrees that it will only Expend and Encumber Project Funds for only the Project purpose as provided in subsection A of this section.
- C. The Chapter shall be required to expeditiously Expend and Encumber the Project Funds within 24 months of Distribution.
- D. Before Distribution, the Chapter shall be required to procure, and finalize the contract terms for the Project purpose. Once the aforementioned process is completed by the Chapter, the Chapter shall submit the contract to CPMD for review and approval that it is appropriate for the Project and in compliance with applicable Navajo Nation laws and policies. Upon approval by CPMD and execution of the contract between the contractor and Chapter President, CPMD shall submit notice and all supporting documents to the OOC for Distribution to the Chapter.
- E. If Project Funds are not Spent or Encumbered within 24 months after Distribution or in the event this MOA is terminated, the Chapter shall return

the unspent or unencumbered Project Funds to the Navajo Nation. The Chapter will be required to write a check made payable to the Navajo Nation and submit to General Accounting of the OOC. Pursuant to Appendix M of the Budget Instructions Manual (BIM), the Nation shall place a hold (in the amount of the Project Funds owed) on the release of any other funds designated for the Chapter until the Project Funds are returned.

VI. REPORTING.

- A. The Chapter shall submit an accounting-expenditure report on the use of the Project Funds and a Project status update to CPMD, the Office of the President and Vice-President (OPVP), and the Resource Development Committee (RDC) on a quarterly basis.
- B. The Chapter shall report the status of the Project Funds and Project to RDC, Budget and Finance Committee and Naabik'iyáti' Committee, and OPVP on a quarterly basis.

VII. LEVERAGE PROJECT FUNDS.

- A. The Chapter shall have the continued responsibility to identify ways to leverage the Project Funds.
- B. The Chapter has the authority to enter into match, funding, partnership, cooperative and other cost saving or cost sharing arrangements or leveraging agreements with Navajo Nation entities and enterprises, Navajo Nation program, and federal and state agencies related to this Project.
- C. In the event the Chapter has saved Project Funds on a completed Project in any manner described above, the Chapter may request approval to use the savings (Cost-Saving Funds) on another project within the Chapter's respective area that is deemed construction-ready by CPMD.
 - 1. The Chapter shall conduct the following to effectuate Subsection (C):
 - a. Obtain CPMD's determination that the new project is construction-ready;
 - b. Obtain RDC's approval for the new project after CPMD has determined that the project is construction-ready;
 - c. Enter into a new MOA with CPMD for the new project after RDC's approval; and
 - d. Expend and Encumber the Cost-Saving Funds.
 - 2. The Chapter shall be required to expeditiously Expend and Encumber the Cost-Saving Funds within 24 months of Distribution. If Cost-

Saving Funds are not Spent or Encumbered within 24 months after Distribution to the Chapter or in the event this MOA is terminated, the Chapter shall return the unspent or unencumbered Cost-Savings Funds to the Navajo Nation. The Chapter shall be required to write a check made payable to the Navajo Nation and submit to General Accounting of the OOC. Pursuant to Appendix M of the BIM, the Nation shall place a hold (in the amount of the Project Funds owed) on the release of any other funds designated for the Chapter until the Project Funds are returned.

If there are no construction-ready projects within the respective Chapter, CPMD shall inform the Chapter, the Chapter's Council Delegate and RDC in writing.

VIII. NOTICE.

- A. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile or email transmission followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched. All notices, demands, requests or other communications to or upon any party provided for in this Agreement or given or made in connection with this Agreement, shall be in writing and shall be addressed as follows:

If CPMD:

CPMD
 Division of Community Development
 Attn: [REDACTED]
 Post Office Box 1510
 Window Rock, Navajo Nation (Arizona) 86515
 Telephone: (928) 871-6211/7182
 Facsimile: (928) 871-7189
 Email:

If the Chapter:

[REDACTED] Chapter
 Attn: [REDACTED]
 Post Office Box [REDACTED]
 [REDACTED], Navajo Nation ([REDACTED])
 Telephone: ()
 Facsimile: ()
 Email:

B. The addresses herein given for notices may be changed at any time by the Parties by written notice given to the other Parties as herein provided.

IX. AMENDMENTS.

The terms of this MOA may be amended upon mutual written consent of the Parties and concurrence of the Navajo Nation Department of Justice (DOJ).

X. DISPUTES.

The Parties shall use their best faith efforts to resolve any dispute informally and expeditiously through negotiations at the staff level. Each Party shall designate a staff person to meet with the other Party at a mutually agreeable time and place. The Parties will honor all reasonable requests for relevant documents and information. If the dispute cannot be resolved within ten (10) business days, the Parties shall refer the matter to the Executive Director of DCD and Chapter President, who shall consult with the DOJ to assist with interpretation of the MOA and applicable Navajo Nation laws and policies. If the Parties are unable to resolve the dispute, the CPMD shall terminate the MOA after consultation with the DOJ. The Chapter shall return any unspent or unencumbered Project Funds to the Navajo Nation pursuant to Section V(E) of this MOA.

XI. RIGHTS OF OTHER PARTIES.

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

IN WITNESS WHEREOF, we the undersigned hereby execute this MOA:

For the Chapter:

For CPMD/DCD:

, President
Chapter

Carl Smith, Executive Director
Division of Community Development

Date

Date