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Meeting Date: August 23, 2023  
Staff Contact: Marta Ortiz, Chief Financial Officer

**TITLE: R-23-25 – Amendment to the Approved Capital Implementation Program of the Albuquerque Bernalillo County Water Utility Authority for the Fiscal Year Ending June 30, 2024, to add funding for the To'Hajiilee Pipeline Project**

**ACTION: Introduction August 23, 2023; Final Action September 20, 2023**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) is facilitating and managing the construction of the necessary infrastructure to serve treated potable water for To'Hajiilee in partnership with the Navajo Nation. The Navajo Nation has been awarded \$3,568,180 from the State of New Mexico Department of Indian Affairs for the construction of the Pipeline. Pursuant to an August 28, 2006, Cooperative Agreement 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.

The Water Authority To'Hajiilee Pipeline Project will address the lack of potable water in To'Hajiilee by treating raw water that is conveyed to the Water Authority by the Nation and delivering 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 Navajo Nation will provide \$3,586,180 to the Water Authority for the completion of the pipeline project to To'Hajiilee from one of the Water Authority's existing storage tanks on Albuquerque's West Side.

Pursuant to the pending Reimbursement Agreement attached, the Water Authority will submit monthly reimbursement requests to the Navajo Nation (Grantee within CMPS ID# 21-TF08). The Navajo Nation will then submit the appropriate documentation to the Department of Indian Affairs for reimbursement and immediately forward the received funds to the Water Authority.

**FISCAL IMPACT:**

The attached resolution reflects an expense and revenue budget amendment to provide an additional \$3,568,180 from the Navajo Nation.

The Executive Director is authorized to negotiate and enter into an agreement with the Navajo Nation regarding the funding for To'Hajiilee and take any action necessary to carry out the directives of this resolution.



**REIMBURSEMENT AGREEMENT  
BETWEEN  
THE NAVAJO NATION  
AND  
THE ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY  
FOR THE  
CONSTRUCTION OF A PIPELEINE TO DELIVER WATER TO TO'HAJIILEE**

**PREAMBLE**

This Reimbursement 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, Arizona 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 there is an urgent need to resolve the To'Hajiilee water crisis; and

WHEREAS, the Water Authority is able and willing to address this crisis by treating 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 the same to the Water Authority as necessary; and

WHEREAS, consistent with the Cooperative Agreement dated August 28, 2006 and the Rate Agreement dated December 05, 2022, 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 expenses for construction of the Project or provide water rights for the Project; and

WHEREAS, the Nation has been awarded \$3,568,180 from the State of New Mexico Department of Indian Affairs Fund 89200 Capital Appropriation Project Tribal Infrastructure Fund and, under this Agreement, that funding will be used exclusively for reimbursement to the Water Authority for construction of the Project.

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 the signatures below are sufficient, and no other party is required to authorize the execution of this Agreement.
2. **Term.** This Agreement shall become effective upon execution by both the President of the Navajo Nation and the Executive Director of the Water Authority. This Agreement shall expire when the pipeline construction is complete, and all final invoices have been paid.
3. **The 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 is contingent upon the availability of appropriations made by the Navajo Nation Council, the New Mexico State Legislature and other funding agencies.
4. Pursuant to the Tribal Infrastructure Act, Section 6-29-1 et seq. NMSA 1978 and Severance Tax Bonding Act, Section 7-27-10.(C) NMSA 1978, Three Million Five Hundred Sixty-Eight Thousand One Hundred Eighty Dollars and Thirty-Five Cents (\$3,568,180.35) is available to construct the To'Hajiilee – Albuquerque water supply line

project.

5. Per the Rate Agreement between the Navajo Nation and the Water Authority signed on December 05, 2022, 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. It is agreed that the Water Authority will submit monthly invoices to the Navajo Nation (Grantee within CMPS ID# 21-TF08) for work performed pursuant to this Agreement to be paid with the above-referenced Tribal Infrastructure Grant and for a total sum not to exceed \$3,568,180.35.
6. **Maintenance and Operation 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.
7. **Amendments.** This 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. .
8. **Assignment.** This 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.
9. **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. Unless Section 4 applies, the Nation fails to pay any amount due under this Agreement and such failure has not been cured after completion of the Dispute Resolution proceedings contained in this Agreement; or
  - b. The Water Authority dissolves or liquidates; provided, however, that division of the Water Authority into multiple entities shall not constitute dissolution or liquidation; or
  - c. 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, the non-defaulting Party may suspend performance under this Agreement and terminate this Agreement upon written notice to the defaulting Party.
10. **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.

11. **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.
12. **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.
13. **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 construction of the Project during the dispute resolution process described in this Dispute Resolution section.
14. **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.
15. **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.

16. **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.
17. **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:

**Notice to the Navajo Nation:**

To'Hajiilee Chapter  
P.O. Box 3398  
To'Hajiilee, NM 87026

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

**Notice to the Water Authority:**

Albuquerque Bernalillo County Water Utility Authority  
Executive Director  
P.O. Box 568  
Albuquerque, N.M. 87103

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

By: \_\_\_\_\_  
President of the Navajo Nation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director of the Water Authority

Date: \_\_\_\_\_

This Agreement has been reviewed and determined to be in accordance with Navajo Nation law:

\_\_\_\_\_  
Navajo Nation Department of Justice

\_\_\_\_\_  
Date