**STATE OF NEW MEXICO**

**DEPARTMENT OF INDIAN AFFAIRS**

**FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into by and between [DEPARTMENT NAME AND ADDRESS], hereinafter called the “Department” or abbreviation such as “IAD”, and the [Grantee Name], hereinafter called the “Grantee”.

**RECITALS**

**WHEREAS**, in the Laws of xxxx, Chapter xx, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement;

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement;

**WHEREAS,** pursuant to the Laws 20XX, Chapter XX, Section XX, Item XX, [AMOUNT] ($XXX,XXX) [APPROPRIATION DESCRIPTION]; and

**WHEREAS**, the Department has authority to enter into grant agreements pursuant to Section 9-21-7 (C) NMSA 1978; and

**WHEREAS,** the Grantee is an Indian nation, tribe or pueblo, or is a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation to enter into this agreement**.**

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

[APPROPRIATION TITLE]

IGA [NUMBER]

APPROPRIATION REVERSION DATE: 6/30/20XX

Laws of 20XX, Chapter XX, Section XX, Paragraph XX, [AMOUNT] ($XXX,XXX) [APPROPRIATION DESCRIPTION;

The Grantee’s total reimbursements under this Agreement shall not exceed [AMOUNT] ($XXX,XXX) which is hereinafter referred to as “Appropriation Amount.” Pursuant to the Art in Public Places Act, [AMOUNT] ($X,XXX) has been set aside from the Project and transferred to the Art in Public Places Fund, which is administered by the Cultural Affairs Department.

B. In the event the Appropriation Amount in this Agreement is greater than the amount stated in the laws cited in Article I.A. above, Grantee acknowledges and agrees that the amount stated in those laws is the maximum amount available to it under this Agreement.

In the event of a conflict between the Reversion Date and/or the purpose of the Project and/or the Reversion Date as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the “Project”; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the “Project Description” The Project Description includes Attachment A to this Agreement, which is incorporated by this reference as if fully set forth herein. In the event of an irreconcilable conflict between the terms of Attachment A and the other terms of this Agreement, the other terms of this Agreement shall prevail over the terms in Attachment A; provided, however, that Attachment A may limit allowable expenditures to a subset of the expenditures that would otherwise be permissible under the appropriation language.

Attachment B sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment B imposes more stringent requirements than any requirement set for in this Agreement, the more stringent requirements of Attachment B shall prevail, in the event of irreconcilable conflict.

The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

**ARTICLE II. LIMITATION ON DEPARTMENT’S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, this Grant Agreement and the disbursement of any and all amounts of the above referenced Appropriation Amount are expressly conditioned upon the following:

1. The Grantee’s submission of documentation of all Third Party Obligations and amendments thereto (including terminations), to the Department and the Department’s issuance and the Grantee’s receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
2. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee**.
3. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
4. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee’s expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
5. The date the Department signs the Notice of Obligation is the date that the Department’s Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
6. The Department may not unreasonably refuse to issue a Notice of Obligation; provided however, that this restriction in no way limits the Department’s discretionary rights under Article VI. By way of illustration, the following are examples of circumstances under which the Department’s refusal to issue a Notice of Obligation would be reasonable:
   1. This Agreement is suspended or a notice of termination has been issued;
   2. The amount of the Third Party Obligation plus the amounts of previously issued Notice(s) of Obligation exceeds the Appropriation Amount;
   3. The Third Party Obligation is not within the Project Description;
   4. The Third Party Obligation was not incurred in accordance with the Grantee’s procurement code and/or procurement policies; or
   5. The Grantee has not provided affirmative proof of the existence of the Third Party Obligation.
7. If there are not questions about or deficiencies in Grantee’s request and supporting material or questions about the Grantee’s compliance with this Agreement, Notices of Obligation shall ordinarily be issued within seven (7) business days of the Department’s receipt of Grantee’s request. The Department shall not be liable in the event Notices of Obligation are issued later than seven (7) days.
8. Irrespective of any Notice of Obligation, the Grantee’s expenditures, as defined in Article IV, shall be incurred on or before the Reversion Date and, if applicable, an Early Termination Date.
9. The total amount received by the Grantee shall not exceed the total of all amounts stated in the Notice(s) of Obligation.
10. The Grantee’s expenditures were made pursuant to the Grantee’s legal procurement and execution of binding Third Party Obligations.
11. The Grantee’s submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein.
12. In the event that capital assets acquired with Project funds are to be leased or licensed to or operated by another entity, the Department must approve of the lease, license, or operating agreement as complying with law and as providing the Grantee with adequate consideration in exchange for the capital assets. Prior to the Department approving the lease, license, or operating agreement, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the lease, license, or operating agreement commercially feasible, such as plan and design expenditures.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee:

Name:

Title:

Address:

Telephone:

FAX:

Department:

Name:

Title:

Address:

Telephone:

FAX:

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party’s actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. The Effective Date of this Agreement is the date of last signature by either the Department or the Grantee.

B. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the “Reversion Date.” This Agreement shall terminate on the Reversion Date in Article I.A. unless Terminated before Reversion Date (“Early Termination”) pursuant to Article V. herein.

C. The Project’s funds must be “expended” on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement.

(i)  For purposes of this Agreement, an entity has "expended funds" and made an "expenditure" on the day it accepts services rendered or accepts title for goods or property.

(ii) Entering into a contract for services, goods, or property does not constitute funds being expended or an expenditure being made. “Encumbering” Project funds on the Grantee’s books to pay for services, goods, or property not yet rendered or the title to which the Grantee has not yet accepted does not constitute funds being expended or an expenditure being made.

**ARTICLE V. EARLY TERMINATION**

**A**. **Early Termination Before Reversion Date**

Early Termination includes:

1. Termination due to completion of the Project before the Reversion Date; or
2. Termination due to complete expenditure of the Appropriation Amount before the Reversion Date; or
3. Termination for violation of the terms of this Agreement; or
4. Termination for mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may terminate this Agreement early for the reasons described above prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination.

**B**. **Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall terminate this Agreement early for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final.

**C**. **Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may direct the Grantee to suspend entering into new and further Third Party Obligations.

1. The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
2. The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
3. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI.D. herein.

B. In the event of Suspension of this Agreement, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II. herein.

C. A suspension of new or further Third Party Obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department directs the Grantee to suspend entering into new or further Third Party Obligations pursuant to Article VI.A. and the reason for such suspension is Grantee’s action or inaction, the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department, which approval shall not be unreasonably withheld, and be signed by the Grantee. Failure to develop a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A.** **Database Reporting**

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information shall be entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days’ advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

**B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

1. request such additional information regarding the Project as it deems necessary; and
2. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1 (Agency may from time to time reasonably prescribe). Payment requests are subject to the following procedures:

1. The Grantee must submit a Request for Payment; and
2. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
3. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third-party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.
4. As an additional condition precedent to payment, the Department may, in its discretion, require the Grantee to submit with its Request(s) for Payment invoices showing the amount and type of expenditures and proof of payment (e.g., cancelled warrant or check (front and back)).

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C.** **Deadlines**

Requests for Payment shall be submitted by Grantee to the Department on the earlier of:

1. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred, or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
2. Twenty (20) days from date of Early Termination; or
3. Twenty (20) days from the Reversion Date.

D. The Grantee’s failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS;**

**REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

1. The Project’s funds must be spent in accordance with all applicable laws, regulations, policies, and guidelines, including, but not limited to the Grantee’s procurement code and/or processes.
2. Before an agency may certify for the need of severance tax bond proceeds, the project must be developed sufficiently so that the agency reasonably expects to: (1) incur within six months after the applicable bond proceeds are available for the project a substantial binding obligation to a third party to encumber at least five percent of the bond proceeds for the project; and (2) spend at least eighty-five percent of the bond proceeds within three years after the applicable bond proceeds are available for the project.
3. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called “Anti-Donation Clause.”
4. The Grantee shall not at any time convert any property acquired or developed with the Project’s funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
5. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project’s funds to uses other than those specified in the Project Description without the Department's and the Board of Finance’s express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
6. The Grantee has the legal authority to receive and expend the Project’s funds.
7. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
8. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's constitution or federal law (if applicable), or any judgment or decree to which it is subject.
9. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
10. The Grantee’s governing body has duly adopted or passed as an official act a law, resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement.
11. If applicable to the Project, the Grant will be conducted and administered in conformity with:
    1. The policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act and as issued pursuant to section 104 (g) of the Housing and Urban Development Act and contained in 24 CFR Part 58.
    2. The requirements of the Flood Disaster Protection Act of 1973 (Public Law 93-234; as amended) and if necessary with the participation requirements of the National Flood Insurance Program.
    3. The prohibition against the use of lead-based paint of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)). Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures.

1. The Grantee shall abide by all applicable federal whistleblower laws.
2. The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid to or for the benefit of an elected official, officer, or employee of the Grantee in connection with the awarding of any Third Party Obligation.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project’s funds. The Grantee shall follow generally accepted accounting principles, and maintain a separate fund with a separate organizational code for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records related to the Project as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

**ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

**ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act. Any liability of the Grantee is subject to immunities and limitations of applicable federal and tribal law.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen’s compensation and other benefits which apply to the activity of officers, agents or employees of the parties to this Agreement, shall apply to them to the same extent while engaged extraterritorially in the performance of any of their functions and duties under the provisions of this Agreement.

**ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and the Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

**ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Grantee may immediately terminate this Agreement by giving the Contractor written notice of such termination. The Grantee’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department Grant Agreement. In the event the Department terminates the grant agreement early, the Grantee may also terminate the grant agreement by providing written notice of such termination to the contractor. In the event of termination pursuant to this paragraph, the Grantee’s only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date.”

**ARTICLE XVII. FORCE LABOR ACCOUNTS**

The Grantee may utilize force labor accounts for the Project and such force labor accounts constitute Third Party Obligations within the meaning of this Agreement. Force labor accounts are defined as the hiring of temporary employees to work specifically on the Project. In the case of force labor accounts, the Department shall issue a Notice of Obligation in accordance with the following:

1. The Grantee must submit a notarized certification stating:
   1. the amount to be used to pay force labor working on the Project;
   2. that the labor is being hired specifically for the Project;
   3. that the labor is being hired in accordance with the Grantee’s procurement or employment code and/or processes; and
   4. that the labor will be hired within a reasonable time after the Grantee’s receipt of a Notice of Obligation.

The certification required under this paragraph must be made by the Grantee’s designated representative in Article III. of this Agreement; a person designated by such representative in writing on a Department prescribed form as being authorized to submit such certifications; or the person designated by tribal law as being authorized to submit such certifications.

1. Grantee shall submit Requests for Payment concerning force labor account expenditures in accordance with the provisions in Article IX, above, and the Department will accept pay stubs in lieu of invoices.
2. In the event that the Grantee will expend less on force labor account than is stated in the Notice of Obligation concerning such labor, it must immediately notify the Department of such fact. In that event, the Department shall issue an amended Notice of Obligation reflecting the reduced level of force labor account expenditures.
3. A Notice of Obligation issued for force labor account expenditures cannot be used for any other purpose unless the tribal entity has obtained an amended or new Notice of Obligation for another Third Party Obligation.

**ARTICLE XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. timely submit to the federal government all forms and federal single audit documentation required under the federal Single Audit Act of 1984, as amended, and Office of Management and Budget Uniform Guidance 2 CFR Part 200, Subpart F – Audit Requirements. The parties acknowledge and agree that a federal single audit report is timely submitted for purposes of this subparagraph if submitted by any extended due date granted by the Grantee’s federal cognizant agency;
2. notify the Department if Grantee requests from its federal cognizant agency an extension to the federal single audit report submission due date and the reasons for the request;
3. in the event the publicly available Data Collection Form for Reporting on federal single audits (Form SF-SAC or its successor forms) demonstrates that the Grantee’s audit report for its most recent fiscal year contained an opinion other than an unqualified opinion, a significant deficiency, a material weakness, a material noncompliance, or questioned costs, provide the Department, upon request, copies of the relevant sections of the single audit report and documentation and information concerning the development and implementation of any corrective action(s); provided, however, that the Grantee is not required to provide the Department with copies of the financial statements, notes to financial statements, or supplementary information sections of the single audit report; and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds. “Adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds” means that the design and operation of the Grantee’s internal controls allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, on a timely basis: (i) noncompliance with applicable laws, policies, and procedures related to the expenditure of grant funds, including, but not limited to, expending grant funds after expiration of the expenditure period; (ii) misstatements regarding grant funds, including, but not limited to, the failure to timely and accurately record and report grant revenue and expenditures; (iii) unauthorized or unsupported expenditures of grant funds; and (iv) the misappropriation of grant funds or assets acquired by grant funds, including, but not limited to, theft of grant funds or assets acquired by grant funds and the use of grant funds or assets acquired by grant funds for other than allowable purposes.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVIII, the Department may, depending upon the nature and cause of the noncompliance, take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;

2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance; provided, however, that the Department shall consider and give due deference to any corrective action plan submitted to or approved by a federal agency making an award to the Grantee;

3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or

4. terminate this Agreement pursuant to Article V(A) of this Agreement.

The Department shall provide Grantee with written notice of the noncompliance and, prior to taking one of the actions specified in subparagraphs 2, 3, and 4 of this Paragraph B, an opportunity to respond to the notice of noncompliance and proposed action.

**ARTICLE XIX. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS – NOT TO BE USED FOR GENERAL FUNDS] BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) the Department’s failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (ii) the BOF may in the future impose further or different conditions upon the Project; (iii) all BOF conditions are effective without amendment of this Agreement; (iv) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); (v) the Department’s obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied; and (vi) all applicable BOF conditions must be satisfied prior to the Project’s Reversion Date.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF’s Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**[GRANTEE]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Official with Authority to Bind Grantee

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Type or Print Name)

Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Type or Print Title)

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Date

**[DEPARTMENT]**

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Signature of Official with Authority to Bind Department

By:

Its:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date



