**STATE OF NEW MEXICO**

**INDIAN AFFAIRS DEPARTMENT**

**INTERGOVERNMENTAL GRANT AGREEMENT**

**FUND 93100 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into by and between the **New Mexico Indian Affairs Department**, hereinafter called the “Department,” located at the Wendell Chino Building, 1220 S. St. Francis Dr., Santa Fe, NM 87505, and the [**Grantee Name**], hereinafter called the “Grantee,” collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, pursuant to NMSA 1978, § 9-21-7(C)(2), the Department may enter into agreements, such as this Agreement, and may contract with tribal governments to provide services and facilities for promoting the welfare of Indian people in New Mexico; and

**WHEREAS**, in the Laws of 202X, Chapter XX, Section XX, Item 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 202X, Chapter XX, Section XX, Item XX, [TYPE OUT AMOUNT] ($XXX,XXX.XX) [APPROPRIATION DESCRIPTION]; 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**.**

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

**AGREEMENT**

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

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

[APPROPRIATION/PROJECT TITLE]

IGA [NUMBER]

APPROPRIATION REVERSION DATE: 6/30/20XX

Pursuant to the Laws of 202X, Chapter XX, Section XX, Item XX, [TYPE OUT AMOUNT] ($XXX,XXX.XX) [APPROPRIATION DESCRIPTION];

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

1. 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 the laws cited therein is the maximum amount available and shall control.
2. In the event of a conflict between the Reversion Date and/or purpose of the Project as set forth in this Agreement and the corresponding appropriation language in the laws cited in Article I(A), the laws cited therein shall control.
3. 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** (Budget), 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 control; provided, however, that **Attachment A** may limit allowable expenditures to a subset of the expenditures that would otherwise be permissible under the appropriation language.
4. In the event that the entity is subject to Special Conditions and it is necessary to include an **Attachment B** setting forth the Special Conditions, **Attachment B** is incorporated by this reference as if set forth fully herein. If **Attachment B** imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of **Attachment B** shall control.
5. 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. TERM OF AGREEMENT**

1. The Effective Date of this Agreement is the date of signature by the Department’s Cabinet Secretary or designee.
2. As referenced in Article I(A), the applicable law sets the date by which the Grantee must expend Project funds, which is referred to throughout the remainder of this Agreement as the “Reversion Date.” This Agreement shall terminate on the Reversion Date unless it is terminated earlier in accordance with Article III.
3. The Project’s funds must be “expended” on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement.
4. For purposes of this Agreement, the Grantee has “expended funds” and made an “expenditure” on the day it accepts services rendered or accepts title for goods or property.
5. Entering into a contract for services, goods, or property does not constitute expending funds. Similarly, “encumbering” Project funds on the Grantee’s books to pay for services, goods, or property not yet received or accepted does not constitute expending funds or an expenditure.

**ARTICLE III. EARLY TERMINATION**

1. Early Termination Before Reversion Date. Early termination includes any of the following activities prior to the Reversion Date:
2. Termination due to completion of the Project before the Reversion Date; or
3. Termination due to complete expenditure of the Appropriation Amount before the Reversion Date; or
4. Termination for violation of the terms of this Agreement; or
5. Termination for mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.
6. Notice of Early Termination. 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.
7. 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.
8. 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 IV.
9. Termination Management. In the event of termination of this Agreement by either party, the Grantee shall not incur any further obligations for expenditure of funds under this Agreement and comply with all directives issued by the Department regarding the performance of work under this Agreement.

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

1. Conditions for Disbursement. Upon the Effective Date of this Agreement, the Department’s obligation to disburse any funds for permissible purposes within the scope of the Project Description is expressly conditioned on the criteria contained in this Article. The Grantee shall submit to the Department a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone (collectively, Project Budget). The Department shall review and approve the Project Budget by issuing a Notice of Obligation (NOO), in accordance with the Project Description. After receipt of a NOO, the Grantee may be reimbursed for allowable costs up to the Adjusted Appropriation Amount.
2. Submission of Third-Party Obligations:
3. The Grantee must submit one copy of all Third-Party Obligations and any amendments, including terminations, to the Department as soon as possible after the Third-Party’s execution but before the Grantee’s execution.
4. **The Grantee agrees that it is solely responsible for any Third-Party Obligations entered into *prior to* receiving a NOO from the Department for the expenditure.**
5. Submission of NOO:
6. The Department may, at its discretion, issue a NOO for the specific amount of the Third-Party Obligation which obligates the Department to reimburse the Grantee’s expenditures made on or before the Reversion Date or early termination date. The current NOO form is hereto attached as Exhibit 2.
7. The NOO takes effect on the date the Department signs it. After this date, the Grantee is authorized to budget the specific amount, execute the Third-Party Obligation, and request the Third-Party to begin work.
8. The Department will not unreasonably refuse to issue a NOO. However, this does not limit the Department’s right to refuse under Article VI. Refusal to issue a NOO is reasonable in the following situations:
9. This Agreement has been suspended or a notice of termination has been issued.
10. The Third-Party Obligation amount plus previously issued NOOs exceeds the Appropriation Amount.
11. The Third-Party Obligation is not within the Project Description.
12. The Third-Party Obligation was not incurred according to the Grantee’s procurement code and/or policies.
13. NOOs are typically issued within seven (7) business days of receiving the Grantee’s request for payment, provided there are no issues with the request, supporting materials or the Grantee’s compliance with this Agreement. The Department is not liable for any delays later than seven (7) days.
14. Grantee Expenditures:
15. The Grantee’s expenditures, as stated in Article II(C), must be incurred in accordance with the Project Budget on or before the Reversion Date or, if applicable, the Early Termination Date.
16. The total amount received by the Grantee shall not exceed the lesser of: (1) the Adjusted Appropriation Amount or (2) the total amounts stated in the NOOs.
17. The Grantee’s expenditures must be made according to the Grantee’s legal procurement and execution of binding Third Party Obligations.
18. Grantee is authorized to budget the particular amount set forth in the NOO, execute the Third Party Obligation, and request the Third Party to begin work after issuance of a NOO by the Department.
19. The Grantee must submit timely requests for payment in accordance with the procedures outlined in Article IX.
20. The Department must approve any agreements to lease, license or operate capital assets acquired with project funds to ensure that the agreement complies with the law and provides adequate consideration to the Grantee. The Department, subject to conditions set by the New Mexico State Board of Finance (SBOF), may reimburse the Grantee for any necessary expenditures to make the agreement commercially feasible, such as planning and design costs.
21. Project Implementation. The Grantee shall fully implement the Project and provide all necessary qualified personnel, materials, and facilities. Additionally, the Grantee shall finance its share, if any, of the Project costs, including any overruns.

1. Project funds shall not be used for purposes other than those specified in the Project Description.
2. Indirect Costs. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.
3. Grantee’s expenditures are made and accounted for pursuant to the State Procurement Code, State’s Model Accounting Practices, and execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project.
4. Prior to entering into this Agreement, the Department conducted a risk assessment on the Grantee and a project readiness review for the Project. In accordance with State Model Accounting Practices, FIN 9.2, if the Department determines that the expenditure of Project funds by the Grantee requires special conditions, those conditions are identified and listed in **Attachment C**, which is attached and incorporated by reference. The Parties agree that, to the extent the Department, in its sole and absolute discretion, determines additional special conditions are necessary or that existing special conditions are no longer required, it may update **Attachment C** from time to time without the need for a formal amendment of this Agreement.

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

1. The Department may direct the Grantee to suspend entering into new and further Third-Party Obligations.
2. 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
3. The Department may direct the Grantee to implement a corrective action plan in accordance with Article V(D).
4. 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.
5. 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 III herein. If the suspension is lifted, the Department will consider further requests for NOOs.
6. Corrective Action Plan in the Event of Suspension. If the Department directs the Grantee to suspend entering into new or further Third-Party Obligations under Article V(A) because of the Grantee’s action or inaction, the Department may require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the suspension. The corrective action plan must be approved by the Department, who shall not unreasonably withhold approval, 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 a violation of the terms of this Agreement for purposes of Early Termination, Article III(A)(3). 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 VI. REQUEST FOR PAYMENT (“RFP”) PROCEDURES AND DEADLINES**

1. RFP Procedures. The Department may, occasionally, reasonably prescribe procedures, in lieu of those that appear below, for submitting RFPs on a case-by-case basis. RFP requests are subject to the following procedures:
2. The Grantee must submit a RFP using the form attached hereto as **Exhibit 1.**
3. Each RFP 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.
4. Should the Grantee submit an RFP to the Department based upon an invoice received from a third-party contractor or vendor, but not yet paid by the Grantee, the Department may provide payment for that unpaid invoice to Grantee. The unpaid invoice must comply with the provisions of this Agreement and are a valid liability of the Grantee. Within five (5) business days of receipt of payment by the Department to the Grantee, the Grantee shall make the payment to the third-party contractor or vendor. 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.** The Department reserves the right to make such payment directly to the third-party contractor or vendor, as a special consideration of this Agreement.
5. As an additional condition precedent to payment, the Department may, in its discretion, require the Grantee to submit with its RFPs invoices showing the amount and type of expenditures and proof of payment (e.g., cancelled warrant or check (front and back)).
6. **Obligation of Appropriation Amount.** The Grantee must obligate at least 5% of the Appropriation Amount within six months of the Effective Date.
7. **Expenditure of Appropriation Amount.** The Grantee must expend no less than 85% of the Appropriation Amount six months prior to the Reversion Date.
8. Deadlines. RFPs shall be submitted by the Grantee to the Department on the earlier of:
9. 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
10. Twenty (20) days from date of Early Termination; or
11. Twenty (20) days from the Reversion Date.
12. Denial and Delay of RFPs. The Grantee’s failure to abide by the requirements set forth in Article IV and Article VI herein will result in the denial of its RFP or will delay the processing of RFPs.
13. The Department has the right to reject a payment request for the Project until it is satisfied that:
14. the expenditures in the RFP are for permissible purposes as defined in the Project Description; and
15. the expenditures and the Grantee are in compliance with this Agreement, including but not limited to, compliance with the reporting requirements, Third Party Obligations as outlined in Article IV herein, and the deadlines specified in Article VI herein.
16. The Department's ability to reject any RFP is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to the Grantee’s violation of this Agreement.

**ARTICLE VII. REPORTS**

1. Database Reporting
2. The Grantee shall report quarterly Project activity by entering the required information directly into a database maintained by the New Mexico Department of Finance and Administration (DFA), as specified by the Department and DFA.
3. The Grantee shall certify on the RFP form that updates have been maintained and are current in the database.
4. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or jeopardize the reimbursement of funds.
5. Quarterly reports shall be due on the last day of the month, that is, thirty (30) days prior to the end of the quarter following the execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.
6. Requests for Additional Information/Project Inspection. During the term of this Agreement and during the period of time in which the Grantee must maintain records pursuant to Article VII:
7. The Department may:
8. request additional information regarding the Project as it deems necessary; and
9. conduct onsite inspections of the Project at reasonable times with proper notice.
10. The Grantee must respond to requests for additional information within a timeframe established by the Department.

**ARTICLE VIII. 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. Prior to the Department certifying for the need of severance tax bond proceeds, the Project must be developed sufficiently, and the Grantee must be able to show that both the Grantee and Project meet the requirements under Article VI(B) and (C).
3. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, N.M. Const. Art. 9, § 14, known as the “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 SBOF’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.
12. The Grantee shall abide by all applicable federal whistleblower laws.
13. 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 IX. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

1. 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 ensure separate budgeting and accounting of the funds.
2. 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.
3. The Grantee shall make all Project records available to the DFA 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 X. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part 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 XI. 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 XII. AMENDMENT**

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

**ARTICLE XIII. 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 and agreements 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 XIV. 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 or agreements 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 Agreement is funded in whole or in part by funds made available under an Indian Affairs Department Intergovernmental Agreement (“IGA”). In the event the Indian Affairs Department terminates the IGA early, the Grantee shall also terminate the Contract/Agreement with the Third Party 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 XV. FORCE LABOR ACCOUNTS**

1. Force labor accounts are defined as the hiring of temporary employees to work specifically on the Project. 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.
2. In the case of force labor accounts, the Department shall issue a NOO in accordance with the following:
   1. The Grantee must submit a notarized certification which is made by the Grantee’s designated representative in Article XVII of this Agreement; or a person designated, in writing on a Department prescribed form, who is authorized by such representative to submit such certifications or the person designated by tribal law as being authorized to submit such certifications.
   2. The notarized certification must state:
3. The amount to be used to pay force labor working on the Project,
4. That the labor is being hired specifically for the Project, and
5. That the labor will be hired in accordance with the Grantee’s procurement or employment code and/or processes.
6. The Grantee shall submit RFPs concerning force labor account expenditures in accordance with the provisions in Article VI above and the Department will accept pay stubs in lieu of invoices.
7. In the event that the Grantee will expend less on force labor account than is stated in the NOO concerning such labor, it must immediately notify the Department of such fact. In that event, the Department shall issue an amended NOO reflecting the reduced level of force labor account expenditures.
8. A NOO issued for force labor account expenditures cannot be used for any other purpose unless the tribal entity has obtained an amended or new NOO for another Third-Party Obligation.

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

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

1. Submit all reports of annual audits and agreed-upon procedures required by § 12-6-3(A)-(B), NMSA 1978 by the due dates established in § 2.2.2 NMAC, reports of which must be a public record pursuant to § 12-6-5(A), NMSA 1978 within forty-five (45) days of delivery to the State Auditor;
2. Have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. Timely submit all required financial reports to its budgetary oversight agency (if any);
4. Use accounting methods and procedures consistent with Generally Accepted Accounting Principles and the State’s Model Accounting Practices to expend the Appropriated Amount in accordance with applicable law and account for and safeguard Project funds and assets acquired with Project funds;
5. 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;
6. 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;
7. 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
8. 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 Article XVI(A), 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 V(A) of this Agreement;

2. require the Grantee to develop and implement a written corrective action plan pursuant to Article V(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 XVII 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 XVII; or

4. terminate this Agreement pursuant to Article III(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 XVII. BOND PROJECT CLAUSES**

1. 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 SBOF, an entity separate and distinct from the Department. Grantee acknowledges and agrees that:
   * + 1. It is Grantee’s sole and absolute responsibility to determine through SBOF staff what, if any, conditions are currently imposed on the Project;
       2. the Department’s failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition;
       3. the SBOF may in the future impose further or different conditions upon the Project;
       4. all SBOF conditions are effective without amendment of this Agreement;
       5. all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s);
       6. the Department’s obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied; and
       7. all applicable SBOF conditions must be satisfied prior to the Project’s Reversion Date.
2. Grantee acknowledges and agrees that this Agreement is subject to the New Mexico SBOF’s Bond Project Disbursements Rule, which appears at 2.61.6 NMAC, as such may be amended or re-codified.

**ARTICLE XVIII. SOVEREIGN IMMUNITY**

Notwithstanding the foregoing, nothing contained herein or any amendments hereafter shall be construed or deemed as a waiver of the Grantee’s sovereign immunity, either explicitly or by implication, or be construed to limit the privileges and immunities of sovereign nations.

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

1. The following provisions apply to all written notices and decisions related to this Agreement:
   * + 1. The Parties shall send all notices, including written decisions, related to this Agreement to the below-named persons by facsimile, regular mail, or email.
   1. 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.
   2. 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.
   3. 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.
2. 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:

Email:

Department: Indian Affairs Department

Name:

Title:

Address: Wendell Chino Building - 1220 S. St. Francis Dr., Santa Fe, NM 87505

Telephone:

Email:

**ARTICLE XX. SCOPE OF AGREEMENT**

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

[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 NAME]**

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

Signature of Official with Legal Authority to Bind Grantee

By: [NAME]

Its: [TITLE]

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

**NEW MEXICO INDIAN AFFAIRS DEPARTMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature of Official with Authority to Bind Department

By: Josett D. Monette, Esq.

Its: Cabinet Secretary

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

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

Approved for Legal Sufficiency

By: Adelina L. Gomez

Its: General Counsel

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

**STATE OF NEW MEXICO**

**GRANT APPROPRIATION**

**Request for Payment Form**

**Exhibit 1**

**I. Grantee Information II. Payment Computation**

(Make sure information is complete & accurate) Payment Request No.

A.

A.

Grantee:

B.

Grant Amount:

B.

Address:

C.

AIPP Amount

*(*

*If Applicable*

*)*

:

D.

Funds Requested to Date:

E.

Amount Requested this Payment:

F.

Reversion Amount (I

*f Applicable*

):

G.

Grant Balance:

C.

Contact Name/

Phone

#

:

D.

Grant No:

H.

E.

Project Title:

Final Request for Payment (

*if Applicable*

)

F.

*(*

*The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year*

*)*

**IV.**

**V.**

**Reporting Certification:**

I hereby certify to the best of my knowledge and belief, that

reporting is up to date; to include the accuracy of

expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with

the

Grant Agreement.

**III.**

**Fiscal Year :**

Complete Mailing, including Suite, if applicable

(

)

Grant Expiration Date:

**Compliance Certification:**

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct;

expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the

New Mexico Constitution known as the "anti donation" clause.

City, State, Zip



|  |  |
| --- | --- |
| **Grantee Fiscal Officer** or **Fiscal Agent** (*if applicable*) | **Grantee Representative** |

|  |  |
| --- | --- |
| Printed Name | Printed Name |
| Date: | Date: |

**Vendor Code:**

**Fund No.:**

**Loc No.:**

**(**

**State Agency Use Only**

**)**

**PO #**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

**EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee # \_\_\_\_\_\_\_**

|  |  |
| --- | --- |
| DATE: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| TO: | Department Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_Project Manager\_\_ |
| FROM: | Grantee Entity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Grantee Official Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| SUBJECT: | Notice of Obligation to Reimburse Grantee |

Grant Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Grant Termination Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party’s authorized representative:

|  |  |
| --- | --- |
| Vendor or Contractor: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Third Party Obligation Amount: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Vendor or Contractor: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Third Party Obligation Amount: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.