

RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - First Year, 2015

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND BUDGET AND
FINANCE COMMITTEE; APPROVING INTERGOVERNMENTAL PARTNERSHIP
AGREEMENTS FOR USE OF CHAPTER OFFICE SPACE FOR THE TELEHEALTH PILOT
PROJECT OF THE TSEHOOTSOOI MEDICAL CENTER

BE IT ENAFCTED:

1. Findings and Purpose

A. The Health, Education, Social Services Committee of the Navajo Nation Council oversees Navajo Nation policies and priorities to optimize the delivery of social services and health services to the Navajo people with the traditional practices and customs of the Navajo People. 2 N.N.C. § 400(C)(4). The committee, among other duties and responsibilities, reviews and recommends approval of agreements with federal authorities relative to delivery of health services to the Navajo people. 2 N.N.C. § 401(B)(6)(b).

B. The Budget and Finance Committee of the Navajo Nation Council, among other duties and responsibilities, has final authority to approve agreements between the Navajo Nation and federal, state and regional authorities, upon recommendation of committees having oversight authority over programs seeking such agreements. 2 N.N.C. § 301(B)(15).

C. Nine Navajo Nation chapters within the service area of the Tsehootsooi Medical Center, subject to final approval, have agreed to provide office space for Tsehootsooi Medical Center for purposes of implementing a telehealth pilot program (within the service area). Use of office space will provide for installation, operation and maintenance of equipment which will be used to provide and support distance remote healthcare services for patients by way of a broadband connection provided by a qualified local internet and telecommunications carrier. See attached Exhibit "A," a summary of the pilot program.

Section Two. Approval of Agreements for Use of Office Space

The Navajo Nation hereby approves nine (9) Intergovernmental Partnership Agreements for use of office space for purposes of implementation of the Tsehootsooi Medical Center's Pilot Project for Telehealth and Telemedicine services. The agreements, marked as Exhibits B through J, are attached hereto and they are approved as to the following chapters:

- A. Houck Chapter, Exhibit "B" (Intergovernmental Partnership Agreement).
- B. Oak Springs Chapter, Exhibit "C" (Intergovernmental Partnership Agreement).
- C. Red Lake Chapter, Exhibit "D" (Intergovernmental Partnership Agreement).
- D. Sawmill Chapter, Exhibit "E" (Intergovernmental Partnership Agreement).
- E. Ft. Defiance Chapter, Exhibit "F" (Intergovernmental Partnership Agreement).
- F. St. Michaels Chapter, Exhibit "G" (Intergovernmental Partnership Agreement).
- G. Crystal Chapter, Exhibit "H" (Intergovernmental Partnership Agreement).

H. Nahata Dzil Chapter, Exhibit "I" (Intergovernmental Partnership Agreement).

I. Tse Si Ani Chapter, Exhibit "J" (Intergovernmental Partnership Agreement).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor, 0 opposed, this 7th day of April, 2015.



Jonathan Nez, Chairperson

Budget and Finance Committee

Motion: Mel R. Begay

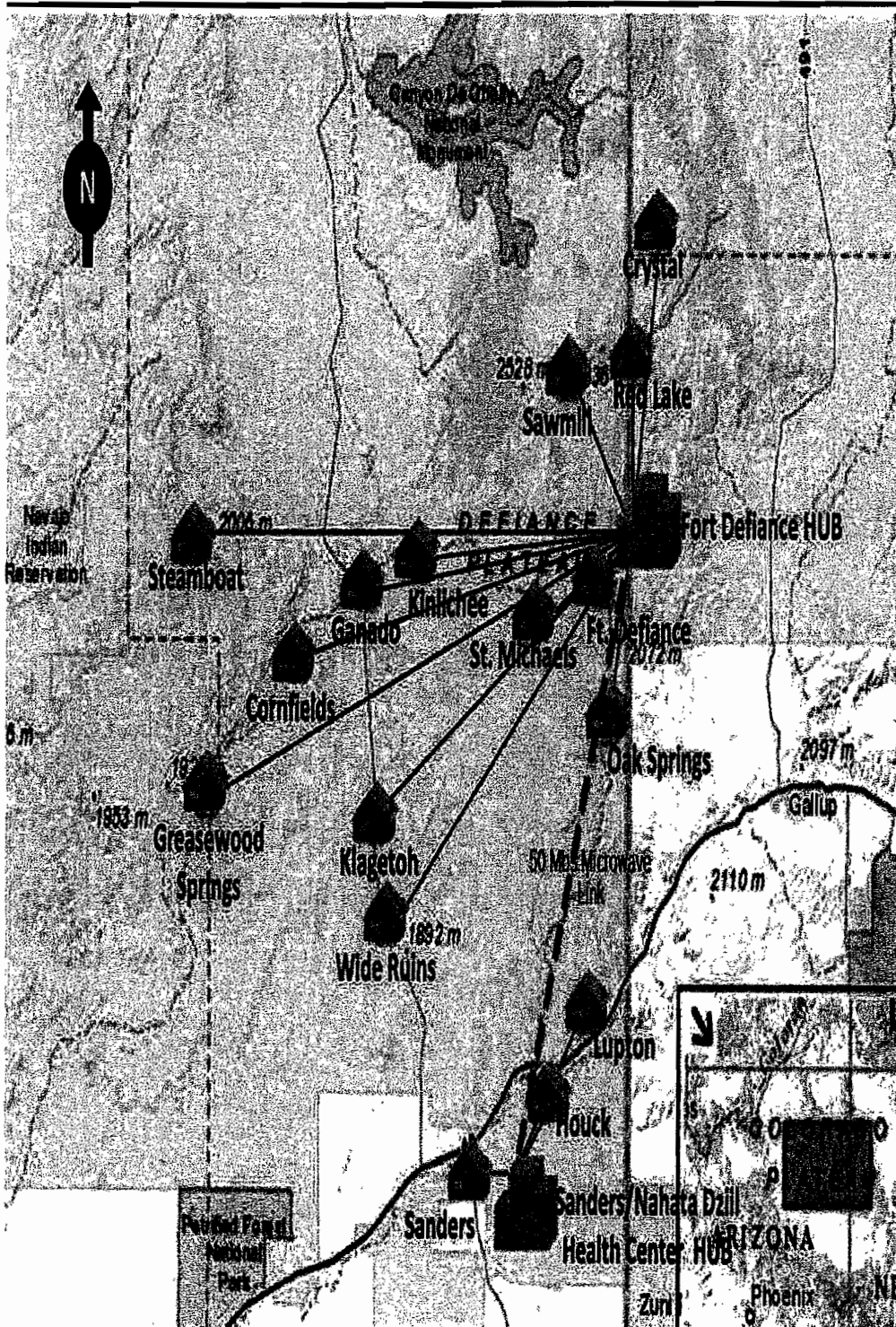
Second: Tom T. Chee

FDIHB, Inc.

FY15

EXHIBIT

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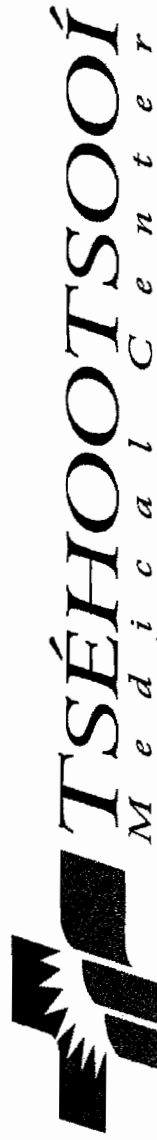


Telehealth / Telemedicine Chapter IPAs

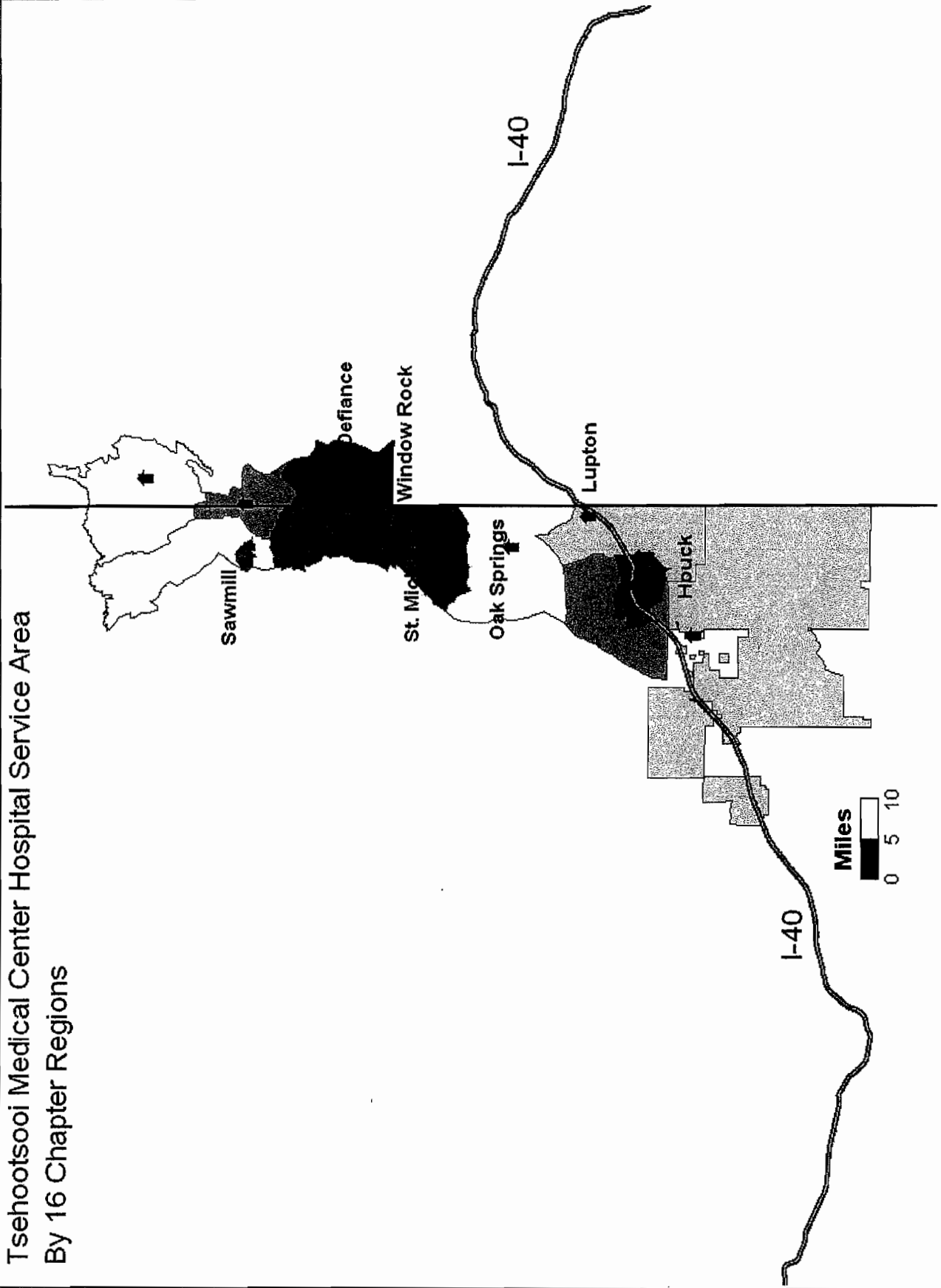


Telehealth Pilot Project

Governed by Fort Defiance Indian Health Board, Inc.

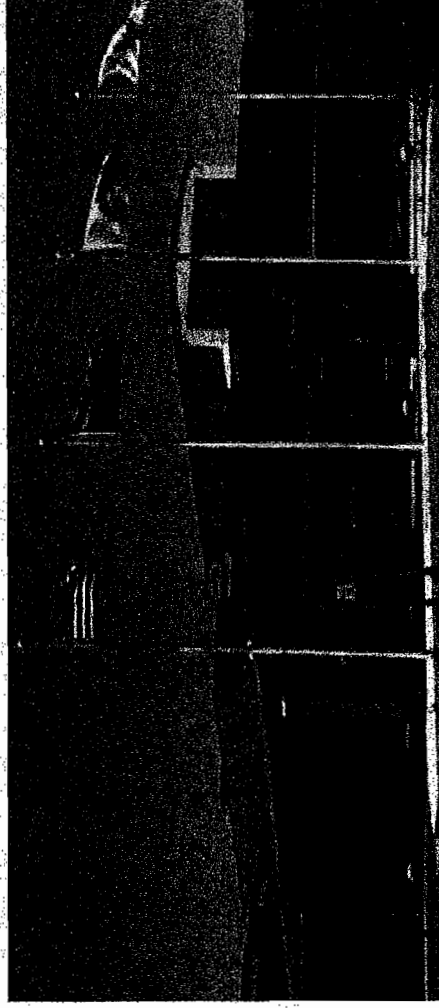


Tsehootsooi Medical Center Hospital Service Area
By 16 Chapter Regions



TMC Mission

"To provide superior and compassionate healthcare to our community by raising the level of health, Hózhó, and quality of life"



WHAT IS TELEHEALTH?

- Use of Telecommunication technology to deliver health-care, health education and public health services across a distance.
- Telehealth Services consists of; diagnosis, treatment, assessment, monitoring communications and educating patients.

How Will This Be Paid For?

- **85% of the grant funding will be from the Federal Communication Commission (FCC).**
- **The grant is managed by the Universal Service Administrative Company (USAC) through Southwest Telehealth Access Group and the University of New Mexico partners.**
- **15% will be provided by the TMC which is approximately \$1.2 million for this project.**

Project Goals

- To provide Telehealth services through telecommunication technology to our community in nine (9) Chapters: Crystal, Red Lake, Sawmil, Fort Defiance, St. Michaels, Oak Springs, Lupton, Houck, and Nahata Dził.
- There will be two locations for all internet access, communications, patient record data, security and technical assistance.
 - TMC will serve as the primary location.
 - Nahata Dził Health Center in Sanders, Arizona will serve as the secondary location.

Project Goals (Con't)

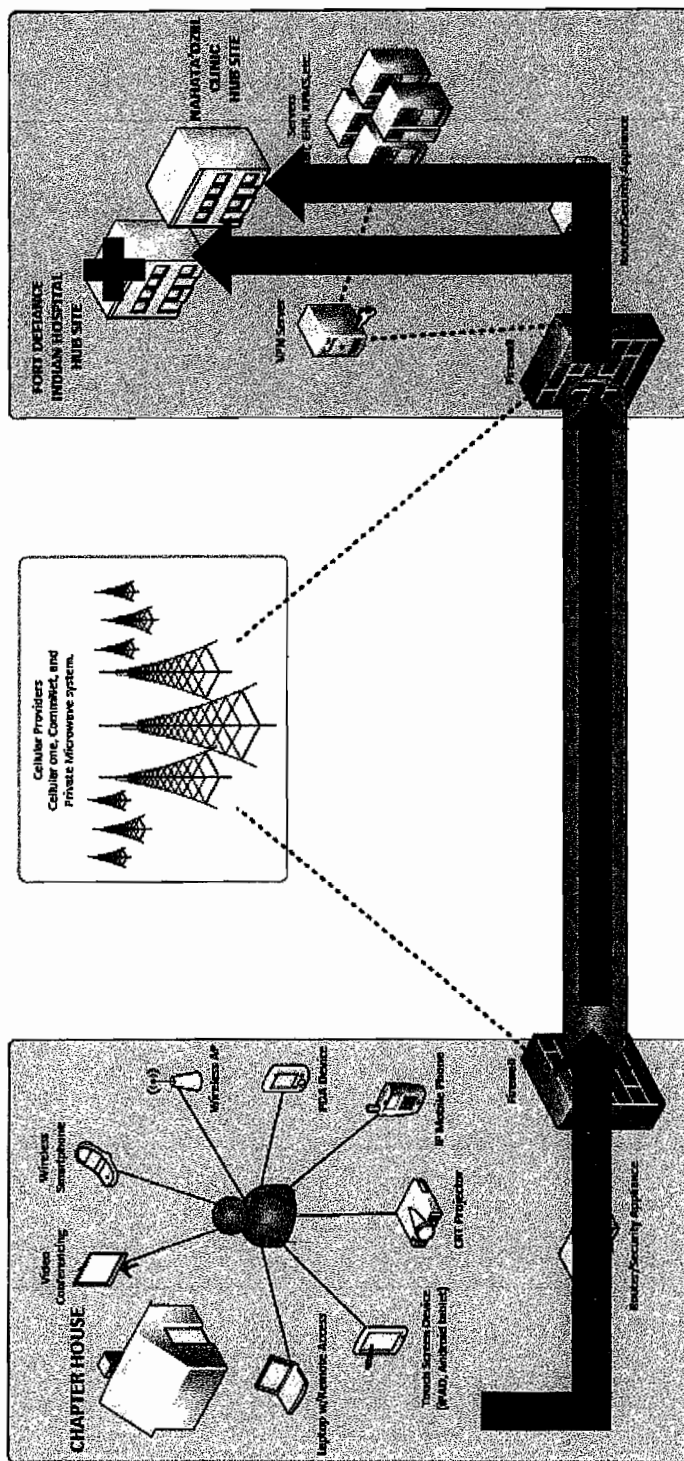
This project will allow us to:

- Provide the community access to the best medicine that can be offered.
- Reduce cost for patients.
- Increase access to health care.
- Empower the community to provide healthcare at the local chapters.
- Strengthen communication that promotes, and sustains wellness in local chapters.

HOW IS TELEHEALTH DELIVERED?

- Video conferencing;
 - patient exams
 - provider-patient discussion
 - provider-to-provider discussions
 - X-Ray
 - Heart monitoring devices

Network Design



FORT DETRICK INDIAN HOSPITAL, BUREAU, INC. - Telemedicine Project	
Ver 1	Prepared by: MS
Date: 2-25-04	

**Collaboration with the Navajo Nation
Division of Community Development**

1. Establish a Memorandum Of Understanding for internet that will be used for health care purposes 100% of the time.
2. Establish a space/office for Telehealth
3. Draft a Chapter Resolution to support and approve Telehealth services.



If you have any questions please contact:

- Caroline Yazzie, Project Coordinator
Division of Planning and Logistics

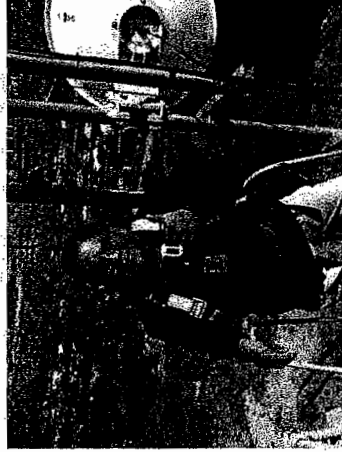
928-729-8082

Caroline.Yazzie@fdihb.org

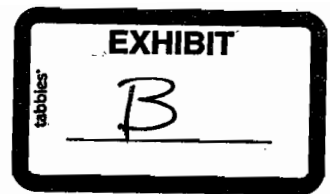
- Chris Larsen, Network Administrator
Information Technology Services

928-729-8373

Chrisopher.Larsen@fdihb.org



Ahéhee'



**AGREEMENT FOR USE OF HOUCK CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Houck Chapter Government (hereinafter referred to as "Chapter"), 127 I 40 Exit 348, P.O. Box 127, Houck, AZ 86506, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Houck Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Houck Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Houck Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Houck Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
- (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
- (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
- (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
- (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
- (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
- (g) neither Party may recover from the other any attorney fees or costs.

17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.

17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.

17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

17.6 CLAIMS within FTCA coverage. Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

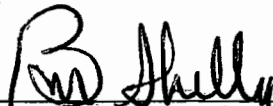
27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

Chapter President [use for LGA-cert chapter]

Date:

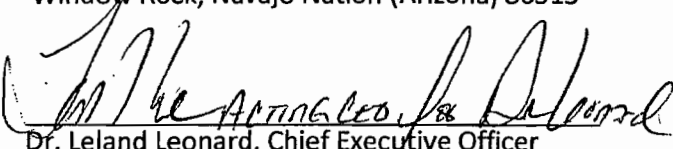
-OR-



Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice-President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515

11/12/2015

Date:

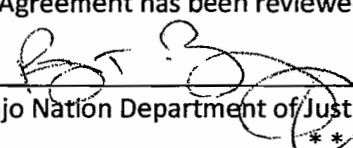


Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504

12-12-14

Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****



Houck Chapter Government

Ernest Hubbell, Chapter President
Ralph Nelson, Chapter Vice-President
Eleanor J. Smith, Chapter Secretary/Treasurer



Tim Goodluck, Council Delegate
Lorenzo Curley, Council Delegate
Herman Spencer, Grazing Director

HCR-021912-01

Resolution of the Houck Chapter

Support the efforts of the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAH) to Initiate broadband connection; and approving to have Fort Defiance Indian Hospital Board, Inc. and SWTAG utilize the chapter to provide distance Healthcare Services.

Whereas:

1. The Houck Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-determination act (P.L. 93-6380) of the U.S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, request, etc., in accordance to local needs and desires; and
3. The Houck Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance I HS Service Unit to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
4. The Houck Chapter is located within the Fort Defiance IHS Service Center and its community people served by Fort Defiance Indian Hospital Board, Inc. and for minor and Major medical services; and
5. It is the best interest of the Houck Chapter to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for Health care purposes 100 % of the time. If the broadband connection is used for something other than health care purposed Ft Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW THEREFORE BE IT RESOLVED THAT:

The Houck Chapter approved to have the Fort Defiance Indian Hospital Board, Inc. jointly with SWTAG to provide distance medical services within the Fort Defiance Services Unit using broadband connection and approving to have use of the Chapter House.

CERTIFICATION

I hereby certify the foregoing resolution was duly considered by the Houck Chapter at a duly called meeting at Houck, Arizona at which a quorum was present and the same was passed by a vote of 26 in favor and 0 opposed, and 1 abstained on the 19th day of February 2012.

Motioned by: Lola Goldtooth

Seconded by: Virginia S. Francisco



Mr. Ernest Hubbell,
Houck Chapter President



**AGREEMENT FOR USE OF OAK SPRINGS CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Oak Springs Chapter Government (hereinafter referred to as "Chapter"), North I 40 Navajo Rt. 12 mile post 19, P.O. Box 486, Window Rock, AZ 86515, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Oak Springs Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Oak Springs Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Oak Springs Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Oak Springs Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.


27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

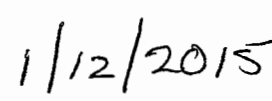
Chapter President [use for LGA-cert chapter]

Date:

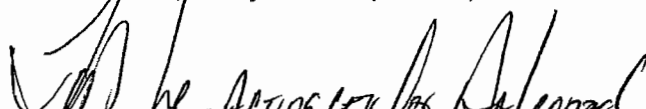
-OR-



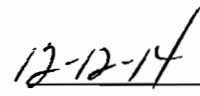
Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515



Date:



Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504



Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****



Oak Springs Chapter Government

Edison Wauneka, Chapter President
Ben Smith, Vice President
Alyce Silversmith, Chapter Secretary/Treasurer



Jonathan Hale, Council Delegate
John Smith, Grazing Officer

OSC 06/26/12 16

RESOLUTION OF THE OAK SPRINGS CHAPTER

Support the efforts of the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to initiate broadband connection; and approving to have Fort Defiance Indian Hospital Board, Inc. and SWTAG utilize the chapter to provide distance Healthcare Services

WHEREAS:

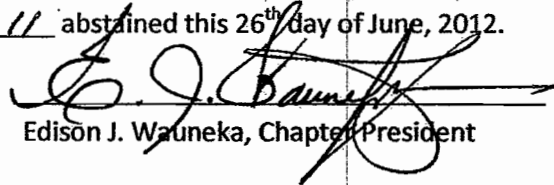
1. The Oak Springs Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-determination act (P.L. 93-6380) of the U.S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, requests, etc. in accordance to local needs and desires; and
3. The Oak Springs Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance Indian Health Board, Inc. to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
4. The Oak Springs Chapter is located within the Fort Defiance Indian Health Board, Inc. and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
5. It is in the best interest of the Oak Springs Chapter to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Services Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% on the time. If the broadband connection is used for something other than health care purposes Ft. Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW THEREFORE BE IT RESOLVED THAT:

The Oak Springs Chapter approved to have the Fort Defiance Indian Health Board, Inc. jointly with SWTAG to provide distance medical services within the Fort Defiance Unit using broadband connection and approving to have use of the Chapter House.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Oak Springs Chapter at a duly called meeting at Oak Springs, Navajo Nation (Arizona), at which a quorum was present and that the same was passed with a motion by Margaret Smith second by Austin Sam and adopted by a vote of 27 in favor, 0 opposed and 11 abstained this 26th day of June, 2012.


Edison J. Wauneka, Chapter President



**AGREEMENT FOR USE OF RED LAKE CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Red Lake Chapter Government (hereinafter referred to as "Chapter"), Sheppard Springs Rd. and Old Red Lake Rd., P.O. Box 130, Navajo NM 87328, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Red Lake Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Red Lake Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Red Lake Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Red Lake Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises; employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.


27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

Chapter President [use for LGA-cert chapter]

Date:

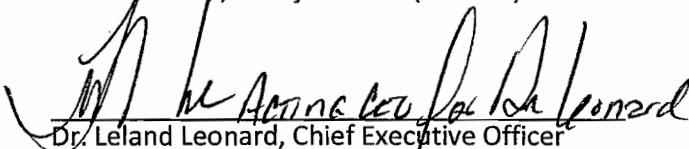
-OR-



Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515

1/12/2015

Date:



Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504

12-12-14

Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****

ALFRED BARNEY
PRESIDENT

RICHARD BITSIE
VICE-PRESIDENT

KATHLEEN SHURLEY
SECRETARY / TREASURER

PAUL MILFORD
GRAZING COMMITTEE



CHAPTER COORDINATOR

OFFICE SPECIALIST

COUNCIL DELEGATE

ROSCOE SMITH
COUNCIL DELEGATE

RED LAKE CHAPTER

RLC-02-12-09

RESOLUTION OF THE RED LAKE CHAPTER #18

SUPPORT THE EFFORTS OF THE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC., AND SOUTHWEST TELEHEALTH ACCESS GRID (SWTAG) TO INITIATE BROADBAND CONNECTION; AND APPROVING TO HAVE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SWTAG UTILIZE THE CHAPTER TO PROVIDE DISTANCE HEALTHCARE SERVICES.

WHEREAS:

1. Pursuant to 26 N.N.C., section 3 (a), the Red Lake Chapter is a certified chapter of the Navajo Nation as listed under 11 N.N.C., part 1, section 10; and
2. Pursuant to 26 N.N.C., section 1 (b), the Red Lake Chapter is delegated the governmental authority to make decisions over local matters consistent with the Navajo laws, customs, and tradition; and
3. The Indian Self-determination Act (P.L. 93-6380) of the U.S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, requests, etc., in accordance to local needs and desires; and
4. The Red Lake Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance IHS Service Unit to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
5. The Red Lake Chapter is located within the Fort Defiance IHS Service Center and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
6. It is in the best interest of the Red Lake Chapter to support the Fort Defiance Indian Hospital Board, Inc., and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is used for something other than health care purposes, Fort Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW THEREFORE BE IT RESOLVED THAT:

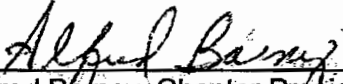
The Red Lake Chapter hereby supports and approves to have Fort Defiance Indian Hospital Board, Inc., jointly with SWTAG to provide distance medical services within the Fort Defiance Service Unit using broadband connection and approving to have use of the Chapter House.

C-E-R-T-I-F-I-C-A-T-I-O-N

I hereby certify that the foregoing resolution was considered at a duly called meeting held at Red Lake Chapter (Navajo Nation) New Mexico at which a quorum was present and the same was passed by a vote of 27 in favor, 0 opposed and 08 abstained this 15th day of February, 2012.

Motioned: Dondi Begay

Seconded: Vernon Tsosie


Alfred Barney, Chapter President



**AGREEMENT FOR USE OF SAWMILL CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Sawmill Chapter Government (hereinafter referred to as "Chapter"), Milepost 14 on Rt. 7 Across from Sawmill Primary School, P.O. Box 1786, Sawmill, AZ 86504, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Sawmill Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Sawmill Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Sawmill Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Sawmill Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptible power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 **CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

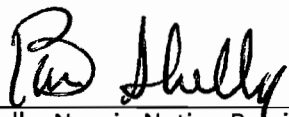
27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

Chapter President [use for LGA-cert chapter]

Date:

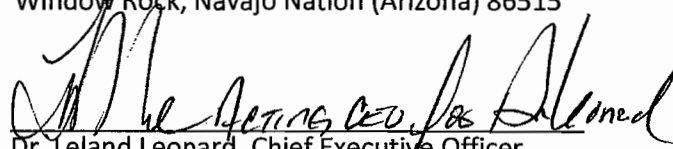
-OR-



Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515

1/12/2015

Date:



Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504

12-12-14

Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****

Herman Begay, President
Lewis Shirley, Vice President
Laurita Begay, Sec/Treasurer
Roscoe Smith, Council Delegate
Tom Billman, Grazing Representative

Sawmill Chapter

P.O. Box 1786
Fort Defiance, AZ 86504
(928) 729-4433 / 4432
(928) 729-4435 FAX

Delilah Endishee, Comm. Service Coordinator
Position Vacant, AMS
Christine Henry, CHR
Nellie Lilly, S.C. Supervisor

Resolution# SAW-02-2012-04

RESOLUTION OF SAWMILL CHAPTER

Support the efforts of the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to initiate broadband connection; and approving to have Fort Defiance Indian Hospital Board, Inc. and SWTAG utilize the chapter to provide distance Healthcare Services

Whereas:

1. The Sawmill Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-determination act (P.L. 93-6380) of the U. S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, requests, etc., in accordance to local needs and desires; and
3. The Sawmill Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance IHS Service Unit to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
4. The Sawmill Chapter is located within the Fort Defiance IHS Service Center and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
5. It is in the best interest of the Sawmill Chapter to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is used for something other than health care purposes Ft. Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW THEREFORE BE IT RESOLVED THAT:

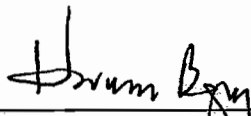
The Sawmill Chapter approved to have the Fort Defiance Indian Hospital Board, Inc. jointly with SWTAG to provide distance medical services within the Fort Defiance Service Unit using broadband connection and approving to have use of the Chapter House.

CERTIFICATION

I hereby certify the foregoing resolution was duly considered by the Sawmill Chapter at a duly called meeting at Sawmill, Arizona at which a quorum was present and the same was passed by a vote of 19 in favor, 2 opposed, and 9 abstained on the 22nd day of February, 2012.

Motion by: Sally Billiman

Seconded by: Mary Tom



Mr. Herman Begay, President





**AGREEMENT FOR USE OF FORT DEFIANCE CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Fort Defiance Chapter Government (hereinafter referred to as "Chapter"), I-40 Exit 357, In conjunction with Navajo Rt. 12., P.O. Box 403, Lupton, AZ 86508, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Fort Defiance Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Fort Defiance Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Fort Defiance Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Fort Defiance Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

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The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

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FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

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- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

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Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

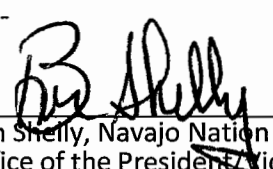
27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

Chapter President [use for LGA-cert chapter]

Date:

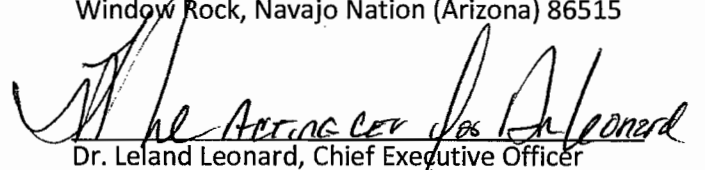
-OR-



Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice-President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515

1/12/2015

Date:

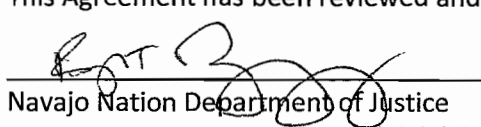


Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504

12-12-14

Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****



**THE NAVAJO NATION
FORT DEFIANCE CHAPTER**

P.O. BOX 366 • Fort Defiance, Arizona 86504
Phone: (928) 729-4352 • Fax: (928) 729-4353
E-mail: fdefiance@navajochapters.org

BEN DENNETT, President

Aaron Sam, Vice-President

Eva D. Platero, Secretary/Treasurer

Dorothy Upshaw, Community Service Coordinator

Roscoe Smith, Council Delegate

Stanley Denetdeel, Grazing Official

BEN SHELLY

Navajo Nation President

REX LEE JIM

Navajo Nation Vice President

RESOLUTION OF THE FORT DEFIANCE CHAPTER

FD-2012-02-09-01

SUPPORT THE EFFORTS OF THE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SOUTHWEST TELEHEALTH ACCESS GRID (SWTAG) TO INITIATE A HIGH SPEED NETWORK; AND APPROVING TO HAVE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SWTAG UTILIZE THE CHAPTER TO PROVIDE DISTANCE HEALTHCARE SERVICES.

WHEREAS:

1. The Fort Defiance Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-determination act (P.L. 93-6380) of the U.S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, request, etc., in accordance to local needs and desires; and
3. The Fort Defiance Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance IHS Services Unit to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
4. The Fort Defiance Chapter is located within the Fort Defiance IHS Service Center and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
5. It is in the best interest of the Fort Defiance to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is used for something other than health care purposes Ft. Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW, THEREFORE BE IT RESOLVED THAT:


1. The Fort Defiance Chapter approved to have the Fort Defiance Indian Hospital Board, Inc. jointly with SWTAG to provide distance medical services within the Fort Defiance Service Unit using broadband connection and approving to have use of the Chapter House.

CERTIFICATION

We hereby certify that the forgoing resolution was duly consider by the Fort Defiance Chapter at a duly called meeting at Fort Defiance, Arizona, at which a quorum was present and that the same was passed by a vote 26 in favor, 0 opposed, and 2 abstained, the 9th day of February, 2012.

Motion by: Irene Watchman

Second by: Lorraine Nelson



Ben Bennett, Chapter President



**AGREEMENT FOR USE OF ST. MICHAELS CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the St. Michaels Chapter Government (hereinafter referred to as "Chapter"), Hwy 264, (-Across from IHS Bldg) Bldg 29A, P.O. Box 829, St. Michaels, AZ 86511, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the St. Michaels Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the St. Michaels Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the St. Michaels Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to St. Michaels Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

17.6 CLAIMS within FTCA coverage. Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

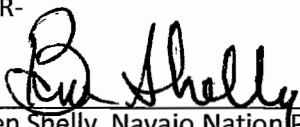
27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

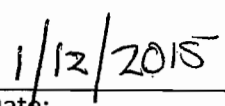
Chapter President [use for LGA-cert chapter]

Date:

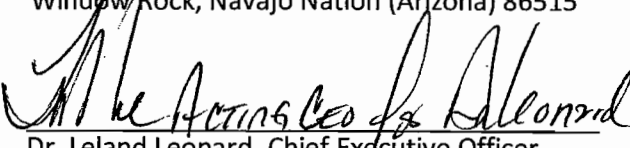
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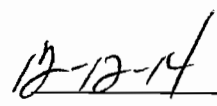
Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice-President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515



Date:



Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504



Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****



Raymond Castillo, President
Janis Damon, Vice-President
Gloria Smiley, Secretary/Treasurer
Jonathan Hale, Council Delegate
Darryl Yazzie, Grazing Official

Ben Shelly, Navajo Nation President

Rex Lee Jim, Navajo Nation Vice President

**RESOLUTION OF THE
ST. MICHAELS CHAPTER
No. 04-15-12-42**

Approving and Supporting the Efforts of the Fort Defiance Indian Hospital Board, Inc., (FDIHBI) in Conjunction with Southwest Telehealth Access Grid (SWTAG) to Initiate Broadband Connection, and to have SWTAG Utilize the Chapter to Provide Distance Healthcare Services

WHEREAS:

1. Pursuant to 26 N.N.C., Section 3(A), the St. Michaels Chapter is a duly certified chapter of the Navajo Nation Government, as list at 11 N.N.C., Part 1, Section 10; and
2. Pursuant to 26 N.N.C., Section 1(B), the St. Michaels Chapter is vested with the authority to review all matters affecting the community and to make appropriate correction when necessary and make recommendation to the Navajo Nation and other local agencies for appropriate actions, and
3. The St. Michaels Chapter has learned that the FDIHBI and SWTAG plan to provide distance healthcare using broadband connection from and to chapters within the Fort Defiance IHS Service Unit to the FDIHBI and vice-versa; and
4. The St. Michaels Chapter is located within the Fort Defiance IHS Service Unit and its community people are served by FDIHBI for minor and major medical services; and
5. The St. Michaels Chapter supports and considers the FDIHBI and SWTAG plan to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit. Moreover, the chapter community supports SWTAG to utilize the chapter for such medical services with the understanding the broadband connection funded by FCC Rural health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is use for something other than health care purposes, Ft. Defiance (RFP 8) will notify SWTAG/USAC of other usage and a prorated rate will be determined.

NOW; THEREFORE, BE IT RESOLVED:

1. St. Michaels Chapter hereby supports and approves to have Fort Defiance Indian Hospital Board, Inc., in conjunction with SWTAG to provide distance medical services within the Fort Defiance IHS Service Unit using the broadband connection.
2. Furthermore, St. Michaels Chapter fully supports and approves SWTAG to utilize the chapter for providing distance healthcare services to the community people.

CERTIFICATION

We hereby certify that the foregoing resolution was considered at a duly regular called meeting at St. Michaels Chapter, Navajo Nation (Arizona), at which a quorum was present and that same was passed by 35 in favor, 05 opposed, 13 abstained, this 15th day of April 2012.

Motion by: Brian Lypshar

Second by: Clara Brown

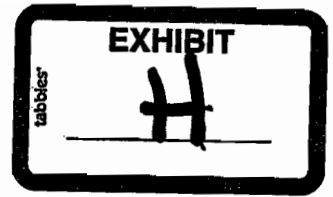
Raymond Castillo
Raymond Castillo, President

Janis Damon
Janis Damon, Vice-President

Gloria Smiley
Gloria Smiley, Secretary/Treasurer

Jonathan Hale
Jonathan Hale, Council Delegate

Darryl Yazzie
Darryl Yazzie, Grazing Official



**AGREEMENT FOR USE OF CRYSTAL CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Crystal Chapter Government (hereinafter referred to as "Chapter"), Navajo Rt. 12 off Hwy. 134, P.O. Box 775, Navajo NM 87328, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Crystal Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Crystal Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Crystal Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Crystal Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptible power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 **CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

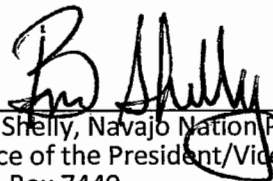
27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

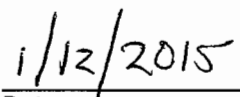
Chapter President [use for LGA-cert chapter]

Date:

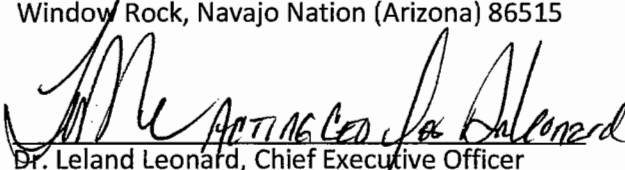
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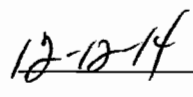
Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice-President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515



Date:

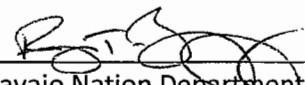


Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504



Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****



Crystal Chapter



P.O. Box 775 • Navajo, N.M. 87328

(505) 777-2800/2801 Fax (505) 777-2805

CRY 03-2012-028

RESOLUTION OF THE CRYSTAL CHAPTER

SUPPORT THE EFFORTS OF THE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SOUTHWEST TELEHEALTH ACCESS GRID (SWTAG) TO INITIATE BROADBAND CONNECTION; AND APPROVING TO HAVE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SWTAG UTILIZE THE CHAPTER TO PROVIDE DISTANCE HEALTHCARE SERVICES

WHEREAS:

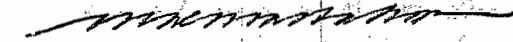
1. The Crystal Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-Determination Act (PL 93-6380) of the US Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, requests, etc., in accordance to local needs and desires; and
3. The Crystal Chapter has learned that the Fort Defiance Indian Hospital Board, Inc., and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance IHS Service Unit to the Fort Defiance Indian Hospital Board, Inc., and vice versa; and
4. The Crystal Chapter is located within the Fort Defiance IHS Service Center and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
5. It is in the best interest of the Crystal Chapter to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is used for something other than health care purposes Ft. Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.

NOW THEREFORE BE IT RESOLVED THAT:

The Crystal Chapter approved to have the Fort Defiance Indian Hospital Board, jointly with SWTAG to provide distance medical services within the Fort Defiance Service Unit using broadband connection and approving to have use of the Chapter House.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered at a duly called Chapter Meeting at Crystal (Navajo Nation), New Mexico at which a quorum was present and that same was motioned by Delphine Gatewood and seconded by Freyda Thompson and adopted by votes of 22 in favor 0 opposed and 5 abstained on 20th day of March 2012



Chapter President



**AGREEMENT FOR USE OF NAHATA DZIIL COMMISSION GOVERNANCE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Nahata Dziil Commission Governance (hereinafter referred to as "Chapter"), Red Fan View Dr., (1) mile S. Hwy 191, P.O. Box 400, Sanders, AZ 86512, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Nahata Dziil Commission Governance. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Nahata Dziil Commission Governance for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the Nahata Dził Commission Governance in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Nahata Dził Commission Governance via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptible power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

17.6 CLAIMS within FTCA coverage. Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB's successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB's subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:



Chapter President [use for LGA-cert chapter]

Darryl T. Ahasteen

-OR-

12-19-14

Date:

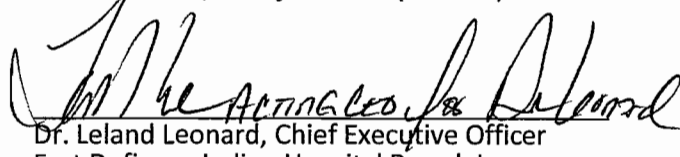
Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]

Office of the President/Vice-President

P.O. Box 7440

Window Rock, Navajo Nation (Arizona) 86515

Date:



Dr. Leland Leonard, Chief Executive Officer

Fort Defiance Indian Hospital Board, Inc.

PO Box 649, Corner of Routes N12 & N7

Fort Defiance, AZ 86504

12-12-14

Date:

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



Navajo Nation Department of Justice

***** END OF DOCUMENT *****

NAHATA DZIIL COMMISSION GOVERNANCE

Arnold Begay – President
Clarence Bedonie – Vice President
Ella Katoney – Secretary

Jerry Thompson - Treasurer
Wayne Lynch - Member

RESOLUTION OF NAHATA DZIIL COMMISSION GOVERNANCE

NDZL- 12 - 04 - 17

THE NAHATA DZIIL COMMISSION GOVERNANCE SUPPORTS THE EFFORTS FO THE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. AND SOUTHWEST TELEHEALTH ACCESS GRID (SWTAG) TO IINITIATE BROADBAND CONNECTION; AND APPROVING TOO0 HAVE FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. SWTAG UTILIZE THE CHAPTER TO PROVIDE DISTANCE HEALTHCARE SERVICES.

WHEREAS:


1. The Nahata Dziil Chapter is certified by the Navajo Nation Council Resolution CAP-36-91 as a local governmental entity of the Navajo Nation government which has the responsibility and authority to promote, protect and preserve the interest and general welfare including the safety of its community, programs, and property, etc; and
2. The Transportation and Community Development Committee of the Navajo Nation, by Resolution TCDCAU-66-02, approved governance certification of the Nahata Dziil Chapter Five Management Policies and Procedures pursuant to 26 N.N.C. Section 102 (B), which permit's the Nahata Dziil Chapter to exercise its local governance authorities contained within 26 N.N.C. Section 103 (D) (1); and
3. The Nahata Dziil Chapter is further certified by the Navajo Nation in accordance with its Community Land Use Plan, pursuant to Resolution of the Transportation and Community Development Committee of the Navajo Nation Council, to administer its community lands within the New Lands boundaries; and
4. The Nahata Dziil Chapter converted its new local governance to the Nahata Dziil Commission Governance on January 2009; and
5. The Nahata Dziil Commission Governance is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
6. The Indian Self-determination act (P.L. 93-6380) of the U.S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendation, requests, etc., in accordance to local needs and desires; and
7. The Nahata Dziil Commission Governance has learned that the Fort Defiance hospital board, Inc. and Southwest Telehealth access Grid (SWTAG) to provide distance healthcare using broadband connection from and to chapters with in the Fort defiance IHS service unit to the Fort defiance Indian hospital board, Inc. and vice versa; and
8. The Nahata Dziil Commission Governance is located within the Fort Defiance IHS service center and its community people are served by the Fort Defiance Indian Hospital Board, Inc. and for minor and major medical service; and
9. It is in the best interest of the Nahata Dziil Commission Governance to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distant healthcare to chapters within the Fort Defiance HIS service unit, and to approve to have SWTAG utilize by the chapter for such medical services with that understanding the broadband connection funded by asked FCC Rural Health Care Pilot Program will be used for healthcare purposes 100% of the time. If the broadband connection is used for something other than healthcare purposes Fort Defiance (RFP 8) well notify SWTAG/USAC of this other usage and prorated rate will be determined.

NOW, THEREFORE BE IT RESOLVE

The Nahata Dziil Commission Governance approves to have the Fort Defiance Indian Hospital Board, Inc. jointly with SWTAG to provide distant medical services within the Fort Defiance service unit using broadband connection and approving to have the use of the chapter house.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by and moved for adoption by Wayne Lynch and Second by Clarence Bedonie thoroughly discussed and adopted by a vote of 02 in favor 01 opposed, and at a duly called meeting at Nahata Dziil Commission Governance, NAVAJO NATION, Sanders (Arizona), on this 12, April, 2012


Nahata Dziil Commission Governance



**AGREEMENT FOR USE OF TSÉ SI ANÍ CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Tsé Si Aní Chapter Government (hereinafter referred to as "Chapter"), I-40 Exit 357, In conjunction with Navajo Rt. 12., P.O. Box 403, Lupton, AZ 86508, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Routes N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Tsé Si Aní Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the TSÉ SI ANÍ Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.

NOW, THEREFORE, the Parties agree that FDIHB may occupy and use certain Space (east wall of the pantry area adjacent to the kitchen), hereinafter referred to as "Space", at the TSÉ SI ANÍ Chapter House in accordance with the terms and conditions of this Agreement.

1. DESCRIPTION OF EQUIPMENT COVERED BY THIS AGREEMENT:

The actual physical location(s) of equipment installation shall be physically on the Chapter House building, and are referred to herein as "Chapter House Space" or "Chapter Space" or "Space," and are as follows:

(A) Exterior equipment:

(Item 1) 2.4GHz 4dBi/5GHz 4dBi Multi Mount Omni Ant., 4-port – MIMO Omnidirectional Antenna.

(Item 2) 5 ft. low loss plenum cable, RP-TNC connectors – Accessories.

(Item 3) Exalt ExtendAir r5005 Wireless Bridge – Network radio equipment (if necessary).

All hardware equipment mounted on premise exterior or available utility pole.

(B) Interior equipment:

(Item 1) CISCO Catalyst 3750-X Series WS-C3750X-48P-S 10/100/1000Mbps+10 Gigabit Switch Network hardware equipment

(Item 2) CISCO C1941W-A-N-SEC/K9 1941 Security Router, internal 802.11a Wireless Access Point - Network hardware equipment.

(Item 3) Cisco 2602e Wireless Access Point with mounting accessories – Network hardware equipment

(Item 4) APC Smart-UPS 1500VA LCD RM 2U – Uninterruptable Power Supply

(Item 5) RE4XB-Hubbell Cabinet – Wall mounted network equipment cabinet housing

Items 1 through 3 will be contained in the RE4XB cabinet mounted and located in the facility telecom closet or demarcation room.

2. PERIOD OF USE.

(A) **Initial term.** FDIHB's equipment shall be and remain installed at the Chapter House Space, as described in Paragraph 1 herein, for a period of one calendar year beginning on the effective date of this Agreement.

(B) **Additional periods.** Upon expiration of this Agreement at the end of the first calendar year period, the Parties may renegotiate the terms and conditions of this Agreement, and may execute a Modification to this Agreement (see Paragraph 25 herein) for an additional use period as agreed to by the Parties, provided that any single additional term shall not extend beyond a one calendar year period.

(C) **Removal of equipment.** If no such Modification is executed within fifteen (15) calendar days following the expiration date of this Agreement, FDIHB shall immediately remove its equipment, and vacate and surrender the Chapter Space in the condition it was in as of the execution of this Agreement, normal wear and tear excepted.

(D) **Chapter ownership of equipment.** If FDIHB interior and exterior telecommunications equipment is not so removed, all such equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

3. PAYMENTS TO THE CHAPTER.

FDIHB agrees to pay the Chapter for use of the Space as follows:

(A) **space use;** a payment of \$ 0.00 per month, with each payment due to the Chapter on the 1st calendar day of each month, for the 12 month period covered by this Agreement; and,

(B) **taxes;** an additional amount per month to reimburse the Chapter for the five-percent (5%) Navajo Sales Tax.

4. OWNERSHIP AND PROTECTION OF EQUIPMENT.

(A) **FDIHB ownership.** The Parties acknowledge and agree that all equipment and fixtures installed at the Chapter Space pursuant to this Agreement, both interior and exterior, shall be owned and operated by FDIHB, and the Chapter shall not claim any ownership or control of such FDIHB property except as provided in Paragraph 15(D) herein.

(B) **Securing equipment.** FDIHB agrees to install all equipment, interior and exterior, in a secured manner, with secured casing or other sealed or locked containers/enclosures as reasonably necessary to prevent damage to, or theft of, such equipment.

5. CHAPTER LIABILITY.

The Chapter shall assume no responsibility or liability for any damages to, or theft of, any of FDIHB equipment, materials, supplies, or vehicles, whether interior-installed or exterior-installed, or whether any such items are intentionally or unintentionally left on the Chapter House premises.

6. PROPERTY INSURANCE; COSTS.

Because FDIHB equipment will be installed at, and physically affixed to, the Chapter House building, FDIHB shall pay all costs for the inclusion of all such equipment under the Chapter's property insurance coverage provided by the Navajo Nation. Further, it shall be FDIHB's sole responsibility to coordinate such coverage with the Navajo Nation Risk Management Department so that such insurance does not lapse and is not cancelled during the effective duration of this Agreement.

7. FDIHB LIABILITY; FTCA COVERAGE.

The parties acknowledge that as a self-determination contractor pursuant to the Indian Self-Determination and Education Assistance Act, P.L. 93-638, *et seq.*, as amended, FDIHB comes within the coverage of the Federal Tort Claims Act (FTCA) for claims for injury or death to persons or damage to property arising out of FDIHB's activities authorized by this Agreement. 25 C.F.R. Part 900, Subpart M.

8. CONDUCT OF BUSINESS; USE OF COMMON AREAS.

FDIHB shall occupy and use the Chapter Space for the effective duration of this Agreement and any Modification extending the period of this Agreement, without any disturbance from Chapter employees or Chapter officials or any person or entity under the authority or control of the Chapter.

(A) **FDIHB.** FDIHB shall use the Space solely and exclusively for housing telecommunications equipment and network connectivity to Tsé Si Aní Chapter via the installed equipment, and shall not permit the Space or installed equipment to be used for any other purpose, except as provided for in Paragraph 13 herein.

(B) **Chapter activities.** This Agreement does not limit in any way the ability of the Chapter to engage in any activities that promote the best interests of the Chapter House, to modify or alter the physical configurations of the Chapter House, or to conduct activities within the Chapter House or upon the Chapter Premises, so long as such Chapter actions do not affect the activities of FDIHB that are authorized under this Agreement. FDIHB will work with the Chapter to ensure that FDIHB activities do not interfere with Chapter activities taking place within the Chapter premises.

(C) **Use of common areas.** FDIHB and Navajo individuals seeking services from FDIHB may reasonably occupy, enjoy, and use the common areas of the Chapter House and Chapter Premises, including lobbies, corridors, public restrooms, walkways, sidewalks, landscaped areas, loading areas, pedestrian crossing areas, parking areas including handicapped parking and access roads, in the same manner as

other public users of the Chapter House and Chapter Premises. FDIHB acknowledges areas designated as "authorized personnel" are not to be accessed.

9. MAINTENANCE OF EQUIPMENT AND PREMISES.

- (A) **FDIHB responsibilities.** FDIHB shall keep all interior-installed and exterior-installed equipment neat, clean, in good working order and repair; FDIHB shall make all improvements, alterations, and repairs as necessary to all such equipment in order to maintain the equipment and network services provided therefrom in continuous operation.
- (B) **Chapter responsibilities.** The Chapter shall maintain and keep in good condition the roof, floor, exterior walls, and structural parts of the Chapter House, and the fire protection system and the electrical pipes, wiring and conduits, and the Chapter House locks and security systems, if any.
- (C) **Access to Chapter Space.** The Chapter shall allow access to the Chapter Space by FDIHB for purposes of the activities described in Paragraph 8 herein, so long as:
 - 1. FDIHB provides written notice to the Chapter at least 24 hours in advance of the planned commencement of such activities;
 - 2. the receipt of such written notice must be acknowledged by the appropriate Chapter official or employee;
 - 3. FDIHB access to all equipment, whether interior-installed or exterior-installed, shall be only during dates/times that the Chapter is open for business (generally 8:00 a.m. to 5:00 p.m. Mondays-Fridays, except Navajo Nation holidays), as the Chapter will not provide FDIHB with any key to access the Chapter House or the Chapter Premises when the Chapter is not open for business;
 - 4. it shall be FDIHB's sole responsibility to make arrangements with appropriate Chapter employees and officials for an agreed-upon date/time for FDIHB to access the equipment.

10. INSPECTION OF EQUIPMENT.

FDIHB agrees to allow Chapter and/or any and all officials of any appropriate and authorized federal, state, or Navajo Nation regulatory agency permission to inspect FDIHB's installed equipment, for purposes of regulatory oversight.

11. ELECTRICAL SERVICES.

The Chapter agrees to provide the electrical power needed for the continuous operation of all FDIHB installed equipment, and to keep current all payments to the service provider as necessary to prevent shutoff of electrical services to the Chapter House; FDIHB shall include a uninterruptable power supply (UPS) with installed equipment, which the UPS would provide a runtime of 115 minutes of electrical power for operation of all FDIHB installed equipment in the event that the Chapter House's electrical services are interrupted for any reason.

12. RETENTION OF RECORDS; AUDITS.

FDIHB shall keep and maintain books, records, documents or other materials related to services under this Agreement for a period of five (5) years from the date of termination or expiration of this Agreement, including any additional periods under a Modification, whichever occurs last.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FDIHB shall comply with all Navajo Nation laws, and all applicable federal and state laws and regulations, now in force and effect or as hereafter may come into force and effect, that pertain to all activities

authorized by this Agreement.

14. NAVAJO NATION JURISDICTION.

By voluntarily entering into and executing this Agreement, FDIHB expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by FDIHB within the Chapter or the Navajo Nation, or which have a proximate (legal) effect on persons or property within the Chapter or the Navajo Nation. FDIHB hereby acknowledges and agrees that this Agreement constitutes a voluntary consensual relationship between FDIHB and the government of the Chapter and the Navajo Nation.

15. TERMINATION OF THIS AGREEMENT.

- (A) **Notice required.** The Parties agree that either Party may terminate this Agreement by providing to the other Party a written NOTICE OF INTENT TO TERMINATE no later than thirty (30) calendar days prior to the intended date of termination.
- (B) **Removal of equipment.** In the event of termination of this Agreement, FDIHB shall remove its installed equipment from all interior and exterior locations at the Chapter House and Chapter Premises within fifteen (15) calendar days following the date of termination.
- (C) **Performance during termination.** The issuance of a NOTICE OF INTENT TO TERMINATE as required herein shall not release either Party from full and faithful performance of all terms and conditions of this Agreement during the forty-five (45) calendar day continued occupancy/use period.
- (D) **Chapter ownership of equipment.** FDIHB further agrees that, if all interior and exterior equipment is not removed from the Chapter Space at the end of said forty-five day period following the issuance of a NOTICE OF INTENT TO TERMINATE, all said equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion. FDIHB further agrees that if any payment due the Chapter remains unpaid ten (10) or more calendar days past the due date for such payment, or if FDIHB otherwise commits a material breach or default of any terms or conditions set forth in this Agreement, all FDIHB equipment shall become the property of the Chapter and the Chapter may remove, sell, or otherwise use or dispose of such equipment at its discretion.

16. SOVEREIGN IMMUNITY.

Nothing herein shall be considered a waiver, express or implied, of the sovereign immunity of the Chapter or of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq., or the sovereign immunity of FDIHB under 25 C.F.R. Part 900, Subpart M, if any.

17. DISPUTE RESOLUTION.

Any claim, dispute, or other matter in question arising out of or relating to this Agreement, with the exception of claims for injury that are within the scope of the FTCA coverage extended to FDIHB, shall be resolved by the negotiation and arbitration procedures set forth as follows:

- 17.1 **Negotiation.** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either Party of the other Party's "NOTICE TO INVOKE DISPUTE RESOLUTION."

- 17.2 **Arbitration.** If the negotiation provided for in Article 17.1 herein does not result in resolution of the Parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the Parties agree in writing to extend the time for negotiation, either Party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554 J and §554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
- (a) unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at the Chapter; and,
 - (b) the arbitration shall be conducted by a single arbitrator selected by the Navajo Nation Department of Justice;
 - (c) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and,
 - (d) whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Chapter shall be in strict conformance with the provisions of 1 N.N.C. §554 K 1-6; and,
 - (e) whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the FDIHB, except if no Navajo Nation law governs a particular issue in dispute, in which case the applicable laws of the State of primary performance shall govern that issue only; and,
 - (f) pursuant to 1 N.N.C. §554 K and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Chapter's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
 - (g) neither Party may recover from the other any attorney fees or costs.
- 17.3 **Waiver of suit.** The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Agreement. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated or arbitrated in accordance with the provisions set forth herein.
- 17.4 **Post-expiration; post-termination.** The dispute resolution provisions herein shall, with respect to any dispute or controversy arising from this Agreement, survive the termination or expiration of this Agreement.
- 17.5 **Challenges limited.** By entering into and executing this Agreement, FDIHB expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in the context of a similar

challenge to the jurisdiction of a state government.

- 17.6 **CLAIMS within FTCA coverage.** Notwithstanding the foregoing, claims within the scope of coverage of the FTCA shall be resolved solely through the procedures for disposition of claims applicable to the FTCA.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding any provision of Navajo Nation codified law, or Navajo Nation common or fundamental law, no provision of this Agreement shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any person or entity that is not one of the Parties hereto.

19. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Paragraph 17 herein, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either Party under this Agreement in a materially adverse manner, the Parties may agree in writing to a Modification of the Agreement, or either Party may terminate this Agreement in accordance with Paragraph 15 herein.

20. ASSIGNMENT RESTRICTED.

FDIHB shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Agreement or any interest therein including any Modifications, or any monetary claims against the Chapter relating thereto, without the prior written consent of the Navajo Nation Department of Justice; and any attempted assignment without such consent shall be void.

21. SUBCONTRACTORS; SUCCESSORS.

All provisions, conditions and covenants contained herein shall extend to and be binding upon each of FDIHB' successors, heirs, assigns, executors, administrators, employees, officials, representatives, agents and designees, including all of FDIHB' subcontractors and consultants, and the term FDIHB wherever used herein includes all persons and entities.

22. NOTICES; MAILINGS.

Any notices or correspondence relating to this Agreement sent by either Party to the other shall be mailed to the address shown in Paragraph 1 of this Agreement, shall be mailed via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving Party as of the date of such certified mailing regardless of the date actually received.

23. LEASE DISCLAIMER.

This Agreement in no way involves the disposition of any Navajo Nation or Chapter property that is defined and governed under the provisions of 2 N.N.C. §§ 53-54 et seq. This Agreement only creates FDIHB's right to use of the Chapter Space as provided for herein. This Agreement does not alienate or demise any interest in real property held in trust for the Navajo Nation or the Chapter, and it does not grant to FDIHB any possessory interest in any real property that is held in trust for the Navajo Nation or the Chapter, and therefore, it is not a lease as defined and governed under the provisions of 25 C.F.R. § 162 et seq.

24. INDEMNIFICATION.

FDIHB agrees to hold harmless and indemnify the Chapter and the Navajo Nation and its divisions,

departments, offices, programs, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury or death to any persons or property, arising out of or connected with any activities under this Agreement.

25. MODIFICATIONS.

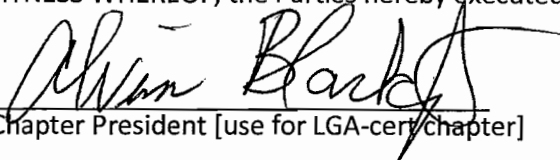
Any revisions, amendments, addendums, alterations, or changes whatsoever to any provision of this Agreement shall be made only by a duly approved written Modification that is duly authorized and executed by the Parties. Any and all Modifications shall be reviewed and approved in writing by the Department of Justice prior to execution by the Chapter. If the effective period of this Agreement is extended via a duly executed Modification, the term "Agreement" as used herein shall include the effective period provided for in the Modification.

26. EFFECTIVE DATE OF THIS AGREEMENT.

This Agreement shall be first executed, as shown below, by FDIHB. If this Agreement is with a chapter that is local-governance-certified pursuant to 26 N.N.C. §103, this Agreement shall be effective as of the date of execution by such chapter. If this Agreement is with a chapter that is not so certified, then this Agreement shall be effective as of the date of execution by the President of the Navajo Nation.

27. EXECUTION.

IN WITNESS WHEREOF, the Parties hereby executed this Agreement as follows:

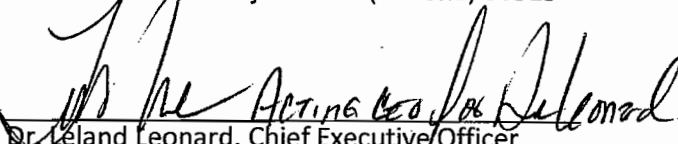

Chapter President [use for LGA-cert Chapter]

12-17-14
Date:

-OR-

Ben Shelly, Navajo Nation President [use for non-LGA-cert chapter]
Office of the President/Vice-President
P.O. Box 7440
Window Rock, Navajo Nation (Arizona) 86515

Date:


Dr. Leland Leonard, Chief Executive Officer
Fort Defiance Indian Hospital Board, Inc.
PO Box 649, Corner of Routes N12 & N7
Fort Defiance, AZ 86504

12-12-14
Date:

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


Navajo Nation Department of Justice

***** END OF DOCUMENT *****

TSE SI ANI CHAPTER

RESOLUTION OF THE TSE SI ANI CHAPTER TSA-2012-02-005

Support the efforts of the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to Initiate broadband connection; and approving to have Fort Defiance Indian Hospital Board, Inc. and SWTAG utilize the chapter to provide distance Healthcare Services

JACKIE YAZZIE, JR.
PRESIDENT

RAYMOND SMITH, JR.
VICE PRESIDENT

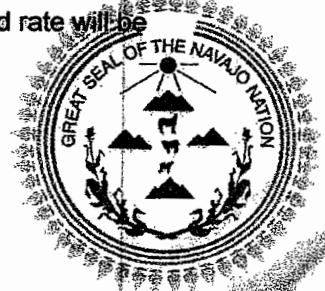
REGAN E. HAWTHORNE
SECRETARY/TREASURER

LORENZO CURLEY
COUNCIL DELEGATE

FREDDIE J. NELSON
GRAZING OFFICER

Whereas:

1. The Tse Si Ani Chapter is a certified chapter within the Fort Defiance Agency and vested with authority and charged with the responsibility to promote, protect and preserve the interest and general welfare, including the health and safety of its community people; and
2. The Indian Self-determination act (P.L. 93-6380) of the U. S. Congress and Local Governance initiatives enable local chapters to develop/establish plans, make decisions, recommendations, requests, etc., in accordance to local needs and desires; and
3. The Tse Si Ani Chapter has learned that the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid (SWTAG) to provide distance healthcare using broadband connection from and to Chapters within the Fort Defiance IHS Service Unit to the Fort Defiance Indian Hospital Board, Inc. and vice-versa; and
4. The Tse Si Ani Chapter is located within the Fort Defiance IHS Service Center and its community people are served by Fort Defiance Indian Hospital Board, Inc. and for minor and major medical services; and
5. It is in the best interest of the Tse Si Ani Chapter to support the Fort Defiance Indian Hospital Board, Inc. and Southwest Telehealth Access Grid to provide distance healthcare to chapters within the Fort Defiance IHS Service Unit, and to approve to have SWTAG utilized by the chapter for such medical services with the understanding the broadband connection funded by FCC Rural Health Care Pilot Program will be used for health care purposes 100% of the time. If the broadband connection is used for something other than health care purposes Ft. Defiance (RFP 8) will notify SWTAG/USAC of this other usage and a prorated rate will be determined.



NOW THEREFORE BE IT RESOLVED THAT:

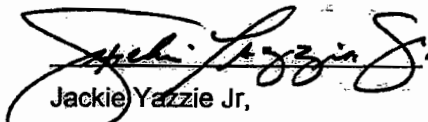
The Tse Si Ani Chapter approved to have the Fort Defiance Indian Hospital Board, Inc. jointly with SWTAG to provide distance medical services within the Fort Defiance Service Unit using broadband connection and approving to have use of the Chapter House.

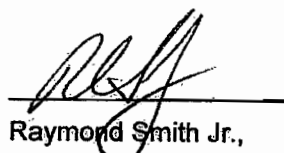
CERTIFICATION

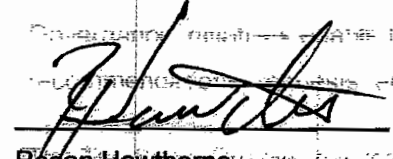
I hereby certify the foregoing resolution was duly considered by the Tse Si Ani Chapter at a duly called meeting at Lupton, Arizona at which a quorum was present and the same was passed by a vote of 16 in favor, 0 opposed, and 11 abstained on the 17 day of April, 2012.

Motion by: Marvin Smith

Seconded by: Alvin Blackgoat


Jackie Yazzie Jr,
Chapter President


Raymond Smith Jr.,
Chapter Vice President


Regan Hawthorne
Secretary/Treasurer

Document No. 003139Date Issued: 12/01/2014**EXECUTIVE OFFICIAL REVIEW**Title of Document: 9-Chapter Agreement with IHS Contact Name: JIM, SHIRLENEProgram/Division: DIV. OF COMMUNITY DEVELOPMENTEmail: sjim@nndcd.org Phone Number: 505-371-8466-8468☐ **Business Site Lease** Sufficient Insufficient

1. Division: _____	Date: _____	☐	☐
2. Office of the Controller: _____	Date: _____	☐	☐
(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)			
3. Office of the Attorney General: _____	Date: _____	☐	☐

☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**

1. Division: _____	Date: _____	☐	☐
2. Office of the Attorney General: _____	Date: _____	☐	☐

☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**

1. Office of Management and Budget: _____	Date: _____	☐	☐
2. Office of the Controller: _____	Date: _____	☐	☐
3. Office of the Attorney General: _____	Date: _____	☐	☐

☐ **Navajo Housing Authority Request for Release of Funds**

1. NNEPA: _____	Date: _____	☐	☐
2. Office of the Attorney General: _____	Date: _____	☐	☐

☐ **Lease Purchase Agreements**

1. Office of the Controller: _____	Date: _____	☐	☐
(recommendation only)			
2. Office of the Attorney General: _____	Date: _____	☐	☐

☐ **Grant Applications**

1. Office of Management and Budget: _____	Date: _____	☐	☐
2. Office of the Controller: _____	Date: _____	☐	☐
3. Office of the Attorney General: _____	Date: _____	☐	☐

☒ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**

1. Division: _____	Date: <u>12/01/14</u>	☑	☐
2. Office of the Attorney General: _____	Date: <u>12-3-14</u>	☑	☐

☐ **Relinquishment of Navajo Membership**

1. Land Department: _____	Date: _____	☐	☐
2. Elections: _____	Date: _____	☐	☐
3. Office of the Attorney General: _____	Date: _____	☐	☐

			Sufficient	Insufficient
<input type="checkbox"/>	Land Withdrawal or Relinquishment for Commercial Purposes			
1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases			
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Rights of Way			
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease			
1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Assignment of Mineral Lease			
1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)			
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
8. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	OTHER:			
1.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
12/02/14 11:46 am
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 003139
SAS #:
UNIT: ECDU

☒ RESUBMITTAL

10/07/14

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

CLIENT TO COMPLETE

DATE OF REQUEST: 12.02.14	ENTITY/DIVISION: DCD
CONTACT NAME: Shirlene Jim	DEPARTMENT: DCD-Admin
PHONE NUMBER: 505 371.8468	E-MAIL: Jim@nndcd.org
TITLE OF DOCUMENT: 9 - Chapter Agreement e 1.HS	

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 12-2-14 3:45 pm	REVIEWING ATTORNEY/ADVOCATE: Rodgerick Begay
DATE/TIME OUT OF UNIT:	

DOJ ATTORNEY / ADVOCATE COMMENTS

Previously reviewed RFS 14-1933 Legally sufficient

REVIEWED BY: (PRINT) Rod Begay	DATE / TIME 12-3-14 8:30a	SURNAMED BY: (PRINT) Rod Begay	DATE / TIME 12-3-14 8:30a
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DOJ Secretary Called: Sylvia for Document Pick Up on 12/3/14 at 835 By: AH

PICKED UP BY: (PRINT)	DATE / TIME:
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RECEIVED

NOV 13 2014

DIVISION OF
COMMUNITY
DEVELOPMENT

INTEROFFICE ROUTING MEMO

NAVAJO NATION DEPARTMENT OF JUSTICE

Post Office Box 2010, WINDOW ROCK, AZ 86515

Telephone No. 928-871-6932 • 6933

Telefax No. 928-871-6200

TO: Shirlene Jim
Division of Community Development

FROM: Rodgerick Begay
ECONOMIC/COMMUNITY DEVELOPMENT UNIT

DATE: 11-13-14

- ☒ For your information / File
- ☐ Per Your Request
- ☐ Signature / Approval
- ☐ Process for Payment

COMMENTS:



NAVAJO NATION DEPARTMENT OF JUSTICE

REQUEST
FOR
SERVICES



DOJ
10/17/14 2:51pm
DATE/TIME
RFS #: 14-1933
UNIT: ECDW

☐ RESUBMITTAL

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

CLIENT TO COMPLETE

DATE OF REQUEST: OCT 17, 2014 ENTITY/DIVISION: Division Comm. Development
CONTACT NAME: SAIRLENE Jim DEPARTMENT: Comm. Development
PHONE NUMBER: 505 371.8468 E-MAIL: sjim@nndoj.org

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (attach documents):
Review of Contract for 9 chapters from I.H.S. (Int. Defense)

DEADLINE: REASON:

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 10-17-14 3:30pm REVIEWING ATTORNEY/ADVOCATE: Rodgerick Begay
DATE/TIME OUT OF UNIT: PREPARED BY (initial):

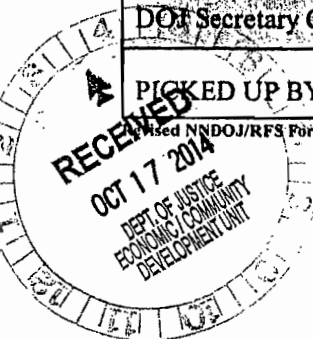
DOJ ATTORNEY/ADVOCATE COMMENTS

Legally sufficient. Draft previously developed by a former DOJ attorney. I have no other comments on the draft.

REVIEWED BY: (PRINT) Rod Begay DATE / TIME 11-13-14 1:17p

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (PRINT) DATE / TIME:





**AGREEMENT FOR USE OF FORT DEFIANCE CHAPTER HOUSE SPACE BY
FORT DEFIANCE INDIAN HOSPITAL BOARD, INC. FOR TELEHEALTH/TELEMEDICINE SERVICES**

This Agreement is made and entered into by and between the Fort Defiance Chapter Government (hereinafter referred to as "Chapter"), Navajo Route 112 & BIA I-10, Kit Carson Road, P.O. Box 366, Fort Defiance, AZ 86504, and the Fort Defiance Indian Hospital Board, Inc. (hereinafter referred to as "FDIHB"), a non-profit Company, PO Box 649, Corner of Route N12 & N7, Fort Defiance, AZ 86504.

WHEREAS, the Chapter is a political subdivision/local governmental entity of the Navajo Nation that has the authority to enter into agreements for the use of Chapter House Space pursuant to 26 N.N.C. §103(D)2, and currently has building space or room available for purposes of this Agreement.

WHEREAS, FDIHB is participating in the Southwest Telehealth Access Grid (SWTAG), Rural Healthcare Pilot Project, the purpose of which is to assist FDIHB and other participating entities to have the necessary broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health care technology to rural areas of the country, such as to the Fort Defiance Chapter. Through participating in the Pilot Project, FDIHB received funding for the equipment that is installed at the Chapter House, which will in turn allow for FDIHB to deliver telehealth services at the Chapter House. Telehealth consists of providing long-distance clinical healthcare and telemedicine consists of the exchanging medical information from one site to another using electronic communications to provide healthcare at a distance, i.e., from the FDIHB facility located in Fort Defiance. Providing telehealth services at the Chapter will reduce costs and increase healthcare delivery.

WHEREAS, this collaborative effort between Navajo Nation Community Health Representatives and FDIHB Public Health Nurses, Home Based Care Nurses, Diabetes Educators, Public Health Nutrition which will have mobile devices such as laptops, smartphones, PCs, and touch screen devices (iPads), which will be used to remotely connect from the Chapter to the FDIHB hospital to access RPMS, EHR, and providers. In doing so, Providers, Nurses and CHRs can remotely access the EHR to update patient records, and most importantly, the patient can have real-time provider-patient consults/discussions from the Chapter. Another advantage is health education and prevention, nutrition, diabetes, and wellness topics can be video streamed to the Chapter.

WHEREAS, FDIHB is in need of room or space at the Fort Defiance Chapter House for the installation, operation, and maintenance of telecommunications equipment which will be used to provide and support distance remote healthcare services for patients via a broadband connection provided by a qualified local internet and telecommunications carrier.