

LEGISLATIVE SUMMARY SHEET

Tracking No. 0026-24

DATE: January 25, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING ADMINISTRATIVE SECTIONS OF NAVAJO NATION COUNCIL RESOLUTIONS NOS. CJY-41-21 AND CJN-29-22 TO ENSURE THE FULL AND TIMELY OBLIGATION AND EXPENDITURE OF ALL NAVAJO NATION FISCAL RECOVERY FUNDS BY U.S. TREASURY DEADLINES; ESTABLISHING INDIRECT COST RECOVERY AND PERSONNEL-OPERATING COSTS RECOVERY RESERVES

PURPOSE: If adopted, this legislation will enact new administrative procedures intended to expedite the obligation and expenditure of all Navajo Nation Fiscal Recovery Funds ("NNFRF"). The legislation also establishes Indirect Cost and Personnel-Operating Cost recovery; and expands the recovery of FRF-eligible expenditures from internal Navajo Nation funds. The legislation does *not* adopt new NNFRF Expenditure Plans or reallocate funds between enacted NNFRF Expenditure Plans.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD
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Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED RESOLUTION OF THE NAVAJO NATION COUNCIL

25TH NAVAJO NATION COUNCIL— Second Year, 2024

INTRODUCED BY

Primary Sponsor

TRACKING NO. 0026-24

AN ACTION

**RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION
COUNCIL; AMENDING ADMINISTRATIVE SECTIONS OF NAVAJO NATION
COUNCIL RESOLUTIONS NOS. CJY-41-21 AND CJN-29-22 TO ENSURE THE
FULL AND TIMELY OBLIGATION AND EXPENDITURE OF ALL NAVAJO
NATION FISCAL RECOVERY FUNDS BY U.S. TREASURY DEADLINES;
ESTABLISHING INDIRECT COST RECOVERY AND PERSONNEL-
OPERATING COSTS RECOVERY RESERVES**

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Naabik'iyáti Committee is a standing committee of the Navajo Nation Council with responsibility to recommend resolutions to the Navajo Nation Council. 2 N.N.C. §§ 700 (A) and 701 (A)(3).
- C. Navajo Nation Council Resolution No. CJY-41-21, incorporated herein by reference, and Navajo Nation Council Resolution No. CJN-29-22, incorporated herein by reference, can only be amended by a two-thirds (2/3) vote of all members of the Navajo Nation Council and approved by the President of the Navajo Nation pursuant to 2

1 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005(C)(10), (11), and (12). CJN-29-22, Section
2 Seventeen.
3

4 **SECTION TWO. FINDINGS**

- 5 A. The World Health Organization ("WHO") declared a Public Health Emergency of
6 International Concern related to the Coronavirus ("COVID-19"), a highly contagious
7 and sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of
8 Health and Human Services declared a Public Health Emergency related to the
9 COVID-19 outbreak on January 31, 2020; and the WHO declared a global pandemic
10 due to COVID-19 on March 11, 2020.
- 11 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
12 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency
13 on the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See*
14 Resolution No. CEM 20-03-11 which is incorporated herein by reference. The Navajo
15 Nation Department of Health has subsequently issued numerous Public Health
16 Emergency Orders. Public Health Orders 2020-001 through 2023-002 are incorporated
17 herein by reference. These Public Health Emergency Orders are available at
18 www.ndoh.navajo-nsn.gov.
- 19 C. The coronavirus pandemic of 2019 has caused and continues to cause large scale
20 infections and loss of life throughout the world, the United States, and the Navajo
21 Nation. As of October 31, 2023, the Navajo Nation Health Command Operations
22 Center has confirmed 87,075 COVID-19 cases and 2,224 COVID-related deaths on the
23 Navajo Nation.
- 24 D. Although the Public Health State of Emergency on the Navajo Nation was lifted on
25 June 15, 2023, *see* Resolution of the Commission on Emergency Management No.
26 CEM-23-06-15, incorporated herein by reference, COVID-19 variants have recently
27 emerged that threaten to increase the number of confirmed COVID-19 cases on the
28 Navajo Nation and continue the pandemic's assault on the Navajo People.
- 29 E. The devastating effects of COVID-19 continue throughout the United States, affecting
30 the Navajo Nation disproportionately, and extend beyond life and health devastation to

1 wide scale negative financial impacts, such as employment losses, business closures,
2 food and housing insecurity, and other economic disruptions.

3 F. In response to the pandemic, United States President Joseph Biden signed the American
4 Rescue Plan Act ("ARPA") into law on March 11, 2021. Section 9901 of ARPA
5 amended Title VI of the Social Security Act to add section 602, which established the
6 Coronavirus State Fiscal Recovery Fund, and section 603, which established the
7 Coronavirus Local Fiscal Recovery Fund (together the "Fiscal Recovery Funds" or
8 "FRF") and provided \$362 billion for state, local, and tribal governments, including
9 \$20 billion specifically designated for tribal governments.

10 G. As of April 12, 2022, the United States Department of Treasury allocated two billion
11 seventy-nine million four hundred sixty-one thousand four hundred sixty-four dollars
12 (\$2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions of
13 ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief
14 provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES
15 Act), Public Law 116-136, 134 Stat. 281 (2020), and are intended to mitigate and
16 contain the spread of COVID-19, as well as to respond to the health, social and
17 economic impacts of COVID-19 suffered by residents and businesses.

18 H. Pursuant to Section 9901 of ARPA, as amended by the Consolidated Appropriations
19 Act of 2023 ("2023 CAA"), incorporated herein by reference, Fiscal Recovery Funds
20 are specifically intended to:

- 21 1. respond to the COVID-19 public health emergency and its negative economic
22 impacts, including assistance to households, small businesses, and non-profits;
23 and/or aid to impacted industries such as tourism, travel, and hospitality;
- 24 2. respond to workers performing essential work during the COVID-19 public
25 health emergency by providing premium pay to eligible workers of the recipient
26 that perform such essential work, or by providing grants to eligible employers
27 that have eligible workers who perform essential work;
- 28 3. provide government services to the extent of the reduction in Navajo Nation
29 revenue due to the COVID-19 public health emergency, relative to revenues
30

- collected in the most recent full fiscal year prior to the COVID-19 public health emergency;
4. make necessary investments in water, sewer, and/or broadband infrastructure;
5. provide emergency relief from natural disasters or the negative economic impacts of natural disasters;
6. fund projects eligible under the twenty-six (26) surface transportation programs specified in the 2023 CAA, herein referred to as "Surface Transportation Projects"; and/or
7. fund projects eligible under Title I of the Housing and Development Act of 1974, incorporated herein by reference and herein referred to as "Title I Projects".

I. Pursuant to ARPA, Section 9901, Fiscal Recovery Fund costs must be incurred, meaning funds must be obligated, by December 31, 2024.

1. Pursuant to U.S. Treasury's 2022 Final Rule:

- a. Costs are considered "incurred" when FRF is obligated. FRF is considered obligated for the purposes of the December 31, 2024, obligation deadline when funds are obligated under a contract, grant agreement, or subrecipient agreement;
 - b. Contractors, grantees, and subrecipients are not subject to the obligation deadlines; and
 - c. FRF cannot be reallocated or re-obligated after the obligation deadline (December 31, 2024).
2. Enactment of a NNFRF Expenditure Plan by Navajo Nation Council resolution or a NNFRF Delegate Region Project Plan by Naabik'íyáti' Committee resolution does not obligate FRF under U.S. Treasury rules and guidance.
3. The Fiscal Recovery Fund period of performance runs from March 3, 2021, until December 31, 2026, meaning that all FRF-funded projects, with the exception of Surface Transportation Projects and Title I Projects, must be completed and FRF funds fully expended by December 31, 2026. FRF-funded

1 Surface Transportation Projects and Title I Projects must be completed and their
2 FRF funds fully expended by September 30, 2026;

- 3 4. Costs incurred prior to March 3, 2021 are not FRF eligible; and
4 5. Any NNFRF funds not obligated or expended for eligible uses by the dates set
5 forth above must be returned to the U.S. Treasury, including unexpended funds
6 that have been provided to contractors, grantees, and sub-recipients as part of
7 the award closeout process.

8 J. By accepting the ARPA Fiscal Recovery Funds, the Navajo Nation agreed to comply
9 with rules and guidance issued by the U.S. Department of Treasury ("U.S. Treasury")
10 concerning the use, expenditure and reporting of Fiscal Recovery Funds. As of January
11 1, 2024, the Navajo Nation is required to comply with the following U.S. Treasury
12 FRF rules and guidance, as amended, which are incorporated herein by reference and
13 available on the NNFRF Office website at <https://frf.navajo-nsn.gov>.

- 14 1. 2022 Final Rule and Final Rule FAQs;
15 2. 9/20/2023 Interim Final Rule;
16 3. 11/09/2023 Interim Final Rule on Obligation of FRF; and
17 4. 12/14/2023 Guidance on Compliance and Reporting.

18 The Navajo Nation is also required to comply with future U.S. Treasury rules and
19 guidance concerning FRF, as well as amendments thereto.

20 K. In addition to the ARPA requirement that the use and expenditure of Fiscal Recovery
21 Funds satisfy one or more of the ARPA Section 9901 intended purposes set forth in
22 Sub-Section H above, U.S. Treasury's 12/14/2023 Guidance on Compliance and
23 Reporting, Appendix 1, requires funding recipients to report each expenditure under
24 one of one-hundred twenty-five (125) "Expenditure Categories".

25 L. The U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of FRF authorized the
26 use and expenditure of Fiscal Recovery Funds for personnel costs and other operating
27 costs after the obligation deadline (12/31/2024) when the use and expenditure are
28 related to compliance with federal laws, regulations, and the funding agreement
29 (reporting and compliance requirements; Single Audit costs; record retention and
30

1 internal control requirements; property standards; environmental compliance
2 requirements; and civil rights and nondiscrimination requirements).

3 M. The U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of FRF also authorized
4 the recovery of Indirect Costs ("IDC") by charging the recipient's approved IDC rate
5 to FRF expenditures so long as there is no double dipping (charging IDC for the same
6 costs that are funded directly by FRF).

7 N. The U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of FRF restricted the
8 amendment to or replacement of contracts and subrecipient agreements after the
9 obligation deadline (12/31/2024).

10 O. On July 23, 2021, the Navajo Nation Council adopted Resolution No. CJY-41-21,
11 incorporated herein by reference, establishing the Navajo Nation Fiscal Recovery Fund
12 ("NNFRF") into which the Navajo Nation's allocation of \$2,079,461,464 has been
13 deposited. Resolution No. CJY-41-21 also adopted an expenditure authorization and
14 approval process for the allocation of funds from the NNFRF.

15 P. Resolution No. CJY-41-21 also mandated the Budget and Finance Committee to adopt
16 application and review procedures, as well as an expenditure plan template, to be used
17 by entities requesting Navajo Nation Fiscal Recovery Funds. The Budget and Finance
18 Committee approved Resolution No. BFS-31-21, incorporated herein by reference,
19 which established mandatory Navajo Nation Fiscal Recovery Fund application
20 procedures, forms, and an expenditure plan template.

21 Q. To ensure the Navajo Nation's compliance with ARPA, Section Four of Resolution
22 CJY-41-21 directed the Navajo Nation Department of Justice ("NNDOJ") to perform
23 "an initial determination of whether a NNFRF funding request satisfies the legal
24 requirements of the Fiscal Recovery Funds provisions of ARPA and applicable Navajo
25 Nation laws, regulations, and policies and procedures." Resolution BFS-31-21
26 incorporated NNDOJ's initial determination into the mandatory NNFRF application
27 procedures, forms, and an expenditure plan template, which requires, among other
28 things, identification of the entity with administrative oversight over the Funding
29 Recipient. Administrative oversight means having the authority and responsibility to
30 monitor the implementation of an approved FRF Expenditure Plan and the expenditure

1 of awarded funds. The duties of the entity with administrative oversight are set forth in
2 Section Seven of the FRF Procedures in Exhibits 1 through 5 of Resolution BFS-31-
3 21.

4 R. The financial devastation visited on the Navajo People by the COVID-19 pandemic
5 rose to emergency levels. In response, the Navajo Nation Council enacted Resolution
6 No. CD-62-21, incorporated herein by reference, providing \$557,000,000 in direct
7 Hardship Assistance for Navajo members. The President signed CD-62-21 into law on
8 January 4, 2022.

9 S. In addition to the critical need for direct financial assistance, the Navajo Nation Council
10 and the President of the Navajo Nation agreed that critical infrastructure must be built
11 by the Navajo Nation government to respond to COVID-19 and to improve the quality
12 of life for the Navajo People, and that the government must provide programs and
13 projects necessary to assist Navajo members and Navajo-owned businesses to recover
14 from the on-going COVID-19 pandemic. In response, in July of 2022, the Navajo
15 Nation Council and President of the Navajo Nation enacted Navajo Nation Council
16 Resolution No. CJN-29-22 to immediately enact comprehensive Navajo Nation Fiscal
17 Recovery Fund Expenditure Plans for Chapter and Regional Projects; Public Safety
18 Emergency Communication, E911, and Rural Addressing Projects; Cyber Security;
19 Public Health Projects; Economic Development Projects; Hardship Assistance; Water
20 and Wastewater Projects; Broadband Projects; Home Electricity Connection and
21 Electric Capacity Projects; Housing Projects and Manufactured Housing Facilities;
22 Bathroom Addition Projects; and Construction Contingency Funding in the total
23 amount of one billion seventy million two hundred ninety-eight thousand eight
24 hundred sixty-seven dollars (\$1,070,298,867).

25 T. The time available for construction of such infrastructure and expenditure of the Fiscal
26 Recovery Funds continues to dramatically lessen as the December 31, 2024 deadline
27 to obligate Fiscal Recovery Funds quickly approaches, after which time unobligated
28 funds must be returned to the U.S. Treasury.

29 U. To ensure that the Navajo Nation obligates and expends all of its Fiscal Recovery Funds
30 by the ARPA and U.S. Treasury deadlines, the Office of the President and Vice-

1 President, Office of the Controller, Office of Management and Budget, and Navajo
2 Nation Department of Justice (collectively the “Executive Branch”) has proposed
3 amendments to the administrative provisions of Navajo Nation Council Resolutions
4 Nos. CJY-41-21 and CJN-29-22 that should, if enacted, mitigate the return of NNFRF
5 funds to the U.S. Treasury.

6 V. The Executive Branch presented its proposed amendments to the Naabik’iyáti’
7 Committee during the week of January 4, 2024, and emphasized that the Navajo Nation
8 government must develop, streamline and improve its systems and procedures to ensure
9 that all NNFRF are obligated and expended by U.S. Treasury deadlines. The Executive
10 Branch also emphasized that the Navajo Nation government must balance the need for
11 compliance with applicable federal and Navajo Nation laws, regulations, and policies
12 with the need for rapid implementation of NNFRF-funded programs and projects.

13 W. The Executive Branch also shared that it is imperative that the Navajo Nation
14 government move as much NNFRF dollars as possible into the General Fund or another
15 internal Navajo Nation fund through reimbursement of FRF-eligible expenditures
16 originally made with the General Fund, specifically emphasizing recovery of eligible
17 Indirect Costs and reimbursement of eligible personnel and operating costs. Once
18 NNFRF is deposited into the General Fund or another internal Navajo Nation fund as
19 reimbursement for eligible FRF expenditures, the funds are unrestricted and are not
20 subject to ARPA and U.S. Treasury guidance and limitations on eligible uses,
21 obligation deadlines, and expenditure requirements.

22 X. The Navajo Nation Council has determined that the Executive Branch’s proposed
23 amendments to the administrative provisions of Navajo Nation Council Resolutions
24 Nos. CJY-41-21 and CJN-29-22 are in the best interest of the Navajo people and should
25 facilitate the timely obligation of NNFRF and mitigate the return of funds to the U.S.
26 Treasury.

27
28 **SECTION THREE. ESTABLISHING THE NAVAJO NATION FISCAL**
29 **RECOVERY FUNDS INDIRECT COST RECOVERY RESERVE**
30

- 1 A. Under U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of FRF, the Navajo
2 Nation may recover Indirect Costs ("IDC"), at the Nation's approved IDC rate(s) set
3 forth in its IDC Negotiation Agreement(s) with the Nation's cognizant agency
4 (Department of Interior), on eligible expenditures of NNFRF.
- 5 B. To ensure that the Navajo Nation fully recovers IDC on all eligible NNFRF
6 expenditures and does not charge IDC for the same costs funded directly by FRF, the
7 Controller of the Navajo Nation, in consultation with the Office of Management and
8 Budget, shall establish a Navajo Nation Fiscal Recovery Funds Indirect Cost
9 Recovery Reserve Account ("IDC Reserve").
- 10 C. The purpose of the IDC Reserve is to house NNFRF to reimburse the Navajo Nation
11 General Fund for eligible Indirect Costs expended to administer the NNFRF and
12 implement NNFRF-funded programs and projects.
- 13 D. The Office of Management and Budget ("OMB"), in consultation with the Office of
14 the Controller and NNDOJ, shall project the amount of IDC that the Navajo Nation
15 is expected to recover on its NNFRF expenditures under U.S. Treasury rules and
16 guidance.
- 17 E. The Office of the Controller, in consultation with OMB and NNDOJ, shall develop
18 policies and procedures governing the IDC Reserve. The IDC Reserve policies and
19 procedures shall be approved through resolution of the Budget and Finance
20 Committee.
- 21 F. OMB's projected amount of IDC recovery on NNFRF expenditures shall be initially
22 funded through reallocation of excess funds allocated to the NNFRF Hardship
23 Assistance Expenditure Plan through Resolution No. CJNI-29-22.
- 24 1. If OMB's projected amount of IDC recovery is more than the reallocation
25 excess funds in the NNFRF Hardship Assistance Expenditure Plan set forth
26 above, additional funding may be secured through reallocation of another
27 enacted NNFRF Expenditure Plan or allocation of uncommitted NNFRF,
28 when and if available.
- 29
30

- 1 2. If OMB's projected amount of IDC recovery is less than the reallocation set
2 forth above, the excess funds shall revert to the Personnel-Operating Costs
3 Reserve without legislative action.
4

5 **SECTION FOUR. ESTABLISHING THE NAVAJO NATION FISCAL RECOVERY**
6 **FUNDS PERSONNEL-OPERATING COSTS RECOVERY RESERVE**

- 7 A. To ensure that the Navajo Nation takes full advantage of all opportunities to expend
8 Navajo Nation Fiscal Recovery Funds, including the reimbursement of General Fund
9 expenditures, on costs deemed FRF eligible by U.S. Treasury rules and guidance, the
10 Controller of the Navajo Nation, in consultation with the Office of Management and
11 Budget, shall establish a Navajo Nation Fiscal Recovery Funds Personnel-Operating
12 Costs Recovery Reserve Account ("Personnel-Operating Costs Reserve").
13 B. The purpose of the Personnel-Operating Costs Reserve is to house NNFRF to
14 reimburse the Navajo Nation for FRF-eligible personnel and operating cost
15 expenditures of General Funds.
16 C. The Office of Management and Budget ("OMB"), in consultation with the Office of
17 the Controller and NNDOJ, shall project the amount of personnel and operating costs
18 that the Navajo Nation is expected to recover on its NNFRF expenditures under U.S.
19 Treasury rules and guidance.
20 D. The Office of the Controller, in consultation with OMB and NNDOJ, shall develop
21 policies and procedures governing the Personnel-Operating Costs Reserve. The
22 Personnel-Operating Costs Reserve policies and procedures shall be approved
23 through resolution of the Budget and Finance Committee.
24 E. OMB's projected amount of personnel and operating cost expenditure reimbursement
25 shall be funded through reallocation of excess IDC Recovery Reserve funds without
26 legislative action or through reallocation of an enacted NNFRF Expenditure Plan or
27 allocation of uncommitted NNFRF, when and if available.
28

29 **SECTION FIVE. ESTABLISHING THE INVESTMENT OF NAVAJO NATION**
30 **FISCAL RECOVERY FUNDS**

1 A. The Office of the Controller shall invest Navajo Nation Fiscal Recovery Funds
2 pursuant to an investment policy recommended by the Navajo Nation
3 Investment Committee and approved by the Budget and Finance Committee.
4 Such investment policy shall be consistent with guidance issued by U.S.
5 Treasury.

6 B. The investment policy for Navajo Nation Fiscal Recovery Funds shall ensure
7 that NNFRF are invested with the degree of care exercised by reasonable and
8 prudent managers of investments intended to produce maximum growth of the
9 investments with a high degree of safety and include specific investment
10 objectives and policies.

11 C. As stated in CJY-41-21, Section Eight (C), the Office of the Controller “shall
12 be responsible for ensuring that withdrawals from all invested NNFRF funds
13 are timed to balance Expenditure Plan needs with maximum investment
14 earnings”.

15 D. Realized earnings from the investment of Navajo Nation Fiscal Recovery Funds
16 shall be deposited in the Navajo Nation’s General Fund or another internal
17 Navajo Nation fund, and be available for appropriation by the Navajo Nation
18 Council pursuant to pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§
19 1005(C)(10), (11), and (12).

20
21 **SECTION SIX. AMENDING CJY-41-21, SECTION FIVE, TO EXPAND NAVAJO**
22 **FISCAL RECOVERY FUNDS REIMBURSEMENT OF ELIGIBLE GENERAL**
23 **FUND, SÍHASIN FUND, PERMANENT FUND INCOME, AND UNRESERVED**
24 **UNDESIGNATED FUND BALANCE (“UUF”) EXPENDITURES**

25 To ensure that the Navajo Nation utilizes its Fiscal Recovery Funds to the fullest extent
26 allowable under ARPA and U.S. Treasury rules and guidance, Section Five of CJY-41-21
27 is hereby amended as follows:

28 SECTION FIVE. IMMEDIATE ALLOCATION OF NAVAJO NATION FISCAL
29 RECOVERY FUNDS TO REIMBURSE GENERAL FUND, SÍHASIN FUND,
30

1 ALLOCATIONS PERMANENT FUND INCOME, AND UNRESERVED
2 UNDESIGNATED FUND BALANCE APPROPRIATIONS EXPENDITURES

3 The Office of the Controller ~~OOO~~, in consultation with the Office of Management
4 and Budget ~~OMB~~, shall immediately reimburse the General Fund, Sihasin Fund,
5 Permanent Trust Income, and Unreserved Undesignated Fund Balance ("UUFB")
6 from the NNFRF for any expenditures from such Funds ~~any allocations or~~
7 ~~appropriations wherein the approving Navajo Nation Council resolution authorized~~
8 ~~such reimbursement and that~~ NNDOJ deems ~~such reimbursement(s)~~ legally
9 defensible under the Fiscal Recovery Funds provisions of ARPA. A NNFRF
10 Expenditure Plan shall not be required for such reimbursements provided that the
11 resolutions appropriating such Navajo Nation funds contained an expenditure plan
12 and supporting documents that provide sufficient details to allow NNDOJ to make
13 an FRF eligibility determination. ~~OMB~~ The Office of the Controller shall report
14 the amount and status of such reimbursements to the Budget and Finance
15 Committee, Naabik'iyati' Committee, and the Office of President and Vice-
16 President no later than ~~sixty (60) days after the effective date of this legislation~~ ten
17 (10) days after the end of each quarter.

18
19 **SECTION SEVEN. AMENDING CJY-41-21, SECTION SEVEN, TO EXPAND THE**
20 **ALLOWABLE USES OF NAVAJO NATION FISCAL RECOVERY FUNDS BY**
21 **PROGRAMS AND OFFICES PROVIDING CENTRAL SUPPORT SERVICES AND**
22 **REGULATORY SERVICES**

23 To ensure that the Navajo Nation takes full advantage of all opportunities to expend Navajo
24 Nation Fiscal Recovery Funds on costs deemed FRF eligible under U.S. Treasury rules and
25 guidance, the Navajo Nation hereby amends Section Seven of Resolution No. CJY-41-21
26 as follows:

27 SECTION SEVEN. IMMEDIATE ALLOCATION OF NAVAJO NATION FISCAL
28 RECOVERY FUNDS TO ~~FUND~~ PROGRAMS AND OFFICES PROVIDING
29 CENTRAL SUPPORT SERVICES AND REGULATORY SERVICES

- 1 A. The Navajo Nation hereby immediately allocates ten percent (10%) of all Fiscal
2 Recovery Funds received by the Navajo Nation to fund programs and offices
3 providing central support services and regulatory services costs.
- 4 B. The Office of the President and Vice-President shall be responsible for
5 apportioning ninety percent (90%) of the ten percent (10%) amount amongst
6 Executive Branch programs and offices providing central support services and
7 regulatory services, including, the Office of the President and Vice-President,
8 Office of the Controller, Office of Management and Budget, Department of
9 Justice, Navajo Nation Washington Office, Division of Human Resources,
10 Division of Community Development, and other Divisions and offices
11 providing central support services and/or regulatory services.
- 12 C. The Speaker of the Navajo Nation Council, after consultation with the
13 Naabik'iyati' Committee, shall be responsible for apportioning ten percent
14 (10%) of the ten percent (10%) amount amongst Legislative Branch programs
15 and offices providing central support services, including the Office of
16 Legislative Services, Office of Legislative Counsel, Office of the Speaker, and
17 Navajo Nation Council.
- 18 D. The programs and offices providing ~~receiving NNFRF~~ for central support
19 services and/or regulatory services shall may use their allocated NNFRF such
20 funding for any FRF eligible purpose that the Navajo Nation Department of
21 Justice determines complies with U.S. Treasury rules and guidance, including
22 but not limited to develop the development of the legal, financial,
23 organizational, managerial, ~~administrative~~, regulatory, and reporting
24 framework necessary to support the expeditious completion of NNFRF funded
25 projects and the provision of NNFRF funded services.
- 26 E. The Branch Chief of the program or office providing central support services
27 or regulatory services shall administratively approve the expenditure of
28 allocated NNFRF. The proposed expenditure plans and detailed budgets for the
29 NNFRF ~~funding~~ allocated here for programs and offices providing central
30 support services and regulatory services shall be reviewed by NNDOJ to

determine FRF eligibility and processed through the executive or administrative review process applicable to each Branch and shall not require further legislative action.

- F. NNFRF funding for the offices and programs providing central support services and/or regulatory services shall not be subject to automatic reallocation on December 31, 2024, if NNDOJ determines such funds will meet U.S. Treasury's requirements to be considered as the Nation having incurred an obligation by December 31, 2024 in accordance with U.S. Treasury guidance.

SECTION EIGHT. AMENDING CJY-41-21, SECTION TEN, TO RESCIND EMERGENCY PROCUREMENT AUTHORIZATION

- A. Per U.S. Treasury's 2022 Final Rule, the Navajo Nation must comply with federal procurement rules and guidance, including the Uniform Guidance, which do not allow emergency procurements for the expenditure of Fiscal Recovery Funds.
- B. To ensure that Navajo Nation's use of Fiscal Recovery Funds complies with the federal procurement rules and guidance, the Navajo Nation hereby rescinds Section Ten of Resolution No. CJY-41-21 as follows:

~~SECTION TEN. AMENDING 12 N.N.C. § 334 TO AUTHORIZE EMERGENCY PROCUREMENTS FOR NAVAJO NATION FISCAL RECOVERY FUND EXPENDITURES~~

- ~~A. Until such time as Navajo Nation procurement laws and regulations are amended to specifically support NNFRF procurements, the Navajo Nation hereby amends 12 N.N.C. § 334 as set forth below.~~

~~Title Twelve~~

~~Fiscal Matters~~

~~Chapter 3. Navajo Nation Procurement Act~~

~~Subchapter 1. General Provisions~~

~~*****~~

~~§ 334 Emergency Procurement~~

1 ~~A. Notwithstanding any other provision of law, the Director, Division of~~
2 ~~Finance, Purchasing Department, the head of a purchasing agency, or a~~
3 ~~designee of either officer may make or authorize others to make emergency~~
4 ~~procurement when there exists a threat to public health, welfare, or safety~~
5 ~~under emergency conditions as defined in regulations promulgated by the~~
6 ~~Budget and Finance Committee; provided that such emergency~~
7 ~~procurement shall be made with such competition as is practicable under~~
8 ~~the circumstances. A written determination of emergency shall be made by~~
9 ~~the executive director of the affected division, in concert with the Director,~~
10 ~~Division of Finance, Purchasing Department or authorized designee, and a~~
11 ~~representative of the Attorney General's Office (or the Office of Legislative~~
12 ~~Counsel for emergency procurements by the Legislative Branch). To the~~
13 ~~extent possible, certified entities under the Navajo Nation Business~~
14 ~~Opportunity Act, 5 N.N.C. § 201 et seq., shall receive preference in~~
15 ~~emergency procurement. The written determination and the selection of the~~
16 ~~particular contractor shall be included in the contract file. No oversight~~
17 ~~committee approval shall be required for these contracts.~~

18 ~~B. Notwithstanding any other provision of law, procurements using Navajo~~
19 ~~Nation Fiscal Recovery Funds may be authorized and executed as~~
20 ~~Emergency Procurements at the discretion of the Procuring Party without~~
21 ~~further justification; provided that such emergency procurement shall be~~
22 ~~made with such competition as is practicable under the circumstances. To~~
23 ~~the extent possible, certified entities under the Navajo Nation Business~~
24 ~~Opportunity Act, 5 N.N.C. § 201 et seq., that are able to complete the good~~
25 ~~or service within the Fiscal Recovery Fund's strict deadlines shall receive~~
26 ~~preference in emergency procurement. No oversight committee approval~~
27 ~~shall be required for these contracts.~~

28 *****

29 ~~B. Until such time as the Budget and Finance Committee amends the Navajo~~
30 ~~Nation Procurement Rules and Regulations ("Procurement Regulations")~~

1 ~~adopted by BFD-192-03, procurements using NNFRF funds shall be~~
2 ~~deemed to satisfy the definition of EMERGENCY CONDITION set forth~~
3 ~~at Section VII (B) of the Procurement Regulations without further~~
4 ~~justification; and the written application and concurrence requirements set~~
5 ~~forth at Section VII (C) of the Procurement Regulations shall not apply to~~
6 ~~such procurements.~~

7 ~~C. As set forth in the Navajo Business Opportunity Act, if there are no~~
8 ~~responsive and responsible Priority One or Priority Two vendors responding~~
9 ~~to the Nation's solicitation for NNFRF funded goods, services, or~~
10 ~~construction and construction related services, who are qualified and able to~~
11 ~~meet the requirements of the procurement, including the demonstrated~~
12 ~~ability to meet the ARPA and NNFRF time deadlines, the Procuring Party~~
13 ~~may contract with companies not included on the Business Source List~~
14 ~~maintained by the Business Regulatory Department, as long as such~~
15 ~~companies agree to comply with Navajo Nation laws, regulations, and~~
16 ~~policies, including the Navajo Preference in Employment Act and Navajo~~
17 ~~Business Opportunity Act.~~

18 ~~D. Navajo citizens, Navajo-owned businesses and non-profits, Navajo~~
19 ~~business support organizations, such as the Diné Chamber of Commerce,~~
20 ~~and Navajo Nation-owned enterprises/authorities/corporations shall be a~~
21 ~~provided a meaningful opportunity to comment before amendments are~~
22 ~~made to Navajo Nation procurement laws and regulations.~~

23
24 **SECTION NINE. AMENDING CJN-29-22, SECTION THREE, TO ENSURE THAT**
25 **PROJECT FUNDS INCLUDED IN DELEGATE REGION PROJECT PLANS ARE**
26 **TIMELY OBLIGATED AND EXPENDED**

27 A. Per U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of FRF, Fiscal Recovery
28 Funds generally cannot be reallocated or re-obligated after Treasury's December 31,
29 2024 obligation deadline. Therefore, the Navajo Nation must take all steps necessary
30 to reallocate funding for projects included in an approved Delegate Region Project Plan

1 that are unlikely to be obligated by Treasury's obligation deadline of December 31,
2 2024.

- 3 B. To ensure that all NNFRF projects included in a Delegate Region Project Plan are
4 timely reallocated or re-obligated by December 31, 2024, the Navajo Nation hereby
5 amends CJN-29-22, Section Three, Subsections B, E, G, and K as follows:

6 SECTION THREE. APPROVAL OF THE CHAPTER AND REGIONAL
7 PROJECTS EXPENDITURE PLAN

8 ****

- 9 B. The Navajo Nation hereby approves total funding for the NNFRF Chapter and
10 Chapter Regional Projects Expenditure Plan from the Navajo Nation Fiscal
11 Recovery Fund in the total amount of two hundred eleven million two hundred
12 fifty-six thousand one hundred forty-eight dollars (\$211,256,148) to be divided
13 equally between the twenty-four (24) Delegate Regions in the amount of eight
14 million eight hundred two thousand three hundred forty dollars (\$8,802,340)
15 per Delegate Region, as set forth in Exhibit C, and allocated through Delegate
16 Region Project Plans approved by two-thirds (2/3) vote of the Naabik'iyáti'
17 Committee members in attendance.

18 ****

- 19 E. The Navajo Nation Central Government, specifically the Division of
20 Community Development or other appropriate Navajo Nation Division or
21 Department, shall manage and administer funds and Delegate Region Project
22 Plans on behalf of Non-LGA-Certified Chapters. Such funds could be
23 obligated by the Navajo Nation Central Government through a subrecipient
24 agreement (with an entity other than the Chapter), a services contract, a
25 construction contract, a grant agreement, or other form of financial obligation
26 that is duly executed by December 31, 2024.

- 27 F. The Navajo Nation Central Government may award funding to LGA-Certified
28 Chapters through sub-recipient agreements to implement and manage specific
29 projects, but shall maintain Administrative Oversight over such funding and
30 expenditure plans within Delegate Region Project Plans.

1. LGA-Certified Chapters shall immediately return to the Office of the Controller all Chapter Project Plan funds that remain unobligated and unencumbered as of 5:00 p.m. on September 30, 2024. If the Navajo Nation Central Government and LGA-Certified Chapter do not elect to have a subrecipient agreement, or if a subrecipient agreement is otherwise not viable, the Central Government shall administer the NNFRF on behalf of the LGA-Certified Chapter, and must obligate such funds through a subrecipient agreement (with an entity other than the Chapter), a services contract, a construction contract, a grant agreement, or other form of financial obligation that is duly executed by December 31, 2024.
2. If the Navajo Nation Central Government and the LGA-Certified Chapter elect for the Chapter to administer the NNFRF for an expenditure plan included in an approved Delegate Region Project Plan, a subrecipient agreement must be duly executed by both parties by December 31, 2024. Under U.S. Treasury's 2022 Interim Final Rule, NNFRF allocated to a LGA-Certified Chapter is deemed obligated when a subrecipient agreement is fully executed by Treasury's December 31, 2024 obligation deadline. As the subrecipient, the LGA-Certified Chapter is not required to obligate the subaward funds by Treasury's obligation deadline.
3. The Navajo Nation divisions and departments with administrative oversight over Delegate Region Project Plans shall report to the NNFRF Office on an ongoing basis regarding the status of subrecipient agreements with LGA-Certified Chapters.
4. The NNFRF Office shall provide quarterly reports to the Naabik'iyáti' Committee and shall make recommendations regarding the continuation or rescission and reallocation of such funding for expenditure plans (projects) included in an approved Delegate Region Project Plan.

5. The Naabik'iyáti Committee may rescind and reallocate NNFRF if the Committee determines that a project allocated to a LGA-Certified Chapter under an approved Delegate Region Project Plan is unlikely to have an executed subrecipient agreement, or that the funds are unlikely to be otherwise obligated by December 31, 2024.
6. Under U.S. Treasury's 2023 Interim Final Rule, FRF funds must be fully expended by December 31, 2026, for all FRF-funded projects, with the exception of Surface Transportation Projects and Title 1 Projects funds which must be fully expended by September 30, 2026.
 - a. LGA-Certified Chapters shall immediately return to the Office of the Controller all NNFRF Surface Transportation Project and Title 1 Project funds that remain unexpended as of 5:00 p.m. on June 30, 2026.
 - b. LGA-Certified Chapters shall immediately return to the Office of the Controller all remaining NNFRF Chapter Project Plan funds that remain unexpended as of 5:00 p.m. on September 30, 2026.

G. The projects selected by each Navajo Nation Council delegate shall be compiled into a Delegate Region Projects Plan for their respective Delegate Region and approved by a two-thirds (2/3) vote of the Naabik'iyáti' Committee members in attendance.

1. All NNFRF allocated to a Delegate Region Project Plan must be obligated by the applicable Administrative Oversight entities through a contract, subrecipient agreement, or by other means that satisfy the definition of "obligation" at 31 CFR 35.3, as amended, by December 31, 2024.
2. The Administrative Oversight entities shall report to the NNFRF Office on an ongoing basis, and no less than quarterly, regarding the progress of such expenditure plans and the status of obligation of such funds.
3. The Administrative Oversight entities administering Delegate Region

1 Project Plan expenditures plans shall report to the NNFRF Office
2 quarterly on how they will ensure that funds for each project included
3 in an approved Delegate Region Project Plan will be fully obligated by
4 December 31, 2024.

- 5 4. The NNFRF Office shall provide quarterly reports to the Naabik'íyáti'
6 Committee and shall make recommendations regarding the
7 continuation or rescission and reallocation of NNFRF funding for
8 project(s) included in approved Delegate Region Project Plans.
9 5. The Naabik'íyáti' Committee may rescind and reallocate NNFRF if the
10 Committee determines that a project(s) included in an approved
11 Delegate Region Project Plan is unlikely to be obligated by December
12 31, 2024.

13 *****

14 K. Each Delegate shall submit a comprehensive list of projects, including applicable
15 BFS-31-21 Appendix A and Appendix B, and supporting documents for those
16 projects that have not already received NNDOJ initial eligibility determinations,
17 for their respective Delegate Region, totaling no more than their Delegate Region
18 allocation of \$8,802,340 set forth in Exhibit C, to the NNFRF Office by no later
19 than ~~September~~ June 30, 2024.

- 20 1. If the NNFRF Office has **not** received a comprehensive list of projects
21 totaling \$8,802,340 for a Delegate Region, including Appendix A; or
22 Appendix B and supporting documents for each project, by ~~September~~
23 June 30, 2024; any the unallocated amount for that Delegate Region shall
24 automatically revert to the Navajo Nation Fiscal Recovery Fund. Navajo
25 Nation Council and President of the Navajo Nation action shall not be
26 required for the reversion.

27 *****

1 **SECTION TEN. AMENDING CJN-29-22, SECTION SIX, TO REALLOCATE**
2 **EXCESS HARDSHIP ASSISTANCE EXPENDITURE PLAN FUNDS, TO THE**
3 **INDIRECT COST RECOVERY RESERVE**

- 4 A. Under U.S. Treasury rules and guidance, Fiscal Recovery Funds must be obligated
5 by December 31, 2024 through a contract or subrecipient agreement; tribal
6 resolutions do not obligate funds under U.S. Treasury rules and guidance.
- 7 B. Per U.S. Treasury rules and guidance, recipients of Fiscal Recovery Funds cash
8 assistance must demonstrate need for the assistance.
- 9 C. Given U.S. Treasury restrictions on FRF cash assistance and the requirement to have
10 FRF obligated by December 31, 2024, the Navajo Nation Council determines that it
11 is more prudent for COVID-19-related cash assistance to be allocated from Navajo
12 Nation funds as opposed to NNFRF and amends Section Six of CJN-29 accordingly
13 as follows:

14 **SECTION SIX. APPROVAL OF ALLOCATION OF ADDITIONAL EXCESS**
15 **FUNDS TO THE HARDSHIP ASSISTANCE EXPENDITURE PLAN FUNDS TO**
16 **THE INDIRECT COST RECOVERY RESERVE**

- 17 A. Through Council Resolution CD-62-21, the Navajo Nation approved and
18 adopted the Navajo Nation Fiscal Recovery Fund Hardship Assistance
19 Expenditure Plan set forth in Exhibit H, which included an allocation of five
20 hundred fifty-seven million dollars (\$557,000,000).
- 21 B. The Navajo Nation hereby approves an allocation of additional funding for the
22 NNFRF Hardship Assistance Expenditure Plan from the Navajo Nation Fiscal
23 Recovery Fund in the total amount of one hundred twenty million dollars
24 (\$120,000,000) to the Office of the Controller, for Household Assistance – Cash
25 Transfers (Expenditure Category 2.3), as set forth in Exhibit H-1, with
26 administrative oversight by the Office of the President and Vice President and
27 legislative oversight by the Budget and Finance Committee.
- 28 C. Any NNFRF not used to fulfill CD-62-21's Hardship Assistance Expenditure
29 Plan by September 30, 2024, shall be automatically reallocated to the Indirect
30 Cost Recovery Reserve without the need for legislative approval.

1
2 **SECTION ELEVEN. AMENDING CJN-29-22, SECTION TWELVE, TO REFINE**
3 **PROCESSES FOR MODIFICATION OF ENACTED NAVAJO NATION FISCAL**
4 **RECOVERY FUND EXPENDITURE PLANS**

5 A. Per U.S. Treasury's 11/09/23 Interim Final Rule on Obligations of Fiscal Recovery
6 Funds, such funds generally cannot be reallocated or re-obligated after Treasury's
7 December 31, 2024, obligation deadline. Therefore, the Navajo Nation must take all
8 steps necessary to reallocate funding for projects included in an approved Delegate
9 Region Project Plan that are unlikely to be obligated by Treasury's obligation deadline
10 of December 31, 2024.

11 B. To ensure that all NNFRF are timely reallocated or re-obligated, when necessary, by
12 December 31, 2024, the Navajo Nation hereby amends CJN-29-22, Section Twelve as
13 follows:

14 **SECTION TWELVE. ADMINISTRATION OF NAVAJO NATION FISCAL**
15 **RECOVERY FUND EXPENDITURE PLANS**

16 A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through
17 an immediate allocation under Resolution CJY-41-21 or subsequently approved
18 NNFRF Expenditure Plan, shall comply with all Navajo Nation laws, policies,
19 regulations, rules, and procedures that NNDOJ deems applicable to NNFRF,
20 specifically including, but not limited to, those governing the NNFRF and the
21 expenditure of such funds, and any additional terms set forth in a grant
22 agreement, sub-recipient agreement, or similar agreement.

23 1. Notwithstanding the above, the Navajo Nation Budget Instruction
24 Manual ("BIM") shall not apply in its entirety to the obligation or
25 expenditure of NNFRF.

26 2. Instead, the Office of Management and Budget, in consultation with
27 the Office of the Controller, NNFRF Office, and NNDOJ, shall
28 administratively:

- i. determine which BIM provisions, as written or modified, are applicable to the expeditious obligation and expenditure of NNFRF;
- ii. determine if additional provisions are necessary for the expeditious obligation and expenditure of NNFRF; and
- iii. publish such determination(s) in one comprehensive document on the Office of Management and Budget, NNFRF Office, and Division of Community Development websites.

B. Fiscal Recovery Fund costs must be incurred by U.S. Treasury's December 31, 2024, obligation deadline, meaning that the Navajo Nation must obligate NNFRF funds by that date. Treasury guidance provides that "incurred" shall have the same meaning given to "financial obligation" under the Uniform Guidance at 2 CFR 200.1: "Financial obligations, when referencing a recipient's or sub-recipient's use of funds under a Federal award, means orders placed for property and services, contracts and sub-awards made, and similar transactions that require payment." Under U.S. Treasury guidance, Fiscal Recovery Funds are also obligated when a subrecipient agreement, contract, or grant agreement is fully executed.

- ~~1. For internal Navajo Nation purposes, the terms "obligated" and "encumbered" are defined in Resolution BFS 31-21, Section Three on page 3 of Exhibits 1 through 5. BFS 31-21 provides that, "Obligated" means that an order has been placed for the delivery of goods or property, or the performance of services, that will be paid for with Fiscal Recovery Funds; that a contract or subcontract has been executed promising payment with Fiscal Recovery Funds; or that a similar transaction has occurred requiring payment of Fiscal Recovery Funds. For internal Navajo Nation purposes, funds are obligated or encumbered upon completion of OOC's review and approval of contracts and~~

1 ~~purchase requisitions, and OOC's recording of an encumbrance in the~~
2 ~~FMIS, not upon execution of a contract."~~ 2. Any NNFRF funds not
3 obligated and encumbered by September 30, 2024 ~~the end of the third~~
4 ~~quarter of Fiscal Year 2024~~ shall be reported to the Naabik'iyáti'
5 Committee and are subject to reversion to the NNFRF or reallocation to
6 another enacted NNFRF Expenditure Plan by resolution of the
7 Naabik'iyáti' Committee.

8 2. Within thirty (30) days following the end of each quarter, the NNFRF
9 Office, in collaboration with the Office of the Controller, shall make
10 recommendations to the Naabik'iyáti' Committee of the Navajo Nation
11 Council regarding each enacted NNFRF Expenditure Plan and each
12 enacted Delegate Region Project Plan. Recommendations may include,
13 but are not limited to the continuation of funding, modification of the
14 expenditure plan(s), and/or the reallocation of funds from one enacted
15 expenditure plan to another.

16 3. The Naabik'iyáti' Committee may also request oral reports from the
17 NNFRF Office or any Administrative Oversight entity, funding
18 recipient, and/or subrecipient; and shall have the authority to rescind
19 funding previously allocated to an Expenditure Plan or Delegate Region
20 Project Plan and to reallocate funding when it determines that an
21 Expenditure Plan or Delegate Region Project Plan is not on target to
22 timely obligate and/or expend its allocated funds and complete its
23 assigned projects.

24 4. The Naabik'iyáti Committee shall determine by resolution whether
25 rescinded funds will either revert to the NNFRF or will be reallocated
26 to different NNFRF expenditure plans. Rescinded funds shall only be
27 used for expenditures that the Department of Justice determines are
28 FRF-eligible and allowable under U.S. Treasury rules and guidance.

29 5. Notwithstanding the above, rescinded NNFRF funds shall be
30 automatically reallocated, without the need for legislative action, to the

1 NNFRF IDC Recovery Reserve and Personnel-Operating Costs
2 Recovery Reserve until the IDC Recovery and Personnel-Operating
3 Costs Recovery projections are satisfied. Once the IDC Recovery and
4 Personnel-Operating Costs Recovery projections are satisfied, any
5 rescinded or reverted NNFRF Funds remaining will then be available
6 for reallocation to other enacted NNFRF Expenditure Plans by
7 resolution of the Naabik'iyáti' Committee.

8 C. Projects and/or services funded with Navajo Nation Fiscal Recovery Funds
9 must be completed and all All NNFRF funds must be fully expended spent by
10 June 30 December 31, 2026, unless an earlier date is determined through
11 resolution of the Navajo Nation Council.

12 D. After approval pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§
13 1005(C)(10), (11), and (12), Navajo Nation Fiscal Recovery Fund Expenditure
14 Plan funds, or Delegate Region Project Plan funds approved by a two-thirds
15 (2/3) vote of the Naabik'iyáti' Committee members in attendance, shall be
16 available for use by a funding recipient that is a branch, division, department,
17 or other unit of the Navajo Nation central government as soon as a detailed
18 budget has been administratively approved and the Office of Management and
19 Budget or Office of the Controller has entered such budget into the Financial
20 Management Information System (FMIS).

21 1. Procurement solicitations, such as Requests for Proposal or Requests for
22 Qualifications, can be issued prior to a budget being entered into the
23 FMIS and before a Business Unit Number has been issued.

24 E. The Office of the Controller shall release Navajo Nation Fiscal Recovery Fund
25 Expenditure Plan and Delegate Region Project Plan funds to a funding recipient
26 that is external to the Navajo Nation central government, including LGA-
27 Certified chapters, Navajo Nation owned entities, and other external entities,
28 pursuant to the fund distribution schedule recommended by the Navajo Nation
29 government entity with administrative oversight and approved by the Office of
30 the Controller and included in a fully executed sub-recipient, or similar

1 agreement deemed legally sufficient by the Navajo Nation Department of
2 Justice.

- 3 1. Subrecipient agreements can be negotiated prior to a budget being
4 entered into the FMIS and before a Business Unit Number has been
5 issued.

6 F. Awarded Navajo Nation Fiscal Recovery Funds shall only be obligated and
7 expended on projects and/or services, including need-based projects and
8 services, that were included as an immediate allocation under Resolution CJY-
9 41-21 or are included in a NNFRF Expenditure Plan approved and adopted by
10 a Navajo Nation Council Resolution enacted pursuant to 2 N.N.C. § 16(A)(17)
11 and 2 N.N.C. §§ 1005 (C)(10), (11), and (12) or a Delegate Region Project Plan
12 approved by a two-thirds (2/3) vote of the Naabik'iyáti' Committee members in
13 attendance.

14 G. ~~All proposed modifications to an approved NNFRF Expenditure Plan or an~~
15 ~~approved NNFRF Expenditure Plan budget shall comply with section 8 of~~
16 ~~Exhibits 1 through 5 of Resolution BFS 31-21. 1. Any increase in funding for~~
17 ~~an approved~~ enacted NNFRF Expenditure Plan shall require approval by
18 Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164(A)(17)
19 and 2 N.N.C. §§ 1005(C)(10), (11), and (12), ~~unless such increase in funding~~
20 ~~is due to an administratively approved budget transfer from the Construction~~
21 ~~Contingencies Expenditure Plan. unless such increase in funding is due to the~~
22 transfer of funds from another enacted NNFRF Expenditure Plan and the
23 transfer (modification) meets the criteria for administrative approval or
24 legislative approval by a standing committee of the Navajo Nation Council.

25 i. ~~Proposed modifications of Expenditure Plans shall be submitted~~
26 ~~to the Navajo Nation Department of Justice ("NNDOJ") for an~~
27 ~~eligibility determination review to ensure the proposed~~
28 ~~modification will be an eligible use of FRF.~~

29 ii. ~~Modifications that change the purpose and intent of the~~
30 ~~Expenditure Plan or projects and services within the approved~~

1 ~~Expenditure Plan or that substantially change the scope of work~~
2 ~~of the Expenditure Plan shall require approval by the Navajo~~
3 ~~Nation Council.~~

4 ~~iii. As set forth in Resolution BFS 31-21, NNDOJ shall make the~~
5 ~~determination whether Navajo Nation Council approval of the~~
6 ~~modification is required.~~

7 ~~iv. After NNDOJ has reviewed the request for a modification of an~~
8 ~~approved Expenditure Plan and determined that legislative~~
9 ~~approval is not needed, or after the modification is approved by~~
10 ~~a Navajo Nation Council resolution enacted pursuant to 2~~
11 ~~N.N.C. § 164(A)(17) and 2 N.N.C. §§ 100(C)(10), (11), and~~
12 ~~(12), the Administrative Oversight entity acting on behalf of the~~
13 ~~Funding Recipient shall submit a budget revision request to~~
14 ~~Office of Management & Budget (“OMB”), if needed. The~~
15 ~~Budget Instruction Manual provisions regarding budget revision~~
16 ~~requests shall apply.~~

17 H. ~~Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, may~~
18 ~~be administratively moved between projects and/or services included within the~~
19 ~~same Expenditure Plan, as long as such projects or services share the same~~
20 ~~Treasury Expenditure Category for reporting purposes. NNDOJ shall verify that~~
21 ~~the projects and/or services share the same Expenditure Category before any~~
22 ~~NNFRF funding is moved between projects and/or services. Except for those~~
23 ~~modifications set forth in subsection G above, modifications to duly enacted~~
24 ~~NNFRF “Infrastructure Expenditure Plan(s)” can be approved administratively~~
25 ~~or through legislative action by a standing committee of the Navajo Nation~~
26 ~~Council.~~

27 1. As used herein, “Infrastructure Expenditure Plan(s)” shall refer to
28 and include those NNFRF expenditure plans involving planning,
29 design, and/or construction of: water projects (source, storage,
30 distribution, and transmission projects); waste water projects;

1 broadband projects; road/transportation projects; electricity and
2 connecting homes to electricity projects; housing manufacturing
3 facilities projects; home building projects (regardless of
4 construction method); home renovation projects; house wiring
5 projects; bathroom additions and bathroom renovations projects;
6 septic tank installation and cleaning projects; leechfield and sewer
7 lagoon projects; residential solar projects; construction and
8 renovation of government buildings; and similar types of projects.

9 2. Modification(s) to an enacted Infrastructure Expenditure Plan that
10 do not move funds between Expenditure Plans can be approved
11 administratively by the Division Director of the Administrative
12 Oversight entity and the Director of the FRF Office provided that
13 the following criteria are met:

- 14 i. the modification does not change the purpose and intent of
15 the enacted expenditure plan(s);
- 16 ii. the modification would not necessitate a change in the
17 expenditure category of the expenditure plan(s);
- 18 iii. NNDOJ reviews and determines the proposed modified use
19 of funding is FRF-eligible, and that the proposed
20 modifications are eligible for administrative approval; and
- 21 iv. the Division Director of the Administrative Oversight entity
22 and the Director of the FRF Office concur that the
23 modification would facilitate, rather than hinder, the timely
24 obligation or NNFRF by the applicable deadlines.

25 3. Modification(s) of less than twenty-five million dollars (\$25,000,000)
26 to enacted Infrastructure Expenditure Plan(s) can be approved
27 administratively by the Division Director of the Administrative
28 Oversight entity, the Director of the NNFRF Office, and the Navajo
29 Nation President collectively provided that the following criteria are
30 met:

- i. the modification moves funding between two or more enacted expenditure plans;
 - ii. the amount of funding to be moved is less than twenty-five million dollars (\$25,000,000);
 - iii. the expenditure plans involved have the same funding purpose (e.g. both expenditure plans relate to water infrastructure even if different expenditure categories) and both have the same funding recipient and same Administrative Oversight entity;
 - iv. NNDOJ reviews and determines the modified use of funding is FRF-eligible, and that the proposed modifications are eligible for administrative approval; and
 - v. the Division Director(s) of the Administrative Oversight entity(ies), the Director of the FRF Office, and the Navajo Nation President concur that the modification would facilitate, rather than hinder, the timely obligation or NNFRF by the applicable deadlines.
4. Modification(s) of twenty-five million dollars (\$25,000,000) to seventy-five million dollars (\$75,000,000) to an enacted Infrastructure Expenditure Plan(s) can be approved through legislative action of the Resources and Development Committee of the Navajo Nation Council provided that the following criteria are met:
 - i. NNDOJ determines that the modification(s) are not eligible for administrative approval;
 - ii. the modification moves funding between two or more enacted expenditure plans, regardless of whether the expenditure plans have the same purpose, expenditure category, funding recipient, and/or Administrative Oversight entity;

- 1 iii. the amount of funding to be moved is between twenty-five
2 million dollars (\$25,000,000) and seventy-five million
3 dollars (\$75,000,000); and
4 iv. NNDOJ reviews and determines the proposed modified use
5 of funding is FRF-eligible, and that the proposed
6 modifications are eligible for Resources and Development
7 Committee approval.
8 v. the Resource and Development Committee determines that
9 the modification would facilitate, rather than hinder, the
10 timely obligation or NNFRF by the applicable deadlines.

11 5. Modification(s) of more than seventy-five million dollars (\$75,000,000)
12 to an enacted Infrastructure Expenditure Plan(s) or modifications that
13 are otherwise ineligible for administrative approval or approval by the
14 Resources and Development Committee shall require approval by the
15 Naabik'iyáti' Committee of the Navajo Nation Council.

16 I. ~~Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, cannot~~
17 ~~be moved between NNFRF Expenditure Plans without approval by a Navajo~~
18 ~~Nation Council Resolution enacted pursuant to 2 N.N.C. § 164(A)(17) and 2~~
19 ~~N.N.C. §§ 1005(C)(10), (11), and (12), unless such movement of funds is due~~
20 ~~to an administratively approved budget transfer from the Construction~~
21 ~~Contingencies Expenditure Plan to other NNFRF expenditure plans~~
22 ~~experiencing cost overruns due to construction contingencies. Except for those~~
23 modifications set forth in subsection G above, modifications to duly enacted
24 NNFRF "Non-Infrastructure Expenditure Plan(s)" can be approved
25 administratively or through legislative action by a standing committee of the
26 Navajo Nation Council.

- 27 a. As used herein, the term "Non-Infrastructure Expenditure Plans" shall
28 refer to and include those NNFRF expenditure plans that do not qualify
29 as Infrastructure Expenditure Plans as set forth above, such as those
30 non-construction programs/projects involving: Hardship Assistance and

1 other forms of cash assistance; grants and other assistance to businesses;
2 economic development projects; costs of delivery of government
3 services; reimbursement of Navajo Nation funds for FRF-eligible
4 expenditures; central support services and regulatory offices costs;
5 indirect cost recovery; judicial, peacemaking, and other justice-related
6 programs; social services programs; educational programs; healthcare
7 and public health programs/projects; public safety and law enforcement
8 programs/projects; rural addressing projects; and similar types of
9 programs/projects.

10 a. Modification(s) to an enacted Non-Infrastructure Expenditure
11 Plan can be approved administratively by the Division Director
12 of the Administrative Oversight entity and the Director of the
13 FRF Office provided that the following criteria are met:

- 14 i. the modification does not involve an increase in funding
15 or movement of funding between two or more
16 expenditure plans;
17 ii. the modification does not change the purpose and intent
18 of the enacted expenditure plan(s);
19 iii. the modification would not necessitate a change in the
20 expenditure category of the expenditure plan(s); and
21 iv. NNDOJ reviews and determines the proposed modified
22 use of funding is FRF-eligible, and that the proposed
23 modifications are eligible for administrative approval;
24 and
25 v. the Division Director of the Administrative Oversight
26 entity and the Director of the FRF Office concur that the
27 modification would facilitate, rather than hinder, the
28 timely obligation or NNFRF by the applicable deadlines.

29 b. Modification(s) of less fifteen million dollars (\$15,000,000) to
30 an enacted Non-Infrastructure Expenditure Plan(s) can be

1 approved administratively by the Division Director of the
2 Administrative Oversight entity, the Director of the NNFRF
3 Office, and the Navajo Nation President collectively provided
4 that the following criteria are met:

- 5 i. the modification moves funding between two or more
6 enacted expenditure plans;
- 7 ii. the amount of funding to be moved is less than fifteen
8 million dollars (\$15,000,000);
- 9 iii. the expenditure plans involved have the same funding
10 purpose and same Administrative Oversight entities;
- 11 iv. NNDOJ reviews and determines the proposed modified
12 use of funding is FRF-eligible, and that the proposed
13 modifications are eligible for administrative approval;
14 and
- 15 v. the Division Director of the Administrative Oversight
16 entity, the Director of the FRF Office, and the Navajo
17 Nation President concur that the modification would
18 facilitate, rather than hinder, the timely obligation or
19 NNFRF by the applicable deadlines.

20 c. Modification(s) of fifteen million dollars (\$15,000,000) to fifty
21 million dollars (\$50,000,000) to an enacted Non-Infrastructure
22 Expenditure Plan(s) can be approved through legislative action
23 of the Standing Committee of the Navajo Nation Council having
24 legislative oversight, provided that the following criteria are
25 met:

- 26 i. NNDOJ determines that the modification(s) are not
27 eligible for administrative approval;
- 28 ii. the modification moves funding between two or more
29 enacted expenditure plans, regardless of whether the
30 expenditure plans have the same purpose, expenditure

- 1 category, funding recipient, and/or Administrative
2 Oversight entity;
- 3 iii. the amount of funding to be moved is between fifteen
4 million dollars (\$15,000,000) and fifty million dollars
5 (\$50,000,000);
- 6 iv. NNDOJ reviews and determines the proposed modified
7 use of funding is FRF-eligible, and that the proposed
8 modifications are eligible for Oversight Committee
9 approval; and;
- 10 v. the Standing Committee with legislative oversight
11 determines that the modification would facilitate, rather
12 than hinder, the timely obligation or NNFRF by the
13 applicable deadlines.
- 14 d. Modification(s) of more than fifty million dollars (\$50,000,000)
15 to enacted Non-Infrastructure Expenditure Plan(s) can be
16 approved through legislative action of the Naabik'iyáti'
17 Committee of the Navajo Nation Council provided that the
18 following criteria are met:
- 19 i. NNDOJ determines that the modification(s) are not
20 eligible for administrative approval or for approval by a
21 Standing Committee with legislative oversight other
22 than the Naabik'iyáti' Committee;
- 23 ii. the modification moves funding between two or more
24 enacted expenditure plans, regardless of whether the
25 expenditure plans have the same purpose, expenditure
26 category, funding recipient, and/or Administrative
27 Oversight entity;
- 28 iii. the amount of funding to be moved is more than fifty
29 million dollars (\$50,000,000);
30

- iv. NNDOJ reviews and determines the proposed modified use of funding is FRF-eligible, and that the proposed modifications are eligible for Naabik'íyáti' Committee approval; and
- v. the Naabik'íyáti' Committee determines that the modification would facilitate, rather than hinder, the timely obligation or NNFRF by the applicable deadlines.

J. ~~Approved Expenditure Plans for need-based projects and services, such as Bathroom Addition or Home Electricity Connection projects, may be administratively modified without Navajo Nation Council action as long as the total funding awarded for the Expenditure Plan is not increased and the new project or service is within the same Expenditure Category.~~ Modifications to chapter or regional project(s) included on a duly enacted Delegate Region Projects Plan, regardless of LGA-certified chapter status, may be approved either administratively or shall require legislative approval by the Resources and Development Committee or Naabik'íyáti' Committee as set forth below:

1. Adding a chapter or regional project to a Delegate Region Project Plan shall require Naabik'íyáti' Committee approval by a two-thirds (2/3) vote of those Committee members in attendance. Chapter or regional projects cannot be added to a Delegate Region Project Plan after June 30, 2024.
2. Modifying a chapter or regional project that is already included in an enacted Delegate Region Projects Plan shall be initiated as follows:
 - a. The Council Delegate for the respective Delegate Region Project Plan shall submit a memo to the assigned Administrative Oversight entity and NNFRF Office explaining the requested modification. The memo shall also include a revised BFS-31-21 Appendix A expenditure plan, updated budget forms, and any supporting documents that provide detailed information about

1 the desired modification(s). A chapter resolution shall not be
2 required.

3 b. The Administrative Oversight entity or NNFRF Office shall then
4 submit the modification request memo to NNDOJ who shall
5 review the proposed modification to determine if the proposed
6 expenditure(s), as modified, is FRF-eligible.

7 c. Modification request memos, including the revised Appendix A,
8 updated budgets, and other documents supporting the proposed
9 modification(s), shall be submitted to the respective
10 Administrative Oversight entity and the NNFRF Office no later
11 than June 30, 2024. There shall be no modifications to projects
12 included on a Delegate Region Project Plan after September 30,
13 2024.

14 4. A modification to a chapter or regional project included on an approved
15 Delegate Region Project Plan may be approved administratively by the
16 Division Director of the Administrative Oversight entity(ies) and the
17 Director of the NNFRF Office, provided that the following criteria are
18 met:

19 a. the modification does not involve an increase in funding to the
20 Delegate Region Project Plan;

21 b. if the modification involves the movement of funding between
22 two or more project(s), the projects must pertain to the same
23 Chapter, and the amount of funding to be moved must be less
24 than five million dollars (\$5,000,000); or

25 c. if the modification involves the movement of funding from an
26 approved project(s) to an enacted need-based or equal
27 distribution NNFRF Expenditure Plan, e.g., the Bathroom
28 Additions and Renovations Expenditure Plan, procedures
29 developed by the Division of Community Development for such
30 change(s) are complied with; and

- d. there is no change to the original purpose and intent of the approved project(s);
- e. the modification would not change the expenditure category of the original project(s);
- f. NNDOJ has reviewed the proposed modification memo, revised Appendix A, updated budgets and other documents supporting the proposed modification and determined that all costs for the project(s), as modified, will be FRF-eligible;
- g. the modification would facilitate, rather than hinder, the timely obligation and expenditure of NNFRF by the applicable deadlines; and
- h. the Director of the Administrative Oversight entity and Director of the NNFRF Office concur that the modification can be approved administratively.

5. A modification to a chapter or regional project included in an approved Delegate Region Project Plan that does not meet the criteria for administrative approval set forth above, may be approved by resolution of the Resources and Development Committee, provided that the following criteria are met:

- a. the proposed modification(s) did not qualify for administrative approval;
- b. the proposed modification(s) involves movement of funding from one approved project(s) to another to another project(s) pertaining to the same chapter in an amount exceeding five million dollars (\$5,000,000); or
- c. the proposed modification involves movement of funds to and from approved projects of different chapters in the Delegate Region Project Plan; and
- d. NNDOJ has reviewed the proposed modification memo, revised Appendix A, updated budgets, and other documents supporting

1 the proposed modification, and determined that all costs for the
2 project(s), as modified, will be FRF-eligible;

3 e. the modification would facilitate, rather than hinder, the timely
4 obligation and expenditure of NNFRF by the applicable
5 deadlines;

6 f. the Director(s) of the Administrative Oversight entity(ies) and
7 Director of the NNFRF Office concur that the modification
8 cannot be approved administratively and that approval by the
9 Resources and Development Committee is necessary; and

10 g. the Resources and Development Committee approves the
11 modification by September 30, 2024.

12 6. A modification to a chapter or regional project included in an enacted
13 Delegate Region Project Plan that does not meet the criteria for
14 administrative approval set forth above or the criteria for Resources and
15 Development Committee approval set forth above, shall require
16 Naabik'iyáti' Committee approval by a two-thirds (2/3) vote of those
17 Committee members in attendance.

18 ~~K. To add projects or services to an approved Expenditure Plan when such projects~~
19 ~~and/or services are not need-based projects or services, shall require a NNDOJ~~
20 ~~initial eligibility determination pursuant to Resolution BFS-31-21 and the addition~~
21 ~~must be approved through resolution by the Standing Committee(s) having~~
22 ~~oversight over the Expenditure Plan and the Budget and Finance Committee.~~

23 a. ~~If the new project and/or service increases the total funding awarded for~~
24 ~~the Expenditure Plan or does not share the same Expenditure Category~~
25 ~~as the Expenditure Plan, Resolution BFS-31-21 must be fully complied~~
26 ~~with and the addition can only be added through Navajo Nation Council~~
27 ~~resolution enacted pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§~~
28 ~~1005(C)(10), (11), and (12).~~

29 ~~L. The Emergency Procurement provisions set forth in Resolution CJY-41-21,~~
30 ~~Section Ten, shall apply to all NNFRF Expenditure Plans enacted herein, as~~

1 well as to the federal American Rescue Plan Act (“ARPA”) and all Fiscal
2 Recovery Fund procurements by the Navajo Nation, including its LGA-
3 Certified Chapters, and Navajo Nation-owned entities.

4 K. M. The Office of the Auditor General’s Plan of Operation at 12 N.N.C. § 9
5 provides for withholding certain funds from sanctioned chapters, divisions, and
6 programs. Under 12 N.N.C. § 9(B), following the Budget and Finance
7 Committee’s approval of sanctions, OOC shall cause 10% of “monies payable
8 from any Governmental Fund of the Navajo Nation as defined at 12 N.N.C.
9 section 810” of the Appropriations Act. The Navajo Nation hereby determines
10 that Navajo Nation Fiscal Recovery Funds are not a “Governmental Fund” for
11 purposes of sanctions, and therefore direct allocations of NNFRF to sanctioned
12 chapters, divisions, and programs are not subject to withholding.

13 L.N. All entities receiving Navajo Nation Fiscal Recovery Funds shall follow and
14 apply Generally Accepted Accounting Principles (GAAP), as established by the
15 Governmental Accounting Standards Board (GASB) for governmental entities
16 and by the Financial Accounting Standards Board (FASB) for public and
17 private companies and non-profits, in reporting, recording, and accounting for
18 such Funds.

19 M.O. Fraud, misuse of funds, violation of applicable Navajo Nation or federal laws
20 and regulations, non-compliance with FRF agreements governing grants or sub-
21 awards, and false statements or claims by any individual or entity receiving or
22 administering Navajo Nation Fiscal Recovery Funds may result in
23 administrative, civil, or criminal sanctions and penalties, debarment and
24 suspension, ineligibility for future Navajo Nation awards or business
25 opportunities, and the Navajo Nation may pursue any other legal action or
26 remedy available by law.

27
28 **SECTION TWELVE. AMENDING CJN-29-22, SECTION THIRTEEN, TO**
29 **RESCIND THE CONSTRUCTION CONTINGENCIES EXPENDITURE PLAN**
30

- 1 A. Per U.S. Treasury's 11/09/23 Interim Final Rule on Obligation of Fiscal Recovery
2 Funds generally cannot be reallocated or re-obligated after December 31, 2024.
3 Therefore, contract change-orders increasing the contract amount are **not** allowed after
4 December 31, 2024.
- 5 B. To ensure that all Navajo Nation Fiscal Recovery Funds are properly reallocated or re-
6 obligated by December 31, 2024, the Navajo Nation hereby rescinds CJN-29-22,
7 Section Thirteen, as follows:

8 ~~SECTION THIRTEEN. APPROVING FUTURE ALLOCATION OF~~
9 ~~UNALLOCATED NAVAJO NATION FISCAL RECOVERY FUNDS TO THE~~
10 ~~CONSTRUCTION CONTINGENCIES EXPENDITURE PLAN~~

11 ~~A. The Navajo Nation hereby approves and adopts the Navajo Nation Fiscal~~
12 ~~Recovery Fund Construction Contingencies Expenditure Plan set forth in~~
13 ~~Exhibit N.~~

14 ~~B. The Navajo Nation hereby approves total funding for the NNFRF~~
15 ~~Construction Contingencies Expenditure Plan from the Navajo Nation~~
16 ~~Fiscal Recovery Fund in the total amount of five hundred dollars (\$500) to~~
17 ~~establish a contingency fund for NNFRF construction projects:~~

- 18 ~~1. Five hundred dollars (\$500) to the Fiscal Recovery Fund Office for the~~
19 ~~Construction Contingencies Expenditure Plan, as Revenue~~
20 ~~Replacement: Provision of Government Services (Expenditure~~
21 ~~Category 6.1), as set forth in Exhibit N, with administrative oversight~~
22 ~~by the Office of the President and Vice President and legislative~~
23 ~~oversight by the Resources and Development Committee.~~

24 ~~C. The purpose of the NNFRF Construction Contingencies Expenditure Plan~~
25 ~~is to use available, i.e., unallocated, unencumbered, cost savings, etc., funds~~
26 ~~from other NNFRF expenditure plans to fund the costs of construction~~
27 ~~contingencies on NNFRF funded construction projects.~~

28 ~~D. Additional funds may be needed in the future for construction contingencies~~
29 ~~related to the inflationary costs of labor and building materials. The Navajo~~
30 ~~Nation may determine it is necessary and appropriate to allocate Navajo~~

1 Nation funds from the Sihasin Fund or the General Fund to pay the costs of
2 construction contingencies on NNFRF-funded construction projects.

3 ~~E. Notwithstanding procedures for budget transfers in the Budget Instructions~~
4 ~~Manual and the modification process established in BFC 31-21, the transfer~~
5 ~~of funds from the NNFRF Construction Contingencies Expenditure Plan~~
6 ~~business unit to other NNFRF expenditure plans business units shall be~~
7 ~~handled administratively and shall not require a resolution of the Navajo~~
8 ~~Nation Council or a Standing Committee.~~

9 ~~F. The Office of the President and Vice President, NNFRF Office, Office of~~
10 ~~Management and Budget, and Office of the Controller, with advice from the~~
11 ~~Department of Justice, shall develop a streamlined administrative process~~
12 ~~for approving requests for funding from the NNFRF Construction~~
13 ~~Contingencies Expenditure Plan, and to process budget transfers.~~

14 ~~G. All NNFRF funds that have not been allocated to an NNFRF Expenditure~~
15 ~~Plan through a Navajo Nation Council Resolution enacted pursuant to~~
16 ~~Resolution CJY 41-21 by the end of the second quarter of Fiscal Year 2024~~
17 ~~may be allocated to the NNFRF Construction Contingencies Expenditure~~
18 ~~Plan through Navajo Nation Council Resolution enacted pursuant to 2~~
19 ~~N.N.C. § 164(A)(17) and 2 N.N.C. §§ 1005(C)(10), (11), and (12).~~

20 ~~H. All NNFRF funds that have been allocated to an NNFRF expenditure plan~~
21 ~~through a Navajo Nation Council Resolution enacted pursuant to Resolution~~
22 ~~CJY 41-21, but that have not been obligated and encumbered by 5:00 p.m.~~
23 ~~on June 30, 2024, shall automatically revert to the NNFRF and shall be~~
24 ~~reallocated to the NNFRF Construction Contingencies Expenditure Plan or~~
25 ~~other NNFRF expenditure plans through Navajo Nation Council Resolution~~
26 ~~enacted pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§ 1005(C)(10),~~
27 ~~(11), and (12).~~

28 ~~I. All obligated and encumbered NNFRF funds that have not been expended~~
29 ~~by the Navajo Nation and its sub-recipients by 5:00 p.m. on June 30, 2026,~~
30 ~~shall automatically revert to the NNFRF and shall be reallocated to the~~

1 ~~NNFRF Construction Contingencies Expenditure Plan or other NNFRF~~
2 ~~expenditure plans through Navajo Nation Council Resolution enacted~~
3 ~~pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§ 1005(C)(10), (11), and~~
4 ~~(12).~~

5 ~~J. Funding allocated to the Chapter Assistance Expenditure Plan that is not~~
6 ~~obligated and encumbered by DCD and/or the LGA-Certified Chapters by~~
7 ~~November 20, 2024 shall be automatically reallocated to the Construction~~
8 ~~Contingencies Expenditure Plan. Such reallocation shall not require a~~
9 ~~resolution by the Navajo Nation Council enacted pursuant to 2 N.N.C. §~~
10 ~~164(A)(17) and 2 N.N.C. §§ 1005(C)(10), (11), and (12).~~

11 ~~K. Funding allocated to the Chapter Assistance Expenditure Plan that is not~~
12 ~~expended by DCD and/or the LGA-Certified Chapters by November 20,~~
13 ~~2026 shall be automatically reallocated to the Construction Contingencies~~
14 ~~Expenditure Plan and such reallocation shall not require a resolution by the~~
15 ~~Navajo Nation Council enacted pursuant to 2 N.N.C. § 164(A)(17) and 2~~
16 ~~N.N.C. §§ 1005(C)(10), (11), and (12).~~

17 ~~L. The Division of Community Development, sub-recipient LGA-Certified~~
18 ~~Chapters, the Office of the Controller, and the Office of Management and~~
19 ~~Budget shall cooperate to ensure that such funds from the Chapter~~
20 ~~Assistance Expenditure Plan are automatically reallocated to the~~
21 ~~Construction Contingencies Expenditure Plan.~~

22 ~~M. The requirement in CJY-41-21, Section Three (F), to establish a contingency~~
23 ~~reserve for NNFRF construction projects shall first be satisfied by the~~
24 ~~Construction Contingencies Expenditure Plan. If a contingency(s) cannot~~
25 ~~be funded through the Construction Contingencies Expenditure Plan, the~~
26 ~~contingency(s) shall be implemented on a case-by-case basis through~~
27 ~~resolution(s) approved by the Navajo Nation Council and enacted pursuant~~
28 ~~to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C)(10), (11), and (12).~~

1 **SECTION FOURTEEN. AMENDING CJN-29-22, SECTION SIXTEEN, TO REFINE**
2 **THE REPORTING OF NAVAJO NATION FISCAL RECOVERY FUNDS**
3 **OBLIGATIONS AND EXPENDITURES**

4 To ensure that the Navajo Nation meets the Fiscal Recovery Fund obligation and
5 expenditure deadlines set forth by ARPA and U.S. Treasury rules and guidance, Section
6 Sixteen of CJN-29-22 is hereby amended as follows:

7 **SECTION SIXTEEN. REPORTING**

8 A. All entities receiving Navajo Nation Fiscal Recovery Funds shall keep and
9 maintain accurate and complete financial data and records sufficient to
10 demonstrate that the Fiscal Recovery Funds appropriated to the Navajo Nation
11 have been used by the reporting entity in accordance with the provisions of
12 ARPA and U.S. Treasury rules and guidance; and timely relay such reports and
13 records to the Administrative Oversight entity, Office of the Controller, Office
14 of Management and Budget, NNFRF Office, and legislative oversight as
15 directed in the grant or sub-recipient agreements if any, and when requested.
16 Such reports and records shall be maintained for at least seven (7) years after
17 the project and/or service has been completed. The Office of the Controller shall
18 be responsible for compiling and providing any and all records and financial
19 reports required by the U.S. Treasury.

20 ~~B. All entities receiving Navajo Nation Fiscal Recovery Funds through an~~
21 ~~approved Expenditure Plan shall report the status of their NNFRF allocations~~
22 ~~to their respective legislative oversight committees at the end of each Fiscal~~
23 ~~Year quarter. The entity with administrative oversight over the Expenditure~~
24 ~~Plan shall review the quarterly report prior to its presentation and shall~~
25 ~~participate in the presentation to the oversight committee(s).~~

26 The NNFRF Office shall develop and implement a rigorous process of
27 quarterly progress reporting and review for each enacted NNFRF Expenditure
28 Plan and each enacted Delegate Region Projects Plan as follows:

- 29 1. All entities that received an allocation of NNFRF shall submit a
30 detailed written report to their Administrative Oversight entity, the

1 NNFRF Office, the Office of the President and Vice-President, Office
2 of the Controller, and Office of Management and Budget within ten
3 (10) days following the end of each quarter. At a minimum, each
4 report shall include:

- 5 a. a detailed financial report that compares budgeted
6 expenditures to actual expenditures for costs incurred;
7 b. a narrative report providing a project assessment, including
8 a summary of project activities, accomplishments with dates,
9 impediments encountered, and impediments forecasted with
10 planned responses;
11 c. a detailed plan for how the entity will accomplish the timely
12 obligation and expenditure of funds; and
13 d. a good faith estimate of what funds will not be obligated and
14 expended by the respective deadlines and a recommendation
15 for reversion or reallocation of such funding.

16 2. To ensure report accuracy, the Office of the Controller shall have the
17 authority to access the chapter financial reporting system at any time
18 and to receive reports from subrecipients, including LGA-certified
19 chapters, upon written request.

20 C. The Executive Director of the NNFRF Office, with the assistance of the Office
21 of the Controller and Office of Management and Budget, shall report the status
22 of all allocated Navajo Nation Fiscal Recovery Funds and NNFRF Expenditure
23 Plans to the Budget and Finance Committee and Naabik'íyáti' Committee
24 within thirty (30) days following at the end of each Fiscal Year-quarter.

25
26 **SECTION FIFTEEN. EFFECTIVE DATE**

27 The provisions of this Action shall become effective in accordance with 2 N.N.C. §164(A)(17)
28 and 2 N.N.C. §221(B).

29
30 **SECTION SIXTEEN. EFFECTIVE DATE**

1 This Action may be amended by the Navajo Nation Council and enacted pursuant to 2 N.N.C.
2 § 164 (A)(17) and 2 N.N.C. §§ 1005 (C)(10), (11), and (12).
3

4 **SECTION SEVENTEEN. SAVINGS CLAUSE**

5 If any provision of this Act is determined invalid by the Supreme Court of the Navajo Nation
6 or by any Navajo Nation District Court, without appeal to the Navajo Nation Supreme Court,
7 the remainder of this Act shall remain valid as the law of the Navajo Nation.
8

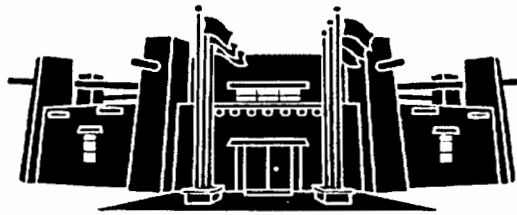
9 **SECTION EIGHTEEN. DIRECTIVES**

10 A. The Office of Legislative Services, with the assistance of the Office of Legislative
11 Counsel, shall incorporate the amendments set forth herein into Resolution Nos. CJY-
12 41-21 and CJN-29-22, so that “clean copies” of the resolutions are available within
13 fifteen (15) days of the effective date of this Action. The “clean copies” shall be posted
14 on the Navajo Nation Council website.

15 B. The Division of Community Development, with the assistance of the NNFRF Office
16 and NNDOJ, shall develop procedures for administrative approval of the movement of
17 funding from an approved project(s) on a Delegate Region Project Plan to an enacted
18 need-based or equal distribution NNFRF Expenditure Plan, e.g., the Bathroom
19 Additions and Renovations Expenditure Plan. Such procedures shall be published
20 within twenty (20) days of the effective date of this Action.

21 C. The NNFRF Office shall establish internal procedures wherein the Office of Legislative
22 Counsel is provided copies of every approved administrative modification to a Delegate
23 Region Project Plan.
24
25
26
27
28
29
30

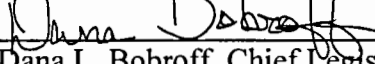
Office of Legislative Counsel
Telephone: (928) 871-7166
Fax No.: (928) 871-7576



Honorable Crystalyne Curley
Speaker
25th Navajo Nation Council

MEMORANDUM

TO: Hon. Shaandiin Parrish, Council Delegate
25th Navajo Nation Council

FROM: 
Dana L. Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: January 25, 2024

SUBJECT: **AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING ADMINISTRATIVE SECTIONS OF NAVAJO NATION COUNCIL RESOLUTIONS NOS. CJY-41-21 AND CJN-29-22 TO ENSURE THE FULL AND TIMELY OBLIGATION AND EXPENDITURE OF ALL NAVAJO NATION FISCAL RECOVERY FUNDS BY U.S. TREASURY DEADLINES; ESTABLISHING INDIRECT COST RECOVERY AND PERSONNEL-OPERATING COSTS RECOVERY RESERVES**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient, although, as with all legislation, challenges are possible in the courts. You are advised and encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. As you may be aware, the Speaker is authorized to refer this proposed resolution to other committees than those stated in the title.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.