

**RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
Of the 23rd Navajo Nation Council---First Year 2015**

**AN ACTION  
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A LEASE BETWEEN  
THE NAVAJO NATION AND MCKINLEY COUNTY, A POLITICAL SUBDIVISION  
OF THE STATE OF NEW MEXICO FOR LOT 30 IN THE CHURCH ROCK  
INDUSTRIAL PARK, CHURCH ROCK, NAVAJO NATION (MCKINLEY COUNTY,  
NEW MEXICO)**

**Section One. Findings**

A. Pursuant to 2 NNC §500, the Resources and Development Committee is hereby established as a standing committee of the Navajo Nation Council; and

B. Pursuant to 2 N.N.C. §501 B 2(a), the Resources and Development Committee grants final approval for all land withdrawals, non-mineral leases, permits, licenses, right-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations; and

C. McKinley County, a political subdivision of the State of New Mexico, whose address is P.O. Box 70, Gallup, New Mexico, 87305, seeks to enter into a lease with the Navajo Nation for Lot 30 in Church Rock Industrial Park, Church Rock, Navajo Nation as described in Lease attached as Exhibit A.

D. The leased premises will consist of 3 acres, more or less, located in Tract 37, Section 14, T15N, R17W, NMPM, Church Rock, Navajo Nation (McKinley County, New Mexico). The location is more particularly described on the survey map attached hereto as Exhibit B.

**Section Two. Approval**

The Resources and Development Committee of the Navajo Nation Council hereby approves a lease, attached as Exhibit A, between the Navajo Nation and McKinley County a Political Subdivision of the State of New Mexico for Lot 30 in the Church Rock Industrial Park, Church Rock, Navajo Nation (McKinley County, New Mexico). The location is more particularly described in Exhibit B.

## CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, (Navajo Nation) Arizona, at which quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstained this 13<sup>th</sup> day of October, 2015.

A handwritten signature in black ink, appearing to read 'Benjamin Bennett', written in a cursive style.

Benjamin Bennett, Vice-Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Davis Filfred  
Second: Honorable Walter Phelps

# Lease Agreement



LEASE NO. \_\_\_\_\_

**THE NAVAJO NATION  
and  
MCKINLEY COUNTY  
(McKinley County Roads – Materials Yard)**

**THIS LEASE** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515, and McKinley County, a Political Subdivision of the State of New Mexico hereinafter called the "Lessee," whose address is P. O. Box 70, Gallup, New Mexico 87305, in accordance with the provisions of 2 N.N.C. § 501. B. 2. a. all amendments or successors thereto, which by this reference are made a part hereof.

**1. DEFINITIONS.**

A. *"Approved Encumbrance"* means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

B. *"Encumbrancer"* means the owner and holder of an Approved Encumbrance, including all successors and assigns.

C. *"Hazardous Substance"* means any "hazardous substance" as defined under the provisions of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto, and "petroleum" as defined under the provisions of section 9001(8) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(8).

D. *"Storage Tank"* means an "underground storage tank" as defined under the provisions of section 6991(1) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, including all amendments and successors thereto, notwithstanding what percent of volume is located beneath the surface of the ground.

**2. LEASED PREMISES.**

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within and described as "Lot 30" in the Church Rock Industrial Park, Church Rock, Navajo Nation, New Mexico (a 3.0 acre parcel, more or less, as shown on the attached Exhibit "A", and made a part hereof), for the purpose of road materials yard, (road materials consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance), together

with the right of reasonable ingress and egress, subject to any prior, valid, existing rights-of-way, is hereinafter called the "Leased Premises." There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

**3. PURPOSE, UNLAWFUL USES.**

A. Lessee shall develop, use and occupy the Leased Premises for the purpose of purpose of road materials yard as well as other related uses consistent with the principal use of the Leased Premises for a road materials yard.

B. The Leased Premises shall not be used by Lessee for any purpose other, except with the prior written consent of Lessor. The consent of Lessor may be withheld, granted or granted upon conditions, in the sole discretion of Lessor.

C. Lessee agrees not to use or permit to be used any part of the Leased Premises for any unlawful conduct or purpose.

**4. TERM.**

The term of this Lease shall be for a period of twenty-five (25) years, beginning on the date approved by the Lessor, with an option to renew for another twenty-five (25) years. The Lessee must exercise the option to renew by providing written notice to the Lessor no later than ninety (90) days prior to the expiration of the lease term.

**5. RENTAL.**

Lessee hereby covenants and agrees to pay Lessor, in lawful money of the United States, an annual rental of: \$240.00.

**6. CONDITION OF LEASED PREMISES.**

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. No representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation.

**7. IMPROVEMENTS.**

A. All buildings and other improvements on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease. At its option, Lessor may require Lessee to remove said buildings and other improvements and to restore the Leased Premises to its original state upon termination of this Lease.

B. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

C. As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

D. All hazardous substances, hazardous substance storage systems or conveyance facilities, including but not limited to storage tanks, placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall assess the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefor, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease. It is understood and approved by Lessor that the property will be used as a road materials storage yard consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance.

## **8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.**

A. All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance.

B. Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

C. Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.

## **9. CONSTRUCTION BOND**

Prior to the commencement of construction of any improvement on the leasehold premises, the Lessee shall require its construction contractor to post construction bonds in accordance with NMSA 1978 §§ 13-1-28 *et seq.* The Bond shall be written to protect Lessor, Lessee, and the United States of America. Copies of the bonds shall be submitted to Lessor and the Secretary upon written request.

## **10. NON-RESPONSIBILITY NOTICES**

Prior to the commencement of construction of any improvement on the leased premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.

## **11. UTILITY SERVICE LINE AGREEMENTS.**

A. Lessee specifically is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Lessor, on the condition that:

1. such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. such agreements authorize utility service lines only within the Leased Premises;
3. such agreements do not extend beyond the term of this Lease;
4. executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor within thirty (30) days of their execution; and
5. such agreements are otherwise in accordance with the provisions of the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions.

B. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

## **12. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.**

A. Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

B. Lessee shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee is liable. Upon request by Lessor, Lessee shall furnish Lessor written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessee, McKinley County as a local Government Entity is exempt from paying property taxes under New Mexico law.

C. Lessee shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

D. Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

### **13. SUBLEASES AND ASSIGNMENTS.**

Lessee shall not assign, convey or otherwise transfer this Lease, or any interest therein, without the prior written approval of Lessor, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, conveyance, or transfer, without such written approval shall be void and of no effect. The approval of Lessor may be granted, granted upon conditions, or withheld at the sole discretion of Lessor.

### **14. QUIET ENJOYMENT.**

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, that Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

### **15. ENCUMBRANCE.**

A. This Lease or any interest therein may not be encumbered without the prior written approval of Lessor, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any



requested financial statements or analyses pertinent to the encumbrance that Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

B. In the event of default by Lessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the leasehold, Encumbrancer shall give to Lessor notice of the same character and duration as is required to be given to Lessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

C. If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.

D. If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such purchase shall be valid unless and until purchaser shall so agree.

## **16. DEFAULT.**

A. Time is declared to be of the essence in this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon by the Lessor in accordance with the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions, including any amendments or successors thereto.

B. In addition to the rights and remedies provided by the aforementioned regulations, Lessor, either jointly or severally, may exercise the following options upon Lessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the premises if the lessee has abandoned the premises or has failed to conduct business for an extended period of time without notice, and remove all persons and property therefrom, and re-let the premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of the Lease under applicable law thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
3. Take any other action authorized or allowed under applicable law.

C. No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor, or any other rights or remedies now held or which may be held by Lessor in the future.

D. Lessor shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. Lessor shall not terminate this Lease if an Encumbrancer has cured or is taking action diligently to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

## **17. SANITATION.**

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance (considering the use as a road materials yard) both inside any structures and on the Leased Premises.

## **18. HAZARDOUS SUBSTANCES.**

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action. It is understood and approved by Lessor that the property will be used as a road materials storage yard consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance.

## **19. PUBLIC LIABILITY INSURANCE.**

A. Lessee shall obtain and maintain a public liability insurance policy in accordance with New Mexico law and Tort Claims Act, NMSA 1978 §§ 41-4-1 *et seq.*. Lessee shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Upon written request, copies of said policy shall be furnished to Lessor.

B. Lessor may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor.

C. This lease constitutes approval by Lessor that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.

## **20. NON-LIABILITY.**

Lessor, nor their officers, agents, or employees, shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, caused by any use of the leased premises by Lessee, or by any defect in any structure existing or erected thereon, or arising from accident, fire, or from any other casualty on said premises or from any other cause whatsoever and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and agrees to defend and hold Lessor free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by New Mexico law.

## **21. PROPERTY INSURANCE.**

A. Lessee shall procure and maintain during the life of this contract, Property Insurance in accordance New Mexico law. Lessee shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment or premium. Upon written request, copies of said policy shall be furnished to Lessor and the Secretary.

B. Subject to the provisions of subsections (C) and (D) of this Section, in the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall promptly replace or repair the destroyed or damaged improvement to a condition as good or better than before the destruction or damage occurred.

C. In the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall have the option not to replace or repair said improvement. Lessee shall provide Lessor with written notice of exercise of Lessee's option within thirty (30) days of the said event of damage. Should Lessee exercise its option to not to replace or repair in accordance with this subsection, this Lease shall terminate ninety (90) days after the effective date of notice thereof and all proceeds of fire and damage insurance shall be paid to Lessor. Lessee shall clear the Leased Premises of all debris prior to termination of this Lease.

D. In the event of destruction of or damage to any improvement on the Leased Premises while an Approved Encumbrance remains in effect, the proceeds of fire and damage insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to Encumbrancer on the condition that Encumbrancer agrees to perform and comply with Lessee's replacement and repair obligations set forth in subsections (B) and (C) of this Section. If such amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements with respect to which it was paid, or, if within three (3) months after such payment by the insurer to Encumbrancer, Lessor or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessor or Lessee, Encumbrancer shall pay such the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3) months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

E. This lease constitutes approval by the Lessor that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.

**22. INSPECTION.**

The Navajo Nation shall have the right, at any reasonable time during the term of this Lease, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

**23. MINERALS.**

All minerals, including sand and gravel, contained in and produced from the Leased Premises are reserved for the use of Lessor. (All road materials placed on the land by Lessee, shall remain the property of Lessee). Lessor also reserves the right to enter upon the Leased Premises and search for minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

**24. EMINENT DOMAIN.**

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

**25. DELIVERY OF PREMISES.**

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, Lessee shall provide to the Navajo Nation, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of said premises.

**26. HOLDING OVER.**

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

**27. ATTORNEY'S FEES.**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease.

**28. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by applicable all laws, regulations, and ordinances of the Navajo Nation, present and future. The parties hereby acknowledge and agree that Lessee is a political subdivision of the State of New Mexico, subject to state and federal laws and that nothing in this Agreement shall be construed as requiring Lessee or its employees, agents or sublessees to violate federal law or applicable laws of the State of New Mexico. This agreement to abide by Navajo laws shall not forfeit rights which the Lessee and the Lessee's employees, agents, and sublessees and their employees, and agents enjoy under the laws of the United States, nor shall it affect the rights and obligations of Lessee under applicable laws of the State of New Mexico. All parties hereto acknowledge that Lessee as a Political Subdivision of the State of New Mexico is and will continue to be an Equal Opportunity Employer.

**29. GOVERNING LAW.**

Except as may be prohibited by applicable federal law, or as stated in this lease, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease.

**30. DISPUTE RESOLUTION.**

In the event that a dispute arises under this Lease, the Parties agree to, prior to pursuing litigation, use their good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution.

**31. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; nor the Sovereign immunity of McKinley County a political subdivision of the State of New Mexico.

**32. NOTICES AND DEMANDS.**

A. Any notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "notices,") shall be in writing and shall be addressed as follows:

To or upon Lessor:

President  
The Navajo Nation  
Office of the President/Vice-President  
P.O. Box 9000  
Window Rock, Navajo Nation (Arizona) 86515  
Fax: 1-928-871-4025

To or upon Lessee:  
McKinley County  
Attn: County Manager  
P.O. Box 70  
Gallup, New Mexico 87305  
Fax: 1-505-863-6362

Copies to: Division Director  
Division of Economic Development  
P.O. Box 663  
Window Rock, Navajo Nation (Arizona) 86515  
Telefax: 1-928-871-7381

B. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, electronic mail, or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, electronic mail, or by facsimile transmission, followed by surface mail, on the next business day following actual delivery and receipt.

C. Copies of all notices shall be sent to the Division of Economic Development.

D. Lessor, and the Lessee may at any time change its address for purposes of this Section by notice.

### **33. SUCCESSORS AND ASSIGNS.**

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

### **34. RESERVATION OF JURISDICTION.**

Nothing in this agreement shall be construed as divesting or operate to divest the Navajo Nation of any jurisdiction it may have over all third parties for acts or omissions on the lease premises and all lands burdened by the lease.

**35. EFFECTIVE DATE; VALIDITY.**

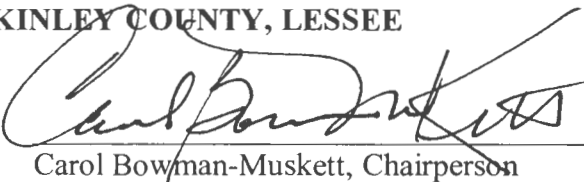
This Lease shall take effect on the date it is approved by the Lessor. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Lessor.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the date first above written.

**THE NAVAJO NATION, LESSOR**

By: \_\_\_\_\_  
Russell Begaye, President

**MCKINLEY COUNTY, LESSEE**

By:  \_\_\_\_\_  
Carol Bowman-Muskett, Chairperson



## **Executive Summary**

**164 # \_\_\_\_\_**

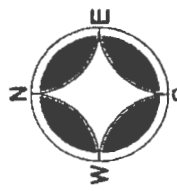
An Action Relating to the Resources and Development Committee of the Navajo Nation Council; Approving a Lease Agreement between the Navajo Nation, Lessor and McKinley County, a Political Subdivision of the State of New Mexico for Lot 30 in the Church Rock Industrial Park.,

LESSEE:	McKinley County
	P. O. Box 70
	Gallup, New Mexico 87305

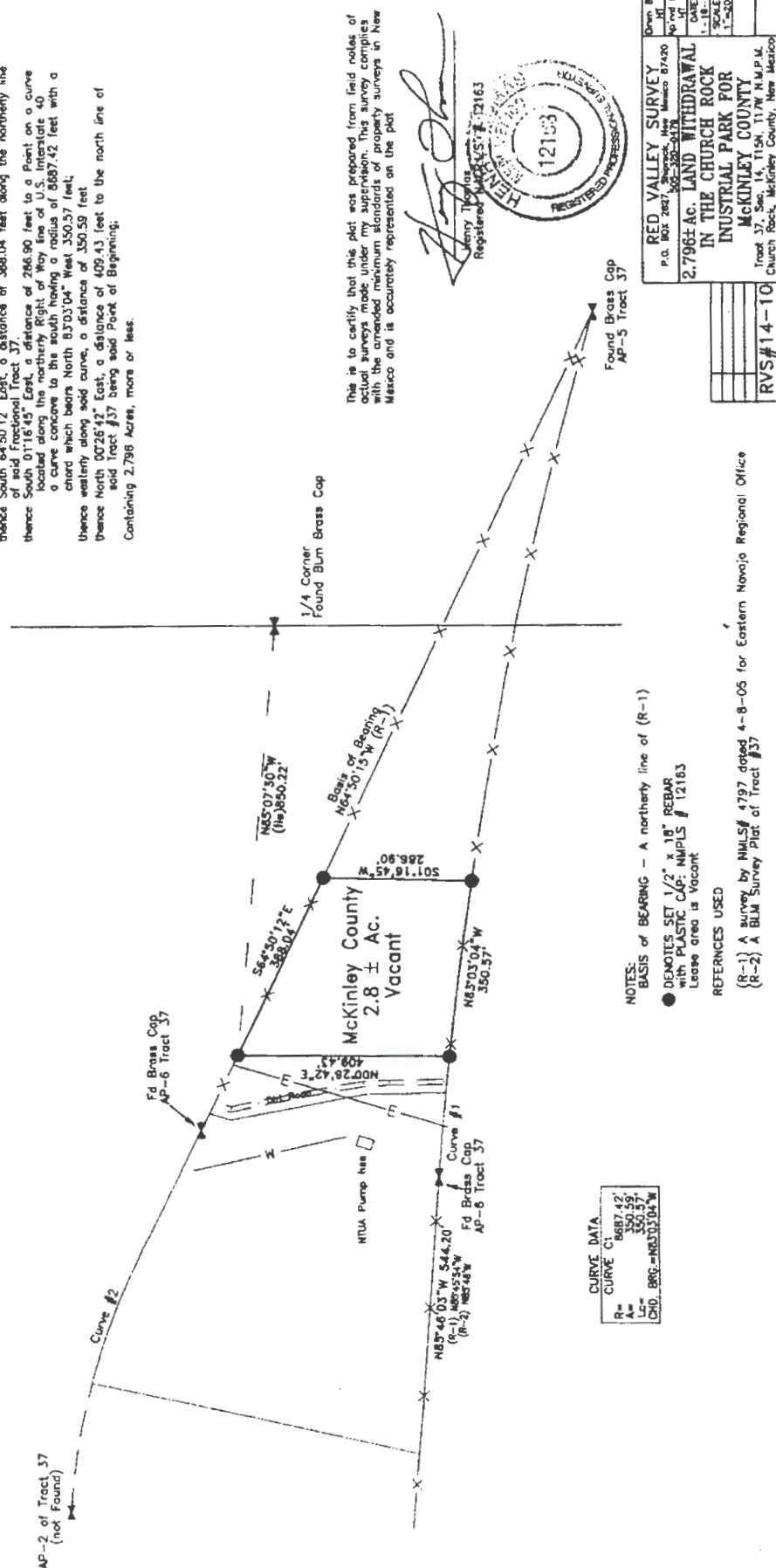
RENTAL	\$240.00 per year
--------	-------------------

# Exhibit A – Survey Plat

Tract 37 SEC. 14  
T15N, R17W NMPM  
Church Rock, McKinley County,  
New Mexico



1"=200'



Legal Description:  
A parcel of land located in Fractional Tract #37 of Section 14, Township 15 North, Range 17 West, N.M.P.M., McKinley County, New Mexico situated in the Church Rock area and being more particularly described as follows:  
Commencing at the Point of Beginning a point on the northerly line of said Fractional Tract #37, a point which bears North 85°07'50\"/>

This is to certify that this plat was prepared from field notes of actual surveys made under my supervision. This survey complies with the amended minimum standards of property surveys in New Mexico and is accurately represented on the plat

*[Signature]*  
Registered Professional Surveyor  
McKinley County, New Mexico  
No. 12163



RED VALLEY SURVEY	
P.O. Box 287	McKinley County, New Mexico 87420
2.796 ± AC. LAND WITHDRAWAL	
IN THE CHURCH ROCK INDUSTRIAL PARK FOR MCKINLEY COUNTY	
Tract 37, Sec. 14, T15N, R17W N.M.P.M., McKinley County, New Mexico	
Drawn By:	HT
Field By:	HT
Check:	HT
Scale:	1"=200'

NOTES:  
BASIS OF BEARING - A northerly line of (R-1)  
● DEMOTES SET 1/2" x 18" REBAR with PLASTIC CAP: NMPM # 12163  
Lease area is Vacant  
REFERENCES USED  
(R-1) A survey by NMLS# 4797 dated 4-8-05 for Eastern Navajo Regional Office  
(R-2) A BLM Survey Plat of Tract #37

CURVE DATA	
CURVE C1	6687.42'
R=	350.59'
A=	350.57'
L=	350.57'
CHD. BEG.	N85°03'04"W

RVS#14-10

# Environmental Summary

## ENVIRONMENTAL SUMMARY

DATE: 6/20/14

Requesting Party: Sharkene Begay-Platero  
Reviewed by Rita Whitehorse-Larsen

Summary of Compliance Determinations (if non-NEPA environmental review process)

1. Historic Preservation

---

2. Fish and Wildlife

---

3. Navajo Environmental Protection Agency

---

### Summary of Compliance with Environmental Laws:

Supporting documentation for the following determinations are found in An *Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402* attached to this *Environmental Summary*. The 2.8-acre<sup>+</sup> MCCRRMY is found on *Church Rock Quadrangle, New Mexico – McKinley Co. – 7.5 Minute Series*, located in Tract 37 Section 14, T15N, and R17W, New Mexico Prime Meridian.

#### 1. National Historic Preservation:

In compliance with National Historic Preservation Act of 1988, as amended, Section 106 consultation and 26 CFR 800.9 (b). A cultural resource inventory of the MCCRRMY site was included in an inventory conducted for a previously planned project. The project was not pursued and a portion of the site is now being considered for use by the County of McKinley for their MCCRRMY. The cultural resource inventory was conducted by Walkenhorst Archeological Services (WAS) on December 11, 2004. A description of the work and findings are included in the archaeological inventory report *A Cultural Resource Inventory of the Church Rock Tourism Complex, Church Rock Chapter, McKinley County, New Mexico, Report No. WAS 04-03, April 8, 2005 Cultural Resource Compliance Form, HPD-05-413, WAS 04-03* was issued on May 31, 2005 with a determination of No Historic Properties Found. (*Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402 - Section IV. Environmental Consequences of the Proposed Action and Mitigation Measures, E. Cultural and Archaeological Resources.*)

#### 2. Floodplain Management:

Utilizing previous studies by the Albuquerque District Corps of Engineers (COE), basin boundaries for both the north and south forks of the Rio Puerco have been identified. The South Fork of the Rio Puerco drains approximately 250 square miles. The South Fork of the Rio Puerco runs west of the MCCRRMY tract. During a 100-year event, flow would cover the natural flood plain along the main channel. The MCCRRMY is not in the floodplain and will not be inundated by a 100-year flow. (*Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section IV. Environmental Consequences of the Proposed Action and Mitigation Measures, B. Water Resources, a. Floodplain Management [Executive Order 11988]*).



3. Wetlands Protection:

Potential impacts to wetlands by the proposed undertaking have been evaluated in accordance with Executive Order 11990. None of the jurisdictional wetlands characteristics as defined by the U. S. Fish and Wildlife Service and the U. S. Army Corps of Engineers are present at the MCCRRMY tract. The soils at the MCCRRMY are not hydric soils as defined in AD-A176734, Corps of Engineers Wetlands Delineation Manual, Jan 87 (Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section IV. Environmental Consequences of the Proposed Action and Mitigation Measures, B. Water Resources, c. Wetland Protection [Executive Order 11990]).

4. Endangered Species Act:

The Navajo Nation Natural Heritage Program (NNNHP), Navajo Fish and Wildlife Department (NFWD) were consulted regarding the effect of the development and use of the MCCRRMY on federally listed threatened or endangered species; or any tribally listed species or other species of concern. The NFWD have determined that the use and development of the MCCRRMY tract is not expected to affect any federally listed threatened or endangered species; or any tribally listed species or other species of concern (Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section III. Description of the Affected Environment, D. Biotic Resources).

5. Air Quality

Ambient air quality may be regarded as good to excellent, that is, near pristine. Primary pollution in the project area is primarily wind blown dust from loose topsoil common during times of high winds and dust from vehicular traffic along unimproved roads in the area. The MCCRRMY site is not in a nonattainment area, an area that exceeds EPA air quality standards for pollutants (Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section III. Description of the Affected Environment, C. Air Resources.

6. Sole Source Aquifer:

There are no designated sole source aquifers within the Navajo Nation. (Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section III. Description of the Affected Environment, B. Water Resources, 2. Ground Water, a. Sole Source Aquifers [40 CFR 149].


7. Abandoned Mine Lands:

There are no abandoned mines; and no Abandoned Mine Lands (AML) project funding involved in the MCCRRMY undertaking.

8. Navajo Nations Solid Waste Act:

Solid wastes generated by MCCRRMY operations will be collected and disposed of in conformance with applicable federal and Navajo Nation laws and regulations. (Environmental Investigation Report for the County of McKinley Church Rock Road Materials Yard – EAS 1402: Section III. Description of the Affected Environment, G. Resource and Land Use Patterns, 3. Solid Waste a. Solid Waste.)

I certify that the Environmental Review Process and the Compliance Determination Process in good faith has been complied with:

  
\_\_\_\_\_  
Environmental Reviewer  
Division of Economic Development

DATE: 7/31/2014



## ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF EXECUTIVE DIRECTOR/ADMINISTRATION

OFFICE OF ENVIRONMENTAL REVIEW

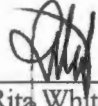
PO BOX 339 WINDOW ROCK ARIZONA 86515 Office: 928/871-7188 Fax: 928/871-7996

Website: [www.navajonationepa.org](http://www.navajonationepa.org)

## M E M O R A N D U M

TO: Sharlene Begay-Platero, IDS  
Project Development Department  
Division of Economic Development

FROM:

  
Rita Whitehorse-Larsen, Senior Environmental Specialist  
Office of Environmental Review  
Office of the Executive Director/Administration  
NNEPA

DATE: July 31, 2014

SUBJECT: Environmental Summary for Proposed Development of the McKinley  
County Church Rock Road Materials Yard, within the Church Rock  
Industrial Park, Church Rock, McKinley County, New Mexico

The Navajo Nation Environmental Protection Agency Office of Environmental Review (NNEPA OER) reviewed and recommends *conditional approval* pursuant the Title 4, NNC Chapter 9 Navajo Nation Environmental Policy Act, Subchapter 1, §904. McKinley County is requesting a revocable use permit (RUP) for 2.8± acres of land to be used as a McKinley County Church Rock Road Materials Yard. Operations will include storing of fine and coarse aggregate materials to be used for road construction material and maintenance by the McKinley County Road Department. Aggregate material will be stockpiled at the site and loaded from the storage piles via front-end loaders and/or belt conveyors to trucks for transport to job sites.

### 1. Navajo Nation Clean Water Act:

- a. In recent recommendations for other business lease sites, NNEPA recommends a 250 feet buffer zone from the ordinary high water mark. Avoid development within the 250 feet buffered zone from the existing South Fork Puerco River.
- b. *NNEPA Water Quality determines the waters of the US and Navajo Nation.*
- c. Section 401- A Section 401 certification is required if any drainage with discernable ordinary high water mark will be crossed/disturbed as determined by Patrick

memo\_businesscompliance McKinley County Maintenance Yard Church Rock NM

Page 1 of 3

7/31/14

Antonio, Principal Hydrologist, NNEPA Water Quality Program on previous proposed projects.

- d. Section 402 –Land surface disturbance in excess of 1.0 acre will require compliance with the federal General Construction Permit requirements for storm water discharges. USEPA Region 9 has the authority for Section 402. A copy shall also be provided to Patrick Antonio, Principal Hydrologist with NNEPA Water Quality Program. His office phone is 928/871-7185.
- e. Section 404 – Boring under and or work in the drainage will require a Section 404 as determined by Patrick Antonio, Principal Hydrologist, NNEPA Water Quality Program. Contact the US Army Corps of Engineers.

**2. Navajo Nation Air Pollution Prevention and Control Act:**

- a. The business is located within an area designated as Class II which is unclassified for the National Ambient Air Quality Standards (NAAQS)~ attainment of the NAAQA;
- b. Potential cumulative impact from airbourne dust is likely to occur from trucks driving on dirt unpaved roads. Dust should be control by applying water.
- c. A Navajo Nation Air Quality Control Program Activity Application is enclosed for the proposed project. Please complete and return to NNEPA Air Quality Operating Permit Program.

**3. Navajo Nation Safe Drinking Water Act:**

- a. The existing drinking water lines must be marked before commencing any construction to lessen and minimize impacts to the pubic drinking water system.
- b. The NNEPA - Public Water Systems Supervision Program (PWSSP) recommends all proposed drinking water projects (extensions, upgrades, new wells, new public water systems, etc.) must also comply with the design review and construction permit of the PWSSP pursuant the Navajo Nation Primary Drinking Water Regulations.
- c. The new business owner/operator and water utility company are subject to submit the proposed domestic waste water and public drinking water lines to Mr. Delfred Gene, Civil Engineer, NNEPA PWSSP, he can be contacted at 928/871-7758 or visit the website at [www.navajopublicwater.org](http://www.navajopublicwater.org).
- d. Assessing the existing sewer lagoons to ensure the existing lagoon(s) will hold additional waste water and not to exceed the holding capacity of the lagoon(s) will lessen the impacts to the public. The sewer lines should be working appropriately. If a need for a septic system, it must be controlled to prevent discharge and prevent ground water/soil contamination.

**4. Navajo Nation's Solid Waste Act:**

- a. Do not allow public to take construction waste, cumulatively NNEPA gets complaints and reports on illegal trash dumpings on rural areas and in the waters of the US and Navajo Nation.
- b. The new business owner/operator will need to control the solid waste bin to reduce injuries or fatalities of business related waste to human, wildlife and domestic animals.



5. *Navajo Nation Comprehensive, Environmental Response, Compensation and Liability Act:*

- a. Approved by the Navajo Nation Council, CF-07-08, February 26, 2008, the NN CERCLA includes petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas)) unlike the US CERCLA or the Superfund Law and mandates petroleum, operator and guarantor to report petroleum release  $\geq$  25 gallons at the site and/or during transport immediately to the Navajo Nation Department of Emergency Management within the Navajo Nation Division of Public Safety.

6. *Navajo Nation Storage Tank Act:*

- a. No storage tanks (aboveground and underground) is proposed to be on the proposed site.

7. *Federal Insecticide Fungicide and Rodenticide Act (FIFRA)/NN Pesticide Act:*

- a. Contact the NNEPA Pesticide Program at 928/871-7815/7810 before applying any pesticides and herbicides to control noxious and invasive plant species to ensure the product is in compliance and appropriately applied by a certified and licensed applicator.
- b. Pesticide staff will also may need to be onsite to monitor during pesticide/herbicide application.

8. *Others To Contact Within Navajo Nation:*

- a. Jack Utter, Division of Natural Resources, Department of Water Resources, Water Code Program at 928/871-6595 to ensure sufficient water is available for the proposed maintenance yard.

If there are any questions, you may contact Rita Whitehorse-Larsen at 928/871-7188. Thank you.

Cc: Howard Draper, Project Review Office, Navajo Land Department  
NNEPA Water Quality; PWSSP; Air Quality; OPP; Pesticide; Radon; RCRP; Superfund; Storage  
Tank Program; Administration chrono file

# Procurement Clearance



# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

E-MAILED  
7/14/2015

July 13, 2015

## MEMORANDUM

TO: Sharlene Begay-Platero, IDS  
Project Development Department  
Division of Economic Development

FROM: *For Jonathan C. Arviso*  
Lena D. Arviso, Accounting Manager  
Accounts Receivable Section, OOC



SUBJECT: "Navajo Business and Procurement Act clearance check"

Pursuant to your request dated July 7, 2015 (*Received in Account Receivable on 07/10/15 at 3:30 p.m.*) seeking a procurement clearance check on the following individual/ Business is as follows:

Name/ Address	BSL No / Store Location	A. R. Debt Due	Action
McKinley County	RUP: R-EN14-0001 Post Office Box 70 Gallup, NM 87305	\$ 0.00	Procurement cleared. The revocable use permit has a credit balance as of (\$20.00) as of 07/13/2015.

*This memorandum supersedes previous document dated June 29, 2015.*

Thank you for complying with the "NNB&P ACT". Our office requests that all relevant information of the individual(s) / business (es) is provided to ensure accurate clearance check. The information contained in this memorandum is privileged and confidential. Therefore, when disseminating this information to the 164 reviewers, block out information that are not applicable to the SAS package if this procurement memo is to be included.

Should you have any questions, please contact Accounts Receivable Section at 871-6771 or 6127. Thank you.

mj

CC: Accounts Receivable

# Modification #1 and Revocable Use Permit R-EN-14-0001



**MODIFICATION**  
Permit No. R-EN-14-0001

It is hereby agreed by and between the Navajo Nation, Lessor, and Navajo Power formerly known as McKinley County, Lessee, that Revocable Permit No. R-EN-14-0001 be modified this 26<sup>th</sup> day of June, 2015.

WHEREAS, on May 13, 2015, McKinley informed the Navajo Nation, Division of Economic Development its desire to extend their Revocable Use Permit term.

**NOW THEREFORE**

1. An amendment to Paragraph 2 grants an option to renew for one year until June 11, 2016 or until a lease is executed whichever occurs first subject to the appropriate Navajo Nation authorities.

This modification does not change any of the terms and conditions of the base lease, or stipulations except as specifically set forth herein. All other terms and conditions shall remain in force and effect.

**PERMITTEE:**

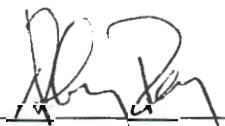
**McKinley County**  
Address of Permittee:  
**P. O. Box 70**  
**Gallup, New Mexico 87305**

  
\_\_\_\_\_  
Signature of Permittee

Date 6-26-15

*new 7/1/15*

**NAVAJO NATION, PERMITTER**

  
\_\_\_\_\_  
Navajo Nation Executive Director  
Division of Economic Development  
7-07-15  
\_\_\_\_\_  
Date

**REVOCABLE USE PERMIT**  
**Division of Economic Development**

This Permit entered into by and between the Navajo Nation, hereinafter called the Permitter, whose address is Division of Economic Development, P. O. Box 663, Window Rock, Arizona 86515, and McKinley County, hereinafter called Permittee, whose address is P. O. Box 70 (207 West Hill Street), Gallup, New Mexico 87305, in accordance with the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions.

1. The Permitter hereby permits the Permittee to use a tract of fee land being more particularly known as Lot 30 in the Church Rock Industrial Park, Church Rock, Navajo Nation, New Mexico (a parcel 3.0 acres, more or less, attached hereto Exhibit "A", and made a part hereof, for the purpose of road materials yard.

2. TERM. The term of this Permit shall be for 12 months or until a business site lease is executed whichever occurs first subject to the appropriate Navajo Nation authorities. This Permit shall begin on the date of execution by the Navajo Nation or authorized designee.

3. RENTAL. The Permittee shall pay to the Permitter \$ 20.00 per month for the use of the premises described above for the term of the permit, unless otherwise agreed in writing. Payments shall be made payable to the Navajo Nation by cashiers check or money order deposited with:

Cashier's Section  
P. O. Box 3150  
Window Rock, Arizona 86515

4. UTILITY SERVICE LINE AGREEMENT. Permittee specifically is authorized to enter into appropriate service agreement with utility companies for the provision of utility services to the permitted area, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Permitter. Fees and monthly utility charges by these utility companies is solely the responsibility of the Permittee.

5. DELIVERY OF PREMISES. The premises shall be given and accepted by the Permittee "as is" and Permitter shall not be responsible for any latent defects. Upon signing the agreement the Permittee agrees that it has had sufficient opportunity to examine and inspect the condition of the premises. Upon termination of this permit, the Permittee will clean up all refuse in the permitted areas, reseed denuded areas, and leave it in a neat and presentable condition considering the use of the property as a Road Materials Yard. The Navajo Environmental Protection Agency will be responsible for inspection of the areas and determining that the Permittee has complied with provisions of the Permit.

6. UNLAWFUL CONDUCT/ACTIVITIES. The Permittee further agrees not to use or allow any part of said property and/or premises for any unlawful conduct/activities. Violation of this clause by the Permittee shall be grounds to revoke the Permit.

7. LIABILITY FOR USE. Permittee shall obtain General Liability Insurance, Fire and Casualty Insurance coverage with the minimum coverage acceptable to the Division of Economic Development (not to exceed the coverage as required by the New Mexico Tort Claims Act) until the Permit is terminated, upon approval of the Permit. It is understood and agreed by the parties that the New Mexico Association of Counties Insurance Authority Pools which insures McKinley County, is acceptable for all purposes of this Permit. All policies required under this Permit shall name the Navajo Nation and United States as an additional named insured and certificates shall be sent to the Division of Economic Development. It is further understood and agreed that the Permittee shall hold the Permitter harmless from any and all claims or liabilities arising out of the use, occupancy, or possession of said property and premises by the Permittee, or injury sustained by the Permittee, or any other person or damage to property, on or about said premises during the term of this Permit.

8. All improvements placed on the permitted premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. All parts of building visible to the

public or from adjacent properties shall present a pleasant appearance as determined by Permittee. Permittee shall, at all times during the term of this Permit and at Permittee's sole cost and expense, maintain the premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition considering the use as a Road Materials Yard, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.

9. **TERMINATION:** This Permit shall be terminated by either party by giving a thirty (30) days notice in writing to the other party by certified mail. Except as otherwise provided in this Permit, all buildings and improvements, excluding removable personal property and trade fixtures, on the leased property shall remain on said property after termination of this Permit and shall thereupon become the property of Permittee. However, Permittee may require Permittee, at Permittee's expense, to remove improvements and restore the premises to a reasonable condition considering the use as a Road Materials Yard, upon termination of this Permit. Any removal of property by Permittee must be completed within ninety (90) days after termination of this Permit, such presence on the property shall not be deemed a holdover or trespass, provided Permittee is acting in a diligent manner to remove such property. Upon the expiration of the ninety (90) day extension, the Permittee has the right to grant another extension or re-enter the premises, at such time the Permittee shall have no right or interest to the premises or any remaining improvements

10. **INTEREST OF MEMBER OF CONGRESS.** No member of Congress, shall be admitted to any share or part of this Permit or to any benefit that may arise there from. This provision shall not be construed to extend to this Permit if made with a corporation or company for its general benefit.

11. **ENVIRONMENT.** Permittee shall take all necessary measures to assure compliance with applicable Federal and Tribal laws.

12. **TRANSFER, SUBLEASING.** The leased premises shall not be subleased, assigned nor transferred, by the Permittee, such action shall be a material violation of the Permit.

13. **AGREEMENT TO ABIDE BY NAVAJO, FEDERAL, AND NEW MEXICO STATE LAWS.** The Permittee and its employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo Nation, of the United States, and of the State of New Mexico now in force and effect or which may hereafter be in force and effect. This agreement to abide by the listed laws shall not forfeit rights, which the Permittee and its employees and agents enjoy under the federal laws of the United States and of the State of New Mexico including those regarding the sovereignty of any Government including McKinley County as a Political Subdivision of the State of New Mexico.

14. **PERMIT REQUIREMENTS NOT EXCLUSIVE.** Nothing in this Permit shall be construed to relieve Permittee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health, safety, or general welfare which is currently enacted or which may be enacted at a later date.

15. **GOVERNING LAW AND CHOICE OF FORUM.** Except as may be prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and interpretation of this Permit. Any action or proceeding brought by Permittee against the Navajo Nation in connection with or arising out of the terms and conditions of this Permit Lease shall be brought in a Court of competent jurisdiction.

16. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this Permit shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; nor, the sovereign immunity of McKinley County as a political subdivision of the State of New Mexico.

17. **VALIDITY.** Any modification thereof or amendment to this Permit shall not be valid or binding upon either party hereto, until approved by the Navajo Nation. A sub-permit, assignment, modification or amendments may not be entered into without the written consent of Division of Economic Development.

Tracking No. \_\_\_\_\_  
Permit Fee \$20.00

18. SUCCESSORS AND ASSIGNS The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents

19. NOTICES All notices, demands, requests, changes in information or other communications to or upon either party provided for in this Permit, or given or made in connection with this Permit, shall be in writing and shall be addressed as follows

For McKinley County

County Manager  
P. O. Box 70, 207 West Hill Avenue  
Gallup, New Mexico 87305-0070  
505-722-3868 Phone Number

For Navajo Nation:

Executive Director  
Division of Economic Development  
P. O. Box 663  
Window Rock, Arizona 86515  
928-871-6544 Phone Number

IN WITNESS WHEREOF, the parties hereto have executed the Permit this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**PERMITTEE:**

McKinley County  
Address of Permittee  
P. O. Box 70  
Gallup, New Mexico 87305

[Signature] 6/11/14  
Signature of Permittee Date

**THE NAVAJO NATION, PERMITTER:**

By [Signature]  
Navajo Nation Executive Director  
Division of Economic Development

Date 6/11/14







108°36'11.755"W, 35°31'52.666"N

108°36'11.524"W, 35°31'49.004"N

108°36'6.226"W, 35°31'50.741"N

108°36'6.367"W, 35°31'48.495"N

391.20 ft.

509 ft.

398.72 ft.

235.84 ft.

approx. 3.0 acres

EAST HISTORIC 66

INTERSTATE 40

INTERSTATE 40

TELSTAR RD

1 inch = 0.03 miles



Previous Request for Services  
by Navajo Department of  
Justice Form and Memo of RFS  
Request



# NAVAJO NATION DEPARTMENT OF JUSTICE



## REQUEST FOR SERVICES



DOJ
08/03/15 @ 11:59
DATE / TIME
RFS #: 15-1353
UNIT: ECON

☐ 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: 8/3/2015	ENTITY/DIVISION: Div of Economic Development
CONTACT NAME: Sharlene Begay-Platero	DEPARTMENT: Proj Development Dept.
PHONE NUMBER: 505/905-6414	E-MAIL: srbp@navajoadvantage.com

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):  
*Review of Lease with McKinley County at Church Rock Industrial Park - fee land*

DEADLINE: 8/7/2015	REASON: Inform DOJ of Changes Before 164 Review
--------------------	---

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 8/3/15 @ 245pm	REVIEWING ATTORNEY/ADVOCATE:
-----------------------------------	------------------------------

DATE TIME OUT OF UNIT:	PREPARED BY (initial): Karis
------------------------	------------------------------

### DOJ ATTORNEY / ADVOCATE COMMENTS

① In the interest of time I made changes to the face of the lease.

*Is fully subject w/ changes*

REVIEWED BY: (PRINT) Karis Begay	DATE / TIME: 8/4 3:08pm
----------------------------------	-------------------------

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

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

NNDJ/DRRF-July 2012





# THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**  
JONATHAN NEZ **VICE PRESIDENT**

August 3, 2015

## MEMORANDUM

TO : Karis Begaye, Attorney  
Economic/Community Development Unit, DOJ

FROM : Sharlene Begay-Platero  
Sharlene Begay-Platero, IDS  
Project Development Department/DED

SUBJECT : Request for Services for a Department of Justice (DOJ) Review of  
2<sup>nd</sup> Draft of a Lease with McKinley County at the Church Rock Industrial Park  
– on Fee Land

Included with this memorandum is the 2<sup>nd</sup> Draft of a lease with the McKinley County government for a lease within the Church Rock Industrial Park. This lot is fee land at the eastern end of the industrial park. McKinley County is currently on this property via a permit modification for another year. Attached at the bottom of this packet is the permit and modification.

The specific items where we need your assistance are:

1. The first draft is based on the Pueblo Pintado Fire Station lease approved by the Resources and Development Committee in 2013. This lease was on trust land in Pueblo Pintado, New Mexico. This was sent by email to McKinley County in mid-July.
2. The second draft with the **red ink** changes is from the McKinley County attorney, Doug Decker via an email message.

We appreciate your review of this before we start the 164 Review Process with McKinley County and eventually before the Resources and Development Committee for approval.

Thank you for your assistance. Should you have any questions, please contact me at 505-905-6414.

**Enclosures:**

LEASE NO. \_\_\_\_\_

Field Code Changed

**THE NAVAJO NATION  
and  
MCKINLEY COUNTY  
(McKinley County Roads – Materials Yard)**

**THIS LEASE** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201~~53~~, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515, and McKinley County, a Political Subdivision of the State of New Mexico hereinafter called the "Lessee," whose address is P. O. Box 70, Gallup, New Mexico 87305, in accordance with the provisions of 2 N.N.C. § 501. B. 2. a. and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162; and all amendments or successors thereto, which by this reference are made a part hereof.

**1. DEFINITIONS.**

A. *"Approved Encumbrance"* means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

B. *"Encumbrancer"* means the owner and holder of an Approved Encumbrance, including all successors and assigns.

C. *"Hazardous Substance"* means any "hazardous substance" as defined under the provisions of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto, and "petroleum" as defined under the provisions of section 9001(8) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(8).

~~D. "Secretary" means the Secretary of the United States Department of the Interior or his duly authorized representative or successor.~~

~~DE.~~ *"Storage Tank"* means an "underground storage tank" as defined under the provisions of section 6991(1) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, including all amendments and successors thereto, notwithstanding what percent of volume is located beneath the surface of the ground.

**2. LEASED PREMISES.**

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within ~~and described the as~~ "Lot 30" in the Church Rock Industrial Park, Church Rock, Navajo Nation, New Mexico (a 3.0 acre parcel ~~3.0 acres~~, more or less, as shown on the attached ~~hereto~~ Exhibit

"A", and made a part hereof), for the purpose of road materials yard. (road materials consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance), attached hereto and by this reference made a part hereof, containing approximately 1 acre, more or less, together with the right of reasonable ingress and egress, subject to any prior, valid, existing rights-of-way, is hereinafter called the "Leased Premises." There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

### **3. PURPOSE, UNLAWFUL USES.**

A. Lessee shall develop, use and occupy the Leased Premises for the purpose of purpose of road materials yard as well as other related uses consistent with the principal use of the Leased Premises for a road materials yard.

B. The Leased Premises shall not be used by Lessee for any purpose other, except with the prior written consent of Lessor. The consent of Lessor may be withheld, granted or granted upon conditions, in the sole discretion of Lessor.

C. Lessee agrees not to use or permit to be used any part of the Leased Premises for any unlawful conduct or purpose.

### **4. TERM.**

The term of this Lease shall be for a period of twenty-five (25) years, beginning on the date approved by the Lessor, with an option to renew for another twenty-five (25) years. The Lessee must exercise the option to renew by providing written notice to ~~both~~ the Lessor no later than ninety (90) days prior to the expiration of the lease term.

### **5. RENTAL.**

Lessee hereby covenants and agrees to pay Lessor, in lawful money of the United States, an annual rental of: \$240.00.

### **6. CONDITION OF LEASED PREMISES.**

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. No representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation.

### **7. IMPROVEMENTS.**



A. All buildings and other improvements on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease. At its option, Lessor may require Lessee to remove said buildings and other improvements and to restore the Leased Premises to its original state upon termination of this Lease.

B. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

C. As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

D. All hazardous substances, hazardous substance storage systems or conveyance facilities, including but not limited to storage tanks, placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall assess the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefor, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease. It is understood and approved by Lessor that the property will be used as a road materials storage yard consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance.

## **8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.**

A. All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance.

B. Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

C. Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.



## **9. CONSTRUCTION BOND**

Prior to the commencement of construction of any improvement on the leasehold premises, the Lessee shall require its construction contractor to post construction bonds in accordance with NMSA 1978 §§ 13-1-28 *et seq.* The Bond shall be written to protect Lessor, Lessee, and the United States of America. Copies of the bonds shall be submitted to Lessor and the Secretary upon written request.

## **10. NON-RESPONSIBILITY NOTICES**

Prior to the commencement of construction of any improvement on the leased premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.

## **11. UTILITY SERVICE LINE AGREEMENTS.**

A. Lessee specifically is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Lessor, on the condition that:

1. such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. such agreements authorize utility service lines only within the Leased Premises;
3. such agreements do not extend beyond the term of this Lease;
- ~~4.~~ executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor within thirty (30) days of their execution; and
- ~~+5.~~ such agreements are otherwise in accordance with the provisions of the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions.

B. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

## **12. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.**

A. Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

B. Lessee shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee is liable. Upon request by Lessor ~~or the Secretary~~, Lessee shall furnish Lessor ~~and the Secretary~~ written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor, ~~the Secretary~~ and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessee, McKinley County as a local Government Entity is exempt from paying property taxes under New Mexico law.

C. Lessee shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

D. Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor ~~or the Secretary~~, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

### **13. SUBLEASES AND ASSIGNMENTS.**

Lessee shall not assign, convey or otherwise transfer this Lease, or any interest therein, without the prior written approval of Lessor ~~and the Secretary~~, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, conveyance, or transfer, without such written approval shall be void and of no effect. The approval of Lessor may be granted, granted upon conditions, or withheld at the sole discretion of Lessor.

### **14. QUIET ENJOYMENT.**

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, that Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

### **15. ENCUMBRANCE.**

A. This Lease or any interest therein may not be encumbered without the prior written approval of Lessor ~~and the Secretary~~, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that Lessor ~~and the Secretary~~ may deem necessary to justify the amount, purpose and terms of said encumbrance.

B. In the event of default by Lessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the leasehold, Encumbrancer shall give to Lessor ~~and the Secretary~~ notice of the same character and duration as is required to be given to Lessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

C. If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.

D. If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor ~~and the Secretary~~, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such purchase shall be valid unless and until purchaser shall so agree.

## **16. DEFAULT.**

A. Time is declared to be of the essence in this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon by the Lessor in accordance with the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions, including any amendments or successors thereto.

B. In addition to the rights and remedies provided by the aforementioned regulations, Lessor ~~and the Secretary~~, either jointly or severally, may exercise the following options upon Lessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the premises if the lessee has abandoned the premises or has failed to conduct business for an extended period of time without notice, and remove all persons and property therefrom, and re-let the premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of the Lease under applicable law thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
3. Take any other action authorized or allowed under applicable law.

C. No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor, or any other rights or remedies now held or which may be held by Lessor in the future.

D. Lessor ~~as the case may be~~, shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. ~~Neither Lessor nor the Secretary~~ shall not terminate this Lease if an Encumbrancer has cured or is taking action diligently to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

## 17. SANITATION.

Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance (considering the use as a road materials yard) both inside any structures and on outside the Leased Premises.

#### 18. HAZARDOUS SUBSTANCES.

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action. It is understood and approved by Lessor that the property will be used as a road materials storage yard consisting of: millings, gravel, cinders or other similar materials used for road improvement and maintenance.

#### 19. PUBLIC LIABILITY INSURANCE.

A. Lessee shall obtain and maintain a public liability insurance policy in accordance with New Mexico law and Tort Claims Act, NMSA 1978 §§ 41-4-1 *et seq.* ~~It is understood and agreed that the Lessor and the United States of America will be named as Additional Insured as respects this lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess.~~ Lessee shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Upon written request, copies of said policy shall be furnished to Lessor ~~and the Secretary.~~

**Comment [d1]:** Under the New Mexico Constitution, McKinley County cannot accept a contingent liability that listing a non-McKinley County entity creates. We can provide an insurance certificate or copy of the policy to assure the Lessor that we have adequate coverage.

B. Lessor may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, ~~whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.~~

C. This lease constitutes approval by Lessor that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.



## 20. NON-LIABILITY.

~~Neither Lessor nor the United States Government~~, nor their officers, agents, or employees, shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, caused by any use of the leased premises by Lessee, or by any defect in any structure existing or erected thereon, or arising from accident, fire, or from any other casualty on said premises or from any other cause whatsoever and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor ~~and the United States Government~~ and agrees to defend and hold Lessor ~~and the United States Government~~ free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by New Mexico law.

## 21. PROPERTY INSURANCE.

A. Lessee shall procure and maintain during the life of this contract, Property Insurance in accordance New Mexico law. ~~It is understood and agreed that the Lessor and the United States of America shall be named as Additional Insured as respects this lease. This coverage shall be primary to the Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess.~~ Lessee shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment or premium. Upon written request, copies of said policy shall be furnished to Lessor and the Secretary.

**Comment [d2]:** See comment 1 above. Also, this is a new interpretation of the Constitution effecting contingent liabilities postdating the Pueblo Pintado Fire Station Lease.

B. Subject to the provisions of subsections (C) and (D) of this Section, in the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall promptly replace or repair the destroyed or damaged improvement to a condition as good or better than before the destruction or damage occurred.

C. In the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall have the option not to replace or repair said improvement. Lessee shall provide Lessor with written notice of exercise of Lessee's option within thirty (30) days of the said event of damage. Should Lessee exercise its option to not to replace or repair in accordance with this subsection, this Lease shall terminate ninety (90) days after the effective date of notice thereof and all proceeds of fire and damage insurance shall be paid to Lessor. Lessee shall clear the Leased Premises of all debris prior to termination of this Lease.

D. In the event of destruction of or damage to any improvement on the Leased Premises while an Approved Encumbrance remains in effect, the proceeds of fire and damage insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to

Encumbrancer on the condition that Encumbrancer agrees to perform and comply with Lessee's replacement and repair obligations set forth in subsections (B) and (C) of this Section. If such amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements with respect to which it was paid, or, if within three (3) months after such payment by the insurer to Encumbrancer, Lessor or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessor or Lessee, Encumbrancer shall pay such the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3) months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

E. This lease constitutes approval by the Lessor ~~and the Secretary~~ that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.

## **22. INSPECTION.**

The Navajo Nation ~~and the Secretary~~ shall have the right, at any reasonable time during the term of this Lease, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

## **23. MINERALS.**

All minerals, including sand and gravel, contained in ~~or and produced from~~ the Leased Premises are reserved for the use of Lessor. (All road materials placed on the land by Lessee, shall remain the property of Lessee). Lessor also reserves the right to enter upon the Leased Premises and search for ~~and remove~~ minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

## **24. EMINENT DOMAIN.**

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

## **25. DELIVERY OF PREMISES.**

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon

the written request of the Navajo Nation, Lessee shall provide to the Navajo Nation, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of said premises.

**26. HOLDING OVER.**

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

**27. ATTORNEY'S FEES.**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor ~~or the Secretary~~ in enforcing the provisions of this Lease.

**28. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo Nation, present and future, including, but not limited to Navajo Preference in Employment Act, 15 N.N.C. §§ 601 *et seq.* (NEPA) and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.* (NNBOA) and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect provided that the parties hereby acknowledge and agree that Lessee is a political subdivision of the State of New Mexico, subject to state and federal laws and that nothing in this Agreement shall be construed as requiring Lessee or its employees, agents or sublessees to violate federal law or applicable laws of the State of New Mexico. This agreement to abide by Navajo laws shall not forfeit rights which the Lessee and the Lessee's employees, agents, and sublessees and their employees, and agents enjoy under the laws of the United States, nor shall it affect the rights and obligations of Lessee under applicable laws of the State of New Mexico. All parties hereto acknowledge that Lessee as a Political Subdivision of the State of New Mexico is and will continue to be an Equal Opportunity Employer.

**29. GOVERNING LAW.**

Except as may be prohibited by applicable federal law, or as stated in this lease, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease.

**30. RESERVATION OF LESSEE'S RIGHTS TO ADMINISTRATIVE AND JUDICIAL REVIEW.**

Nothing in this agreement shall be construed as divesting the Lessee of any right to an administrative appeal or judicial review of an administrative decision regarding this lease ~~under 25 C.F.R. Part 2; 43 C.F.R. Part 4, Subpart D; 5 U.S.C. §704; or, any other applicable regulation~~



~~of statute or remedy.~~

**Comment [d3]:** NN EDD had this paragraph highlighted. Because this is Fee land, please consider my elimination of the CFR citations.

### 31. DISPUTE RESOLUTION.

In the event that a dispute arises under this Lease, the Parties agree to, prior to pursuing litigation, use their good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution.

### 32. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; nor the Sovereign immunity of McKinley County a political subdivision of the State of New Mexico.

### ~~33. TERMINATION OF FEDERAL SUPERVISION.~~

~~Nothing in this Lease shall operate to delay or prevent a termination of federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, or otherwise, during the term of this Lease, however, such termination shall not serve to abrogate this Lease. Lessor, Lessee, Lessee's surety or sureties and an Encumbrancer, if any, shall be notified of any such change in the status of the Leased Premises.~~

**Comment [d4]:** Because this is Fee land, this paragraph is not needed or applicable.

### 34. INTEREST OF MEMBER OF CONGRESS.

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

### ~~35. OBLIGATIONS TO THE UNITED STATES.~~

~~It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.~~

**Comment [d5]:** Because this is Fee land, this paragraph is not needed or applicable.

### 36. NOTICES AND DEMANDS.

A. Any notices, demands, requests or other communications to or upon either party ~~or the Secretary~~ provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "notices,") shall be in writing and shall be addressed as follows:

To or upon Lessor:

President  
The Navajo Nation  
Office of the President/Vice-President  
P.O. Box 9000  
Window Rock, Navajo Nation (Arizona) 86515  
Fax: 1-928-871-4025

To or upon Lessee:

McKinley County  
Attn: County Manager  
P.O. Box 70  
Gallup, New Mexico 87305  
Fax: 1-505-863-6362

Copies to: Division Director  
Division of Economic Development  
P.O. Box 663  
Window Rock, Navajo Nation (Arizona) 86515  
Telefax: 1-928-871-7381

B. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, electronic mail, or by facsimile transmission, followed by surface mail. Notices shall be effective ~~and shall be deemed delivered~~: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, electronic mail, or by facsimile transmission, followed by surface mail, on the next business day following actual delivery and receipt.

C. Copies of all notices shall be sent to the Division of Economic Development.

D. Lessor, and the Lessee may at any time change its address for purposes of this Section by notice.

### **37. SUCCESSORS AND ASSIGNS.**

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

### **38. RESERVATION OF JURISDICTION.**

Nothing in this agreement shall be construed as divesting or operate to divest the Navajo Nation of any jurisdiction it may have over all third parties for acts or omissions on the lease premises and all lands burdened by the lease.

**39. EFFECTIVE DATE; VALIDITY.**

This Lease shall take effect on the date it is approved by the Lessor. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the ~~Lessor~~Secretary.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the date first above written.

**THE NAVAJO NATION, LESSOR**

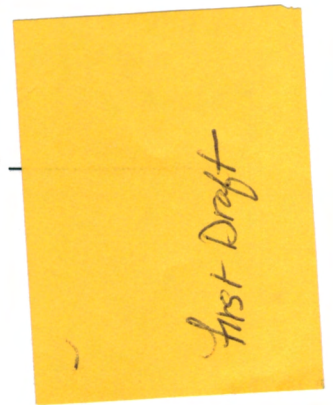
By: \_\_\_\_\_  
Russell Begaye, President

**MCKINLEY COUNTY, LESSEE**

By: \_\_\_\_\_  
Carol Bowman-Muskett, Chairperson

LEASE NO. \_\_\_\_\_

**THE NAVAJO NATION  
and  
MCKINLEY COUNTY  
(McKinley County Roads – Materials Yard)**



**THIS LEASE** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between THE NAVAJO NATION, hereinafter called the "Lessor," whose address is P.O. Box 663, Window Rock, Navajo Nation (Arizona) 86515, and McKinley County, a Political Subdivision of the State of New Mexico hereinafter called the "Lessee," whose address is P. O. Box 70, Gallup, New Mexico 87305, in accordance with the provisions of 2 N.N.C. § 501. B. 2. a. and 25 U.S.C. § 415, as implemented by the regulations contained in 25 C.F.R. Part 162; and all amendments or successors thereto, which by this reference are made a part hereof.

**1. DEFINITIONS.**

A. *"Approved Encumbrance"* means an encumbrance approved in writing by Lessor and the Secretary in accordance with the terms and conditions of this Lease.

B. *"Encumbrancer"* means the owner and holder of an Approved Encumbrance, including all successors and assigns.

C. *"Hazardous Substance"* means any "hazardous substance" as defined under the provisions of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), including all amendments or successors thereto, and "petroleum" as defined under the provisions of section 9001(8) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991(8).

D. *"Secretary"* means the Secretary of the United States Department of the Interior or his duly authorized representative or successor.

E. *"Storage Tank"* means an "underground storage tank" as defined under the provisions of section 6991(1) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, including all amendments and successors thereto, notwithstanding what percent of volume is located beneath the surface of the ground.

**2. LEASED PREMISES.**

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to Lessee all that tract or parcel of land situated within the as Lot 30 in the Church Rock Industrial Park, Church Rock, Navajo Nation, New Mexico (a parcel 3.0 acres, more or less, attached hereto Exhibit "A", and made a part hereof, for the

purpose of road materials yard., attached hereto and by this reference ~~made a part hereof, containing approximately 1 acre, more or less,~~ together with the right of reasonable ingress and egress, subject to any prior, valid, existing rights-of-way, is hereinafter called the "Leased Premises." There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

### **3. PURPOSE, UNLAWFUL USES.**

A. Lessee shall develop, use and occupy the Leased Premises for the purpose of purpose of road materials yard as well as other related uses consistent with the principal use of the Leased Premises for a road materials yard.

B. The Leased Premises shall not be used by Lessee for any purpose other, except with the prior written consent of Lessor ~~and the Secretary.~~ The consent of Lessor may be withheld, granted or granted upon conditions, in the sole discretion of Lessor.

C. Lessee agrees not to use or permit to be used any part of the Leased Premises for any unlawful conduct or purpose.

### **4. TERM.**

The term of this Lease shall be for a period of twenty-five (25) years, beginning on the date approved by the Lessor ~~Secretary,~~ with an option to renew for another twenty-five (25) years. The Lessee must exercise the option to renew by providing written notice to both the Lessor ~~and the Bureau of Indian Affairs~~ no later than ninety (90) days prior to the expiration of the lease term.

### **5. RENTAL.**

Lessee hereby covenants and agrees to pay Lessor, in lawful money of the United States, an annual rental of: \$240.00. ~~In accordance with the provisions of 25 C.F.R. Part 162.604(b) (2) & (3), the rent may be waived if the lease is for a public purpose.~~

### **6. CONDITION OF LEASED PREMISES.**

Lessee has examined and knows the Leased Premises and improvements thereon and accepts the same as-is. No representations as to the condition of the Leased Premises have been made by Lessor, any agent of Lessor or the United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of Lessor or the United States, but solely upon Lessee's independent investigation.

### **7. IMPROVEMENTS.**



A. All buildings and other improvements on the Leased Premises, excluding removable personal property and trade fixtures, shall remain on the Leased Premises after termination of this Lease. At its option, Lessor may require Lessee to remove said buildings and other improvements and to restore the Leased Premises to its original state upon termination of this Lease.

B. Lessee shall remove all removable personal property and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, said property shall thereupon become property of Lessor, and may be disposed of in any manner by Lessor.

C. As used in this Section, the term "removable personal property" shall not include property which normally would be attached or affixed to buildings, other improvements or land in such a way that it would become a part of the realty, regardless of whether such property in fact is so attached or affixed.

D. All hazardous substances, hazardous substance storage systems or conveyance facilities, including but not limited to storage tanks, placed on or under the Leased Premises are the property of Lessee and shall remain the property of Lessee upon termination of this Lease. Within a reasonable time prior to termination of this Lease, Lessee shall remove any such substances or improvements, shall assess the Leased Premises for contamination, shall remediate all contamination, if any, and shall address any third party damages occasioned by any contamination or otherwise by the use or storage of such substances or improvements on the Leased Premises. Should Lessee fail to complete such responsibilities prior to the termination of this Lease, Lessee shall remain responsible therefor, and shall be required to post a bond in an amount reasonably required to ensure that such responsibilities are completed within a reasonable time after termination of this Lease.

## **8. CONSTRUCTION; MAINTENANCE; REPAIR; ALTERATION.**

A. All buildings and other improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner in compliance with applicable laws and building codes. All parts of buildings or other improvements visible to the public or from adjacent premises shall present a pleasant appearance.

B. Lessee shall maintain the Leased Premises and all buildings and other improvements thereon and any alterations, additions or appurtenances thereto, in good order and repair and in a safe, sanitary and neat condition.

C. Lessee shall have the right to make reasonable alterations, additions or repairs to buildings or other improvements on the Leased Premises, consistent with other provisions of this Lease.

## **9. CONSTRUCTION BOND**

Prior to the commencement of construction of any improvement on the leasehold premises, the Lessee shall require its construction contractor to post construction bonds in accordance with NMSA 1978 §§ 13-1-28 *et seq.* The Bond shall be written to protect Lessor, Lessee, and the United States of America. Copies of the bonds shall be submitted to Lessor and the Secretary upon written request.

## **10. NON-RESPONSIBILITY NOTICES**

Prior to the commencement of construction of any improvement on the leased premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.

## **11. UTILITY SERVICE LINE AGREEMENTS.**

A. Lessee specifically is authorized to enter into appropriate service line agreements with utility companies for the provision of utility services to the Leased Premises, including gas, water, sewer, electricity, telephone, television and other utilities, without further consent by Lessor, on the condition that:

1. such agreements are for the sole purpose of supplying utility services to the Leased Premises;
2. such agreements authorize utility service lines only within the Leased Premises;
3. such agreements do not extend beyond the term of this Lease;
4. executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines, are filed by the utility companies with Lessor ~~and with the Secretary~~ within thirty (30) days of their execution; and
5. such agreements are otherwise in accordance with the provisions of the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions. ~~25 C.F.R. Part 169.22, including any amendments or successors thereto.~~

B. Nothing contained herein shall be construed to limit the right of Lessor to enter into service line agreements with utility companies for service lines across the Leased Premises, provided that such service lines do not unreasonably interfere with Lessee's use of the Leased Premises, nor otherwise to affect the rights-of-way reserved to Lessor in Section 2 of this Lease.

## **12. LIENS; TAXES AND ASSESSMENTS; UTILITY CHARGES.**

A. Lessee shall not permit any liens arising from any work performed, materials furnished, or other obligations incurred by Lessee to be enforced against the Leased Premises, any interest therein or improvements thereon. Lessee shall discharge all such liens before any action is brought to enforce same.

B. Lessee shall pay, before becoming delinquent, all taxes, assessments and other like charges levied upon or against the Leased Premises, any interest therein or improvements thereon, for which Lessee is liable. Upon request by Lessor or the Secretary, Lessee shall furnish Lessor and the Secretary written evidence duly certified that any and all such taxes, assessments and other like charges required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any asserted tax, assessment or other like charge against the Leased Premises, any interest therein or improvements thereon, by posting bond to prevent enforcement of any lien resulting therefrom. Lessee agrees to protect and hold harmless Lessor, the Secretary and the Leased Premises and all interests therein and improvements thereon from any and all such taxes, assessments and like charges and from any lien therefor, any sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessee, McKinley County as a local Government Entity is exempt from paying property taxes under New Mexico law.

C. Lessee shall pay, before becoming delinquent, all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Leased Premises.

D. Lessor shall have the right to pay any lien, tax, assessment or other charge payable by Lessee under this Lease, or to settle any action therefor, if, within a reasonable time after written notice thereof from Lessor or the Secretary, Lessee fails to pay or to post bond against enforcement thereof. All costs and other expenses incurred by Lessor in so doing shall be repaid by Lessee to Lessor on demand, together with interest at the legal rate from the date of payment or incursion thereof by Lessor until repayment is made by Lessee.

### **13. SUBLEASES AND ASSIGNMENTS.**

Lessee shall not assign, convey or otherwise transfer this Lease, or any interest therein, without the prior written approval of Lessor and the Secretary, and then only upon the condition that the assignee or other successor in interest shall agree, in writing, to be bound by each and every covenant, agreement, term and condition of this Lease. Any such attempted assignment, conveyance, or transfer, without such written approval shall be void and of no effect. The approval of Lessor may be granted, granted upon conditions, or withheld at the sole discretion of Lessor.

### **14. QUIET ENJOYMENT.**

Lessor hereby covenants and agrees that, upon performing each of its covenants, agreements, terms and conditions contained in this Lease, that Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons claiming from or under Lessor.

### **15. ENCUMBRANCE.**

A. This Lease or any interest therein may not be encumbered without the prior written approval of Lessor and the Secretary, and no such encumbrance shall be valid or binding without such prior written approval. An encumbrance shall be confined to the leasehold interest of Lessee, and shall not jeopardize in any way Lessor's interest in the land. Lessee agrees to furnish any requested financial statements or analyses pertinent to the encumbrance that Lessor and the Secretary may deem necessary to justify the amount, purpose and terms of said encumbrance.

B. In the event of default by Lessee of the terms of an Approved Encumbrance, Encumbrancer may exercise any rights provided in such Approved Encumbrance, provided that prior to any sale of the leasehold, Encumbrancer shall give to Lessor and the Secretary notice of the same character and duration as is required to be given to Lessee by the terms of such Approved Encumbrance and by applicable law. In the event of such default, Lessor shall have the right, which may be exercised at any time prior to the completion of sale, to pay to Encumbrancer any and all amounts secured by the Approved Encumbrance, plus unpaid interest accrued to the date of such payment, plus expenses of sale incurred to the date of such payment.

C. If Lessor exercises the above right, all right, title and interest of Lessee in this Lease shall terminate and Lessor shall acquire this Lease; provided, however, that such termination shall not relieve Lessee of any obligation or liability which shall have accrued prior to the date of termination. Acquisition of this Lease by Lessor under these circumstances shall not serve to extinguish this Lease by merger or otherwise.

D. If Lessor declines to exercise the above right and sale of the leasehold under the Approved Encumbrance shall occur, the purchaser at such sale shall succeed to all of the right, title and interest of Lessee in this Lease. It is further agreed that the purchaser at such sale if it is the Encumbrancer, the Encumbrancer may sell and assign this Lease without any further approval by Lessor and the Secretary, provided that the assignee shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such assignment shall be valid unless and until the assignee shall so agree. If Encumbrancer is the purchaser, it shall be required to perform the obligations of this Lease only so long as it retains title thereto. If the purchaser is other than Encumbrancer, the purchaser shall agree in writing to be bound by all the covenants, agreements, terms and conditions of this Lease, and no such purchase shall be valid unless and until purchaser shall so agree.

## **16. DEFAULT.**

A. Time is declared to be of the essence in this Lease. Should Lessee default in any payment of monies when due under this Lease, fail to post bond or be in violation of any other provision of this Lease, said violation may be acted upon by the Lessor Secretary in accordance with the Laws of the Navajo Nation and any amendments thereto applicable to these types of transactions, including any amendments or successors thereto.

B. In addition to the rights and remedies provided by the aforementioned regulations, Lessor and the Secretary, either jointly or severally, may exercise the following options upon Lessee's default, authorized by applicable law subject to the provisions of subsection (D) below:

1. Collect, by suit or otherwise, all monies as they become due hereunder, or enforce by suit or otherwise, Lessee's compliance with all provisions of this Lease; or
2. Re-enter the premises if the lessee has abandoned the premises or has failed to conduct business for an extended period of time without notice, and remove all persons and property therefrom, and re-let the premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to cause the termination of the Lease under applicable law thereafter, and without invalidating any right of Lessor ~~or the Secretary~~ or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering and repairing, including reasonable attorney's fees and any reasonable real estate commission actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor ~~or the Secretary~~ may sue thereafter as each monthly deficiency shall arise; or
3. Take any other action authorized or allowed under applicable law.

C. No waiver of a breach of any of the terms and conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other term or condition of this Lease. Exercise of any of the remedies herein shall not exclude recourse to any other remedies, by suit or otherwise, which may be exercised by Lessor ~~or the Secretary~~, or any other rights or remedies now held or which may be held by Lessor in the future.

D. Lessor ~~and the Secretary~~, as the case may be, shall give to an Encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given to Lessee. Lessor ~~and the Secretary~~ shall accept performance by an Encumbrancer of any of Lessee's obligations under this Lease, with the same force and effect as though performed by Lessee. An Encumbrancer shall have standing to pursue any appeals permitted by applicable federal or Navajo Nation law that Lessee would be entitled to pursue. Neither Lessor nor the Secretary shall terminate this Lease if an Encumbrancer has cured or is taking action diligently to cure Lessee's default and has commenced and is pursuing diligently either a foreclosure action or an assignment in lieu of foreclosure.

## 17. SANITATION.



Lessee hereby agrees to comply with all applicable sanitation laws, regulations or other requirements of the United States and the Navajo Nation. Lessee agrees to dispose of all solid waste in compliance with applicable federal and Navajo Nation law. Lessee further agrees at all times to maintain the entire Leased Premises in a safe and sanitary condition, presenting a good appearance both inside and outside the Leased Premises.

#### **18. HAZARDOUS SUBSTANCES.**

Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises without the prior written approval of Lessor, which approval may be given, given upon conditions or denied in the sole discretion of Lessor. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination to the Leased Premises or any building or other improvement thereon, Lessee shall promptly take any and all actions necessary or appropriate to restore the Leased Premises or building or other improvement to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall obtain written approval from Lessor prior to commencement of any such remedial action.

#### **19. PUBLIC LIABILITY INSURANCE.**

A. Lessee shall obtain and maintain a public liability insurance policy in accordance with New Mexico law and Tort Claims Act, NMSA 1978 §§ 41-4-1 *et seq.*. It is understood and agreed that the Lessor and the United States of America will be named as Additional Insured as respects this lease. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage by primary, contributing or excess. Lessee shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment of premium. Upon written request, copies of said policy shall be furnished to Lessor and the Secretary.

B. Lessor ~~or the Secretary~~ may require that the amount of the insurance policy required by subsection (A) of this Section be increased at any time, whenever either shall determine that such increase reasonably is necessary for the protection of Lessor or the United States.

C. This lease constitutes approval by Lessor ~~and Secretary~~ that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.

#### **20. NON-LIABILITY.**

Neither Lessor nor the United States Government, nor their officers, agents, or employees, shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of Lessee or any other person whomsoever, caused by any use of the leased premises by Lessee, or by any defect in any structure existing or erected thereon, or arising from accident, fire, or from any other casualty on said premises or from any other cause whatsoever and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to defend and hold Lessor and the United States Government free and harmless from liability for all claims for any loss, damage, injury or death arising from the condition of the premises or use of the premises by Lessee, together with all costs and expenses in connection therewith to the full extent permitted by New Mexico law.

## **21. PROPERTY INSURANCE.**

A. Lessee shall procure and maintain during the life of this contract, Property Insurance in accordance New Mexico law. It is understood and agreed that the Lessor and the United States of America shall be named as Additional Insured as respects this lease. This coverage shall be primary to the Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess. Lessee shall provide for notification to the Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason including non-payment or premium. Upon written request, copies of said policy shall be furnished to Lessor and the Secretary.

B. Subject to the provisions of subsections (C) and (D) of this Section, in the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall promptly replace or repair the destroyed or damaged improvement to a condition as good or better than before the destruction or damage occurred.

C. In the event of destruction of or damage to any improvement on the Leased Premises, Lessee shall have the option not to replace or repair said improvement. Lessee shall provide Lessor with written notice of exercise of Lessee's option within thirty (30) days of the said event of damage. Should Lessee exercise its option to not to replace or repair in accordance with this subsection, this Lease shall terminate ninety (90) days after the effective date of notice thereof and all proceeds of fire and damage insurance shall be paid to Lessor. Lessee shall clear the Leased Premises of all debris prior to termination of this Lease.

D. In the event of destruction of or damage to any improvement on the Leased Premises while an Approved Encumbrance remains in effect, the proceeds of fire and damage insurance equal to the amount of destruction or damage to the encumbered improvements (but not exceeding the remaining balance of the Approved Encumbrance) shall be paid to Encumbrancer on the condition that Encumbrancer agrees to perform and comply with Lessee's replacement and repair obligations set forth in subsections (B) and (C) of this Section. If such

amount paid to Encumbrancer is sufficient to repair the destroyed or damaged improvements with respect to which it was paid, or, if within three (3) months after such payment by the insurer to Encumbrancer, Lessor or Lessee shall deposit with Encumbrancer sufficient additional funds, if any, required to completely replace or repair the destruction or damage, upon written order of Lessor or Lessee, Encumbrancer shall pay such the costs of such replacement or repair, and such payment shall not be deemed a payment or credit on the Approved Encumbrance. Otherwise, at the expiration of such three (3) months said sum so paid by the insurer to Encumbrancer shall be applied and credited on the Approved Encumbrance.

E. This lease constitutes approval by the Lessor ~~and Secretary~~ that the insurance obligation under this section is satisfied by the Lessee's participation in the New Mexico Association of Counties Insurance Authority Multi Line Pool.

## **22. INSPECTION.**

The Navajo Nation ~~and the Secretary~~ shall have the right, at any reasonable time during the term of this Lease, to enter upon the Leased Premises, or any part thereof, to inspect the Leased Premises and any buildings and other improvements erected or placed thereon.

## **23. MINERALS.**

All minerals, including sand and gravel, contained in or on the Leased Premises are reserved for the use of Lessor. Lessor also reserves the right to enter upon the Leased Premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

## **24. EMINENT DOMAIN.**

If the Leased Premises or any part thereof is taken under the laws of eminent domain at any time during the term of this Lease, Lessee's interest in the Leased Premises or the part of the Leased Premises taken shall thereupon cease. Compensation awarded for the taking of the Leased Premises or any part thereof, including any improvements located thereon, shall be awarded to Lessor and Lessee as their respective interests may appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an Encumbrancer under an Approved Encumbrance.

## **25. DELIVERY OF PREMISES.**

At the termination of this Lease, Lessee shall peaceably and without legal process deliver up the possession of the Leased Premises in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, Lessee shall provide to the Navajo Nation, at Lessee's sole cost and expense, an environmental audit assessment of the Leased Premises at least sixty (60) days prior to delivery of said premises.

**26. HOLDING OVER.**

Holding over by Lessee after termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises or to any improvements located thereon.

**27. ATTORNEY'S FEES.**

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor or the Secretary in enforcing the provisions of this Lease.

**28. AGREEMENT TO ABIDE BY NAVAJO NATION AND FEDERAL LAWS.**

Lessee and the Lessee's employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Navajo Nation, present and future, <sup>applicable</sup> including, but not limited to Navajo Preference in Employment Act, 15 N.N.C. §§ 601 *et seq.* (NEPA) and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.* (NNBOA) and all applicable laws, regulations and ordinances of the United States now in force and effect or as may be hereafter in force and effect provided that the parties hereby acknowledge and agree that Lessee is a political subdivision of the State of New Mexico, subject to state and federal laws and that nothing in this Agreement shall be construed as requiring Lessee or its employees, agents or sublessees to violate federal law or applicable laws of the State of New Mexico. This agreement to abide by Navajo laws shall not forfeit rights which the Lessee and the Lessee's employees, agents, and sublessees and their employees, and agents enjoy under the laws of the United States, nor shall it affect the rights and obligations of Lessee under applicable laws of the State of New Mexico. All parties hereto acknowledge that Lessee as a Political Subdivision of the State of New Mexico is and will continue to be an Equal Opportunity Employer.

**29. GOVERNING LAW.**

Except as may be prohibited by applicable federal law, or as stated in this lease, the law of the Navajo Nation shall govern the construction, performance and enforcement of this Lease.

**30. RESERVATION OF LESSEE'S RIGHTS TO ADMINISTRATIVE AND JUDICIAL REVIEW.**

Nothing in this agreement shall be construed as divesting the Lessee of any right to an administrative appeal or judicial review of an administrative decision regarding this lease under 25 C.F.R. Part 2; 43 C.F.R. Part 4, Subpart D; 5 U.S.C. §704; or any other applicable regulation or statute.

**31. DISPUTE RESOLUTION.**



In the event that a dispute arises under this Lease, the Parties agree to, prior to pursuing litigation, use their good faith efforts to resolve such disputes through mediation, informal discussion, or other non-binding methods of dispute resolution.

**32. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation; nor the Sovereign immunity of McKinley County a political subdivision of the State of New Mexico.

**33. TERMINATION OF FEDERAL SUPERVISION.**

Nothing in this Lease shall operate to delay or prevent a termination of federal responsibilities with respect to the Leased Premises by the issuance of a fee patent, or otherwise, during the term of this Lease, however, such termination shall not serve to abrogate this Lease. Lessor, Lessee, Lessee's surety or sureties and an Encumbrancer, if any, shall be notified of any such change in the status of the Leased Premises.

**34. INTEREST OF MEMBER OF CONGRESS.**

No member of or delegate to Congress or any Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

**35. OBLIGATIONS TO THE UNITED STATES.**

It is understood and agreed that while the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease and the obligations of its sureties are to the United States as well as to Lessor.

**36. NOTICES AND DEMANDS.**

A. Any notices, demands, requests or other communications to or upon either party or the Secretary provided for in this Lease, or given or made in connection with this Lease, (hereinafter referred to as "notices,") shall be in writing and shall be addressed as follows:

To or upon Lessor:

President  
The Navajo Nation  
Office of the President/Vice-President



P.O. Box 9000  
Window Rock, Navajo Nation (Arizona) 86515  
Fax: 1-928-871-4025

To or upon Lessee:

McKinley County  
Attn: County Manager  
P.O. Box 70  
Gallup, New Mexico 87305  
Fax: 1-505-863-6362

Copies to: Division Director  
Division of Economic Development  
P.O. Box 663  
Window Rock, Navajo Nation (Arizona) 86515  
Telefax: 1-928-871-7381

~~To or upon the Secretary:~~

~~Regional Director~~  
~~Navajo Region~~  
~~Bureau of Indian Affairs~~  
~~United States Department of the Interior~~  
~~301 West Hill Street~~  
~~P.O. Box 1060~~  
~~Gallup, New Mexico 87305~~  
~~Fax: 1-505-863-8324.~~

B. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours, or if not during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission, followed by surface mail, on the next business day following actual delivery and receipt.

C. Copies of all notices shall be sent to the Division of Economic Development.  
~~Secretary.~~

D. Lessor, and the Lessee ~~and the Secretary~~ may at any time change its address for purposes of this Section by notice.

### 37. SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, executors, assigns, employees and agents.

**38. RESERVATION OF JURISDICTION.**

Nothing in this agreement shall be construed as divesting or operate to divest the Navajo Nation of any jurisdiction it may have over all third parties for acts or omissions on the lease premises and all lands burdened by the lease.

**39. EFFECTIVE DATE; VALIDITY.**

This Lease shall take effect on the date it is approved by the Lessor, Secretary. This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party until it is approved by the Secretary.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed as of the date first above written.

**THE NAVAJO NATION, LESSOR**

By: \_\_\_\_\_  
Russell Begaye, President

**MCKINLEY COUNTY, LESSEE**

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

~~APPROVED~~ pursuant to Secretarial  
Redelegation 209 DM 8, 230 DM1  
and 3IAM4.

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

By: \_\_\_\_\_  
Regional Director  
Navajo Region  
Bureau of Indian Affairs  
U.S. Department of the Interior

