

SUMMARY OF PROPOSED LEGISLATION

Tracking No. 0264-24

DATE: December 16, 2024

RE: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; APPROVING A COMPREHENSIVE INTERAGENCY AGREEMENT TO TIMELY OBLIGATE CERTAIN NAVAJO NATION FISCAL RECOVERY FUNDS (“NNFRF”) BY THE U.S. DEPARTMENT OF TREASURY DEADLINE OF DECEMBER 31, 2024; APPROVING OTHER NNFRF-RELATED ACTIONS

PURPOSE OF THIS LEGISLATION:

to approve an Interagency Agreement for the obligation of NNFRF funds by December 31, 2024, to amend CJN-29-22 to expedite modifications to NNFRF Expenditure Plans, and approving other NNFRF-related actions.

FINAL AUTHORITY and VOTE REQUIREMENT:

The Navajo Nation Council has final authority. A 2/3 vote is required.

OLC No. 24-504-1

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL—Second Year, 2024

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0264-24

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;
APPROVING A COMPREHENSIVE INTERAGENCY AGREEMENT TO
TIMELY OBLIGATE CERTAIN NAVAJO NATION FISCAL RECOVERY
FUNDS (“NNFRF”) BY THE U.S. DEPARTMENT OF TREASURY DEADLINE
OF DECEMBER 31, 2024; APPROVING OTHER NNFRF-RELATED ACTIONS

BE IT ENACTED:

SECTION 1. AUTHORITY

A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
As such, the Council may consider legislation regarding an emergency matter, 2 N.N.C.
§164(A)(16).

B. “[M]atters constituting an emergency shall be limited to the cessation of law enforcement
services, and disaster relief services, fire protection services or other direct services required
as an entitlement under Navajo Nation or Federal law, or which directly threaten the
sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing
public need for such resolution(s) and must be a matter requiring final action by the Council.”
2 N.N.C. §164(A)(16).

C. Due to the COVID-19 pandemic that started in early 2020 and the devastating economic
impacts that resulted nationwide, on March 11, 2021, President Joseph Biden signed into law

1 the American Rescue Plan Act (“ARPA”). ARPA provided \$362 billion for state, local, and
2 tribal governments, including \$20 billion designated for tribal governments.

3 D. In May of 2021, the U.S. Department of Treasury provided \$1,861,554,458.43 in ARPA
4 funds to the Navajo Nation.

5 E. Beginning in July of 2021, the Navajo Nation approved Resolution Nos. CJY-41-21, BFS-
6 31-21, CJN-29-22 and CMY-28-24 (each incorporated herein by this reference) that create
7 the “Navajo Nation Fiscal Recovery Fund” (“NNFRF”) and manages the Navajo Nation’s
8 federal ARPA allocation. “NNFRF” used herein also refers to the dollars in the Navajo
9 Nation Fiscal Recovery Fund.

10 F. According to federal ARPA restrictions, the Navajo Nation must obligate all NNFRF by
11 December 31, 2024 and the Navajo Nation must fully expend all NNFRF by December 31,
12 2026, or the Navajo Nation’s ARPA funds will revert to the federal government.

13 G. The Navajo Nation therefore finds that this Action is an emergency matter affecting critical
14 government services for the Navajo People and the sovereignty of the Navajo Nation, and
15 this Action must be approved without delay to meet an urgent and pressing public need.
16

17 **SECTION 2. FINDINGS**

18 A. As referenced above, under federal ARPA provisions and the U.S. Department of Treasury’s
19 Guidance governing all federal ARPA funding, the Navajo Nation must abide by the
20 following when managing its NNFRF:

21 1. Costs eligible for payment with ARPA funds must be incurred by December 31, 2024.

22 This means that all NNFRF must be obligated by December 31, 2024.

23 2. With regards to “obligate,” the Department of Treasury’s 2022 Final Rule dated April 1,
24 2022 states: “[f]inancial obligations, when referencing a recipient’s or sub-recipient’s use
25 of funds under a Federal [ARPA] award, means orders placed for property and services,
26 contracts and sub-awards made, and similar transactions that require payment. . . .”

27 3. According to the Department of Treasury, the “period of performance” for use of ARPA
28 funds expires on December 31, 2026. This means that all NNFRF must be fully expended
29 by December 31, 2026.

30 4. Any ARPA funds not obligated by December 31, 2024 or not fully expended for eligible

1 purposes by December 31, 2026 must be returned to the federal government. This includes
2 all unobligated and unexpended ARPA funds provided to any subrecipients, vendors, or
3 contractors.

4 B. This federal reversion mandate means that, with respect to all remaining NNFRF, the Navajo
5 Nation must timely accomplish: (1) the obligation of all NNFRF by the December 31, 2024
6 deadline; and (2) full expenditure of all NNFRF by the December 31, 2026 deadline.

7 C. As referenced and incorporated above, the Navajo Nation approved Resolution Nos. CJY-
8 41-21, BFS-31-21, CJN-29-22 and CMY-28-24 to create the NNFRF and to manage the
9 Navajo Nation's federal ARPA allocation received. Through one or more of these
10 resolutions, NNFRF was allocated to Navajo Nation entities ("Recipient Agencies") to carry
11 out NNFRF Expenditure Plans for projects, goods, and services across the Navajo Nation.
12 These Council-approved Expenditure Plans cover numerous Chapter Projects, Delegate
13 Region Projects, public health projects, hardship assistance payments, housing and bathroom
14 projects, broadband services, electricity line projects, water/wastewater projects, and other
15 ARPA-eligible purposes.

16 D. Through these resolutions, the Navajo Nation also established requirements for modifications
17 to all Council-approved NNFRF Expenditure Plans. These Navajo Nation requirements are
18 internal and are not mandated by the federal ARPA requirements.

19 E. Through Resolution No. CMY-28-24, the Navajo Nation set an internal deadline of
20 November 1, 2024 for all NNFRF to be obligated. There is \$5,623,603 of NNFRF that was
21 not obligated by the Navajo Nation's internal deadline. In accordance with CMY-28-24,
22 NNFRF, "not obligated by November 1, 2024, shall automatically revert to the NNFRF
23 Hardship Assistance Expenditure Plan without the need for legislative action..., a
24 Memorandum of Agreement will be entered into between the Navajo Nation Council and the
25 Office of Controller for the Hardship Assistance Program."

26 F. At this point in the Navajo Nation's NNFRF process, there is NNFRF that will revert to the
27 federal government if the Navajo Nation does not obligate it by December 31, 2024. There
28 is also unexpended NNFRF, that will revert to the federal government if the Navajo Nation
29 does not fully expend it by December 31, 2026. Therefore, removing timely processes and
30 procedures that are not federally required to meet the two deadlines is critical to prevent

1 reversion back to the federal government.

2 G. Federal requirements allow for a comprehensive Interagency Agreement to be approved and
3 entered into to obligate all remaining NNFRF by December 31, 2024. Such an Interagency
4 Agreement would include provisions to ensure that all NNFRF funds are expended by the
5 December 31, 2026 federal deadline to prevent reversion of those funds.

6 H. The Navajo Nation finds it is in the best interest of the Navajo Nation and its people to
7 authorize and approve through this Action such a comprehensive Interagency Agreement
8 that can streamline and expedite the NNFRF processes and procedures to ensure that all
9 NNFRF is obligated and expended by the deadlines set by the federal government.

10 I. The Navajo Nation further finds that removing the Council approval requirement for NNFRF
11 Expenditure Plan modifications in CJN-29-22 is necessary to expedite any needed
12 modifications of NNFRF Expenditure Plans after December 31, 2024, but before the
13 expenditure deadline of December 31, 2026.

14 J. A comprehensive Interagency Agreement, as referenced in Sections 2(G) and (H) above,
15 must be executed by December 31, 2024 to meet the Department of Treasury's "obligation"
16 requirement. If executed no later than December 31, 2024, such comprehensive Interagency
17 Agreement will: 1) ensure that the Navajo Nation meets the December 31, 2024 funds
18 obligation deadline; 2) provide flexibility for NNFRF Expenditure Plans; and 3) expedite the
19 transfer of remaining funds to other ARPA-eligible purposes. All of which will facilitate the
20 complete expenditure of the Navajo Nation's remaining NNFRF by the December 31, 2026
21 deadline.

22 K. To further fulfill the purpose of streamlining and expediting the NNFRF process to oversee
23 the remaining NNFRF funds and to ensure that NNFRF does not get reverted, the Navajo
24 Nation finds that such administrative oversight and management would best be served by the
25 Office of the Controller which has the tools and expertise to carry out such functions at this
26 final stage of NNFRF administration.

27
28 **SECTION 3. APPROVING A COMPREHENSIVE INTERAGENCY AGREEMENT**
29 **FOR TIMELY NNFRF OBLIGATIONS AND EXPENDITURES**

30 A. The Navajo Nation hereby approves a comprehensive Interagency Agreement attached

1 hereto as **EXHIBIT A**. This Interagency Agreement shall cover all NNFRF dollars
2 remaining as of the Effective Date of this Action, including any unobligated funds and funds
3 that were previously allocated or obligated for various NNFRF Expenditure Plans approved
4 by the Council. The Interagency Agreement shall include the \$5,623,603 of NNFRF that
5 was not obligated by the Navajo Nation’s internal deadline of November 1, 2024 and such
6 inclusion shall be in accordance with requirements in CMY-28-24 specific to those funds.

7 B. The **EXHIBIT A** Interagency Agreement shall govern all remaining NNFRF (unobligated
8 or obligated), NNFRF Expenditure Plans and NNFRF expenditures by all Recipient
9 Agencies through December 31, 2026. To fulfill the purpose and intent of this Action,
10 “Recipient Agencies” means all NNFRF recipients with remaining funds, collectively,
11 including Executive Branch Programs, the Navajo Tribal Utility Authority (“NTUA”), the
12 Navajo Construction and Engineering Authority (“NECA”), the affected 14 Chapters that are
13 local governance certified under 26 N.N.C. §102 (“LGA Chapters”), and affected Non-LGA
14 Chapters.

15 C. For all Expenditure Plans approved in CJY-41-21, CJN-29-22, and CMY-28-24, the
16 administrative oversight assigned to the Office of the President/Vice-President in said
17 resolutions is hereby transferred to the Office of the Controller, and each of the resolutions
18 cited above are hereby amended accordingly to provide for such transfer. The Office of the
19 Controller shall hereafter have all authority and responsibilities for the administration,
20 management, and oversight of all remaining NNFRF (unobligated or obligated), NNFRF
21 Expenditure Plans and NNFRF expenditures, including modifications thereto, governed by
22 the **EXHIBIT A** Interagency Agreement.

23 D. Immediately following the Navajo Nation Council’s passage of this Action and prior to the
24 execution of the **EXHIBIT A** Interagency Agreement, the Navajo Nation Department of
25 Justice shall review and may modify the **EXHIBIT A** Interagency Agreement for the limited
26 purpose of correcting any legal insufficiencies that would prevent fulfillment of the intent of
27 this Action. The Department of Justice shall immediately notify the Budget and Finance
28 Committee in writing of any modifications.

29 E. Upon the Effective Date of this Action, the Speaker of the Navajo Nation Council is authorized
30 to execute the **EXHIBIT A** Interagency Agreement on behalf of the Navajo Nation Council,

1 and they all shall be bound by the Speaker's signature on **EXHIBIT A**.

2 F. Upon the Effective Date of this Action, the Navajo Nation President is authorized to execute
3 the **EXHIBIT A** Interagency Agreement on behalf of all Recipient Agencies, and they all
4 shall be bound by the President's signature on **EXHIBIT A**.

5 G. Upon the Effective Date of this Action, the Controller is authorized to execute the **EXHIBIT A**
6 Interagency Agreement on behalf of the Office of the Controller and its subordinate
7 departments and programs, and they all shall be bound by the Controller's signature on
8 **EXHIBIT A**.

9 H. In order to meet the Department of Treasury's funds obligation deadline of December 31,
10 2024 and to prevent reversion of NNFRF, **EXHIBIT A** shall be executed no later than
11 December 30, 2024.

12
13 **SECTION 4. AMENDING CJN-29-22 TO EXPEDITE NNFRF EXPENDITURE PLAN**
14 **MODIFICATIONS AND FUNDING TRANSFERS**

15 The Navajo Nation hereby amends Resolution No. CJN-29-22 as follows:

16 * * * *

17 **SECTION TWELVE. ADMINISTRATION OF NAVAJO NATION FISCAL**
18 **RECOVERY FUND EXPENDITURE PLANS**

19 * * * *

20 A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through an
21 immediate allocation under Resolution CJY-41-21 or subsequently approved
22 NNFRF Expenditure Plan, shall comply with the Department of Treasury's 2022
23 Final Rule (effective April 1, 2022), with the Department of Treasury's FAQ (dated
24 March 29, 2024), and with the Department of Treasury's Uniform Guidance set
25 forth in 2 C.F.R. Part 200, as well as all Navajo Nation laws, policies, regulations,
26 rules, and procedures, specifically including, but not limited to, those governing the
27 NNFRF and the expenditure of such funds, and any additional terms set forth in a
28 grant, sub-recipient, or similar agreement, that do not contradict any of the federal
29 provisions cited herein.

1 B. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning
2 that the Navajo Nation must obligate NNFRF funds by that date. The Department
3 of Treasury's gGuidance provides that "incurred" shall have the same meaning
4 given to "financial obligation" under the Uniform Guidance at 2 CFR 200.1:
5 "Financial obligations, when referencing a recipient's or sub-recipient's use of
6 funds under a Federal award, means orders placed for property and services,
7 contracts and sub-awards made, and similar transactions that require payment."
8 The Navajo Nation may also timely obligate NNFRF via an "interagency
9 agreement" executed by December 31, 2024, as noted in the Department of
10 Treasury's FAQ No. 17.23.

11 * * * *

12 ~~G. All proposed modifications to an approved NNFRF Expenditure Plan or an~~
13 ~~approved NNFRF Expenditure Plan budget shall comply with Section 8 of~~
14 ~~Exhibits 1 through 5 of Resolution BFS-31-21.~~

15 ~~1. Any increase in funding for an approved NNFRF Expenditure Plan shall require~~
16 ~~approval by Navajo Nation Council Resolution enacted pursuant to 2 N.N.C. §~~
17 ~~164(A)(17) and 2 N.N.C. §§ 1005(C)(10), (11), and (12), unless such increase~~
18 ~~in funding is due to an administratively approved budget transfer from the~~
19 ~~Construction Contingencies Expenditure Plan.~~

20 ~~a. Proposed modifications of Expenditure Plans shall be submitted to the~~
21 ~~Navajo Nation Department of Justice ("NNDOJ") for an eligibility~~
22 ~~determination review to ensure the proposed modification will be an eligible~~
23 ~~use of FRF.~~

24 ~~b. Modifications that change the purpose and intent of the Expenditure Plan or~~
25 ~~projects and services within the approved Expenditure Plan or that~~
26 ~~substantially change the scope of work of the Expenditure Plan shall require~~
27 ~~approval by the Navajo Nation Council.~~

28 ~~c. As set forth in Resolution BFS-31-21, NNDOJ shall make the determination~~
29 ~~whether Navajo Nation Council approval of the modification is required.~~

30 ~~d. After NNDOJ has reviewed the request for a modification of an approved~~

1 Expenditure Plan and determined that legislative approval is not needed, or
2 after the modification is approved by a Navajo Nation Council resolution
3 enacted pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§ 100(C)(10),
4 (11), and (12), the Administrative Oversight entity acting on behalf of the
5 Funding Recipient shall submit a budget revision request to Office of
6 Management & Budget (“OMB”), if needed. The Budget Instruction Manual
7 provisions regarding budget revision requests shall apply.

8 ~~H. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, may be~~
9 ~~administratively moved between projects and/or services included within the same~~
10 ~~Expenditure Plan, as long as such projects or services share the same Treasury~~
11 ~~Expenditure Category for reporting purposes. NNDOJ shall verify that the projects~~
12 ~~and/or services share the same Expenditure Category before any NNFRF funding~~
13 ~~is moved between projects and/or services.~~

14 ~~I. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, cannot be~~
15 ~~moved between Expenditure Plans without approval by a Navajo Nation Council~~
16 ~~Resolution enacted pursuant to 2 N.N.C. § 164(A)(17) and 2 N.N.C. §§~~
17 ~~1005(C)(10), (11), and (12), unless such movement of funds is due to an~~
18 ~~administratively approved budget transfer from the Construction Contingencies~~
19 ~~Expenditure Plan to other NNFRF expenditure plans experiencing cost overruns~~
20 ~~due to construction contingencies.~~

21 ~~J. Approved Expenditure Plans for need based projects and services, such as~~
22 ~~Bathroom Addition or Home Electricity Connection projects, may be~~
23 ~~administratively modified without Navajo Nation Council action as long as the~~
24 ~~total funding awarded for the Expenditure Plan is not increased and the new project~~
25 ~~or service is within the same Expenditure Category.~~

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

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

6 ~~L. The Emergency Procurement provisions set forth in Resolution CJY-41-21,~~
7 ~~Section Ten, shall apply to all NNFRF Expenditure Plans enacted herein, as well~~
8 ~~as to the federal American Rescue Plan Act (“ARPA”) and all Fiscal Recovery~~
9 ~~Fund procurements by the Navajo Nation, including its LGA-Certified Chapters,~~
10 ~~and Navajo Nation-owned entities.~~

11 * * * *

12
13 **SECTION 5. ADMINISTRATIVE APPROVAL OF NNFRF EXPENDITURE PLAN**
14 **MODIFICATIONS AND FUNDING TRANSFERS**

15 The comprehensive Interagency Agreement attached as **EXHIBIT A** shall provide for
16 modifications to Council-approved NNFRF Expenditure Plans, so long as such modifications
17 are in compliance with the Department of Treasury’s 2022 Final Rule (effective April 1,
18 2022), with the Department of Treasury’s FAQ (dated March 29, 2024), and the Department
19 of Treasury’s Uniform Guidance set forth in 2 C.F.R. Part 200, as well as all Navajo Nation
20 laws, policies, regulations, rules, and procedures, including those governing NNFRF and any
21 grants, sub-recipient agreements, or the like, that do not contradict any of the federal
22 provisions cited herein.

23 **A. Modifications.** Modifications may include changes to the Scope of Work for a Council-
24 approved NNFRF Expenditure Plan, transfers of funds to other Expenditure Plans or eligible
25 purposes, and transfers of funds to other eligible recipients. Prior to the granting of any
26 administrative approval, the Controller shall provide 48 hours of notice in writing to the
27 Office of the President & Vice-President and to the Budget and Finance Committee of the
28 requested or contemplated modifications.

29 **B. Administrative Approval permitted.** All requested NNFRF Expenditure Plan
30 modifications satisfying the requirements above shall be eligible for Administrative

1 Approval. Through this Administrative Approval, NNFRF Expenditure Plan modifications
2 no longer require: 1) Council or Standing Committee action; 2) compliance with SECTION
3 8 of Exhibits 1 through 5 of Resolution BFS-31-21; 3) adherence to the 20% modification
4 restriction in 2 N.N.C.§223(F); and 4) Oversight Committee approval provided for in
5 SECTION 12(D)(2) of the FY2025 Revised Budget Instructions Manual.

6 C. **“Expenditure Plan” defined.** For purposes of this action, “Expenditure Plan” means the
7 form BFS-31-21 Appendix A – NNFRF Expenditure Plan form, with supporting documents.
8 The Navajo Nation Department of Justice reviewed the NNFRF Expenditure Plan to
9 complete its NNFRF Initial Eligibility Determination according to Department of Treasury
10 restrictions, and the NNFRF Expenditure Plan was approved by a Council resolution.

11 D. **“Administrative Approval” defined.** For purposes of this action, “Administrative
12 Approval” means that the Controller, or his authorized designee, approves the modification
13 in writing. The Controller shall determine the form of the modification request and the
14 documents to be submitted for review and approval of modifications.

15
16 **SECTION 6. NNFRF OFFICE REASSIGNED TO THE OFFICE OF THE**
17 **CONTROLLER**

18 A. The NNFRF Office established under SECTION 11 of CJY-41-21, including its program
19 operating budget, staff/personnel, and all program funds, is hereby placed under the
20 responsibility and oversight of the Office of the Controller, effective immediately.
21 Notwithstanding inconsistent provisions in CJY-41-21, the Office of the Controller
22 hereafter shall have decision-making authority over planning, goals, activities, an office
23 restructuring and transitioning plan, and personnel matters, including employee positions,
24 of the NNFRF Office.

25 B. The Controller shall hereafter be authorized and responsible for monitoring the NNFRF
26 Office and ensuring Navajo Nation compliance with the Fiscal Recovery Funds provisions
27 of ARPA and Navajo Nation laws and regulations by all entities receiving NNFRF funds.

28 C. The Office of the Controller shall facilitate and expedite the expenditure of all NNFRF funds,
29 the approval of Expenditure Plan modifications, ensure the completion and implementation
30 of NNFRF-authorized projects and services, and timely submit accurate ARPA reports to the

1 federal government.

2 D. Promptly after the end of each fiscal year quarter, the Controller shall present a written
3 performance report to the Office of the President & Vice-President and the Naabik'iyáti'
4 Committee on overall NNFRF Office operations, accomplishments, and challenges.
5

6 **SECTION 7. WAIVER OF INCONSISTENT PROVISIONS**

7 The Navajo Nation hereby waives all provisions in Resolutions Nos. CJY-41-21, CJN-29-22,
8 CMY-28-24, BFS-31-21, in all other Council or Standing Committee resolutions, in 2
9 N.N.C.§223(F), in the Plan of Operation for the NNFRF Office and in all Executive Orders
10 issued by the Navajo Nation President, to the minimum extent necessary to accomplish the
11 letter, purposes, and intent of this Action.
12

13 **SECTION 8. DIRECTIVES**

14 A. All NNFRF recipients are hereby directed to immediately assess whether any modifications
15 to their approved Expenditure Plans or Subrecipient Agreements are needed to ensure that
16 all NNFRF is fully expended by the December 31, 2026 Department of Treasury deadline.
17 If modifications are needed, recipients shall promptly submit written requests for
18 Administrative Approval of proposed modifications, to ensure the timely expenditure of all
19 NNFRF by December 31, 2026.

20 B. The Office of the Controller and the NNFRF Office are directed to prioritize the review of
21 all proposed modifications.

22 C. Once a modification is approved by the Controller, the Office of the Controller and the Office
23 of Management and Budget shall take all necessary actions to accomplish NNFRF dollar
24 reallocations, if any, as permitted under the Interagency Agreement. Such actions shall
25 include the processing of budget transfers, preparing and executing amendments to contracts
26 or subrecipient agreements, and arranging for the encumbrance of funds in the FMIS.

27 D. The Controller and the NNFRF Office are directed to submit a revised Plan of Operation for
28 the NNFRF Office that addresses its transfer to the Office of the Controller as needed and to
29 be submitted to the Budget and Finance Committee within 60 days of this Action.

30 E. The Controller and the Office of Management and Budget are directed to take immediate

1 action to coordinate the transfer of the NNFRF Office to the Office of the Controller, which
2 transfer shall include the NNFRF Office program budget and all NNFRF Office program
3 operating funds. The Office of Management and Budget shall report on such transfer to the
4 Council at the January 2025 Regular Session of Council.

5
6 **SECTION 9. EFFECTIVE DATE**

7 This Action shall be effective in accordance with 2 N.N.C. §221(B), 2 N.N.C. §164(A)(17), and
8 2 N.N.C. §1005.

9
10 **SECTION 10. AMENDMENTS**

11 Amendments to this Action shall only be approved by a 2/3 vote of all members of the Navajo
12 Nation Council and the approval of the Navajo Nation President pursuant to 2 N.N.C.
13 §164(A)(17) and 2 N.N.C. §1005.

14
15 **SECTION 11. SAVING CLAUSE**

16 If any part of this Action is determined invalid by the Navajo Nation Supreme Court, or by a
17 Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, those
18 provisions of this Action not determined invalid shall remain the law of the Navajo Nation.

**INTERAGENCY AGREEMENT RE: ALLOCATED NNFRF
FUNDING AND APPROVED NNFRF EXPENDITURE PLANS**

between the Speaker of the Navajo Nation Council, the Navajo
Nation President, and the Navajo Nation Controller.

SECTION 1. PARTIES. This Interagency Agreement is entered into by:

**The Speaker of the Navajo Nation
Council** on behalf of:

The Navajo Nation Council
P.O. Box 3390
Window Rock, AZ 86515
Phone: 928.871.7160

The Navajo Nation President
on behalf of:

The Office of the President/Vice-President
P.O. Box 9000
Window Rock, AZ 86515
Phone: 928.871.7000

AND

The Controller on behalf of:

The Office of the Controller
Navajo Nation
P.O. Box 3150
Window Rock, AZ 86515
Phone: 928.871.6583

The Recipient Agencies identified herein.

SECTION 2. RECITALS; AUTHORITIES.

- A. Due to the COVID-19 pandemic that started in early 2020 and the devastating economic impacts that resulted nationwide, on March 11, 2021 President Joseph Biden signed into law the American Rescue Plan Act (“ARPA”). The ARPA provided \$362 billion for state, local, and tribal governments, including a \$20 billion designated for tribal governments. In May 2021, the U.S. Department of Treasury provided \$1,861,554,458.43 in ARPA funds to the Navajo Nation.
- B. Beginning in July 2021, the Navajo Nation approved Resolution Nos. CJY-41-21, BFS-31-21, CJN-29-22 and CMY-28-24 (each incorporated herein by this reference) that created the “Navajo Nation Fiscal Recovery Fund” (“NNFRF”) and managed the Navajo Nation’s federal ARPA allocation. “NNFRF” used herein also refers to the dollars in the Navajo Nation Fiscal Recovery Fund.
- C. According to federal ARPA restrictions, the Navajo Nation must obligate all NNFRF by December 31, 2024 and the Navajo Nation must fully expend all NNFRF by December 31, 2026, or the Navajo Nation’s ARPA funds will revert to the federal government.
- D. The Parties desire to provide for flexibility with respect to possible modifications to the original NNFRF Expenditure Plans approved by the Navajo Nation, for which NNFRF

allocations were made. Said flexibility will facilitate the full and complete expenditure of all NNFRF funds by the federal December 31, 2026 expenditure deadline.

- E. The provisions set forth in this Interagency Agreement allow for the desired flexibility, and also allows the Navajo Nation Controller to give Administrative Approval of proposed modifications to NNFRF Expenditure Plans without the previously-required Navajo Nation legislative and government approvals.
- F. This Interagency Agreement is authorized by Resolution approved by the Navajo Nation Council and signed into law by the Navajo Nation President. This Interagency Agreement governs the various NNFRF Expenditure Plans previously approved by the Navajo Nation for all Recipient Agencies, as well as all unspent NNFRF funds whether obligated or unobligated.
- G. As used herein, “Administrative Approval” means the signature approval of the Controller, or his authorized designee.
- H. As used herein, “Expenditure Plan” refers to the plan describing the exact project, goods, services, or purpose(s) for which NNFRF was approved and allocated by the Navajo Nation. Each Expenditure Plan referenced herein has been reviewed and determined to be ARPA-eligible by the Navajo Nation Department of Justice, and has been approved by a Navajo Nation Council Resolution signed into law by the Navajo Nation President.
- I. “LGA Chapters” means those Navajo Nation Chapters that are certified under the Navajo Nation’s Local Governance Act, at 26 N.N.C. §102.
- J. “Non-LGA Chapters” means those Navajo Nation Chapters that are NOT certified under the Navajo Nation’s Local Governance Act, at 26 N.N.C. §102.
- K. “Recipient Agencies” refers to those Executive Branch Programs listed in SECTION 3 of this Agreement, LGA Chapters, Non-LGA Chapters, the Navajo Tribal Utility Authority (“NTUA”), and Navajo Engineering and Construction Authority (“NECA”).
- L. As used herein, “Treasury” means the United States Department of the Treasury.

SECTION 3. NNFRF GOVERNANCE AND RECIPIENT AGENCIES.

- A. This Interagency Agreement governs all NNFRF funding, remaining as of the Effective Date of this Agreement, which funding was originally allocated for various NNFRF Expenditure Plans previously approved by the Navajo Nation in several ARPA-related Resolutions.
- B. This Interagency Agreement also governs all NNFRF Recipient Agencies, as defined in SECTION 2(K) above, as follows:
 - 1. **\$35,000,000** to the Division of Public Safety (“DPS”) in Section 4(B)(1) of Resolution No. CJN-29-22.
 - 2. **\$5,000,000** to the Department of Information Technology (“DIT”) in Section 4(B)(2) of Resolution No. CJN-29-22.

3. **\$15,243,750** to the Division of Behavioral and Mental Health Services (“**DBMHS**”) in Section 5(B)(1) of Resolution No. CJN-29-22 (for detox and residential treatment centers).
 4. **\$4,000,000** to **DBMHS** in Section 5(B)(1) of Resolution No. CJN-29-22 (for transitional housing).
 5. **\$215,000,000** to the Department of Water Resources (“**DWR**”) in Section 7(B) of Resolution No. CJN-29-22.
 6. **\$20,000,000** to the Division of General Services (“**DGS**”) in Section 8(B)(3) of Resolution NO. CJN-29-22.
 7. **\$50,000,000** to Community Housing and Infrastructure Development (“**CHID**”) in Section 10(B)(1) of Resolution No. CJN-29-22 for new affordable housing.
 8. **\$50,000,000** to the Navajo Nation Veterans Administration (“**NNVA**”) in Section 10(B)(2) of Resolution No. CJN-29-22.
 9. **\$30,000,000** to **CHID** in Section 10(B)(3) of Resolution No. CJN-29-22 for a manufactured housing facility.
 10. **\$15,550,000** to the Navajo-Hopi Land Commission Office (“**NHLCO**”) in Section 10(B)(4) of Resolution No. CJN-29-22.
 11. **\$62,938,855** to **CHID** in Section 4(C) of Resolution No. CMY-28-24 for additional affordable housing.
 12. **\$15,000,000** to the **NNFRF Office** in Section 4(D) of Resolution No. CMY-28-24 for administrative support through December 31, 2026.
 13. **\$2,330,205** to the Division of Aging and Long-Term Care Services (“**DALTCS**”) in Resolution No. CMY-28-24.
 14. **\$211,256,148** to all Navajo Nation Chapters in Section 3(B) of Resolution No. CJN-29-22.
 15. **\$290,204,402** to Navajo Tribal Utility Authority (“**NTUA**”) pursuant to two Subrecipient Agreements with DWR.
 16. **\$150,000,000** to Navajo Engineering & Construction Authority (“**NECA**”) pursuant to one Subrecipient Agreement with DCD.
- C. The total of the NNFRF dollar amounts listed in (B)(1)-(16) above do not include the Navajo Nation’s entire ARPA allocation. Rather, items (1)-(16) list only those original NNFRF allocations, and the NNFRF funds remaining as of the Effective Date of this Interagency Agreement are the funds covered by this Interagency Agreement.

SECTION 4. MODIFICATIONS TO NNFRF EXPENDITURE PLANS.

- A. As used herein, “modification” means a change, revision, alteration, or amendment to any portion of an NNFRF Expenditure Plan, or to a SCOPE OF WORK included therein, which may include the transfer of NNFRF funds into, or out of, such Expenditure Plan.

- B. In his discretion, the Navajo Nation Controller, or his authorized designee, may approve a modification via his signature Administrative Approval, without Navajo Nation Council or Standing Committee action, without compliance with SECTION 8 of Exhibits 1 through 5 of Resolution BFS-31-21, without adhering to the 20% modification restriction in 2 N.N.C.§223(F), without Oversight Committee approval provided for in Section 12(D)(2) of the FY2025 Revised Budget Instructions Manual, and without the request or approval of the affected Recipient Agency or the Agency or other entity to receive NNFRF funding, so long as the modification is in compliance with SECTION 4(C) below and such modification is within the appropriate and applicable SCOPE OF WORK described in SECTION 5 herein.
- C. All modifications approved by the Controller shall comply with federal ARPA-related provisions, including the Treasury’s 2022 Final Rule (effective April 1, 2022), the Treasury’s FAQ (dated March 29, 2024), and the Treasury’s Uniform Guidance set forth in 2 C.F.R. Part 200, as well as all Navajo Nation laws, policies, regulations, rules, and procedures, including those governing NNFRF and any grants, sub-recipient agreements, or the like, that do not contradict any of the federal provisions cited herein.
- D. At least 48 hours prior to implementing any modifications, the Controller shall provide written notice to the Office of the President/Vice-President and the Budget & Finance Committee of the Navajo Nation Council.

SECTION 5. SCOPE OF WORK FOR RECIPIENT AGENCIES.

The Controller shall administer, manage, and oversee, the SCOPE OF WORK for each of the Treasury-approved projects and programs described below.

- A. **PUBLIC HEALTH – COMPREHENSIVE HEALTH PROGRAM.** The Controller shall administer NNFRF funding for a Comprehensive Health Program in response to the COVID-19 pandemic under Treasury Expenditure Category 1.7. The Recipient Agencies and the original NNFRF amount provided are:
 - 1. DALTCS – original NNFRF allocation of \$2,330,205. The primary purpose of this SCOPE OF WORK is to purchase vehicles for use by DALTCS in providing a wide range of services designed to mitigate the negative effects of the COVID-19 pandemic. The Controller is authorized to utilize the DALTCS in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.
 - 2. Division of Public Safety / “E911” program – original NNFRF allocation of \$35,000,000. The primary purpose of this SCOPE OF WORK is to make capital purchases for a comprehensive 911 Emergency Response System across the Navajo Nation. This SCOPE OF WORK is intended to enhance the Navajo Nation’s response to health-related and other emergencies that affect members of the public. The Controller is authorized to utilize DPS DALTCS in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

B. PUBLIC HEALTH – NEGATIVE ECONOMIC IMPACTS. The Controller shall administer NNFRF funding for an Affordable Housing Program under Treasury Expenditure Category 2.15. The Recipient Agencies and the original NNFRF provided are:

1. CHID long term housing security – original NNFRF allocation of \$112,938,855. The primary purpose of this SCOPE OF WORK is to purchase and/or construct affordable housing for eligible recipients. This SCOPE OF WORK also aims to provide infrastructure for eligible recipients of affordable housing. The Controller is authorized to utilize CHID in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.
2. Veterans Administration; long term housing security for veterans – original NNFRF allocation of \$50,000,000. The primary purpose of this SCOPE OF WORK is to purchase and/or construct affordable housing for eligible veterans as determined by the NNVA. This SCOPE OF WORK also aims to provide infrastructure for eligible recipients of affordable housing. The Controller is authorized to utilize NNVA in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.
3. Navajo Hopi Land Commission Office; Affordable Housing and Modular Housing Manufacturing Plant – original NNFRF allocation of \$15,550,000. The primary purpose of this SCOPE OF WORK is to purchase and/or construct affordable housing for eligible NHLCO clients, as determined by the NHLCO. This SCOPE OF WORK also aims to provide infrastructure for eligible recipients of affordable housing. The Controller is authorized to utilize NHLCO in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.
4. Comprehensive Economic Relief Program – original NNFRF allocation of \$5,623,603. The primary purpose of this SCOPE OF WORK is to provide economic relief under certain Treasury-allowed Expenditure Categories for eligible recipients. The Controller is authorized to utilize subcontractors or consultants for this SCOPE OF WORK and any existing or future obligated contracts or purchase orders.

C. WASTEWATER AND SEWER INFRASTRUCTURE. The Controller shall administer NNFRF funding for a Centralized Wastewater Treatment Project under Treasury Expenditure Category 5.1. The Recipient Agency and the original NNFRF amount provided are:

Department of Water Resources – original NNFRF allocation of \$6,008,874. The primary purpose of this SCOPE OF WORK is to construct wastewater treatment facilities throughout the Navajo Nation. This SCOPE OF WORK includes professional services related to construction, project management, and all capital expenditures for the project. The Controller is authorized to utilize DWR in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

D. DRINKING WATER INFRASTRUCTURE. The Controller shall administer NNFRF funding for a Drinking Water Distribution and Transmission Project under Treasury

Expenditure Category 5.11. The Recipient Agency and the original NNFRF amount provided are:

Department of Water Resources – original NNFRF allocation of \$84,642,134. The primary purpose of this SCOPE OF WORK is to construct safe drinking water and potable water facilities throughout the Navajo Nation. This SCOPE OF WORK includes professional services related to construction, project management, and all capital expenditures for the project. The Controller is authorized to utilize DWR in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

- E. DRINKING WATER SOURCING. The Controller shall administer NNFRF funding for a Drinking Water Source Program under Treasury Expenditure Category 5.13. The Recipient Agency and the original NNFRF provided are:

Department of Water Resources – original NNFRF allocation of \$33,393,775. The primary purpose of this SCOPE OF WORK is to construct necessary facilities and infrastructure for providing safe drinking water throughout the Navajo Nation. This SCOPE OF WORK includes professional services related to construction, project management, and all capital expenditures for the project. The Controller is authorized to utilize DWR in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

- F. DRINKING WATER STORAGE. The Controller shall administer NNFRF funding for a Drinking Water Storage Project under Treasury Expenditure Category 5.14. The Recipient Agency and the original NNFRF amount provided are:

Department of Water Resources – original NNFRF allocation of \$1,000,000. The primary purpose of this SCOPE OF WORK is to construct necessary facilities and infrastructure for safe drinking water storage and potable water access throughout the Navajo Nation. This SCOPE OF WORK includes professional services related to construction, project management, and all capital expenditures for the project. The Controller is authorized to utilize DWR in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

- G. DELEGATE REGION PLANS – REMAINING NNFRF FUNDS.

1. The Controller shall work with the Division of Community Development to administer the remaining NNFRF funds allocated for each of the Non-LGA Chapter NNFRF Expenditure Plans previously approved in various Council Resolutions (24 Delegate Region Plans), which funds were not reallocated to the Revenue Replacement Reserve established in CMY-28-24, and which funds are not currently governed by a Chapter Subrecipient Agreement.

2. Division of Community Development – original NNFRF allocation of \$211,256,148. The primary purpose of this SCOPE OF WORK is to complete the NNFRF Expenditure Plans for each of the 24 Delegate Regions approved as of July 17, 2024. This SCOPE OF WORK includes services and goods, both capital and non-capital,

related to approved ARPA-eligible expenditures. The Controller is authorized to utilize DCD in performing this SCOPE OF WORK and in fulfilling any existing or future obligated contracts or purchase orders.

H. ADMINISTRATIVE COSTS RE: NNFRF FUNDS EXPENDITURES AND NNFRF EXPENDITURE PLANS.

1. The Controller shall work with the NNFRF Office and all Recipient Agencies in administering NNFRF funding for a Comprehensive Administrative Costs Program under Treasury Expenditure Categories 7.1 and 7.2.
2. NNFRF Office - original allocation of \$15,000,000. The Controller shall calculate the administrative costs incurred for carrying out all remaining ARPA-related expenditures of NNFRF funds through and by December 31, 2026, in compliance with Treasury Guidelines on Administrative Costs.
3. This SCOPE OF WORK will cover the following activities (per Treasury FAQ 17.10):
 - (a) Reporting and compliance requirements, including subrecipient monitoring.
 - (b) Single Audit costs.
 - (c) Record retention and internal control requirements.
 - (d) Property standards.
 - (e) Environmental requirements.
 - (f) Civil rights and nondiscrimination requirements.

I. PROJECT MANAGEMENT COSTS RELATED TO SCOPE OF WORK.

In accordance with applicable Treasury Guidelines, for each SCOPE OF WORK described in this SECTION 5(A)-5(H), the Controller is authorized to calculate and charge associated project management costs, including, but not limited to, salaries, fringe benefits, and allowable operating costs.

J. CONTROLLER'S DUTIES.

1. In order to determine the best course of action for the Navajo Nation to complete all of its NNFRF expenditures by December 31, 2026, the Controller shall provide oversight, management, and monitoring of all items set forth in this SECTION 5. SCOPE OF WORK Subsections 5(A)-5(I), including the relevant activities and expenditures of all Recipient Agencies, subcontractors, consultants, and any purchase commitments regarding goods and services.
2. In carrying out his duties, the Controller shall utilize the flexibilities available under the Treasury's Final Rule and Treasury's FAQs, as applicable, including:
 - (a) Obligations (FAQ 17.1)
 - (b) Interagency Agreements (FAQ 17.6)
 - (c) Personnel costs (FAQs 17.7 – 17.9)
 - (d) Administrative Costs through December 12/31/26 (FAQs 17.10 and 17.13)

- (e) Cost increases (FAQ 17.16)
- (f) Contract Modifications (FAQ 17.17)
- (g) Unexpended Obligations (FAQ 17.19)

SECTION 6. CONDITIONS ON USE OF FUNDS.

All Recipient Agencies, and any contractors, consultants, or other parties used in the performance of a NNFRF Expenditure Plan, shall use all NNFRF funds in compliance with the ARPA-related requirements of section 602 and 603 of the Social Security Act, the U.S. Department of Treasury’s ARPA-related 2022 Final Rule (effective April 1, 2022), the U.S. Department of Treasury’s ARPA-related FAQ (dated March 29, 2024), and the U.S. Department of Treasury’s ARPA-related Uniform Guidance set forth in 2 C.F.R. Part 200. All Recipient Agencies shall also comply with all other applicable federal statutes, regulations, and executive orders, and shall provide for such compliance by other parties under any agreements the Recipient Agency may enter into with such other parties.

SECTION 7. BINDING EFFECT OF AGREEMENT.

The Parties intend this Interagency Agreement to have full legal effect, and to legally bind the Parties and all Recipient Agencies, under Navajo Nation law and applicable federal law.

SECTION 8. EFFECTIVE DATE.

This Interagency Agreement shall be effective as of the date signed by the Navajo Nation President pursuant to his authority under 2 N.N.C. §1005(C)(2).

SECTION 9. EXECUTION BY THE PARTIES.

The Parties hereby execute this Interagency Agreement as follows:

The SPEAKER of the Navajo Nation Council
on behalf of the Navajo Nation Council:

The PRESIDENT of the Navajo Nation
on behalf of the Recipient Agencies:

Crystalyne Curley, Speaker

Date

Buu Nygren, President

Date

The CONTROLLER of the Navajo Nation
on behalf of the Office of the Controller:

Sean McCabe, Controller

Date



MEMORANDUM

TO: Hon. Crystalyne Curley, Speaker
25th Navajo Nation Council

FROM: 
Luralene D. Tapahe, Principal Advocate
Office of Legislative Counsel

DATE: December 16, 2024

RE: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; APPROVING A COMPREHENSIVE INTERAGENCY AGREEMENT TO TIMELY OBLIGATE CERTAIN NAVAJO NATION FISCAL RECOVERY FUNDS (“NNFRF”) BY THE U.S. DEPARTMENT OF TREASURY DEADLINE OF DECEMBER 31, 2024; APPROVING OTHER NNFRF-RELATED ACTIONS

Per your request, the Office of Legislative Counsel has prepared the above-described proposed legislation. Pursuant to 2 N.N.C. §164(A)(1), OLC finds this draft to be legally sufficient as currently drafted. However, as with any action of the Navajo Nation government, this legislation can be legally challenged. Also, please note that proposed amendments to this legislation, if any, may alter OLC’s determination of the legal sufficiency of this legislation.

Please review this legislation and its attached exhibits, to make sure that everything is satisfactory and in order. OLC relies on you, your LDA, and the requesting programs or parties to provide all necessary supporting documents for this legislation.

You should contact me immediately if any edits are needed, or if you have any questions or concerns. I can be reached at the Office of Legislative Counsel at (928) 871-7166 or via email at luralenetapahe@navajo-nsn.gov.