

COST-SHARING AGREEMENT BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE NAVAJO NATION  
FOR  
TECHNICAL, PLANNING AND DESIGN ASSISTANCE

THIS AGREEMENT entered into this 22<sup>nd</sup> day of Sept 2004, by and between the Department of the Army (hereinafter the "Government"), represented by the Principal Deputy Assistant Secretary of the Army (Civil Works), and the Navajo Nation (hereinafter the "Non-Federal Sponsor"), represented by the President of the Navajo Nation.

WITNESSETH, that

WHEREAS, Section 520 of the Water Resources Development Act of 1999 (Public Law 106-53) authorizes the Corps of Engineers to undertake a survey of, and provide technical, planning, and design assistance for, watershed management, restoration, and development on the Navajo Indian Reservation, Arizona, New Mexico, and Utah;

WHEREAS, Section 520 of the Water Resources Development Act of 1999 provides that the Federal share of the cost of activities carried out under this section shall be 75 percent;

WHEREAS, Section 520 of the Water Resources Development Act of 1999 further provides that funds made available under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) may be used by the Navajo Nation in meeting the non-Federal share of the cost of the activities;

WHEREAS, Section 520 of the Water Resources Development Act of 1999 authorized to be appropriated to carry out this Section \$12,000,000 for the period beginning with fiscal year 2000;

WHEREAS, the Secretary of the Army is prepared to obligate \$12,000,000 as the authorized 75 percent Federal share of the technical planning and design assistance efforts as funds are appropriated,

WHEREAS, the Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor shall contribute 25 percent of the financial obligations for the technical, planning, and design assistance contemplated by this Agreement;

WHEREAS, the Government and the Non-Federal sponsor intend, as funds are appropriated, that such technical planning and design assistance efforts shall be accomplished sequentially, over time, pursuant to the terms of this Agreement, and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in paying for technical, planning, and design assistance in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "technical, planning, and design assistance" shall mean all activities related to undertaking surveys and providing technical planning and design assistance for watershed management, restoration, and development of the Navajo Indian Reservation as authorized by Section 520 of the Water Resources Development Act of 1999, Public Law 106-53, and as generally described in the Project Management Plan, incorporated herein, for which financial obligations are made during the technical, planning, and design assistance period in accordance with the terms of this Agreement; the final accounting in accordance with Article IV.D. of this Agreement; any audit in accordance with Article VII of this Agreement; and the Government's activities conducted as part of negotiating this Agreement. The term shall not include any activities performed as part of reconnaissance or feasibility studies; activities conducted as part of negotiation of a project cooperation agreement; or the Non-Federal Sponsor's activities conducted as part of negotiating this Agreement. Subject to availability of funds and within the amounts authorized by Section 520, the Project Management Plan may be amended without further modification of this Agreement.

B. The term "total technical, planning, and design assistance costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government as a consequence of financial obligations for technical, planning, and design assistance. The term includes but is not necessarily limited to, the Government's costs of negotiating this Agreement; applicable planning and evaluation; applicable engineering and design; environmental assessment and documentation; the identification, survey, and evaluation of historic properties; participation in the Technical, Planning, and Design Assistance Coordination Team in accordance with Article III of this Agreement; costs of the final accounting in accordance with Article IV.D. of this Agreement; and costs of audit in accordance with Article VII of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies; any costs (other than audit) resulting from financial obligations after the technical, planning, and design assistance period; any costs of negotiating a project cooperation agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "technical, planning, and design assistance period" shall mean the time period commencing when Federal General Investigations appropriations for technical, planning, and design assistance are allocated to the U.S. Army Engineer District, Los Angeles, and ending when final technical, planning, and design assistance documents have been delivered to the Non-Federal Sponsor.

D. The term “District Engineer” shall mean the U.S. Army Engineer for the Los Angeles District.

E. The term “fiscal year” shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

F. The term “financial obligations for technical, planning, and design assistance” shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in total technical, planning, and design assistance costs.

G. The term “non-Federal proportionate share” shall mean the ratio of the Non-Federal Sponsor’s total cash contribution required in accordance with Article II.B. of this Agreement to total financial obligations for technical, planning, and design assistance, as projected by the Government.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously provide technical, planning, and design assistance to the Non-Federal Sponsor applying those procedures usually applied to the planning, engineering, and design of Federal projects, pursuant to Federal laws, regulations, and policies.

1. To the maximum extent possible, the Government shall provide technical, planning, and design assistance to the Non-Federal Sponsor in accordance with the Project Management Plan for this assistance and, if applicable, any modifications to the Project Management Plan made during the technical, planning, and design assistance period, developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all technical, planning, and design assistance

(whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

3. As of the effective date of this Agreement, \$660,000 of Federal funds have been appropriated for technical, planning, and design assistance to be provided pursuant to this Agreement. This amount is less than the Federal share of projected total technical, planning, and design assistance costs, and the Government makes no commitment to budget for additional funds for the Federal share of total technical, planning, and design assistance costs. Notwithstanding any other provision of this Agreement, the Government's financial participation in providing technical, planning, and design assistance pursuant to this Agreement is limited to this amount together with any additional funds that the Congress may appropriate for technical, planning, and design assistance. In the event that the Congress does not appropriate funds sufficient to meet the Federal share of funds required to continue technical, planning, and design assistance in the then-current or upcoming fiscal year, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend technical, planning, and design assistance or terminate this Agreement in accordance with Article XI.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for technical, planning, and design assistance and an equal percentage of the total funds contributed by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsor shall provide, during the technical, planning, and design assistance period, a contribution equal to 25 percent of total technical, planning, and design assistance costs. If the Government projects that the value of the Non-Federal Sponsor's contributions under Articles III and VII will be less than 25 percent of total technical, planning, and design assistance costs, the Non-Federal Sponsor shall provide a contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its 25 percent share of total technical, planning, and design assistance costs.

C. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraph B. of this Article and Articles III and VII of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraph B. of this Article.

D. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total technical, planning, and design assistance costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute. However, through separate appropriation, funds made available under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) may be used by the Navajo Nation in meeting the non-Federal share of the cost of the activities.

E. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of any project or a separable element thereof or

as relieving the Non-Federal Sponsor of any future obligation under the terms of any project cooperation agreement.

### ARTICLE III - TECHNICAL, PLANNING, AND DESIGN ASSISTANCE COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Technical, Planning, and Design Assistance Coordination Team. Thereafter, the Technical, Planning, and Design Assistance Coordination Team shall meet regularly until the end of the technical, planning, and design assistance period. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Technical, Planning, and Design Assistance Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Technical, Planning, and Design Assistance Coordination Team informed of the progress of the technical, planning, and design assistance and of significant pending issues and actions, and shall seek the views of the Technical, Planning, and Design Assistance Coordination Team on matters that the Technical, Planning, and Design Assistance Coordination Team generally oversees.

C. Until the end of the period of technical, planning, and design assistance, the Technical, Planning, and Design Assistance Coordination Team shall generally oversee issues related to technical, planning, and design assistance, including scheduling of reports and work products; contract awards and modifications; contract costs; the Government's cost projections; and other related matters.

D. The Technical, Planning, and Design Assistance Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Technical, Planning, and Design Assistance Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Technical, Planning, and Design Assistance Coordination Team. The Government, having the legal authority and responsibility for technical, planning, and design assistance, has the discretion to accept, reject, or modify the Technical, Planning, and Design Assistance Coordination Team's recommendations.

E. The costs of participation in the Technical, Planning, and Design Assistance Coordination Team during the technical, planning, and design assistance period shall be included in total technical, planning, and design assistance costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE IV - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total technical, planning, and design assistance costs, of each party's share of total technical, planning, and design assistance costs, of the non-Federal proportionate share, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B. of this Agreement, and of the funds the Government projects to be required from the Non-Federal Sponsor in accordance with Article II.B. of this Agreement for the upcoming fiscal year. On the effective date of this Agreement, total technical, planning, and design assistance costs are projected to be \$ 16,000,000, and the Non-Federal Sponsor's contribution required under Article II.B. of this Agreement is projected to be \$ 4,000,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required under Article II.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for technical, planning, and design assistance through the first fiscal year of technical, planning, and design assistance, including the non-Federal proportionate share of financial obligations for technical, planning, and design assistance incurred prior to such payment. Not later than 30 calendar days after such notice the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Los Angeles District" to the District Engineer.

2. For the second and subsequent fiscal years of technical, planning, and design assistance, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for technical, planning, and design assistance for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for technical, planning, and design assistance incurred prior to the payment made under paragraph B.1 of this Article; and (b) the non-Federal proportionate share of financial obligations for technical, planning, and design assistance as they are incurred during the remainder of the technical, planning, and design assistance period.

4. If at any time during the technical, planning, and design assistance period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for technical, planning, and design assistance for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon completion of technical, planning, and design assistance or termination of this Agreement, and upon resolution of all relevant proceedings, claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total technical, planning, and design assistance costs, each party's contribution provided thereto, and each parties required share thereof.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., III and VII of this Agreement is less than its required 25 percent share of total technical, planning, and design assistance costs, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required 25 percent share of total technical, planning, and design assistance costs.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., III and VII of this Agreement exceeds its required 25 percent share of total technical, planning, and design assistance costs, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI – RELEASE

The Navajo Nation acknowledges that the Government is performing the technical, planning, and design assistance at the request of the Navajo Nation. Upon the Government's

completion of the services envisioned under this agreement, all Government responsibility for the services provided shall cease. In consideration for the services provided, the Navajo Nation releases the Government from all further responsibility to the Navajo Nation for the services provided.

#### ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, or other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in total technical, planning, and design assistance costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal laws and



regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." Notwithstanding the above provision, nothing in this Agreement shall prohibit the Navajo Nation from adhering to a policy of Indian Preference in employment or the application of tribal employment or tribal contract preference laws, to the fullest extent permitted by law.

#### ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

#### ARTICLE X - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B. or IV of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of technical, planning, and design assistance under this Agreement is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the technical, planning, and design assistance under this Agreement.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for technical, planning, and design assistance under this Agreement for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to technical, planning, and design assistance under this Agreement and proceed to a final accounting in accordance with Article IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment from the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

## ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Mr. John Leeper  
Navajo Nation Water Management Branch  
Post Office Box 678  
Fort Defiance, Arizona 86504

If to the Government:

Deputy District Engineer  
Department of the Army  
Corps of Engineers  
Los Angeles District  
ATTN: CESPL-PM-C  
P.O. Box 532711  
Los Angeles, California 90053-2325

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS

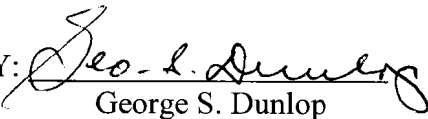
A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Navajo Nation where creating such an obligation would be inconsistent with section 223 of Title 2 of the Navajo Nation Code.

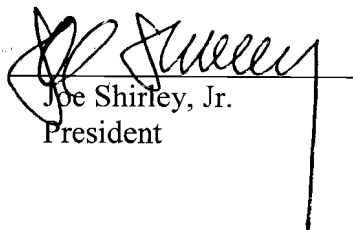
B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Principal Deputy Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE NAVAJO NATION

BY:   
George S. Dunlop

BY:   
Joe Shirley, Jr.  
President

Principal Deputy Assistant Secretary of the Army  
(Civil Works)

DATE: 9/22/2004

DATE: Sept 22, '04

CERTIFICATE OF AUTHORITY

I, LOUIS DENETSOSIE, do hereby certify that I am the principal legal officer of the Navajo Nation, that the Navajo Nation is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Navajo Nation in connection with technical, planning, and design assistance to be provided under it, and that the persons who have executed this Agreement on behalf of the Navajo Nation have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
22nd day of September 2004.

Louis Denetsosie

Louis Denetsosie  
Attorney General  
Navajo Nation

## CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
\_\_\_\_\_  
Joe Shirley, Jr.  
President  
Navajo Nation

DATE: Sept 22, '04