

**INTERDEPARTMENTAL COOPERATIVE AGREEMENT  
IMPLEMENTING THE "LEAD AGENCY CONCEPT"  
FOR PROCUREMENT AND PROJECT MANAGEMENT OF [SERVICES FOR]  
CONSTRUCTION RELATED PROJECTS**

This Interdepartmental Cooperative Agreement ("Agreement") is made and entered into by and between the Community Housing and Infrastructure Department (CHID), Capital Improvement Office (CIO), Solid Waste Management (SWM), and Design and Engineering Services (DES), in the Division of Community Development, and Navajo Division of Transportation (NDOT), and Navajo Nation Telecommunication and Utilities (NNTU), Facilities Maintenance Department (FMD), and Department of Information Technology (DIT), in the Division of General Services, Water Management Branch (WMB), and Historic Preservation Office (HP), and Fish and Wildlife Natural Heritage Program (F&W) in the Division of Natural Resources, and the Navajo Area Agency on Aging (NAAA) in the Navajo Division of Health, and Navajo Environmental Protection Agency (NEPA) (hereinafter "the Parties").

**WHEREAS**, it is in the best interest of the Navajo Nation ("Nation") that the Nation's procurement, project management and administration of construction related services for the design, engineering, construction, renovation, or improvement of private housing, public facilities, roads, parking lots, utilities, service lines and/or other public infrastructure activities or projects should be performed in accordance with all applicable laws and regulations of the Nation; and

**WHEREAS**, some of the Parties have specialized knowledge, experience, duties and responsibilities concerning construction related services under their respective Plans of Operation; and

**WHEREAS**, a Party should serve as a "Lead Agency" for a particular project where the primary purpose, emphasis, or nature of that project falls within that Party's area of expertise and responsibility pursuant to that Party's Plan of Operation (the Party's "purview");

**WHEREAS**, the Lead Agency should take primary responsibility for the oversight, project management and administration of those projects which are within its purview, but the Lead Agency should also consult with other appropriate Parties who have expertise and responsibility in certain areas or aspects of said projects or portion of those projects, and a Lead Agency should also continue to work with and coordinate with the Sponsor of a project; and

**WHEREAS**, the Sponsor of a project still has various ongoing responsibilities for a project even where a different Party is made the Lead Agency;

**NOW, THEREFORE**, the Parties agree to the following:

**I. DEFINITIONS**

- A. "Lead Agency" means a Navajo Nation governmental subdivision or entity who is a Party to this Agreement, and who has the specialized knowledge, experience, duties and responsibilities concerning the primary purpose, emphasis, or nature of a particular construction project pursuant to the Lead Agency's Plan of Operation.
- B. "Portfolio Manager" means a Party to this Agreement who is not the Sponsor but who coordinates with the Lead Agency on pre-planning a project and assists the Sponsor in completion of all Pre-Procurement Activities (PPAs). CIO is an example of a Portfolio Manager.

- C. "Pre-procurement Activities" or "PPAs" means all activities, clearances, etc., which must be completed before a construction project can be procured, and which are further described in Exhibit B.
- D. "Project" means the design, engineering, construction, renovation, or improvement of private housing, public facilities, roads, parking lots, utilities, service lines and/or other public infrastructure activities where the procurement for said construction related activities is done by the Nation.
- E. "Project Management" means the planning and coordination by the Lead Agency of a construction project from the point of developing the scope of work to completion of the project, but which is after completion of the PPAs.
- F. "Purview" means the area of expertise and responsibility of an agency pursuant to its Plan of Operation.
- G. "Sponsor" means the Navajo Nation governmental subdivision or entity, who may or may not be a Party to this Agreement, who has the primary interest in the completion of a particular construction project, and who has continuing responsibilities for said project from inception to completion, including securing of all necessary funding, and who has primary responsibility for completion of all "pre-procurement activities" (PPAs).

## **II. RESPONSIBILITIES OF THE PARTIES.**

- A. All Parties shall use their best faith efforts to communicate, coordinate and cooperate with all involved Parties.
- B. The Project Sponsor shall:
  - 1. Remain involved throughout the duration of the Project;
  - 2. Have primary responsibility for all PPAs for the Project, as described in Exhibit B, which the Parties agree is a draft document to be updated as needed; provided, for a "capital outlay project," CIO, as a "Portfolio Manager," shall assist the Sponsor in ensuring compliance with all PPAs for the capital outlay project in accordance with Article II (G). NEPA, HP and F&W shall be consulted as part of the pre-procurement process, and their approval shall be required, in accordance with their respective plans of operations, for all environmental, biological and archeological clearances for construction related projects;
  - 3. Comply with all reporting requirements of any funding agency;
  - 4. Remain responsible for securing any and all funding for the Project for all phases of the Project, including for the completion of all PPAs;
  - 5. Consult with the Lead Agency in determining whether the Project will require additional funds. If the Lead Agency and Sponsor determine that additional funds are required to complete the Project, either the Sponsor shall secure any requisite additional funds or the Sponsor and the Lead Agency shall amend the scope of the Project to meet funding realities;

6. Authorize signature authority for funding expenditures to be clearly defined with the Lead Agency; provided, said authorization shall not violate any requirements of the funding agency. If said authorization to the Lead Agency is not permitted by the funding agency or the terms of the funding agreement, the Sponsor shall cooperate and coordinate closely with the Lead Agency in authorizing expenditures; and
  7. Assist the Lead Agency and/or Portfolio Manager in coordinating with other Parties as appropriate.
- C. A Party shall be the Lead Agency for a construction related project which expends public funds (whatever the source of the funds) where the primary purpose, emphasis or nature of that project falls within that Party's "purview," as defined above, and as further described in Exhibit A.
- D. In case of a conflict between a Lead Agency's applicable regulations and policies and any other Party's regulations and policies, including those of the Sponsor, the Lead Agency's regulations and policies shall apply; provided, the Lead Agency shall comply with the requirements of any funding agency or applicable funding agreement.
- E. Any Party which is a Lead Agency for a project shall:
1. Develop the scope of work for procurement purposes under the project;
  2. Prepare and advertise any RFPs and/or RSQs for the project;
  3. Take primary responsibility for the preparation of the SAS package for the project, including the contract for services and all required supporting documents;
  4. Manage, implement and oversee the project, including any services procured for that project;
  5. Use best efforts to ensure that project costs are reasonable and remain within budget;
  6. Coordinate and consult as necessary with all other appropriate Parties who may have expertise or responsibility for any aspects or phases of that project pursuant to their Plans of Operation;
  7. Ensure that NEPA is consulted in advance of procurement and that NEPA has approved the scope of work and the RFP or RSQ for any construction related project involving an Underground Storage Tank or with potential to contaminate air, land or water.
  8. Execute a separate "Sponsor-Lead Agency Agreement" with any Sponsor of a project that is not a Party to this Agreement, which shall define the responsibilities of the parties. A model "Sponsor-Lead Agency Agreement" is attached as "Exhibit C." In lieu of executing a separate agreement, a Sponsor who is a non-Party to this Agreement may become a Party to this Agreement pursuant to Article VII.
- F. In the case of a project where the procuring party and/or project manager is a LGA certified chapter, any Party which would otherwise be the Lead Agency for the project may, upon request by the chapter, assist the chapter with:

1. Preparation of the scope of work;
2. Preparation of the RFP or RSQ;
3. Preparation of the SAS package;
4. Management and oversight of the project; and
5. Coordination and consultation as necessary with other appropriate Parties who may have expertise or responsibility for any aspects or phases of the project pursuant to their Plans of Operation.

G. CIO, as a "Portfolio Manager" shall:

1. Be responsible for ensuring completion of critical PPAs for all capital outlay projects prior to authorizing the project to the Lead Agency. PPAs are described in Exhibit B, which the Parties agree is a draft document to be updated as needed;
2. Consult NEPA, HP and F&W as part of the pre-procurement process and their approval shall be required, in accordance with their respective Plans of Operation, for all environmental, biological and archeological clearances for construction related projects; &
3. Not carry out procurement or project management for any project.

### **III. TERM.**

This Agreement shall become effective immediately upon any Party who has executed the Agreement, and shall remain in effect until all Parties agree to terminate the Agreement, or until the Agreement is terminated by Executive Order, or until a change in Navajo Nation laws or regulations makes performance under this Agreement impossible for any Party, but in which case the Agreement shall remain in effect for all other Parties.

### **IV. LIABILITY AND DUTIES.**

This Agreement shall not shift the liability of any Party to any other Party.

### **V. AMENDMENTS.**

The terms of this Agreement may be amended upon mutual written consent of the Parties and concurrence of the Navajo Nation Department of Justice.

### **VI. DISPUTES.**

If a dispute arises under this Agreement, the Parties shall use their best faith efforts to resolve any dispute informally and as expeditiously as possible, through negotiations at the staff level. Each Party shall designate a staff person to meet with staff from the other Parties at a mutually agreeable time and place. The Parties will honor all reasonable requests for information. If the dispute cannot be resolved within five (5) days, the Parties will refer the matter to the Executive Division Director level for resolution. If the Parties are still unable to resolve the dispute, the matter will be referred to the President

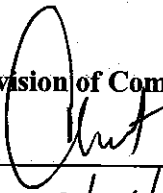
or his or her designee for resolution. In the event the Parties are from different Divisions, and the Parties are unable to resolve the dispute with the assistance of their Division Directors, the matter will be referred directly to the President or his or her designee.

**VII. RIGHTS OF OTHER PARTIES.**

Nothing in this Agreement shall be interpreted to create any rights in any third party that is not an entity or subdivision of the Navajo Nation government; provided, the Parties agree that any other Navajo Nation governmental subdivision may become a Party to this Agreement by executing a Letter of Commitment to be a Party to this Agreement and which shall bind said new Party to all the terms of this Agreement.

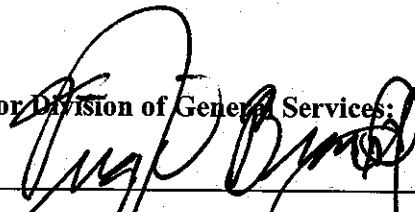
IN WITNESS WHEREOF, we the undersigned hereby execute this Interdepartmental Cooperative Agreement for the benefit of the Navajo Nation:

For Division of Community Development:

  
\_\_\_\_\_

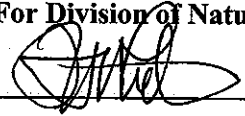
Date: 9/14/09

For Division of General Services:

  
\_\_\_\_\_

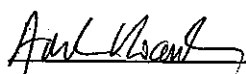
Date: 9-21-09

For Division of Natural Resources:

  
\_\_\_\_\_

Date: 9/14/09

For Navajo Division of Health:

  
\_\_\_\_\_

Date: 9/25/09

For Historic Preservation Office:

  
\_\_\_\_\_

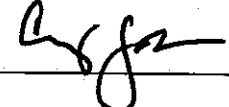
Date: 9.17.09

For Water Management Branch:

  
\_\_\_\_\_

Date: 9-14-09

For CHID:

  
\_\_\_\_\_

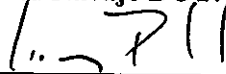
Date: 9/14/09

For Capital Improvement Office:

  
\_\_\_\_\_


Date: 9/14/09

For Navajo DOT:

  
\_\_\_\_\_

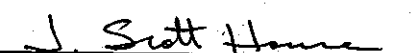
Date: 09.23.2009

For Solid Waste Management:

  
\_\_\_\_\_

Date: 9/14/09

For DES:

  
\_\_\_\_\_

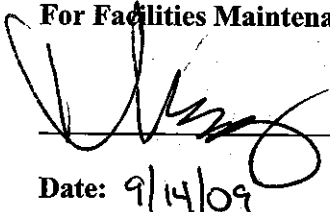
Date: 9/14/09

For NNTU:

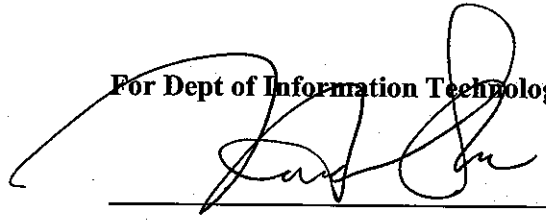
  
\_\_\_\_\_

Date:

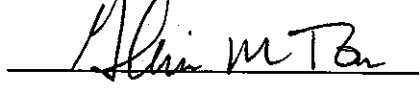
For Facilities Maintenance Dept:

  
Date: 9/14/09

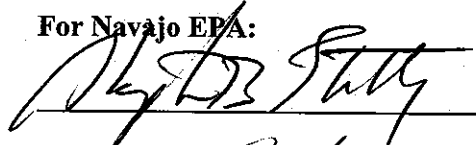
For Dept of Information Technology:

  
Date: 9-14-09

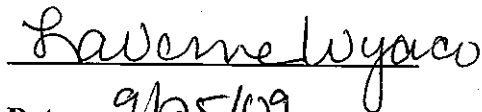
For Fish and Wildlife:

  
Date: 9/17/09

For Navajo EPA:

  
Date: 09/21/09

For Navajo Area Agency on Aging:

  
Date: 9/25/09

## Exhibit A

### **“Guidance for Consultation with Involved Agencies and for Selection of Lead Agency”**

**Navajo Area Agency on Aging (NAAA):** Never a “Lead Agency” but shall serve as the Sponsor for Senior Center construction and renovation and be responsible for the PPAs for all such projects.

**Community Housing and Infrastructure Department (CHID):** Electric service lines, home electric wiring, bathroom additions, potable water lines, residential water lines and single family residence waste water projects.

**Capital Improvement Office (CIO):** Never a “Lead Agency” but responsible for ensuring completion of all pre-procurement activities in capital projects, see Exhibit B.

**Solid Waste Management (SWM):** Public landfills and transfer stations.

**Navajo Division of Transportation (NDOT):** Roads, highway, airports, and equipment/maintenance yards.

**Design and Engineering Services (DES):** Design of new public use facilities, including site development and parking lots, site improvement, and construction management and administration of authorized capital projects.

**Navajo Nation Telecommunication and Utilities (NNTU):** Never a Lead Agency for communication infrastructure projects but shall be consulted by Department of Information Technology.

**Facilities Maintenance Department (FMD):** Renovation and repair of public use facilities that are not capital projects.

**Department of Information Technology (DIT):** Communication infrastructure projects in consultation with Navajo Nation Telecommunication and Utilities.

**Water Management Branch (WMB):** Hydrology infrastructure including water lines, dams, some water treatment facilities, and water delivery systems (including agricultural).

**Historic Preservation Office (HP):** Never a “Lead Agency” but provides archeological clearances as part of pre-procurement activities and must be consulted during construction activities for any archeological disturbance.

**Navajo Environmental Protection Agency (NEPA):** A “Lead Agency” for remedial environmental construction projects and provides environmental clearances as part of pre-procurement activities, and must approve any scope of work for projects involving underground storage tanks and any projects where potential exists for contamination of air, land or water.

**Fish and Wildlife Natural Heritage Program (F&W):** Never a “Lead Agency” but provides environmental clearances as part of pre-procurement activities



## Exhibit B

### PPA TO DO LIST (Pre-Procurement Activities)

(Done by Sponsor and in coordination with CIO on Capital Projects; for latest version of this list and further guidance, see CIO Policies and Guidelines, available at <http://nncio.org/cms/kunde/rtts/nncioorg/docs/828801887-04-20-2007-16-56-09C.pdf>, and CIO "Project Management Plan for Navajo Nation Chapters & Entities," available from CIO or at their website [nncio.org](http://nncio.org))

1. Secure land free and clear via land withdrawal or other method, factoring in required utilities, parking, sewage lagoon, access roads and additional acreage to be used if necessary.
2. Secure a comprehensive legal description of the site for the facility, including approvals relating to any existing land use rights of other parties such as leases, customary use areas, rights-of-way or other easements.
3. Obtain land survey information, with comprehensive site and topographical data; evaluate existing site conditions and land development requirements, soil and subsoil investigation & test results, including soil and water retention and drainage, foundation/fill requirements and erosion control.
4. Make any aesthetic/design and location considerations, conceptual criteria for project and compatibility with existing facilities, if any; determine whether "master development plan" is necessary or whether plan is just for individual facilities with additional buildings or facilities to be added later.
5. In accordance with the ICIP, prepare description of planned and potential uses for the proposed facility, including size of the project and maximum occupancy load; determine whether single large facility or master plan with later additions and whether future expansion is planned.
6. Plan for furniture, fixtures, and any necessary special equipment or appurtenances.
7. In coordination with Lead Agency preliminarily determine any requirements for electrical system, HVAC, plumbing, fresh & waste water, septic systems, telecommunications infrastructure, etc. (e.g. through feasibility study).
8. Per funding agency regulations, and in coordination with the Lead Agency, determine building and site material requirements and required quality construction standards, quality assurance and quality control requirements, applicable codes, regulations, ordinances, or statutes, and permitting requirements (esp. with federal facilities), and inspection and certification requirements.
9. Estimate cost in coordination with the Lead Agency for all phases of project, available and projected funding, budget estimates including existing funding and account numbers, if any.
10. In coordination with Lead Agency, determine preliminary project time schedules, dates of milestones and deadlines, and schedule of planned incoming funds/contributions.
11. Determine existing infrastructure and utility hookups, additional land use for utilities, if any, and responsibility for costs of utilities.
12. Determine any requirements for turnouts, access roads, parking and landscaping.
13. Identify any existing contracts or other agreements that may affect the project.
14. Address any other applicable requirements and considerations.

**Exhibit C**

**SPONSOR and LEAD AGENCY AGREEMENT  
for  
CONSTRUCTION RELATED PROJECT(S)**

This Sponsor and Lead Agency Agreement for Construction Related Project(s) (hereinafter "Agreement") is made and entered into by and between \_\_\_\_\_ (hereinafter "Lead Agency") and \_\_\_\_\_ (hereinafter "Sponsor") for the (description of project) \_\_\_\_\_ (hereinafter "Project").

**WHEREAS**, it is in the best interest of the Navajo Nation ("Nation") that the Nation's procurement, project management and administration of construction related services for the design, engineering, construction, renovation, or improvement of private housing, public facilities, roads, parking lots, utilities, service lines and/or other public infrastructure activities or projects should be performed in accordance with all applicable laws and regulations of the Nation; and

**WHEREAS**, the Lead Agency has the requisite specialized knowledge, experience, duties and responsibilities to carry out the procurement, project management and administration of the Project pursuant to its Plan of Operation; and

**WHEREAS**, the Sponsor of the Project still should have various ongoing responsibilities for the Project from inception to completion;

**NOW, THEREFORE**, the Parties agree to the following:

**I. RESPONSIBILITIES OF THE PARTIES.**

A. The Parties shall use their best faith efforts to communicate, coordinate and cooperate with each other and other involved Navajo Nation entities.

B. The Project Sponsor shall:

1. Remain involved throughout the duration of the Project;
2. Have primary responsibility for all "Pre-procurement Activities" or "PPAs" for the Project, as described in Exhibit A, which the Parties agree is a draft document to be updated as needed; provided, for a "capital outlay project," the Sponsor will work with CIO in ensuring compliance with all PPAs for the capital outlay project. NEPA, HP and F&W shall be consulted as part of the pre-procurement process, and their approval shall be required, in accordance with their respective plans of operations, for all environmental and archeological clearances for construction related projects;

## Exhibit C

3. Comply with all reporting requirements of any funding agency;
  4. Remain responsible for securing any and all funding for the Project for all phases of the Project, including for the completion of all PPAs;
  5. Consult with the Lead Agency in determining whether the Project will require additional funds. If the Lead Agency and Sponsor determine that additional funds are required to complete the Project, either the Sponsor shall secure any requisite additional funds or the Sponsor and the Lead Agency shall amend the scope of the Project to meet funding realities;
  6. Authorize signature authority for funding expenditures to be clearly defined with the Lead Agency; provided, said authorization shall not violate any requirements of the funding agency. If said authorization to the Lead Agency is not permitted by the funding agency or the terms of the funding agreement, the Sponsor shall cooperate and coordinate closely with the Lead Agency in authorizing expenditures; and
  7. Assist the Lead Agency in coordinating with other Navajo Nation entities as appropriate.
- C. In case of a conflict between a Lead Agency's applicable regulations and policies and those of the Sponsor, the Lead Agency's regulations and policies shall apply; provided, the Lead Agency shall comply with the requirements of any funding agency or applicable funding agreement.
- D. The Lead Agency shall:
1. Develop the scope of work for procurement purposes under the project;
  2. Prepare and advertise any RFPs and/or RSQs for the project;
  3. Take primary responsibility for the preparation of the SAS package for the project, including the contract for services and all required supporting documents;
  4. Manage, implement and oversee the project, including any services procured for that project;
  5. Use best efforts to ensure that project costs are reasonable and remain within budget;

## Exhibit C

6. Coordinate and consult as necessary with all other appropriate Parties who may have expertise or responsibility for any aspects or phases of that project pursuant to their Plans of Operation;
7. Ensure that NEPA is consulted in advance of procurement and that NEPA has approved the scope of work and the RFP or RSQ for any construction related project involving an Underground Storage Tank.

### III. TERM.

This Agreement shall become effective upon execution by both Parties, and shall remain in effect until the Parties agree to terminate the Agreement, or until the Agreement is terminated by Executive Order, or until a change in Navajo Nation laws or regulations makes performance under this Agreement impossible for any Party, but in which case the Agreement shall remain in effect for all other Parties.

### IV. LIABILITY AND DUTIES.

This Agreement shall not shift the liability of any Party to the other Party.

### V. AMENDMENTS.

The terms of this Agreement may be amended upon mutual written consent of the Parties and concurrence of the Navajo Nation Department of Justice.

### VI. DISPUTES.

If a dispute arises under this Agreement, the Parties shall use their best faith efforts to resolve any dispute informally and as expeditiously as possible, through negotiations at the staff level. Each Party shall designate a staff person to meet with staff from the other Parties at a mutually agreeable time and place. The Parties will honor all reasonable requests for information. If the dispute cannot be resolved within five (5) days, the Parties will refer the matter to the Executive Division Director level (Chapter President for chapters) for resolution. If the Parties are still unable to resolve the dispute, the matter will be referred to the President or his or her designee for resolution. In the event the Parties are from different Divisions (or a chapter), and the Parties are unable to resolve the dispute with the assistance of their Division Directors (or Chapter President), the matter will be referred directly to the President or his or her designee.

### VII. RIGHTS OF OTHER PARTIES.

Nothing in this Agreement shall be interpreted to create any rights in any third party that is not an entity or subdivision of the Navajo Nation government.

**Exhibit C**

**IN WITNESS WHEREOF**, we the undersigned hereby execute this **Sponsor and Lead Agency Agreement for Construction Related Project**:

**For the Sponsor:**

**For the Lead Agency:**

\_\_\_\_\_  
**(name and title)**

**(entity)**

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

**Exhibit A**

\_\_\_\_\_  
**(name and title)**

**(entity)**

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

## Exhibit C

### PPA TO DO LIST

*(Pre-Procurement Activities)*

(Done by Sponsor and in coordination with CIO on Capital Projects)

1. Secure land free and clear via land withdrawal or other method, factoring in required utilities, parking, sewage lagoon, access roads and additional acreage to be used if necessary.
2. Secure a comprehensive legal description of the site for the facility, including approvals relating to any existing land use rights of other parties such as leases, customary use areas, rights-of-way or other easements.
3. Obtain land survey information, with comprehensive site and topographical data; evaluate existing site conditions and land development requirements, soil and subsoil investigation & test results, including soil and water retention and drainage, foundation/fill requirements and erosion control.
4. Make any aesthetic/design and location considerations, conceptual criteria for project and compatibility with existing facilities, if any; determine whether "master development plan" is necessary or whether plan is just for individual facilities with additional buildings or facilities to be added later.
5. In accordance with the ICIP, prepare description of planned and potential uses for the proposed facility, including size of the project and maximum occupancy load; determine whether single large facility or master plan with later additions and whether future expansion is planned.
6. Plan for furniture, fixtures, and any necessary special equipment or appurtenances.
7. In coordination with Lead Agency preliminarily determine any requirements for electrical system, HVAC, plumbing, fresh & waste water, septic systems, telecommunications infrastructure, etc. (e.g. through feasibility study).
8. Per funding agency regulations, and in coordination with the Lead Agency, determine building and site material requirements and required quality construction standards, quality assurance and quality control requirements, applicable codes, regulations, ordinances, or statutes, and permitting requirements (esp. with federal facilities), and inspection and certification requirements.
9. Estimate cost in coordination with the Lead Agency for all phases of project, available and projected funding, budget estimates including existing funding and account numbers, if any.
10. In coordination with Lead Agency, determine preliminary project time schedules, dates of milestones and deadlines, and schedule of planned incoming funds/contributions.
11. Determine existing infrastructure and utility hookups, additional land use for utilities, if any, and responsibility for costs of utilities.
12. Determine any requirements for turnouts, access roads, parking and landscaping.
13. Identify any existing contracts or other agreements that may affect the project.
14. Address any other applicable requirements and considerations.