



Michael J. Garcia, Mayor

DATE: May 14, 2026

TO: Governing Body
Finance Committee
Public Works and Utilities Committee

FROM: Jesse Roach, Interim Public Utilities Department Director

SUBJECT: New Mexico Special Appropriation Grant Agreement

The New Mexico Office of the State Engineer has generously offered up to two million dollars (\$2,000,000) in legislative appropriations to the City of Santa Fe to reimburse fiscal year 2026 costs associated with critical maintenance and improvements at Nichols Dam. The actual amount will be determined by qualifying expenses through June 30, 2026 that will not be reimbursed through any other funding mechanism. The City of Santa Fe's Public Utilities Department expects to be able to take advantage of nearly \$1,300,000 of this generous offer and recommends approval of the attached NEW MEXICO SPECIAL APPROPRIATION GRANT AGREEMENT for Santa Fe Critical Dam Maintenance and Improvement Project ZJ5134.

City Council

Alma G. Castro, District 1
Patricia Feghali, District 1

Elizabeth "Liz" Barrett, District 2
Paul C. Bustamante, District 2

Lee Garcia, Mayor Pro Tem, District 3
Pilar F.H. Faulkner, District 3

Jamie Cassutt, District 4
Amanda Chavez, District 4

**NEW MEXICO SPECIAL APPROPRIATION GRANT AGREEMENT
Santa Fe Critical Dam Maintenance and Improvement Project ZJ5134**

This Special Appropriation Grant Agreement (“**Agreement**”) is made and entered into by and between the State of New Mexico, Office of the State Engineer (“**Grantor**” or “**OSE**”) and the City of Santa Fe (“**Grantee**”) (individually “**Party**” and collectively “**Parties**”). This Agreement shall be effective as of the date the OSE executes it (“**Effective Date**”).

WITNESSETH

WHEREAS, pursuant to Subsection 102 of Section 5 of Chapter 210 of Laws 2023 the Legislature appropriated ten million dollars (\$10,000,000) to OSE for critical dam maintenance and improvement projects, Subsequently, Subsection 134 of Section 5 of Chapter 160 of Laws 2025 provided that the OSE was permitted to use up to six million dollars (\$6,000,000) of that appropriation to the OSE for other identified purposes. In the event that some of the identified purposes may not be able to utilize their maximum allocations, the OSE desires to enter into an agreement with the Grantee to grant up to two million dollars (\$2,000,000) of remaining funds available to the Grantee from the appropriation for additional critical dam maintenance and improvement projects in Santa Fe, with the final amount to be established at OSE’s sole discretion, (“**Project**”); and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLE I - SCOPE OF WORK

- A. Grantee agrees that it will implement, in all respects, the activities outlined in its Program Description, attached hereto as **Exhibit “A,”** and incorporated herein by reference.
- B. Grantee agrees to make no change to the Program Description as defined herein without first submitting a written request to the OSE and obtaining the OSE’s written approval of the proposed change.

ARTICLE II - LENGTH OF GRANT AGREEMENT

- A. The term of this Agreement shall become effective July 1, 2025, and will terminate on June 30, 2026.
- B. The General Appropriation Act of 2025, Section 5 states: “Unless otherwise indicated, the appropriation may be expended in fiscal years 2025 and 2026”. Per section 5, any unexpended funds remaining at the end of fiscal year 2026 shall revert to the appropriate fund.

ARTICLE III - REPORTS

- A. Evaluation:
 - a. Grantee agrees to systematically collect, analyze, and use data to evaluate programs, initiatives, and policies by examining both the process and

outcomes to determine their effectiveness. Grantee agrees to review and update the existing evaluation plan regularly throughout the fiscal year.

- b. Grantee agrees that data entered into a database or otherwise provided to the OSE, is complete, accurate, and allows the OSE's designated evaluation contractor to develop and implement an evaluation system and/or to provide relevant reports derived from the available data.
- c. To adequately evaluate the progress of the Project statewide, Grantee shall provide, within thirty (30) days, upon request of the OSE's evaluator(s), information and access to program records and records of contractors working for Grantee.

B. Progress Reports:

- a. To adequately evaluate the progress of this Agreement, Grantee shall provide periodic quarterly progress reports to the OSE ("Progress Reports"). The Progress Reports shall contain a narrative and/or bulleted highlights of successes and challenges, a detailed budget breakdown of project milestones and expenditures to date, which includes expenditure back-up documentation, a certification all expenditures comply with the requirements of this Agreement, and anticipated project milestones and expenditures during the next quarter, in the form required by the OSE, attached hereto as **Exhibit "B,"** and incorporated herein by reference ("**Quarterly Progress Report**"), and such other information following the objectives of Grantee's evaluation as may be of assistance to the OSE in its evaluation. The first quarterly Progress Report is due on the thirtieth (30th) day following the end of the quarter, directly after the Effective Date.
- b. Grantee represents and warrants that Quarterly Progress Reports submitted to the OSE will not contain any "personally identifiable information" or "individually identifiable health information" in accordance with HIPAA.

C. Final Report:

- a. Grantee shall submit one copy of the final report for the Project to the OSE. The Final Report shall include the information called for in Article III, Paragraphs B (1) and B (2) for the fourth quarter. This requirement shall survive the termination of this Agreement.
- b. The Final Report and final reimbursement shall include sufficient detail to evaluate the effectiveness of each program component and shall be submitted no later than July 10th following expiration of the Term of this Agreement.

D. Annual Report:

- a. Grantee shall submit one copy of the annual report for the Project to the OSE. The Annual Report shall include the relevant data from the Project, including highlights for the period, budget to actual expenditures to date, and other information requested by the OSE in the format provided by the OSE. This requirement shall survive the termination of this Agreement.

- b. The Annual Report shall be submitted no later than the date determined by the OSE.

ARTICLE IV - CONSIDERATION AND METHOD OF PAYMENT

- A. In consideration of Grantee's satisfactory completion of all work and services required to be performed under the terms of this Agreement, and in compliance with all other Agreement requirements herein stated, the OSE shall pay Grantee a sum not to exceed two million dollars (\$2,000,000). The funds are to be expended in accordance with the proposed budget attached hereto as **Exhibits "C,"** incorporated herein by reference. The Parties agree that the Grantee's expenditure of these monies shall not deviate from the line items or amounts of the budget without the prior written approval of the OSE.
- B. It is understood and agreed that if any portion of the funds set forth in Article IV, Paragraph (A), are not expended at the completion of this Agreement for the purpose(s) designated in this Agreement, shall revert to the OSE for disposition.
- C. All Grantee payment requests shall be subject to Grantor review and acceptance. Payments will be made on a reimbursement of actual cost basis for cost incurred by Grantee during the grant period unless the Grantor determines, with the express permission of the State Controller, that advance payment to Grantee is justified. Grantee must submit all payment requests to Grantor no later than July 15, 2026. Payment requests shall be sent to the Program Manager and include, at minimum, the following documentation:
 - a. A completed Request for Payment Form, attached hereto as **Exhibit "D."**
 - b. A copy of the paid invoice or receipt from vendor (or due and payable invoice from vendor in the case of advance payment).
 - c. A copy of the canceled check for the payment made to vendor (in the case of advance payment Grantee shall send a copy of the cancelled check for the payment made to the vendor to Grantor within five days of the vendor's deposit of the check to document appropriate use of the funds advanced).
- D. Payment shall be made only for those services specified in this Agreement and not funded by any other public entity funding source. **The Grantee shall not bill the OSE for the same service or services that have been billed to another funding agency or source.**

ARTICLE V - MODIFICATION AND TERMINATION

- A. The OSE, upon written notice to Grantee, shall have the unilateral right to immediately terminate this Agreement if, in the judgment of the OSE, the provisions of this Agreement are violated or the activities described in the Program Description do not

progress satisfactorily. In this regard, the OSE may demand a refund of all or part of the funds dispersed to Grantee.

- B. The Parties may modify any terms and conditions of this Agreement by mutual agreement confirmed in writing with the same formalities for execution as this Agreement.
- C. Early Termination for Convenience: Except as provided in Article X and subparagraph A above, either Party may terminate this Agreement by providing the other Party with a minimum of thirty (30) days' advance written notice of the termination.
- D. Liability in the Event of Early Termination: In the event of early termination of this Agreement by either party, the OSE's sole liability shall be to reimburse Grantee in accordance with this Grant Agreement for qualifying expenditures that were:
 - a. Incurred pursuant to a legally binding agreement entered into by Grantee before Grantee's receipt of the OSE's notice of early termination or the issuance by the Grantee of a notice of early termination;
 - b. Incurred on or before the termination date in the notice of early termination;
 - c. For permissible purposes under this Agreement's Program Description and procured and executed in accordance with applicable law; and
 - d. The subject of a Request for Payment Form properly and timely submitted in accordance with Article IV of this Agreement.

ARTICLE VI – REPRESENTATIONS AND WARRANTIES

Grantee hereby represents and warrants that it will comply with all State laws, regulations, policies, guidelines, and requirements with respect to the acceptance and use of State funds. Also, Grantee certifies that:

- A. It has the legal authority to receive and expend the funds as described in the Program Description.
- B. It shall meet all requirements of the General Appropriation Act of 2025, the Regulations, and all other New Mexico State laws and regulations as they pertain to all activity conducted under this Agreement and provide the OSE with verification thereof.
- C. It shall finance all costs of the Project, including all Project overruns.
- D. Every facility, program, or other provider with which it contracts to perform the activities that are subject to this Agreement shall, at all times, comply with all applicable State and federal laws and regulations and any licensure requirements governing treatment facilities, programs, or providers. All Contracts shall contain the following provisions:

- a. "The Contractor agrees to comply, at all times, with all applicable State and federal laws and regulations and any licensure requirements governing its program and facility."
 - b. The Grantee agrees it shall be solely liable for the failure of any of its providers to meet and comply with all applicable State and federal laws and licensure requirements governing the treatment provider or the program.
- E. It shall comply with the State Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.
- F. All professional services, activities, or programs will be implemented through a professional service contract. Grantee will submit all Project-related contracts and agreements to the OSE for review and approval prior to execution. Amendments to existing contracts will be submitted to the OSE for review and approval prior to execution.
 - a. Without limiting the foregoing, Grantee shall be required to complete a request-for-proposal (RFP) for contracts over sixty thousand dollars (\$60,000); provided, however, that if Grantee's governing body's guidelines have more stringent requirements, the Grantee's governing body's guidelines must be followed.
 - b. Sole Source contracts can be utilized if written justification is provided, confirming that the organization is the only one in the area that can provide services uniquely and substantially related to the intended purpose of the contract. Grantee shall submit written documentation describing the reason(s) for sole source contracting to the OSE prior to entering into the contract. Grantee shall adhere to all applicable provisions and requirements outlined in the State Procurement Code.
- G. It will adhere to all OSE financial and accounting requirements, including the State's Model Accounting Practices, as amended from time to time.
- H. It will comply with all applicable conditions and requirements prescribed by the OSE regarding the receipt of Project funds.
- I. It shall not at any time utilize or convert any equipment or property acquired or developed pursuant to this Agreement for any use other than those specified in the scope of work as defined in the Agreement without the prior approval of the OSE.
- J. No member, officer, employee, or family member(s) of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract, or the process thereof, for work to be performed in connection with the program assisted under the grant, and the Grantee shall incorporate, in all such contracts, a provision prohibiting such interest pursuant to the purposes of this certification.

- a. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of the State, any agency, or body in connection with the awarding of any Third Party Obligation.
 - i. Grantee will require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans, and cooperative agreements.
- K. It will comply with all applicable federal requirements and regulations.

The representations and warranties made by Grantee shall survive the Early Termination or expiration of this Agreement.

ARTICLE VII - RETENTION OF RECORDS

- A. **Accountability:** Grantee shall be strictly accountable for receipts and disbursements relating to this Agreement. Grantee shall follow generally accepted accounting principles, the State's model accounting principles, § 6-6-2 NMSA 1978, and, if feasible, maintain a separate bank account or fund with a separate organizational code to ensure separate budgeting and accounting of the funds.
- B. **Record Retention:** For six (6) years following the Program's completion ("**Record Retention Period**"), Grantee shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of funds from all sources budgeted for the Program, the purpose for which such funds were used, and such other records as the OSE may prescribe.
 - a. All Program records must adhere to the New Mexico State Records Center and Archives Rule for Functional Retention and Disposition Schedule, 1.21.2 NMAC.
- C. Grantee shall make all Project records available to the OSE, the OSE's Independent Public Accountant, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the OSE finds any funds were improperly expended, Grantee shall be required to reimburse the State all amounts found to be improperly expended plus interest in accordance with Article IX below.

ARTICLE VIII - REPRESENTATIVES

- A. Grantee hereby designates the person listed below as the official Grantee Representative responsible for overall supervision of the approved Project:
 - a. Name: Jesse Roach
 - b. Title: Interim Public Utilities Department Director
 - c. Address: 801 W. San Mateo, Santa Fe, NM, 87505
 - d. Phone: (505) 955-4309

- e. Email: jdroach@santafenm.gov
- B. The OSE designates the person listed below as its Project Manager, responsible for the overall administration of this Agreement, including compliance and monitoring of Grantee:
- a. Name: Sushil Chaudhary
 - b. Title: Senior Manager Executive Engineer
 - c. Address: 5550 San Antonio Drive, NE
 - d. Phone: (505) 383-4134
 - e. Email: sushil.chaudhary@ose.nm.gov

ARTICLE IX – IMPROPERLY REIMBURSED FUNDS

If the OSE determines part or all of the funds reimbursed under this Agreement were improperly requested by Grantee, including but not limited to reimbursements based upon fraud, mismanagement, misrepresentation, misuse, or violation of law by the Grantee, after ten (10) days' notice to Grantee and the opportunity to return such funds to the OSE, the OSE may offset any funds due to Grantee from the State, until the improperly reimbursed funds are fully repaid.

ARTICLE X – SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Parties concerning the subject matter hereof. The Agreement supersedes all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XII – LIABILITY

Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIII – APPROPRIATIONS

The terms and conditions of this Agreement are contingent upon the New Mexico Legislature making sufficient appropriations and authorization for the performance of this Agreement. If the Legislature fails to make sufficient appropriations and authorizations, the OSE may immediately terminate this Agreement, in whole or in part, regardless of any existing legally binding third-party contracts entered into by or between the Grantee and a third party, by providing the Grantee with written notice of such early termination. Grantee shall accept the OSE's decision as to whether sufficient appropriations are available, which shall be final and non-appealable. Grantee shall include a substantively identical clause in all contracts between the Grantee and third parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into between the effective date of this Agreement and the Termination Date or early termination date.

ARTICLE XIV – REQUIRED TERMINATION CLAUSE

Grantee shall include the following or a substantially similar termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

- A. “This contract is funded in whole or in part by funds made available under a State of New Mexico (State) grant agreement. If the State terminates the grant agreement, the [insert Grantee name] may terminate this contract by providing the contractor written notice of such termination in accordance with the notice provisions in this contract. In the event of termination pursuant to this paragraph, the [insert Grantee name] only liability shall be to pay the contractor for acceptable goods and/or services delivered and accepted prior to the termination date”.

ARTICLE XV: GENERAL PROVISIONS

- A. Assignment: Grantee’s rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent of the OSE. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee’s rights and obligations approved by the OSE shall be subject to the provisions of this Agreement.
- B. Binding Effect: Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.
- C. Authority: Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations have been duly authorized.
- D. Captions and References: The captions and headings in this Agreement are for the convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.
- E. Counterparts: This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute the same agreement.
- F. Digital Signatures: If any signatory signs this agreement using a digital signature in accordance with the State Policies regarding the use of digital signatures, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.
- G. Modification: Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment, properly executed, and approved in accordance with applicable New Mexico law and State fiscal policies and rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.

- H. Statutes, Regulations, Fiscal Rules, and Other Authority: Any reference in this Agreement to a statute, regulation, policy, or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended after the Effective Date of this Agreement.
- I. External Terms and Conditions: Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Grantee's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.
- J. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.
- K. Survival of Certain Agreement Terms: Any provision of this Agreement that imposes an obligation on a Party after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.
- L. Third Party Beneficiaries: Except for the Parties' respective successors and assigns described in this Agreement, it does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this Agreement are incidental to this Agreement and do not create any rights for such third parties.
- M. Waiver: A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.
- N. Standard and Manner of Performance: Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in Grantee's industry, trade, or profession.
- O. Licenses, Permits, and Other Authorizations: Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement and shall ensure that all employees, agents, and subcontractors secure and maintain at all times during the term of their employment, agency or subcontractor, all licenses, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- P. Venue and Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to any conflict of law provisions. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the district courts located in Santa Fe, New Mexico. The Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such suit, action, or proceeding. The Parties waive any objection to the laying of the venue of any such suit, action, or proceeding in


the district courts of Santa Fe, New Mexico, and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]

APPROVED BY GRANTEE:

Grantee: By: _____ Michael J. Garcia
Title: Mayor, City of Santa Fe Date: _____

Attest: By: _____ Geralyn F. Cardenas
Title: City Clerk, City of Santa Fe Date: _____

Grantee: By:  _____ Andrea Phillips
Title: Finance Director, City of Santa Fe Date: May 14, 2026
ANDREA PHILLIPS (May 14, 2026 14:53:01 MDT)

AS TO LEGAL FORM AND SUFFICIENCY


Grantee: By:  _____ Marcos D. Martinez
Legal Counsel Title: City Attorney, City of Santa Fe Date: May 14, 2026
Marcos Martinez (May 14, 2026 10:16:21 MDT)

EXHIBIT A

Project Description

The purpose of the Project is to grant up to two million dollars (\$2,000,000) to the Grantee to fund the reimbursement of costs associated with critical dam maintenance and improvement projects for the City of Santa Fe. The final amount of the grant funding provided by the Grantor to the Grantee will be established at the sole discretion of Grantor, but will in no instance exceed the maximum amount. Grantee shall propose allowable uses that will be subject to the review and acceptance/approval of the Grantor.

EXHIBIT B

Quarterly Progress Report
(TBD)

EXHIBIT C

Proposed Budget

(To be provided by Grantee)

EXHIBIT D

Request for Payment Form

STATE OF NEW MEXICO GRANT APPROPRIATION Request for Payment Form

I. Grantee Information (Must match your DFA Substitute W-9 Form)

A. Grantee: City of Santa Fe

B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: ZJ5134 Santa Fe Dam Projects__

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount *(if applicable)*: _____

G. Grant Balance: \$ 0.00

H. Final Request for Payment *(if applicable)*

III. Fiscal Year : 2026 (July 1, 2025-June 30, 2026)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Certifications

I hereby certify that all conditions and requirements for Payments outlined in the Agreement have been met, including but not limited to:

- a. Submission and approval of a Project Budget as per Article IV, Section A of the Agreement.
- b. Compliance with the Project Budget and expenditure of funds in accordance with the State Procurement Code and the State's Model Accounting Practices.
- c. Submission of supporting documentation as required by the Agreement.
- d. Maintenance of all necessary records and documentation as stipulated in the Agreement.

I attest that the information provided is correct; expenditures are properly documented and valid or actual receipts, and that the activity fully complies with Article IX, Sec. 14 of the New Mexico Constitution, known as the "anti-donation" clause.

I hereby certify that all representations and warranties made in the Agreement remain true, accurate, and complete as of the date of this request, and will continue to be so throughout the term of the Agreement. I acknowledge that these representations and warranties are a material inducement for the Department to approve this pay request.

<p>Grantee Fiscal Officer or Fiscal Agent <i>(if applicable)</i></p> <p>_____</p> <p>Printed Name</p> <p>Date: _____</p>	<p>Grantee Representative</p> <p>_____</p> <p>Printed Name</p> <p>Date: _____</p>
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(State Agency Use Only)

Vendor Code: _ Fund No.: _____ PO # _ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

ASD Officer _____ Date _____	Division Grant Manager _____ Date _____
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