



**THE
NAVAJO
NATION**

PURCHASING SERVICES • P.O. Box 3150 • Window Rock, Arizona • 86515
TELEPHONE: (928) 871-6316 • FACSIMILE: (928) 871-7778/6159

BEN SHELLY
PRESIDENT

REX LEE JIM
VICE PRESIDENT

October 28, 2014

SAN JUAN COUNTY

Mr. Bruce Adams, Chairman
117 South Main St. #202
Monticello, Utah 84535-009



Reference: DOC 001621 – CO10906

Dear Mr. Adams:

Attached, please find your executed Intergovernmental Agreement, Contract, **CO10906**. The agreement is with the Navajo Nation Division of Transportation. This Agreement has been approved in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00).

The term of commencement will begin on September 11, 2014 and terminate on September 11, 2019. Contract, **CO10906** must be referenced on all invoices, documents and correspondences as it relates to this contract.

Should you have any questions, please contact Paulson Chaco, Director, Navajo Nation Division of Transportation at 505.371.8300.

Sincerely,

THE NAVAJO NATION

Valerie Bitsilly, Accountant
Purchasing Section
Navajo Nation Office of the Controller

Xc: Paulson Chaco, Director, Navajo Nation Division of Transportation
File / Chrono

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE NAVAJO NATION
AND
SAN JUAN COUNTY, UTAH**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made and entered into by and between the Navajo Nation, acting through its Navajo Division of Transportation (the "NATION"), and San Juan County, a political subdivision of the State of Utah, acting through its Public Works Department (the "COUNTY").

WHEREAS, by the adoption of Resources and Development Committee Resolutions the NATION has previously approved road maintenance projects for certain public roads within San Juan County and the Navajo Nation and may from time to time approve additional such projects (all such projects to be collectively referred to herein as the "PROJECTS"); and

WHEREAS, the NATION is a sovereign entity and has the inherent power to plan and develop an integrated transportation network of highways, roads, waterways, airports, railroads and pipelines; and

WHEREAS, the COUNTY has the authority pursuant to the laws of the State of Utah to enter into intergovernmental agreements for joint or cooperative action with agencies of the United States and/or Tribal governments; and

WHEREAS, the NATION and the COUNTY have previously entered into a Memorandum of Understanding #MOU00122 dated May 01, 2013 (the "MOU"), expressing their intent to cooperate in transportation-related projects for their mutual benefit; and

WHEREAS, consistent with the MOU, the COUNTY has agreed to assist the NATION and individual Chapters of the NATION by acting as their agent for the procurement of materials and supplies required to complete the PROJECTS, providing project planning support, and as agreed on a project-by-project basis to provide labor and equipment to assist in road repair activity for PROJECTS which are eligible for such activity by the COUNTY under the applicable Utah statutes and constitutional provisions,

NOW, THEREFORE, the parties hereby agree as follows:

- 1. Purpose.** The purpose of this IGA is for the COUNTY to assist the NATION and individual Chapters of the NATION by acting as their agent for the procurement of road materials and supplies for the PROJECTS; providing project planning assistance to the Nation and the Chapters in connection with the PROJECTS; and, as may be agreed by San Juan County on a project-by-project basis, assisting in road repair activities for PROJECTS which are eligible for such activity by the COUNTY under the applicable Utah statutes and constitutional provisions. All other work in connection with the PROJECTS, including but not limited to permitting, shall be the responsibility of the County.

Unless otherwise agreed to in writing, the COUNTY shall have no responsibility for the maintenance or repair of the roads after the completion of a PROJECT.

1.1 Initial and Additional PROJECTS. The initial PROJECT (Piute Creek Bridge, Concrete Abutment Protection) is described in Attachment A hereto. From time to time, the parties may agree to additional PROJECTS, each such additional PROJECT to be described in a separate Attachment to be appended to this IGA with the written approval of the authorized representatives of both parties. Any such additional PROJECT shall be governed by the terms of this IGA.

2. **Funding.** For the initial PROJECT as described in Attachment A, the NATION has set aside TWO HUNDRED THOUSAND dollars (\$200,000.00) as payment to the COUNTY for the non-federal cash match in connection with the PROJECT.

2.1 Funding for Additional PROJECTS. For each additional PROJECT as described in Section 1.1 above, the funding source for such PROJECT shall be set forth in the Attachment describing that PROJECT.

3. **Appropriations.** The NATION warrants that the sum referenced in Section 2 above has been set aside in the Navajo Nation Road Fund and/or General Fund Allocation for the purposes set forth in Section 2 and Attachment A.

4. **Key Officials.** The key officials for each party are as follows:

San Juan County
Mr. Bruce Adams, Chairman
San Juan County Commission
117 South Main St. #202
Monticello, Utah 84535-009
Office (435) 587-3225
Fax (435) 587-2447

Navajo Nation
Mr. Paulson Chaco
Navajo Division of Transportation
P.O. Box 4620
Window Rock, Arizona 86515
Office (505) 371-8301
Fax (505) 371-8399

5. **Need for Materials, Supplies, Road Repair Activity and Project Planning Support.** The parties shall jointly agree on the materials and supplies required for the PROJECTS before each procurement is made. The COUNTY shall agree to the level and type of support it will provide to assist the NATION on the road repair activity. The COUNTY will provide project planning assistance and guidance in determining what materials and supplies are required. Additional project planning support may be provided by the COUNTY as requested by the NATION, but it is understood that the completion of the PROJECTS is the responsibility of the COUNTY.

6. **Procurement Procedures.** Unless otherwise agreed in writing by the parties, all materials and supplies procured by the COUNTY pursuant to this IGA shall be procured in accordance with the Utah Procurement Code and the San Juan County Procurement Policy. Procurement shall include the delivery of the materials and supplies by the vendor or COUNTY to the site(s) where they are required.

7. **Payment to the COUNTY.**

A. The NATION shall pay the non-federal cash match prior to the start of the PROJECT. The COUNTY shall not charge the NATION any overhead or administrative expenses for procurement and project planning services under this IGA. If the nonfederal cash match funds are not adequate to complete the PROJECT the NATION shall not obligate additional funds as requested by the COUNTY; the COUNTY shall have no obligation to continue with any PROJECT for which adequate funding has not been received.

- B. Costs incurred before the finalization of this Agreement which are deemed reasonable, allowable, and allocable to performance of the Agreement as agreed to by the parties may be paid.
 - C. The COUNTY will provide a quarterly report showing expenditures against the advance.
 - D. Each quarterly report shall reference this IGA and the appropriate Attachment.
 - E. The COUNTY shall provide for strict accountability of all costs of materials, supplies, equipment and labor applied against the advance, shall maintain an accurate accounting of all PROJECT-related expenditures, and shall preserve such records for at least three (3) years following the final payment under this IGA. Copies of all correspondence, reports and invoices associated with this IGA shall be furnished to the NATION.
8. **No Surplus Funds.** Upon completion of each PROJECT and at the termination of this IGA, there shall be no surplus money on hand because all funds advanced will have been disbursed on PROJECT expenditures or returned to the NATION. The COUNTY shall refund surplus funds to the NATION 30 days after parties mutually agree a PROJECT is complete.
9. **Assignment.** The COUNTY shall not assign or transfer any interest in this IGA or assign any claims for reimbursement under this IGA without the prior written approval of the NATION. The COUNTY shall not assign any of its responsibilities under this IGA without the prior written approval of the NATION.
10. **Term.** This IGA shall not become effective until executed by both the President of the Navajo Nation and the Chairman of the San Juan County Board of County Commissioners. This IGA shall terminate 5 years after the date of the last signature.
11. **Amendment / Renewal.** This IGA shall not be altered, changed or amended except by a written instrument executed by both parties. On or before the scheduled date of termination, this IGA may be renewed for one or more additional years with the written concurrence of both parties
12. **Termination.** Either party may terminate this IGA, or its participation in any PROJECT, upon written notice if the other party has failed to cure a default hereunder thirty (30) days after written notice of default from the non-defaulting party. Upon such termination, reimbursement, not covered by the advance, shall be made for materials and supplies procured and project planning support provided prior to the date of termination. Money advanced to the COUNTY but not spent or committed shall be refunded to the NATION prior to the date of termination.
13. **Scope of Agreement.** This IGA incorporates all of the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this IGA. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this IGA.
14. **Severability.** In the event that any portion of this IGA is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this IGA shall remain in full force and effect.

15. Other Terms and Conditions.

- A. Nothing in this IGA is intended to, nor shall it be interpreted to, grant or alter any existing jurisdiction of any government over the NATION's public roads. The COUNTY's participation in this IGA is in the spirit of cooperation described in the MOU, and except as expressly set forth herein.
- B. Neither the NATION nor the COUNTY waives any rights (including but not limited to treaty rights, immunities, sovereign immunities, jurisdictional defenses, or defenses based on their respective protecting laws). Specifically, nothing in this IGA shall be construed as a waiver of sovereign immunity by the NATION, except as provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§ 551, et seq. Nothing herein shall constitute the NATION's consent to be sued, or consent to jurisdiction of any federal or state court. Nothing in this IGA creates, implies or shall be construed to create any right of action in any third party.
- C. Nothing in this IGA is intended to, or shall be interpreted to, allocate or shift any current or future liability of a party to this IGA due to such party's acts or omissions to the other party to this IGA.
- D. The Navajo Nation acknowledges that it will be responsible for claims of damages arising from personal injury or damages to persons or property to the extent they result from the negligence of tribal employees. The liability of the Navajo Nation shall be subject to the immunities and limitations provided for under the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551, et seq.
- E. It is understood and agreed that the COUNTY will utilize its existing employees for the work performed by the COUNTY under the terms of this agreement and that any replacement employees or additional employees that are hired by the COUNTY to perform the work shall be hired pursuant to the provisions of San Juan County's personnel ordinance and applicable Utah statutes and constitutional provisions.

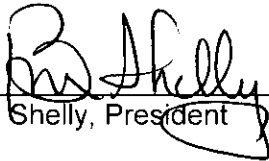
16. Dispute Resolution Procedures. Any dispute arising out of or relating to this IGA shall be resolved under the Dispute Resolution provisions of the Memorandum of Understanding #MOU00122 dated May 01, 2013 between the COUNTY and the NATION expressing their intent to cooperate in transportation related projects. In the event the dispute cannot be resolved in that manner, the following provision shall apply:

- A. Any claim against the NATION arising out of or related to this IGA shall be settled through binding arbitration under the provisions of the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 et seq. The arbitration shall be conducted in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration. Notice of intent to invoke arbitration against the NATION shall be filed in compliance with the notice requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 555.

B. Any claim against the COUNTY arising out of or related to this IGA shall be settled through binding arbitration in accordance with the Utah Uniform Arbitration Act, citation which is 78B-11-122, Utah Code Annotated (1953, as amended). A single arbitrator shall be appointed to hear the arbitration and shall be selected by the parties. If the parties cannot agree, the arbitrator shall be selected by the Chief Judge of the Seventh Judicial District Court, State of Utah.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this IGA on the dates affixed by their signatures.


NAVAJO NATION



Ben Shelly, President

05-11-2014
Date

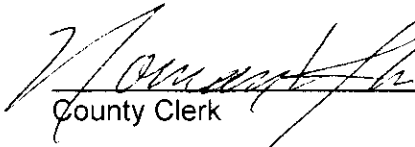
SAN JUAN COUNTY



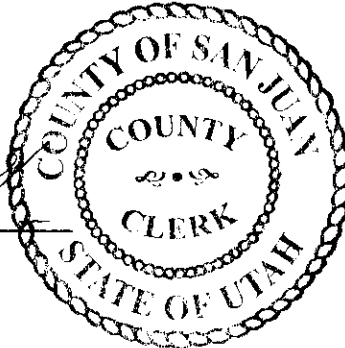
Bruce Adams, Chairman
San Juan County Board of
Commissioners

05-27-14
Date

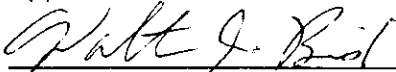
ATTEST:



County Clerk



Approved as a Form:



County Attorney

5-27-14
Date

ATTACHMENT A

Handwritten signature and date: 10/23/14

PROJECT	FISCAL YEAR	APPROVING RESOLUTION	BUSINESS UNIT	AMOUNT
Piute Creek Bridge, Concrete Abutment Protection	2014	<i>NAJBY. 45.14</i>	<i>9028</i> 506007-9520	\$200,000
Total				\$200,000

The allocated non-federal match funds will be used to match the NRCS \$650,000 for the construction and additional cost of \$65,000 for design of a concrete abutment on the Piute Bridge near the small community of Navajo Mountain. The repaired bridge will be serving the people of the Navajo Mountain Chapter.

Project Scope:

The Gypsum Wash crossing is located approximately 10 miles South of Halchita, Utah within the boundaries of the Navajo Indian Reservation. San Juan has implemented a number of different culvert sizes and configurations in the past and all have caused severe overtopping and washout. The current structure consists of five four foot diameter corrugated metal culverts with end sections on the inlet side. Each culvert is approximately 75 feet in length. There is also a spillway located to the southeast of the culverts to handle larger flows. The existing culverts are grossly undersized and overtopping of the roadway occurs frequently. A makeshift spillway has been constructed to handle the excess flows during storms, but scour and washout has been a major problem. Bedrock is located approximately 3 to 4 feet below flow line of the wash, while it is exposed along the spillway outlet. This wash crossing lies on a dedicated school bus route used to transport children to and from school, and also provides access to homes and grazing in the area. The proposed project would remove the existing culverts and replace them with a triple barrel culvert system with each barrel consisting of a 32-foot span. The culverts will be either a Conspan culvert system, or a similar three sided box culvert set on concrete footings embedded in bedrock. The roadway prism will be reconstructed at the crossing location to accommodate a design speed of 40 MPH through the crossing. The existing spillway will be reconstructed and armored with riprap to redirect large flood events in a controlled manner to avoid future washout of the proposed structures. Further, the intersection that lies southeast of the wash crossing will be reconstructed to improve the approach angle and increase safety. As part of construction, a temporary bypass road will be constructed on-site to maintain access in the area.