

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



June 8, 2022

APACHE COUNTY, ARIZONA

Nelson Davis, Chairman, Board of Supervisors
Post Office Box 428
St. Johns, Arizona 85936

Reference: DOC 018527 – CO15355

Dear Mr. Davis:

Attached, please find your executed Intergovernmental Agreement Contract, **CO15355**. This Intergovernmental Agreement Contract is with the Navajo Nation Division of Transportation. This Intergovernmental Agreement Contract is approved in the amount of One Hundred Eighty-Five Thousand Three Hundred Dollars and Zero Cents (\$185,300.00).

This Intergovernmental Agreement Contract will commence on May 18, 2022 and will terminate on December 31, 2032. Contract, **CO15355** must be referenced on all invoices, documents and correspondences as it relates to this contract.

Should you have any questions, please contact Garret Silversmith, Director, Navajo Nation Department of Transportation at 505.371.8373.

Sincerely,

THE NAVAJO NATION

A handwritten signature in black ink, appearing to read "Valerie Bitsilly".

Valerie Bitsilly, Accountant
Contract Administration
Navajo Nation Office of the Controller

Xc: Garret Silversmith, Director, Navajo Nation Department of Transportation
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**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE NAVAJO NATION
AND
APACHE COUNTY, ARIZONA**

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 Apache County, a political subdivision of the State of Arizona, acting through its Board of Supervisors, (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 Apache 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 is authorized by A.R.S §11-952 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 dated July 14, 2021 (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 Arizona 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 Apache County on a project-by-project basis, assisting in road repair activities for PROJECTS which are eligible for such activities by the COUNTY under the applicable Arizona statutes and constitutional provisions. All other work in connection with the PROJECTS, including but not limited to permitting, shall be the responsibility of the NATION. The Statement of Work (SOW) is described in Attachment A for additional information. All other work in connection with the PROJECTS, including but not limited to permitting, shall be the responsibility of the NATION.

Unless otherwise agreed to in writing, the COUNTY shall have no responsibility for the maintenance or repair of any work done pursuant to this Agreement after the completion of a PROJECT.

1.1 **Initial and Additional PROJECTS**. The initial PROJECT is described in Attachment A hereto. From time to time, the parties may agree to additional PROJECTS, each such additional PROJECTS 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 PROJECT as described in Attachment A, the NATION has set aside up to One hundred, eighty-five thousand, three hundred dollars(\$185,300.00) as payment to the COUNTY for materials, equipment costs, labor and supplies procured for the PROJECT 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 allocations for the purposes set forth in Section 2 and Attachment A.
4. Key Officials. The key officials for each party are as follows:

Apache County

Mr. Ferrin Crosby
Engineering Department
P.O. Box 238
St. Johns, Arizona 85936
Office: (928) 337-7528
Fax: (928) 337-2062

Navajo Nation

Mr. Garret Silversmith
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 NATION and/or the Chapters which will benefit from the PROJECTS. If the COUNTY will be acting in any capacity other than that of a procurement agent in connection with a PROJECT, the NATION and/or Chapters shall provide such documentation as the COUNTY may reasonably require that the PROJECT roads are eligible for expenditures of COUNTY resources under the applicable Arizona statutes and constitutional provisions.
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 Arizona Procurement Code and the Apache County Procurement Policy. Procurement shall include the delivery of the materials and supplies by the vendor to the site(s) where they are required.

7. **Payment to the COUNTY.**

- A. The NATION shall advance funding for each PROJECT prior to any material being ordered. For materials, supplies, equipment, and labor, the NATION shall pay the COUNTY for the actual cost and any directly related procurement expenses (newspaper ads, etc.). The COUNTY shall not charge the NATION any overhead or administrative expenses for procurement and project planning services under this IGA. If the advanced funds are not adequate to complete the PROJECT, the NATION shall advance additional funds within 30 days after receipt of a written request 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 cost 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 correspondences, 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 Apache County Board of Supervisors. This IGA shall terminate on December 31, 2032, bringing it into concurrence with the MOU timeline.
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 thirty (30) prior to the effective date of termination. 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, and except as expressly set forth herein, the COUNTY shall have no authority, responsibility, or liability in connection with the PROJECTS or the roads that are the subject of the PROJECTS, including road deterioration as a result of road use.
 - 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.
16. **Dispute Resolution Procedures.** Any dispute arising out of or relating to this IGA shall be resolved by arbitration as contemplated by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 554(J) and (K), and 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.


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

NAVAJO NATION


Jonathan Nez - President

05.18.2022
Date

APACHE COUNTY


Nelson Davis - Chairman, Board of Supervisors

4/5/2022
Date

ATTEST:


Clerk of the Board

Approved as a form and found to be within the powers and authority of the County Board of Supervisors under the laws of the State of Arizona.


County Attorney

4/9/2022
Date

ATTACHMENT A

PROJECT	FISCAL YEAR	APPROVING RESOLUTION	BUSINESS UNIT	AMOUNT
(N136 Lukachukai)	2021	RDCS-61-14 RDCJA-02-21	C01547.9024	\$185,300.00
Total				\$185,300.00

Scope of Work for N136 Lukachukai:

The improvement will include addressing drainage, subgrade preparation, building up the road where needed, and applying gravel and soil stabilization for up to 2.8 miles.

The County will be responsible for all engineering services but may use the allocated to fund needed engineering services.

The Navajo Division of Transportation will issue a Notice to Proceed to the County, and a Letter of Intent to the Chinle Bureau of Indian Affairs, when project is deemed ready to proceed to the next phase.

Upon completion of the road improvement, the County and Bureau of Indian Affairs will maintain the routes, unless the route is added to Navajo DOT's inventory as a school bus route.

Timeline

Road project needs to be **completed before 9/30/22**

Funding

Navajo DOT Road Funds: The allocated funds will be used to improve N136 Lukachukai by addressing the drainage, applying gravel, and soil stabilization for up to 2.8 miles. The Navajo Nation funding will not exceed \$185,300.00 which is considered a cost-share to the project.