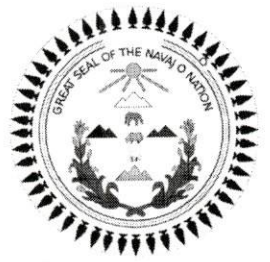


THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



July 23, 2021

MCKINLEY COUNTY
McKinley Board of Commissioners
Post Office Box 70
Gallup, NM 87305



ATTENTION: Billy Moore, Chairperson

REFERENCE: 164 Review 016371/Intergovernmental Agreement

Dear Mr. Moore:

Attached, please find your copy of the approved Master Intergovernmental Agreement (**MOA258**) with the Navajo Nation Division of Transportation/DOR. The MOA is the "Master Agreement" to govern all road projects performed within McKinley County and Navajo. The term commences on 05/12/2021 and expires on 05/31/2031. A copy of the IGA must be attached to each project being processed for a contract number. The term of master IGA commences on May 12, 2021 and ends on May 31, 2031.

The above MOA number (**MOA258**) must be referenced on all documents and correspondences as it relates to this IGA.

Should you have any questions, please contact Mr. Ardaniel Begay, Principal Contract Analyst, at (505) 371.8351

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronalda A. Logg".

Ronalda A. Logg, Senior Accountant
OOC – Contract Administration

Ardaniel Begay, PCA, DOT
Contract File: **MOA258**

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025

**Intergovernmental Agreement between
 The NAVAJO NATION and MCKINLEY COUNTY, NEW MEXICO
 for ROAD REPAIR and MAINTENANCE**

This Intergovernmental Agreement (“IGA”) is made and entered into by and between the Navajo Nation, acting through its Navajo Division of Transportation, hereinafter called “NAVAJO DIVISION OF TRANSPORTATION,” and McKinley County, a political subdivision of the State of New Mexico, hereinafter called “COUNTY.” Navajo Division of Transportation and COUNTY are jointly referred to as “PARTIES.”

- A. WHEREAS, the Navajo Nation is a sovereign entity with inherent governmental power to provide for the public welfare, and has established the NAVAJO DIVISION OF TRANSPORTATION to plan and develop an integrated transportation network of highways, roads, waterways, airports, railroads and pipelines for the transportation of persons, commerce and goods within the Navajo Nation; and,
- B. WHEREAS, the NAVAJO DIVISION OF TRANSPORTATION shall approve certain Road Improvement Projects (hereinafter called “PROJECTS”) that are to be listed on separate Exhibits that will be attached to this IGA, and will be located within the Navajo Nation in McKinley County, New Mexico; and,
- C. WHEREAS, the NAVAJO DIVISION OF TRANSPORTATION and the COUNTY have previously entered into an Agreement substantially similar to this document, and a Memorandum of Understanding dated May 12, 2021 (the “MOU”), expressing their intent to cooperate in implementing and carrying out transportation-related projects for their mutual benefit; and,
- D. WHEREAS, roads maintained by the COUNTY are located within the territorial jurisdiction of the Navajo Nation and serve many Navajo people and McKinley County residents; and,
- E. WHEREAS, the NAVAJO DIVISION OF TRANSPORTATION and the COUNTY wish to enter into and use this single IGA as a “Master Agreement” which will govern all PROJECTS to be performed by the COUNTY in accordance with the Parties’ cooperative relationship;

NOW, THEREFORE, the PARTIES hereby agree to the following:

1. Purpose. The PARTIES are entering into this IGA because of their mutual desire to repair, maintain and improve roads for the safety and general benefit of New Mexico and Navajo Nation residents and travelers.

- a. Initial and Additional PROJECTS: There is not an initial PROJECT for this IGA; however, the expiring IGA (McKinley County No. 16-MAR-3713 and NN No. CO13607) has the following projects nearing completion: IGA-Exhibit G for CR 19, and Exhibit H for Dear Springs Road. These project(s) will be finished pursuant to the IGA they were started under.
 - b. It is anticipated that the first project under this IGA (**EXHIBIT A**) will be for 1.6 miles of the Pinehaven Road and the Scope of Work will be to Construction/shape/chip seal on an existing road within the Breadsprings Chapter. The cost will be refined as the project is solidified, and at this point is estimated to be \$391,067.27.
2. PROJECTS. PROJECTS governed by this IGA shall be set forth in separate Exhibits that will become part of this IGA upon approval by the Parties. Once approved, such Exhibits(s) shall be attached to a conformed copy of this IGA. From time to time, the PARTIES may agree to additional PROJECTS, each such additional PROJECT to be described in a separate Exhibit to be attached to a conformed copy of this IGA. Any such additional PROJECT shall be governed by the terms of this IGA. The PARTIES acknowledge and agree that a separate additional IGA need not be executed for any such additional PROJECT, so long as the authorized representatives of both PARTIES sign an Exhibit that references this IGA Number, that is attached to a conformed copy of this IGA, and that describes the particular **Scope of Work, Budget, and Funding/Amount** for such additional PROJECT.
3. Scope of Work. All work on the PROJECTS shall be performed by the COUNTY and its employees, consultants, contractors, subcontractors, or agents. The COUNTY shall implement and perform, in all respects, the activities associated with the PROJECTS pursuant to the **Scope of Work** shown on the appropriate Exhibit to be attached to this IGA.
4. Funding/Amount. For materials and services of the COUNTY in performance of the PROJECTS, the NAVAJO DIVISION OF TRANSPORTATION shall pay to the COUNTY, as provided for in Paragraph 10 herein, the separate budgeted amount for each of the PROJECTS as identified in the **Budget** shown in the appropriate **Exhibit**.
5. Indirect Costs and Overruns. Nothing herein obligates the NAVAJO DIVISION OF TRANSPORTATION or the Navajo Nation to pay any indirect costs or administrative costs for the COUNTY's work on any PROJECTS governed by this IGA. If costs for any of the PROJECTS exceed the amount provided for in the Budget shown on the appropriate Exhibit, the COUNTY shall assume all responsibility for payment of overruns.

6. Appropriations. The obligations of the NAVAJO DIVISION OF TRANSPORTATION for all PROJECTS governed by this IGA are contingent upon the availability of appropriations made by the Navajo Nation Council for projects such as those that are the subject of this IGA.
7. Administering Division. The NAVAJO DIVISION OF TRANSPORTATION is designated as the administering Division for all PROJECTS governed by this IGA.
8. Independent Contractor/Payment of Fees. The COUNTY and its employees, consultants, contractors, subcontractors, or agents shall act as independent contractors and shall not be entitled to any benefits available to the Navajo Nation's employees. The NAVAJO DIVISION OF TRANSPORTATION and the Navajo Nation shall not be responsible for the payment of any taxes, permit fees, licenses or other expenses required to be paid by the COUNTY or its employees, consultants, contractors, subcontractors, or agents, on account of COUNTY'S performance of all PROJECTS governed by this IGA.
9. Governing Law/Procurement. The County shall comply with all applicable state, Navajo Nation, and federal laws and regulations pertaining to performance of all PROJECTS governed by this IGA. If the COUNTY has an outstanding money judgment against it in favor of the NAVAJO DIVISION OF TRANSPORTATION or the Navajo Nation, or a delinquent accounts receivable debit which is due and owing to the NAVAJO DIVISION OF TRANSPORTATION or the Navajo Nation, the NAVAJO DIVISION OF TRANSPORTATION may, with due notice, offset its money claim against the COUNTY by deducting any amount owed to the COUNTY under this IGA.
10. Disbursements. All estimated budgeted costs incurred for all PROJECTS governed by this IGA shall be approved by the NAVAJO DIVISION OF TRANSPORTATION prior to commencement of work. All disbursements shall be approved by the Director of the NAVAJO DIVISION OF TRANSPORTATION. All amounts to be paid to the COUNTY shall be disbursed on an "up front" basis from the accounts listed on the appropriate **Exhibit**.
 - A. The NAVAJO DIVISION OF TRANSPORTATION shall receive from the COUNTY a **Quarterly Report** and receipt of original itemized invoices(s) or receipts for materials received and/or work performed, completed, invoiced, accepted, and paid for by the COUNTY, as related to the PROJECTS, evidenced by a copy of the COUNTY's cancelled check showing payment to the billing party.

- B. All up-front invoices remitted to the NAVAJO DIVISION OF TRANSPORTATION shall indicate this IGA number and shall be submitted to:

Accounting Supervisor
IGA Administration Section
Office of the Controller
P.O. Box 3150
Window Rock, Arizona 86515

- C. The COUNTY shall provide for strict accountability of all receipts and disbursements for each of the PROJECTS governed by this IGA; shall maintain an accurate accounting of all expenditures related to the PROJECTS; and shall preserve such records for at least three (3) years following the final expenditure under this IGA.

11. No Surplus Funds. The parties acknowledge and agree that, upon completion of each PROJECT, there should be no surplus funds available that have been allocated for the PROJECT, and appropriated funds shall be drawn from the proper Navajo Nation account and paid to the COUNTY, and any remaining unused funds will automatically revert back to the NAVAJO DIVISION OF TRANSPORTATION.
12. Work Product. The product(s) of the COUNTY's work and services under this IGA shall benefit citizens and residents of the Navajo Nation and McKinley County. Copies of all correspondences, reports, and invoices related to this IGA and the PROJECTS shall be furnished upon request to the NAVAJO DIVISION OF TRANSPORTATION.
13. Confidentiality. Any confidential information provided to or developed by COUNTY in the performance of this IGA shall be kept confidential and shall not be made available to any individual or organization without the prior written consent of the COUNTY.
14. Assignment. The COUNTY shall not assign or transfer any interest in this IGA or assign any claims for money or debt under this IGA without the prior written approval of NAVAJO DIVISION OF TRANSPORTATION. The COUNTY shall not assign any of its responsibilities under this IGA without the prior written approval of the NAVAJO DIVISION OF TRANSPORTATION.
15. Indemnification. Each Party agrees to assume all liabilities, losses, costs, damages, or expenses arising out of, or connected with, each Party's performance own or activities undertaken pursuant to this IGA, including but not limited to any accident or injury to persons or property.

16. Term. This IGA shall not become effective until executed by the President of the Navajo Nation. This IGA shall expire **on May 31, 2031** unless earlier terminated pursuant to Paragraph 17 herein.
17. Termination. Either Party may terminate this IGA if the other Party fails to comply with any of the provisions in this IGA and, if any, its attached documents. In the case of any breach, either Party may allow the continuation of this IGA; if there is excusable reason for the default, and the NAVAJO DIVISION OF TRANSPORTATION shall allow the COUNTY to cure any default within a period of sixty (60) calendar days from the date of receipt of written notice from the NAVAJO DIVISION OF TRANSPORTATION such default. In the event of termination by the NAVAJO DIVISION OF TRANSPORTATION, the COUNTY shall only be paid reasonable costs for materials and/or services invoiced prior to the date of termination.
18. Taxes. The COUNTY hereby acknowledges and agrees that all of its work performed and services provided within the territorial jurisdiction of the Navajo Nation is subject to the (six percent) 6% or current Navajo Sales Tax (24 N.N.C. § 601 et seq.). The COUNTY shall separately indicate, on each invoice submitted to the NAVAJO DIVISION OF TRANSPORTATION, any and all of its work performed, or services provided within the Navajo Nation under this IGA. Solely as an accommodation to COUNTY, the Navajo Nation shall withhold from each payment to COUNTY (six percent) 6% or current Navajo Sales Tax of the total invoice amount associated with COUNTY's work performed and services provided within the Navajo Nation under this IGA, and shall transfer such percentage amount to the Office of the Navajo Tax Commission (ONTC) on behalf of COUNTY. COUNTY acknowledges that the withholding of tax amounts pursuant to this Paragraph in no way removes COUNTY's responsibility for timely filing of tax returns and payment of interest, penalties, or any other amounts relating to COUNTY's tax obligations under any other jurisdiction including the State of New Mexico.
19. Sovereign Immunity/Disputes. Nothing herein shall be considered a waiver, express or implied, or the sovereign immunity of the NAVAJO DIVISION OF TRANSPORTATION or the Navajo Nation, except to the limited extent provided for in the Navajo Sovereignty Immunity Act, as amended, at 1 N.N.C. §§551 et. seq. Any dispute arising out of or relating to this IGA shall be resolved by arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et. seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

- A. Unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held at such time and place designated by the arbitrator(s); and,
- B. The arbitration panel shall consist of a single arbitrator, unless one of the Parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration panel shall consist of three (3) arbitrators, with each Party selecting one arbitrator and the third arbitrator selected by the first two selected, with at least one arbitrator possessing at least ten (10) years of experience in Indian Law; and,
- C. Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555; and,
- D. Whether as a result of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from such arbitration, any award against the NAVAJO DIVISION OF TRANSPORTATION or the Navajo Nation shall be in strict conformance with the provision of 1 N.N.C. § 554 K 1-6; and,
- E. Whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from such arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this IGA, the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to COUNTY and its subcontractors, agents, representatives, employees or consultants; and
- F. Pursuant to 1 N.N.C. § 554 K and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the NAVAJO DIVISION OF TRANSPORTATION's or the Navajo Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; and,
- G. The arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising out of this IGA. Commencement of arbitration shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this IGA that is arbitrated as set forth herein. The arbitration provisions of this IGA shall, with respect to such any dispute or controversy arising out of this IGA, survive the termination or expiration of this IGA.

- 20. Amendments. This IGA shall not be altered, changed, or amended except by written instrument executed by both PARTIES.

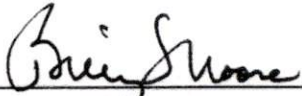
- 21. Scope of Agreement. This IGA incorporates all of the agreement, covenants and understandings between the PARTIES concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written IGA. No prior agreement or understanding, verbal or otherwise, of the PARTIES or their agents shall be valid or enforceable unless specifically set forth in this IGA.

- 22. Severability. In the event that any portion of this IGA is determined to be void, unconstitutional, or otherwise unenforceable, the remained of this IGA shall remain in full force and effect.

- 23. Execution. This IGA shall take effect upon its last execution by either of the PARTIES via written signature of a person with authorization to bind the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this IGA on the dates affixed by their signatures, with an effective date as stated in Paragraph 16 herein.


ON BEHALF OF
MCKINLEY COUNTY
AS AUTHORIZED IN OPEN MEETING
OF _____, 2021



Billy Moore, Chairperson
McKinley County Board of Commissioners
P.O. Box 70
Gallup, NM 87305

Date Signed

ON BEHALF OF NAVAJO
DIVISION OF TRANSPORTATION
THE NAVAJO NATION



Jonathan Nez, President
The Navajo Nation
P.O. Box 7440
Window Rock, AZ 86515

05-12-2021

Date Signed

This agreement has been reviewed and determined to be in accordance with the Navajo Nation law:



Assistant Attorney General, NNDOJ

5/5/21

Date Signed