

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



July 20, 2021

APACHE COUNTY, ARIZONA

Dr. Joe Shirley, Jr., Chairman of Supervisors
75 West Cleveland
St. Johns, Arizona 85936

Reference: Doc 016688

Dear Mr. Dr. Joe Shirley, Jr.:

Attached, please find your executed Memorandum of Understanding, **MOU 259**. This agreement is with the Navajo Nation Division of Transportation. All respective parties will adhere to all terms and conditions stipulated within **MOU 259**.

This Memorandum of Understanding will commence on July 14, 2021 and will terminate on December 31, 2032. **MOU 259** must be referenced on all documents and correspondences as it relates to this contract. The Navajo Nation Division of Transportation is the responsible party to adhere and contact as it relates to this Memorandum of Understanding.

Should you have any questions, please contact Garret Silversmith, Director, Navajo Nation Department of Transportation at 505.371.8351.

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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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NAVAJO NATION
AND
APACHE COUNTY, ARIZONA**

I. PREAMBLE AND BUILDING PRINCIPLES

This Memorandum of Understanding (MOU) is entered into this 14th day of July, 2021 between the Navajo Nation, through its Division of Transportation (NDOT), hereinafter referred to as "Nation", and Apache County, Arizona, a political subdivision of the State of Arizona, hereinafter referred to as "Apache County".

WHEREAS, the Nation has established its Division of Transportation to plan and develop an integrated transportation network of highways, roads, waterways, airports, railroads, and pipelines for the delivery of people, commerce and goods within the Navajo Nation that is safe and in harmony with nature. And;

WHEREAS, one of the responsibilities of Apache County is to plan, repair and maintain existing County school bus routes on the Navajo Nation through an Intergovernmental Agreement with the Navajo Nation. And;

WHEREAS, it is the mutual desire of the Nation and Apache County to achieve their goals and work in harmony for the common purpose of protecting the public health, safety, and welfare of the people through improved relationships between the Parties. And;

WHEREAS, each party of this MOU respects the sovereign status of the other and wishes to establish procedures to fully implement the government-to-government relationship with respect to transportation projects of mutual interest and benefit. In recognition of the sovereign status of the Navajo Nation, Apache County respects the continued existence of the Navajo Nation's government, values, cultures, codes and laws. And;

WHEREAS, Apache County has authority to enter this MOU and participate in transportation projects of mutual interest and benefit with the Nation pursuant to the laws of the State of Arizona, specifically A.R.S. 11-952. And;

WHEREAS, the Nation has authority, as a sovereign nation, to enter this MOU and participate in transportation projects of mutual interest and benefit with Apache County.

NOW, THEREFORE, the Parties hereto agree to the following.

II. PURPOSES AND OBJECTIVES

- A. This MOU is intended to build confidence and trust between the Parties in order to improve communication.
- B. The MOU lays the foundation and framework for developing specific Intergovernmental Agreements (IGA) and other agreements between the Parties to address transportation funding and transportation projects of mutual interest and benefits.
- C. The Parties mutually agree that this MOU is intended to formalize the government-to-government relationship in accordance with applicable laws.
- D. The Parties mutually agree to help maintain a safe and accessible transportation system for the Navajo Nation and Apache County citizens.
- E. The Parties mutually agree to aid in declared emergency situations as a cooperative assistant for the effective, safe, and timely recovery of the transportation system infrastructure.
- F. The Parties mutually agree that this MOU is intended to recognize the responsibility of each party to protect the public health, safety, and welfare of all persons within their jurisdiction.
- G. The Parties mutually agree this MOU is intended to encourage consultation and cooperation with one another on transportation funding and transportation projects of mutual interest and benefit.
- H. The Parties mutually agree that an objective of this MOU is to identify and seek to remove any impediments and barriers impairing the ability to work directly and effectively with one another.
- I. The Parties mutually agree that an objective of this MOU is to incorporate the principles of the MOU in each entity's short and long-term transportation planning.

III. AGREEMENT AND RESPONSIBILITIES

The Nation and Apache County mutually agree to the following:

- A. The Parties will establish a working group composed of appointed representatives of each to carry out the purposes and objectives of this MOU.
- B. The Parties agree that the working group will meet, at a minimum, annually to establish goals, objectives and definition of tasks relating to implementation of projects of mutual concern and to identify and seek to remove obstacles impairing the achievement of these goals, objectives, and tasks.

- C. When a specific project has been identified, the working group will meet on a regular basis, as determined by the working group, until the project is completed, to discuss the progress and set priorities for the next meeting.
- D. Once a specific project has been identified, the Parties will, pursuant to the laws applicable to the governing bodies of the participating agencies, enter into a "project specific" Inter-Governmental Agreement (IGA) or other agreement for the particular project.
- E. After the project is established, the working group will develop an action plan, which describes the project and the tasks to be performed by each party, separately or jointly and the means to be used to fund and complete the project to be included in the project specific IGA.
- F. The Parties agree to work efficiently together in order to enhance each party's participation in the actions of the other party that may affect the interests of both of the Parties, including but not limited to on-going activities, short-range and long-range transportation planning decisions, and their implementation.
- G. The Parties agree the transportation system and infrastructure within Apache County and the Navajo Nation be directed towards maintenance on existing County school bus routes and other roads currently in inventory that are located on the Navajo Nation.
- H. The Parties agree to aid in emergency situations and each transportation department has an important supporting role in emergency response and disaster recovery. A functional transportation system is crucial for getting emergency responders and lifesaving supplies where they need to go and in helping promote economic recovery after a disaster.
- I. The Parties agree to cooperate in nonfinancial ways to support each other's agencies objectives such as assisting in each other's projects as detailed in separate project specific IGA's and utilizing each agency road yards for equipment storage overnight and on weekends. The Parties agree that storing equipment in another agency's facility will be at the equipment owners' risk and will assume all associated liability for any bodily injury, equipment damage, or theft. Each agency director or elected official is responsible for granting authorization of another agency to utilize their facility.
- J. The Parties agree to include the right to use and access water necessary under reasonably prudent practices for transportation purposes for repairs, preservation, maintenance and to achieve maximum density in the soil for compaction.
- K. The Parties agree it shall be the responsibility of NDOT to identify and inform which roads have the appropriate engineering, environmental and archeological clearance completed for collaborative specific projects on County roads.
- L. The Parties, while acknowledging that funding limitations may exist for either party at any given time, agree to pursue funding jointly or individually for transportation projects of mutual interest and benefit, especially in circumstances where imminent danger is identified that affects the health, safety and welfare of the Nation and Apache County communities.

- M. Nothing in this MOU shall be construed as obligating either party in the expenditure of funds or for the future payment of funds beyond what is in an IGA.
- N. The Parties recognize implementation of this MOU will require education of members, officials, agents, employees, contractors, and subcontractors of both Parties. Therefore, the Parties agree to develop strategies for carrying out these education efforts.
- O. The Parties recognize that a key principle of the working relationship is to address transportation-related issues of mutual concern and to maintain accountability consistent with this MOU. In furtherance of this principle, the Nation's primary contact shall be the Division Director of the Navajo Division of Transportation who is accountable to the President of the Nation and the Resources and Development Committee of the Navajo Nation Council. Apache County's primary contact shall be the County Engineer who is accountable to the Board of Supervisors.
- P. As a component of the system of accountabilities, the Parties agree that on an annual basis, the working group will review and evaluate its ability to implement the terms of this MOU and will prepare an annual report summarizing this evaluation for the Apache County Board of Supervisors and the Nation's President and Resources and Development Committee of the Navajo Nation Council.

IV. AGREEMENT TO WORK IN GOOD FAITH

- A. In good faith, the County Manager, and the County Employees of Apache County, in their official capacity or through their designee(s) shall endeavor to implement the terms of this MOU.
- B. In good faith, the President of the Navajo Nation or through his/her designee(s) including the Director of the Division of Transportation and the Division of Transportation Department Managers shall endeavor to implement the terms of this MOU.

V. RESERVATION OF RIGHTS

In executing this MOU, neither the Nation nor Apache County waives any rights, including but not limited to treaty rights, immunities, sovereign immunities, jurisdictional defenses, or defenses based on their protecting laws. Specifically, nothing in this MOU shall be constructed as a waiver of sovereign immunity by the Navajo Nation, consent to be sued or consent to jurisdiction of any federal or state court. Nothing in this MOU creates, implies nor should be construed to create any right of action by either party against each other or in any third party.

VI. DISPUTE RESOLUTION

All disputes and controversies regarding this MOU shall be resolved by the Director of the Navajo Nation's Division of Transportation and the Apache County Engineer. If these officials are unable to resolve the dispute or controversy, the working group identified in Section III, Article "A" may participate in the resolution.

VII. EFFECTIVE DATE, TERMINATION AND AMENDMENT

This MOU shall become effective when signed by both Parties and shall continue in force until December 31, 2032. Termination may be initiated by either party after thirty (30) days written notice to the other of its intention to terminate. Amendments, including extension of this MOU, must be approved by both Parties in writing.

WHEREFORE, the duly authorized officials of the Parties have executed this Memorandum of Understanding on the dates affixed by their signatures with the effective dates as herein.

NAVAJO NATION:

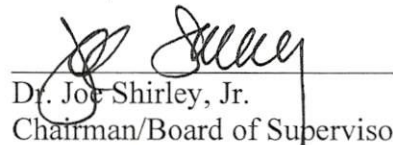


Jonathan Nez
President

07.14.2021

Date

APACHE COUNTY:


Dr. Joe Shirley, Jr.
Chairman/Board of Supervisors

6/1/2021

Date