

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



June 22, 2020

SANDOVAL COUNTY, NM

Public Works Department
305 South Oliver
Aztec, NM 87410



ATTENTION: Mike Hatzenbuhler, Director

REFERENCE: 164 Review 014360/Memorandum of Understanding

Dear Mr. Hatzenbuhler:

Attached, please find your copy of the approved Memorandum of Understanding. This MOU is with the Navajo Nation Division of Transportation. MOU 254 is hereby approved and recognized as an Intergovernmental Agreement with future project funding contracts. The term of the MOU commences on April 13, 2020 and will remain in force for four (4) years.

The above MOU number (**MOU 254**) must be referenced on all documents and correspondences as it relates to this Memorandum of Understanding.

Should you have any questions, please contact, Mr. Garret Silversmith, Director, at (505) 371.3851.

Sincerely,

A handwritten signature in blue ink that reads "Ronalda A. Logg".

Ronalda A. Logg, Senior Accountant
OOC – Contract Administration

Garret Silversmith, D, DOT
Contract File: MOU 254

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
SANDOVAL COUNTY, NEW MEXICO**

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 Sandoval County, a political subdivision of the State of New Mexico, acting through its Public Works Department (the "COUNTY"), collectively the Parties (the "PARTIES").

WHEREAS, by the adoption of Resources and Development Committee Resolutions the NATION has previously approved road maintenance projects for certain public roads within Sandoval 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 New Mexico to enter into intergovernmental agreements for joint or cooperative action with agencies of the United States and/or Tribal governments; and

WHEREAS, this is the first Inter-Governmental Agreement (IGA) between the NATION and the COUNTY related to transportation, each expressing their intent to cooperate in transportation-related projects for their mutual benefit; and

WHEREAS, the COUNTY agrees 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 New Mexico statutes and constitutional provisions; and

WHEREAS, the NATION agrees to assist the COUNTY in PROJECTS as outlined in the terms of such;

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 Sandoval 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 New Mexico statutes and constitutional provisions. All other work in connection with the PROJECTS, including but not limited to

**Intergovernmental Agreement Between Navajo Nation and Sandoval County, New Mexico
Regarding Transportation Projects- March 2020**

permitting, shall be the responsibility of the NATION, and for the NATION to provide assistance to the COUNTY as outlined in agreed upon the terms of PROJECTS. Unless otherwise agreed to in writing, the COUNTY shall have no responsibility for the maintenance or repair of the roads after the completion of any PROJECTS.

A. Funding for PROJECTS. For each PROJECT as described in Section 1 above, the funding source for such PROJECT shall be set forth in an Attachment describing that PROJECT.

1. **Appropriations.** The NATION warrants that the sum referenced in PROJECTS will be set aside in the Navajo Nation Road Fund and/or General Fund Allocation for the purposes set in the applicable Attachment outlining PROJECTS.
2. **Key Officials.** The key officials for each party are as follows:

Sandoval County
Mike Hatzenbuehler, Director
Public Works Department
305 S. Oliver
Aztec, New Mexico 87410
Office (505) 771-8500
Fax (505) 771-3323

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

3. **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.
4. **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 New Mexico Procurement Code and the Sandoval 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.
5. **Payment to the COUNTY.**
 - A. The NATION shall advance funding for each PROJECT prior to the start of the PROJECT. For materials, supplies, equipment and labor, the NATION shall pay the COUNTY for the actual cost, including any and all applicable New Mexico gross receipts tax and Navajo Nation sales tax, 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 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.
6. **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.
7. **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.
8. **Term.** This IGA shall not become effective until executed by both the President of the Navajo Nation and the Sandoval County Board of County Commissioners. This IGA shall terminate 4 years after the date of the last signature.
9. **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.
10. **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.
11. **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.

12. **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.
13. **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, 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.
 - 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, unless outlined in the terms of a PROJECT. It is further understood and agreed 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 Sandoval County's personnel ordinance and applicable New Mexico statutes and constitutional provisions.
14. **Dispute Resolution Procedures.** Any dispute arising out of or relating to this IGA shall be resolved under the Dispute Resolution provisions of a Memorandum of Understanding 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 New Mexico Uniform Arbitration Act, NMSA 1978, §§ 44-7A-1 to -32 (2001). 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 Eleventh Judicial District Court, State of New Mexico.

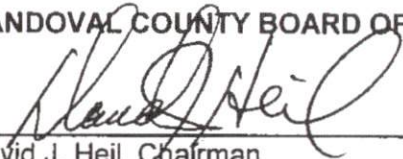
IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this IGA on the dates affixed by their signatures.

NAVAJO NATION


Jonathan Nez, President

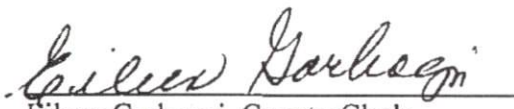
04.13.2020
Date

SANDOVAL COUNTY BOARD OF COUNTY COMMISSIONERS



David J. Heil, Chairman
Sandoval County Board of
Commissioners

Date

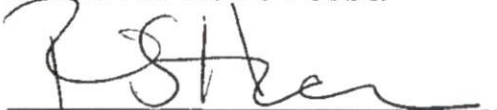
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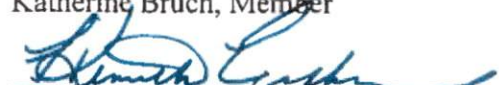

Eileen Garbagni, County Clerk



Jay C. Block, Vice Chairman


Katherine Bruch, Member

APPROVED AS TO FORM:


Robin S. Hammer, County Attorney


F. Kenneth Eichwald, Member


Michael Meek, Member