



DR. BUU NYGREN *PRESIDENT*
RICHELLE MONTOYA *VICE PRESIDENT*

The Navajo Nation | Yideeskáądi Nitsáhákees

October 17, 2023

Apache County
75 West Cleveland
PO Box 238
St. Johns, AZ 85936

ATTENTION: Alton Sheperd, Chairman of Supervisors

REFERENCE: 164 Review 021400 / IGA

Dear Alton:

Attached please find your copy of Intergovernmental Agreement, MOU272. This agreement is with the Navajo Nation Division of Transportation. This Intergovernmental Agreement is approved in good faith based on mutual understanding between both parties. All terms and conditions are stipulated within the agreement, MOU272.

This Intergovernmental Agreement will commence on execution of agreement October 04, 2023, and will terminate December 31, 2032. Referenced MOU272 on all documents and correspondences.

Should you have any questions, please contact Ardaniel Joe Begay at 505-371-8351.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darlene Begay".

Darlene Begay, Senior Accountant
OOC – Contract Administration

xc: Ardaniel Joe Begay, Navajo Nation DOT
File / Chrono

INTERGOVERNMENTAL AGREEMENT
TO PROVIDE ROAD MAINTENANCE ACTIVITIES ON EXISTING
SCHOOL BUS ROUTES WITHIN APACHE COUNTY

This Agreement is entered into by and between the Navajo Division of Transportation through the President of the Navajo Nation, and Apache County, Arizona through the Apache County Board of Supervisors.

- I. **PURPOSE (Required by A.R.S. § 11-952(B)(2))**
 - A. The purpose of this Agreement is to enable agents, officers and employees of Apache County, a governmental subdivision of the State of Arizona, to enter on lands held in trust for the Navajo Nation by the United States Government and to provide, as funds are available, a minimum level of maintenance activities on existing unpaved roads within the Navajo Nation in Apache County, Arizona.
 - B. This Agreement is made to conform to A.R.S. §11-251(29), which empowers Apache County through its Board of Supervisors to enter into maintenance agreements for roads within Apache County which are located within the Navajo Nation and open to the public.

- II. **DURATION (Required by A.R.S. §11-952(B)(1))**

The duration of this Agreement shall be until December 31, 2032. Apache County may renew this Agreement for an additional two-year period by notifying the parties hereto in writing. This Agreement will be filed with the Recorder of Apache County pursuant to A.R.S. § 11-952(G).

- III. **AUTHORITY OF PARTIES (Required by A.R.S. §11-952 (H))**
 - A. 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.

- B. The Chairman of the Apache County Board of Supervisors is authorized to enter into this Agreement on behalf of Apache County pursuant to the Resolution of the Apache County Board of Supervisors attached hereto as Exhibit A.

IV. FINANCING (Required by A.R.S. §11-952(B)(3))

This Agreement shall be financed by appropriations from Highway User Fund (H.U.R.F.) monies as identified in the Apache County Road Budget for each appropriate County Fiscal Year coupled with any other funds received by the County for the purpose of maintaining the roads listed in this agreement.

V. SCOPE OF MAINTENANCE UNDER THIS AGREEMENT

- A. The Parties hereto agree that Apache County shall provide road maintenance on the existing school bus routes within the Navajo Nation.

- B. The Parties jointly acknowledge that the routes described and identified in Exhibit B are not roads included in the Bureau of Indian Affairs (BIA) Road System nor are they dedicated county roads and the Parties agree that this Agreement shall not extend to Bureau of Indian Affairs roads or to officially dedicated county roads subject to right of way under 25 U.S.C. §311.

- 1. The roads described in Exhibit B shall be maintained by Apache County on existing courses, through periodic leveling and blading and the extent of such leveling and blading shall be left to the sound discretion of the road foremen of the road departments of Apache County Supervisorial Districts I, II, and III, after review of the Apache County Roads Budget for each year this Agreement remains in effect.

- 2. It is understood that Apache County is to provide maintenance activities on existing roads and because of tribal and BIA rules and regulations concerning, but not limited to easements, archaeological clearances and environmental clearances, Apache County shall not undertake, nor be obligated to vary the existing courses or plan or design of these routes, nor to make any structural or design changes in these routes except by express written, and duly executed, modifications to this Agreement or pursuant to another properly executed independent intergovernmental agreement.

- C. The minimum degree of Apache County's maintenance agreed to by the Parties shall not exceed that which is necessary to keep such routes passable to public school buses during the school term, as that may be set by the governing board of the Arizona School District using each such route.
- D. The Navajo Nation covenants that reservation lands consisting of the routes described and identified in Exhibit B shall be open at all times to the public for the duration of this Agreement.
- E. The Navajo Nation agree that in the event that Apache County Engineering Department determines that patterns of use on any of the routes described and identified in Exhibit B have increase such as to substantially impair the safety of the routes at the level of maintenance set out in Section V(C) of this Agreement, the Board of Supervisors may suspend all further county obligation for maintaining such route (5) days after the Apache County Engineering Department personally serves written notice of this determination on the Navajo Division of Transportation Director.
- F. The Navajo Nation agrees that in the event Apache County Engineering Department determines that the use of any of the routes described and identified in Exhibit B for the purposes of transporting children to and from public schools has decreased to such an extent that maintenance of a route for that purpose is no longer warranted, or insufficiency of funds to allowed for continued maintenance, the Board of Supervisors may suspend all further County obligation for maintaining such route five (5) days after the Apache County Engineering Department personally serves written notice of this determination on the Navajo Division of Transportation Director.
- G. The Parties agree that in the event that the Apache County Engineering Department determines that additional routes need to be maintained in order to adequately transport children to and from public schools, such routes may be added to those described and identified in Exhibit B, upon written approval by the Apache County Board of Supervisors and the Navajo Division of Transportation.

H. The Parties agree that Apache County shall have the right, in its discretion, to post signs at any point on any or all of the routes described in Exhibit B to the effect that the route is maintained for school bus travel only and that all other travel at their own risk and that no greater speed than a certain identified speed is safe upon the route. Apache County may also post other signs that would be appropriate for posting if posted on county roads.

VI. TERMINATION (Required by A.R.S. §11-952(B)(4))

A. This Agreement is effective until December 31, 2032. However, Apache County may renew this agreement for an additional two (2) years by notifying the other party hereto in writing.

B. Notwithstanding Section VI.A above, this Agreement shall terminate:

1. Thirty (30) days after delivery of written notice by a party of that party's intent to terminate at will to the designated signatories for the other party, or to their designees or successors in office, or;
2. Ten (10) days after delivery of written notice by the terminating party to the other party, through their respective designated signatories or designees of successors in office, citing:
 - a.) a breach of any material covenant of this Agreement; or
 - b.) inadequacy of available funds to proceed further.

C. This Agreement shall be deemed partially terminated by the Parties for those specific routes that change jurisdictional status for the following:

1. Pursuant to the Apache County Board of Supervisors' decision under Section V (E) and (F) as to any route identified in Exhibit B;
2. As to any routes identified in Exhibit B which may become state or county roads under right-of-way grants issued pursuant to 25 U.S.C. §311.

D. In the event of termination of this Agreement:

1. Apache County shall retain all equipment and property purchased by it and all unspent funds otherwise appropriated for carrying out this Agreement.
2. The Navajo Nation shall be deemed to have revoked their grant for Apache County's right of access to reservation lands for purpose of road maintenance on the routes identified in Exhibit B.

VII. SOVEREIGN IMMUNITY

Nothing in this Agreement or attachments shall be construed as a waiver of sovereign immunity by the Navajo Nation or as consent to be sued, or as a submission to jurisdiction of any court.

VIII. SAVING CLAUSE

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by the law and equity.

IX. CHANGE OF APPLICABLE LAWS AND REGULATIONS

Any changes in the governing state laws, rules and regulations during the term of this Agreement shall apply. The Apache County shall notify the Navajo Nation in writing of any changes in the governing laws, rules and regulations affecting any terms and conditions of this Agreement which become effective during the term of this Agreement.

X. NOTICES

All notices under this Agreement shall be in writing, shall be delivered or served in person or by certified mail, return receipt requested and shall be directed to the persons and addresses as any party may designate to the others by notice.

Navajo Nation Division Director
16 Future Navajo Route 543
Gallup, NM 87301

Apache County Engineer
75 West Cleveland
PO Box 238
St. Johns, AZ 85936

XI. EXERCISE OF RIGHTS

Failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.

XII. AMENDMENTS

This Agreement may be amended, modified, or extended upon the written agreement of the Parties executed pursuant to the authority corresponding to that set forth in Sections III (A)-(B) of this Agreement.

XIII. PREDESSOR AND SECESSOR AGREEMENTS

The execution or termination of this Agreement shall not be considered a waiver by the Parties of any rights they may have for damages suffered through a breach of this or a prior agreement between the Parties. The Parties have no obligation to renew this Agreement.

XIV. INDEMNIFY AND HOLD HARMLESS

Each Party shall be liable for their own negligence pursuant to each party's laws governing their respective actions and conduct.

XV. ENTIRE AGREEMENT

This document, its appendices and attachments, including any approved amendments and modifications and any required supporting documents, constitutes the entire agreement between the Parties and supersedes all other understandings, oral or written.

XVI. CONFLICT OF INTEREST

The Parties hereby acknowledge notice of A.R.S. §38-511 which provides for political subdivisions of the State of Arizona to cancel contracts entered into or maintained in violation of this section of the Arizona Conflict of Interest Statutes.

IGA TO PROVIDE ROAD MAINTENANCE ACTIVITIES ON
EXISTING SCHOOL BUS ROUTES WITHIN APACHE COUNTY

FOR AND ON BEHALF OF THE APACHE
COUNTY BOARD OF SUPERVISORS:



Alton Joe Shepherd, CHAIRMAN
Apache County Board of Supervisors

FOR AND ON BEHALF OF THE NAVAJO
NATION:



Buu Nygren, PRESIDENT
Navajo Nation

In accordance with applicable laws, this Agreement has been reviewed by the undersigned who have determined that this Agreement is in proper form and within the powers and authority granted to each respective public body.

DATE: ~~_____~~ 9-5-23

MICHAEL WHITING
Apache County Attorney

DATE: 9/14/23 

Veronica Blackhat
Navajo Nation Attorney

Pursuant to appropriate action by ordinance, resolution or otherwise.