

## INTERGOVERNMENTAL AGREEMENT

### **AN AGREEMENT WHEREBY THE NAVAJO NATION PERMITS THE RESUMPTION OF ROUTINE ROAD MAINTENANCE, SNOW REMOVAL, AND FLOOD REPAIR SERVICES BY SAN JUAN COUNTY UTAH ON CERTAIN PUBLIC ROADS WITHIN THE NAVAJO NATION IN PARTNERSHIP AND COORDINATION WITH THE NAVAJO DIVISION OF TRANSPORTATION**

This Intergovernmental Agreement:

- Identifies the specific roads that are both within the County and within the Nation that are subject to this agreement as Attachment 4;
- Constitutes the necessary “agreement with the appropriate federal agency” and the Navajo Nation needed for the County to secure funding from the State for maintenance of those specific roads;
- Constitutes the necessary authorization by the Navajo Nation for San Juan County to perform ongoing maintenance on those specific roads;
- Articulates the need to secure additional ongoing funding for road maintenance; and
- Establishes the scope and standards of maintenance to be performed by the County on those specific roads.

#### ARTICLE 1: RECITALS

- 1.1 This Intergovernmental Agreement (“IGA”) is entered into by and between San Juan County, (“County”), the Navajo Nation (“Nation”) through the Division of Transportation (“NDOT”), identified in this IGA individually as a “Party” and collectively as “Parties”.
- 1.2 This IGA is subject to the guiding principles established by the Memorandum of Understanding (Attachment 1) dated on January 9, 2019 between and the Nation through NDOT and the County.
- 1.3 This IGA is a separate agreement that is in addition to the existing agreement between the Nation and the County which addresses specific road maintenance and improvement projects, originally dated September 11, 2014, with subsequent amendments. (See Attachment 2.)
- 1.4 The purpose of this IGA is to re-establish the County’s ability to perform routine maintenance on specified B roads within the County that are also within the Nation (“Nation B Roads”). The County’s goal is to support NDOT’s efforts to maintain an adequate network of roads for its residents and visitors by providing resources in the form of labor and equipment.
- 1.5 To do so, the County must be able to designate the subject roads as “B roads” so that they may be included in the State of Utah’s (“State”) B Road inventory and thus eligible for

State B road maintenance funding. The County has not historically claimed formal road rights of way on the Nation, but previously had classified many roads on the Nation as B roads.

- 1.6 In April 2018, NDOT informed the County that it was tasked by the Bureau of Indian Affairs Department of Transportation (“BIADOT”) “to transition the county route ownership to tribal route ownerships in the National Tribal Transportation Facility Inventory” (see Attachment 5). NDOT requested that that the County submit documentation of County rights-of-way on Nation land by May 31, 2018; otherwise “Navajo DOT will start making the change of ownership code...from county to tribe.”
- 1.7 The State of Utah (“State”) Code Section 17-3-103(1)(c) states that “County roads comprise all public highways, roads, and streets within the state that...are located on property under the control of a federal agency and constructed or maintained by the county under agreement with the appropriate federal agency.”
- 1.8 Subsequent to the April 2018 NDOT correspondence, the County revised its B road inventory to exclude routes within the Nation because it was not able to clearly document that it had permission to maintain those roads “under agreement with the appropriate federal agency”, and thus could not meet the criteria required for classification of B roads.
- 1.9 Historically, the proportional amount of B road funds that the County received for B roads within the Nation have not been adequate to fund the entire maintenance and operational needs for those roads. To fully fund the maintenance needs for those roads on an ongoing basis, additional funds must be secured by the Nation in addition to the State’s B road fund.
- 1.10 This IGA will not go into effect until it is approved by the San Juan County Commission in a public meeting in full compliance with the Utah Open and Public Meetings Act (U.C.A. §52-4 *et seq.*).

## ARTICLE II: TERMS OF AGREEMENT

- 2.1 Road maintenance defined. Road maintenance is defined as an activity necessary to repair, preserve, restore and maintain a road to a safe, usable condition. Road maintenance includes emergency snow removal and flood repairs. Road maintenance, as further defined in the Scope of Work (Attachment 5), is the only activity authorized under this IGA that may be performed with the funding identified herein.
- 2.2 Nation acknowledges State B road classification. According to the Utah Transportation Code, “County roads comprise all public highways, roads, and streets within the state

that...are located on property under the control of a federal agency and constructed or maintained by the county under agreement with the appropriate federal agency.”<sup>1</sup>

The Nation, through NDOT, acknowledges that the Nation B Roads are located on property under its control, and both Parties acknowledge that the Nation is the “appropriate agency” with which the County must establish an agreement for maintenance of the Nation B Roads.

2.3 Class B Roads. Class B Roads in the State of Utah are defined as County roads which comprise all public highways, roads, and streets within the State that: (a) are situated outside of incorporated municipalities and not designated as State highways; (b) have been designated as County roads; or (c) are located on property under the control of a Federal Agency and constructed or maintained by the County under agreement with the appropriate Federal Agency. As defined in Utah Code 72-3-103 annotated.

2.4 The Nation provides authorization for maintenance of all tribal roads on tribal land. The United States Code of Federal Regulations states that “[y]ou do not need a right-of-way to cross<sup>2</sup> Indian land if...you are authorized by...[o]ther tribal-specific authority authorizing the use of tribal land without Secretarial approval[.]”<sup>3</sup>

Accordingly, the Nation authorize the County to cross Nation land for the purpose of allowing the County to maintain the Nation B Roads subject to this IGA.

2.5 Specific roads subject to this agreement. The Nation B Roads, as described in Attachment 6, are the only roads subject to this IGA. Updates to Attachment 6 may be made from time to time upon the express written mutual agreement of both Parties.

2.6 Routes remain designated as Nation routes. The Nation B Roads shall remain labeled and designated as Nation routes.

2.7 Funding. The Nation and the County will each fund 50 percent of the costs related to the road maintenance, snow removal and flood repair of the roads listed in Attachment 4. Total cost for one year of maintenance is not to exceed \$200,000 dollars per year. Funding levels may change it agreed upon and amended by both parties. The total cost covers road maintenance, snow removal and flood repair on a quarterly basis (four times per year) and as needed in adverse weather conditions. Both the Nation and the County are each responsible for match funding in the amount of, and not to exceed, \$100,000 dollars per year.

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<sup>1</sup> U.C.A. §72-3-103

<sup>2</sup> The term “cross” in this context is interpreted to include maintaining roads. “*Right-of-way* means an easement or legal right to go over or across tribal land, individually owned Indian land, or BIA land for a specific purpose, including but not limited to building and operating a line or road.” (25 C.F.R. §169.2)

<sup>3</sup> 25 C.F.R. §169.4. Rights-Of-Way Over Indian Land, Subpart A – Purpose, Definitions, and General Provisions.

- 2.8 County funding sources. The County will secure funding for Nation B Roads by including those roads in the County's inventory of B roads submitted to the State. The pro rata share of funds will be used to perform maintenance on Nation B Roads.
- 2.9 NDOT matching funding. NDOT will identify and secure additional funding or material by December 31, 2020 ("Match Date") that will fund 1/2 (50 percent) of the total budget for maintenance of the Nation B Roads subsequent to that date. After the Match Date, the total budget subject to this IGA may be adjusted to reflect the requirement for matching funds.
- 2.10 County matching funding. County will seek to secure State B Road funds to match the NDOT contributions for the maintenance of the selected and priority roads as indicated on Attachment #4 of this agreement.
- 2.11 Agreement length and renewal. This IGA shall become effective sixty (60) days subsequent to signing by all parties and shall continue to be binding upon the parties until December 31, 2024. This IGA shall be reviewed annually by the the appropriate governing bodies of the County and the Nation and may be renewed for additional five (5) year terms subject to the availability of funds. Unless renewed, this IGA terminates automatically at the end of the term specified in this section.
- 2.12 Right to terminate. The parties reserve the right to terminate this IGA at any time if such action is in the best interest of either party. In such event, the terminating party shall provide written notice to the other party 30 days prior to the effective date of termination; however, maintenance work shall be allowed to continue until December 31 ("closeout date") of the year in which the notice of termination was sent, or for 30 days, whichever is later. Notices shall be delivered, mailed or faxed to the key officials identified in Article III. Any work completed prior to the closeout date notice must be paid in full upon the completion of the work.
- 2.13 Amendments. This IGA may be amended in writing by mutual consent of all parties. No amendments shall be considered final until a written amendment is executed by all parties, approved by the County Board of Commissioners and recorded with the San Juan County, Recorder. The parties may propose an amendment to this IGA by submitting a written amendment request with a 30-day notice to the other party.
- 2.14 Compliance with rules and regulations. The County shall perform road maintenance activities in strict compliance with all state, local, tribal, and federal codes and regulations (i.e., IAM-82, cultural resource requirements on federal lands and Clean Water Act requirements). The Nation will provide archeological and environmental clearances prior to work commencing.
- 2.15 Cultural artifacts. The County shall not disturb any existing artifacts of possible archaeological significance noted during authorized maintenance activities and shall

report the discovery of new sites to NDOT for notification of the appropriate tribal, state, and federal agencies.

- 2.16 County responsible for maintenance. The County shall be responsible for providing all labor, equipment, , and quality control necessary to perform the authorized road maintenance. When the roads are maintained, it shall be done so as to provide for a safe condition suitable for the road class and surface type as defined by the State's B Road regulations.
- 2.17 County responsible for traffic control while performing work. The County is responsible to assure that all traffic control required to perform activities authorized under this IGA is in compliance with the "Utah Manual of Uniform Traffic Control Devices" (Utah MUTCD) as amended.
- 2.18 County responsible for road damages caused by negligent work. The County shall be solely responsible for any damages to the road and roadside appurtenances caused by the negligent performance by the County in carrying out its maintenance obligations.
- 2.19 County to maintain records of work; NDOT right to inspect. The County shall maintain written records (i.e., dates, locations, work performed, personnel involved in the performance of work, materials utilized, etc.) of road maintenance activities performed under this IGA. Records shall be made available promptly to NDOT upon request.
- 2.20 Records and Reports: Records and reports will be maintained by both the County and NDOT for all activities, funding, and expenditures related to this IGA. Upon request by either party, the other party shall provide access to or copies of all such records and reports.
- 2.21 Resolution of controversies or claims.
- A. In the event of any controversy which may arise out of this IGA, the County and Nation will first proceed according to the agreed-upon principles set forth in Section VI of the Memorandum of Understanding dated January 9, 2019 (Attachment 1).
- B. Any claim arising out of or related to this IGA shall be settled through binding arbitration in accordance with the Utah Uniform Arbitration Act.<sup>4</sup> A single arbitrator shall be appointed to hear the arbitration and shall be selected by mutual agreement of the Parties. If the Parties cannot agree, the arbitrator shall be selected by the Chief Judge of the State of Utah's Seventh Judicial Court.
- 2.22 No change of jurisdictions. Nothing in this IGA is intended to nor shall it be interpreted to grant or alter any existing jurisdiction of any party with regard to the Nation's public roads.

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<sup>4</sup> U.C.A. § 78B-11-122.



- 2.23 Force majeure. The performance of this IGA shall be subject to events of force majeure. Events of force majeure shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts or omissions of the parties), fires, explosion, rain or other weather delays, floods, strikes, slowdowns or work stoppages.
- 2.24 No change in liability. Nothing in this IGA is intended to nor shall be interpreted to allocate or shift any current or future liability of any Party to this IGA due to such Party's acts or omissions to any other Party to this IGA.
- 2.25 Governmental immunity not waived. By entering into the IGA, no Party waives, nor shall they be deemed to have waived, any immunity or defense that would otherwise be available to them against claims arising by third parties. 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). Nothing in this IGA creates, implies or shall be construed to create any right of action in any third party.
- 2.26 Hold Harmless. To the fullest extent permitted by state, federal, and tribal law, NDOT will indemnify and hold harmless the County, its elected officials, officers, directors, partners, representatives, agents and employees from and against any and all claims, suits, liens, judgments, damages, losses, and expenses, including legal fees and all court costs and liability (including statutory liability) arising in whole or in part from the acts, omissions, breach or default tribal employees. The foregoing indemnity shall include injury, death or disability of any tribal employee and shall not be limited in any way by any amount or type of damage, compensation, or benefits payable under any applicable workers compensation, disability benefits or other similar employees benefit act. 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.*

### ARTICLE III-KEY OFFICIALS

The key officials for each party are as follows:

San Juan County, Utah  
Public Works Director  
881 East Center Street  
P.O. Box 188  
Monticello, Utah 84535-0188  
Office (435) 587-3230  
Fax (435) 587-2771

San Juan County, Utah  
County Administrator  
117 South Main  
P.O. Box 9  
Monticello, Utah 84535-0009  
Office (435) 587-3225  
Fax (435) 587-2447

Navajo Division of Transportation  
Garret Silversmith  
Division Director  
P.O. Box 4620  
Window Rock, Arizona 86515  
Office (505) 371-8300  
Fax (505) 371-8399  
gsilversmith@navajodot.org


Navajo Division of Transportation  
Roscoe Tsosie  
Program Supervisor  
P.O. Box 4620  
Window Rock, Arizona 86515  
Office (505) 371-8332  
rtsosie@navajodot.org

ARTICLE IV-ACCEPTANCE AND APPROVAL

IN WITNESS WHEREOF, the parties hereto have executed the IGA as of the dates given below:

**SAN JUAN COUNTY**

Approved by action of the San Juan County, Utah Board of Commissioners at a duly noticed open meeting held on the 7th day of April, 2020.

  
Kenneth Maryboy  
Chairman, Board of Commissioners

02/24/20  
Date

ATTEST:

  
John David Nielson  
Clerk of the Board

4/7/20  
Date


County Attorney Approval:

Approved as to form and found to be within the powers and authority of the San Juan County Board of Commissioners under the laws of the State of Utah:

  
San Juan County Attorney

4/7/2020  
Date

**NAVAJO NATION**

  
Jonathan Nez  
President

02.24.2020  
Date

  
Garret Silversmith  
Navajo Division of Transportation, Director

2/24/20  
Date

## **ATTACHMENT 1**

### **Memorandum of Understanding**



**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NAVAJO NATION,  
DIVISION OF TRANSPORTATION,  
AND  
SAN JUAN COUNTY, UTAH  
ROAD DEPARTMENT**

**I. PREAMBLE AND GUIDING PRINCIPLES**

This Memorandum of Understanding (MOU) is entered into as of January 9, 2019 by and between the Navajo Nation, through its Division of Transportation, hereinafter referred to as the "Nation", and San Juan County, a political subdivision of the State of Utah, through its Road Department, hereinafter referred to as "San Juan County".

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

**WHEREAS**, San Juan County through its Road Department maintains and improves a transportation system of public roadways and related structures within the unincorporated areas of the county under the jurisdiction of its Board of Commissioners.

**WHEREAS**, by this MOU and related agreements with the Bureau of Indian Affairs (BIA) the Nation and San Juan County wish to establish a framework for their cooperation in transportation projects of mutual interest and benefit.

**WHEREAS**, it is the mutual desire of the Nation and San Juan County to achieve their goals and work in harmony for the common purpose of protecting the public health, safety and welfare of the people of the Nation and San Juan County through an improved relationship between parties.

**WHEREAS**, each party to 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 Nation, San Juan County respects the continued existence of the Nation's government, values, cultures, codes, and laws.

**WHEREAS**, San Juan County has authority to enter into this MOU and participate in transportation projects of mutual interest and benefit with the Nation pursuant to the laws of the State of Utah.

**WHEREAS**, On April 17, 2018, Navajo Division of Transportation issued San Juan County a letter indicating the transition of road ownership of all roads on the Navajo Indian Reservation from County to Tribal to become effective May 1, 2018.

**WHEREAS**, San Juan County has updated the Official B-Road Map to reference the ownership change and submitted this to the Utah Department of Transportation.

**WHEREAS**, San Juan County will be required to adhere to the Utah Department of Transportation Regulations Governing Class B&C Road Funds including Appendix to that document.

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

**NOW, THEREFORE**, the parties hereby agree to the following:

**II. PURPOSE 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 projects of mutual interest and benefit.
- C. The parties mutually agree that this MOU is intended to formalize the government-to-government relationship in accordance with applicable law.
- D. 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 its respective territorial jurisdiction.
- E. The parties mutually agree that this MOU is intended to encourage consultation and cooperation with one another on transportation projects of mutual interest and benefit.
- F. 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.
- G. The parties mutually agree that an objective of this MOU is to incorporate the principles of the MOU into each party's short and long-term transportation planning.

**III. AGREEMENT AND RESPONSIBILITIES**

The Nation and San Juan County mutually agree to the following:

- A. The primary points of contact for carrying out the purposes and objectives of this MOU shall be the Director of the Nation's Division of Transportation and the Public Works Director of San Juan County's Road Department.
- B. The primary contacts as described in paragraph A and selected members of their staff will meet at least annually to discuss possible transportation projects of mutual interest and benefit and to identify and seek to remove obstacles impairing the achievement of their transportation-related goals, objectives, and tasks.
- C. Potential projects will be presented by the Nation to San Juan County who will then evaluate the project to be of mutual interest and benefit. Any proposed project will be considered by the intended improvements to school bus route conditions, reduced road maintenance requirements, and increased safety. Mutual interest and benefit will be determined by review and presented for consideration for joint cooperation by the San Juan County Board of Commissioners.
- D. When a specific transportation project which is appropriate for joint cooperation and participation has been identified, the primary contacts and selected members of their staff will meet at least quarterly until the project is completed to discuss the progress and set priorities for the next meeting.
- E. Once a specific transportation project which is appropriate for joint cooperation and participation has been identified, the parties will by resolution or otherwise enter into a "project specific" IGA or other agreement for the particular project.
- F. After the project is established, the primary contacts and their staff 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.
- G. The parties agree to work together in good faith 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 transportation activities, short-range and long-range transportation planning, decisions, and their implementation.
- H. The parties, while acknowledging that funding limitations may exist for either party at any given time, agree to jointly or individually pursue funding for transportation projects of mutual interest and benefit, especially in circumstances where imminent danger is identified that may affect the health, safety or welfare of their citizens.
- I. Nothing in this MOU shall be construed as obligating either party in the expenditure of funds for the future payment of money in excess of appropriations authorized by IGA and law.
- J. The parties recognize that 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 this educational effort.

- K. 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 accountable to the President of the Nation and Resources and Development Committee of the Navajo Nation Council. San Juan County's primary contact shall be accountable to the County Administrator and Board of County Commissioners.
- L. As a component of the system of accountability, the parties agree that on an annual basis the primary contacts and their respective staff will review and evaluate their ability to implement the terms of this MOU and will prepare an annual report summarizing this evaluation for San Juan County's Board of Commissioners, the Nation's President, and the Resources and Development Committee of the Navajo Nation Council.

**IV. AGREEMENT TO WORK IN GOOD FAITH**

- A. In good faith, the San Juan County Commission, Administrator, Public Works Director, and other San Juan County employees, in their official capacities or through their designees, shall endeavor to implement the terms of this MOU.
- B. In good faith, the President of the Navajo Nation or his designees, including the Director of the Division of Transportation, shall endeavor to implement the terms of this MOU.

**V. RESERVATION OF RIGHTS**

In executing this MOU, neither the Nation nor San Juan 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 construed as a waiver of sovereign immunity by the Navajo Nation, consents to be sued, or consent to the 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 the other, or in any third party.

**VI. DISPUTE RESOLUTION**

All disputes and controversies regarding this MOU shall be resolved by the Director of the Nation's Division of Transportation and the Public Works Director of San Juan County. If these officials are unable to resolve the dispute or controversy, the officials identified in Article IV may participate in the resolution.

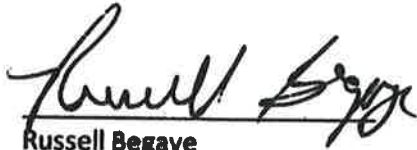
**VII. EFFECTIVE DATE, TERMINATION, AND AMENDMENT**

This MOU shall become effective when signed by both parties and shall continue in force for five (5) years. Termination may be initiated by either party after a thirty (30) day notice to the other of its intention to terminate. Any implemented IGA will be completed per terms as stated within said IGA, regardless of a motion to terminate the MOU. Amendments, including any extension for this MOU, must be approved by both parties in writing.

Wherefore, the duly authorized official of the parties has executed this Memorandum of Understanding on the dates affixed by their signatures with the effective date as stated above.

NAVAJO NATION

SAN JUAN COUNTY



Russell Begaye  
President



Bruce Adams  
Chairman, Board of Commissioners

1-9-2019  
Date

12-17-2018  
Date







**THE  
NAVAJO  
NATION**

PURCHASING SERVICES • P.O. Box 3150 • Window Rock, Arizona • 86515  
TELEPHONE: (928) 871-6316 • FACSIMILE: (928) 871-7778/6159

**BEN SHELLY**  
PRESIDENT

**REX LEE JIM**  
VICE PRESIDENT

**October 28, 2014**

**SAN JUAN COUNTY**

Mr. Bruce Adams, Chairman  
117 South Main St. #202  
Monticello, Utah 84535-009

RECEIVED

SAN JUAN COUNTY

**Reference: DOC 001621 – CO10906**

Dear Mr. Adams:

Attached, please find your executed Intergovernmental Agreement, Contract, **CO10906**. The agreement is with the Navajo Nation Division of Transportation. This Agreement has been approved in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00).

The term of commencement will begin on September 11, 2014 and terminate on September 11, 2019. Contract, **CO10906** must be referenced on all invoices, documents and correspondences as it relates to this contract.

Should you have any questions, please contact Paulson Chaco, Director, Navajo Nation Division of Transportation at 505.371.8300.

Sincerely,

**THE NAVAJO NATION**

Valerie Bitsilly, Accountant  
**Purchasing Section**  
**Navajo Nation Office of the Controller**

Xc: Paulson Chaco, Director, Navajo Nation Division of Transportation  
File / Chrono

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE NAVAJO NATION  
AND  
SAN JUAN COUNTY, UTAH**

**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 San Juan County, a political subdivision of the State of Utah, acting through its Public Works Department (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 San Juan 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 Utah 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 #MOU00122 dated May 01, 2013 (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 Utah 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 San Juan 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 Utah statutes and constitutional provisions. All other work in connection with the PROJECTS, including but not limited to permitting, shall be the responsibility of the County.

Unless otherwise agreed to in writing, the COUNTY shall have no responsibility for the maintenance or repair of the roads after the completion of a PROJECT.

**1.1 Initial and Additional PROJECTS.** The initial PROJECT ( Piute Creek Bridge, Concrete Abutment Protection) is described in Attachment A hereto. From time to time, the parties may agree to additional PROJECTS, each such additional PROJECT 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 initial PROJECT as described in Attachment A, the NATION has set aside TWO HUNDRED THOUSAND dollars (\$200,000.00) as payment to the COUNTY for the non-federal cash match 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 Allocation for the purposes set forth in Section 2 and Attachment A.

**4. Key Officials.** The key officials for each party are as follows:

San Juan County  
Mr. Bruce Adams, Chairman  
San Juan County Commission  
117 South Main St. #202  
Monticello, Utah 84535-009  
Office (435) 587-3225  
Fax (435) 587-2447

Navajo Nation  
Mr. Paulson Chaco  
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 COUNTY.

**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 Utah Procurement Code and the San Juan 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.

**7. Payment to the COUNTY.**

**A.** The NATION shall pay the non-federal cash match prior to the start of the PROJECT. The COUNTY shall not charge the NATION any overhead or administrative expenses for procurement and project planning services under this IGA. If the nonfederal cash match funds are not adequate to complete the PROJECT the NATION shall not obligate additional funds as requested 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.
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 San Juan County Board of County Commissioners. This IGA shall terminate 5 years after the date of the last signature.
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 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.
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 described in the MOU, and except as expressly set forth herein.
- 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 and 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 San Juan County's personnel ordinance and applicable Utah statutes and constitutional provisions.

**16. Dispute Resolution Procedures.** Any dispute arising out of or relating to this IGA shall be resolved under the Dispute Resolution provisions of the Memorandum of Understanding #MOU00122 dated May 01, 2013 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 settled through binding arbitration in accordance with the Utah Uniform Arbitration Act, citation which is 78B-11-122, Utah Code Annotated (1953, as amended). 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 Seventh Judicial District Court, State of Utah.

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

**NAVAJO NATION**

Ben Shelly  
Ben Shelly, President

SEP 11 2014

Date

**SAN JUAN COUNTY**

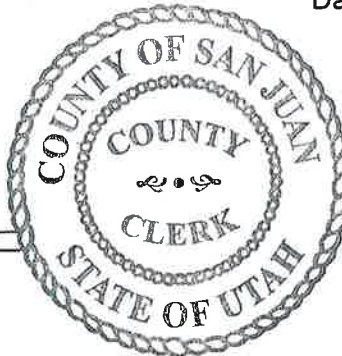
Bruce Adams  
Bruce Adams, Chairman  
San Juan County Board of  
Commissioners

05-27-14

Date

ATTEST:

Monica A. Smith  
County Clerk



Approved as a Form:

Walter J. Bird  
County Attorney

5.27.14

Date



## ATTACHMENT A

PROJECT	FISCAL YEAR	APPROVING RESOLUTION	BUSINESS UNIT	AMOUNT
Piute Creek Bridge, Concrete Abutment Protection	2014	NABUJ. 45-14	9028 506007-9520	\$200,000
Total				\$200,000

The allocated non-federal match funds will be used to match the NRCS \$650,000 for the construction and additional cost of \$65,000 for design of a concrete abutment on the Piute Bridge near the small community of Navajo Mountain. The repaired bridge will be serving the people of the Navajo Mountain Chapter.

### **Project Scope:**

The Gypsum Wash crossing is located approximately 10 miles South of Halchita, Utah within the boundaries of the Navajo Indian Reservation. San Juan has implemented a number of different culvert sizes and configurations in the past and all have caused severe overtopping and washout. The current structure consists of five four foot diameter corrugated metal culverts with end sections on the inlet side. Each culvert is approximately 75 feet in length. There is also a spillway located to the southeast of the culverts to handle larger flows. The existing culverts are grossly undersized and overtopping of the roadway occurs frequently. A makeshift spillway has been constructed to handle the excess flows during storms, but scour and washout has been a major problem. Bedrock is located approximately 3 to 4 feet below flow line of the wash, while it is exposed along the spillway outlet. This wash crossing lies on a dedicated school bus route used to transport children to and from school, and also provides access to homes and grazing in the area. The proposed project would remove the existing culverts and replace them with a triple barrel culvert system with each barrel consisting of a 32-foot span. The culverts will be either a Conspan culvert system, or a similar three sided box culvert set on concrete footings embedded in bedrock. The roadway prism will be reconstructed at the crossing location to accommodate a design speed of 40 MPH through the crossing. The existing spillway will be reconstructed and armored with riprap to redirect large flood events in a controlled manner to avoid future washout of the proposed structures. Further, the intersection that lies southeast of the wash crossing will be reconstructed to improve the approach angle and increase safety. As part of construction, a temporary bypass road will be constructed on-site to maintain access in the area.

**ATTACHMENT 2**

**NDOT Letter, April 2018**



**NAVAJO DIVISION OF TRANSPORTATION**  
P.O. BOX 4620, WINDOW ROCK, AZ 86515  
PHONE (505) 371-8300 FAX (505) 371-8399



RUSSELL BEGAY  
PRESIDENT

JONATHAN NEZ  
VICE PRESIDENT

April 16, 2018

San Juan County Utah  
Commissioner Rebecca Benally  
PO Box 9  
Monticello, Utah 84535

REF: Transition of County Route Ownerships to Tribal Route Ownerships

Navajo Division of Transportation (Navajo DOT) is tasked by Bureau of Indian Affairs Department of Transportation (BIADOT) to transition the county route ownership to tribal route ownerships in the National Tribal Transportation Facility Inventory (NTTFI).

Historically, BIADOT has allowed routes to have an "Assumed Rights-of-Way." With the updated Federal Register from the Department of the Interior, 25 CFR Part 170 requires clear documentation for rights-of-way (ROW).

Therefore, Navajo DOT is requesting all county offices to submit legal documentation of all ROW for their county routes. To complete this task, ROW documentation that are provided will be submitted into the NTTFI.

Deadline to submit ROW documentation is May 31, 2018. Unless otherwise, Navajo DOT will start making the change of ownership code in the NTTFI from county to tribe. These changes will then be forward on to BIADOT and Federal Highway (FWHA) for consideration and final approval.

Thank you in advance for your consideration to this request and if any questions or comments, please feel free to contact me at (505) 371-8300.

Sincerely,

Garret Silversmith  
Division Director  
Navajo Division of Transportation

## **ATTACHMENT 3**

### **Scope of Work**

## **Scope of Work**

**As defined based on funding in Section 2.7, the County will perform road maintenance, snow removal and flood repair of the roads listed in Attachment 4. The expectation is that maintenance will be performed on a quarterly basis 4 (four) times a year and as needed in adverse weather conditions.**

## ATTACHMENT 4

### Specific Roads Subject to this Agreement

#### SAN JUAN COUNTY UTAH WESTERN NAVAJO AGENCY

Road Number	Chapter	School Bus Rt	Miles	Class	ADT	BOP		EOP	
						Lat	Long	Lat	Long
491	KAYENTA	YES	6.8	5	23	37.017898	-109.810879	37.096992	-109.744863
427	OLJATO	YES	15.5	5	135	37.075815	-110.295136	37.119013	-110.131432
428	OLJATO	YES	12.4	5	103	37.053624	-110.266764	37.120790	-110.088923
494	OLJATO	YES	1.4	5	103	37.065347	-110.328422	37.050717	-110.315134
<del>435</del>	<del>NAVAJO MOUNTAIN</del>	<del>YES</del>	<del>3.7</del>	<del>5</del>	<del>50</del>	<del>37.034444</del>	<del>-110.777056</del>	<del>37.065614</del>	<del>-110.728713</del>
			39.8	TOTAL MILES					

6310 Navajo Mtn. Yes 3.0 5  
6388 Navajo Mtn. Yes 2.0 5

#### SAN JUAN COUNTY UTAH NORTHERN NAVAJO AGENCY

ROUTE NUMBER	Chapter	Miles	Class	ADT	BOP LAT	BOP LONG	EOP LAT	EOP LONG
403	ANETH	3.7	5	75	37.274152	-109.331935	37.311043	-109.302891
404	ANETH	5.2	5	59	37.304863	-109.223826	37.265950	-109.151858
415	MEXICAN WATER	10.4	5	43	37.064046	-109.672804	37.181281	-109.592658
436	MEXICAN WATER	4.6	5	69	37.185807	-109.670412	37.181469	-109.588646
448	TEEC NOS POS	2.9	5	83	37.023492	-109.358118	36.999272	-109.327507
451	TEEC NOS POS	3.5	5	83	37.022750	-109.361505	37.010242	-109.333542
463	ANETH	1.7	5	429	37.309852	-109.279954	37.299771	-109.255439
4181	MEXICAN WATER	1.0	5	40	37.181469	-109.588646	37.177525	-109.572773
Total Miles:		33.0						