

MEMORANDUM OF UNDERSTANDING

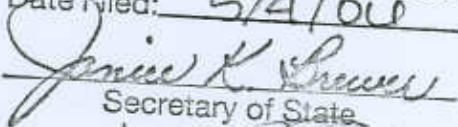
BETWEEN
THE NAVAJO NATION DEPARTMENT OF TRANSPORTATION
AND
THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION

I. PREAMBLE AND BUILDING PRINCIPLES

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into May 4, 2006, by and between the Navajo Nation, through its Department of Transportation within the Navajo Nation Division of Community Development, hereinafter referred to as "Nation", and the Arizona Department of Transportation, hereinafter referred to as "ADOT", an executive department of the State of Arizona.

- A. WHEREAS, the Nation has established its Department 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.
- B. WHEREAS, ADOT was established in 1974 and is responsible for planning, developing, maintaining, and operating transportation facilities for the efficient movement of people and products by surface and air throughout Arizona.
- C. WHEREAS, it is the mutual desire of the Nation and ADOT to achieve their multi-modal transportation goals and work in harmony for the common purpose of protecting the public health, safety and welfare of the people of the Navajo Nation and Arizona through an improved relationship between the parties.
- D. WHEREAS, each party to this MOU respects the sovereign status of the other and wish to establish procedures to fully implement the government-to-government relationship. In recognition of the sovereign status of the Nation, ADOT respects the continued existence of the Nation's government, values, culture, codes and laws.
- E. WHEREAS, ADOT has authority to enter into this MOU and conduct negotiations concerning issues of mutual concern with the Nation pursuant to the laws of the State of Arizona.
- F. WHEREAS, the Nation has authority, as a sovereign nation, to enter into this MOU and conduct negotiations concerning issues of mutual concern with ADOT.

NOW, THEREFORE, the parties hereto agree to the following:

NO. 28220
 Filed with the Secretary of State
 Date Filed: 5/4/06

 Secretary of State

By: 

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 transportation-related Intergovernmental Agreements and other agreements between the parties to address and resolve specific issues of mutual concern.
- C. The parties agree 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 their territorial jurisdiction.
- E. The parties mutually agree this MOU is intended to encourage coordination and consultation with one another on matters impacting both parties.
- F. The parties mutually agree 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 other.
- G. The parties mutually agree an objective of this MOU is to incorporate the principles of the MOU into each entity's short and long-term planning, as well as management practices.

III. AGREEMENT AND RESPONSIBILITIES

The Nation and ADOT mutually agree to the following:

- A. The parties will establish a working group composed of representatives of each to carry out and further clarify the purposes and objectives of this MOU. Group membership shall be determined by each party. Group roles and responsibilities shall be created and updated annually.
- B. The parties agree that the working group will meet quarterly to establish goals, objectives, and delineation of tasks relating to implementation of projects of mutual concern, and to identify and seek to remove obstacles impairing the achievement of those goals, objectives and tasks.
- C. When a specific project has been identified, the working group will meet at its quarterly meeting until the project is completed to discuss the progress and to set goals for the next meeting.
- D. Once a specific project is identified, the parties will enter into a "project specific" intergovernmental agreement, or other agreement for the particular project.
- E. After the project is established, a memorandum will be created by the working group, which details what the project is and the tasks to be performed by each party, separately or jointly, and the same shall describe the means to be used to complete the project.
- 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 planning, and decisions and their implementation.
- G. The parties, while acknowledging that funding limitations may exist for either party at any given time, agree to jointly or individually pursue funding for projects especially in instances where

imminent danger is identified that affects the health, safety and welfare of the Navajo and local communities. Nothing in this MOU shall be construed as obligating the parties in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

- H. The parties recognize implementation of this MOU will require education to members, officials, agents, employees, contractors, and subcontractors of both parties. Therefore, the parties agree to develop strategies for carrying out this educational effort.
- I. The parties recognize that a key principle of the working relationship is to resolve issues of mutual concern and maintain accountability consistent with this MOU. In furtherance of this principle, the Nation representatives to the working group shall be accountable to the Division Director of the Division of Community Development, the Transportation and Community Development Committee, the President of the Nation, and the Navajo Nation Council. The representatives to the working group from ADOT shall be accountable to their supervisors and division directors within ADOT and the State Transportation Board.
- J. As a component of the system of accountability, 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 Director of ADOT and the Nation's President and Director of the Division of Community Development.

IV. AGREEMENT TO WORK IN GOOD FAITH

- A. In good faith, the Director of ADOT, in his/her official capacity, or through his/her designee(s), including the Transportation Planning Division, the Public Transportation Division, and the District Engineer(s) for the Flagstaff, Holbrook and Globe Districts, shall endeavor to implement the terms of this MOU.
- B. In good faith, the President of the Nation, or through his designee(s), including the Division Director of the Division of Community Development, and Navajo Department of Transportation Department Manager, shall endeavor to implement the terms of this MOU.

V. RESERVATION OF RIGHTS

In executing this MOU, neither the Nation, nor the ADOT waives any rights, including, but not limited to, treaty rights, immunities, sovereign immunities, jurisdictional defenses, or defenses based on other protecting laws. Specifically, nothing in this MOU shall be construed 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, nor shall 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 administratively, by the working group in accordance with applicable law.

VII. EFFECTIVE DATE AND TERMINATION

This MOU shall become effective when signed by both parties, and shall continue in force until terminated by either party after thirty (30) days notice in writing to the other of his intentions to do so.

VIII. AMENDMENT

Any amendments or supplements to this MOU may be proposed by either party, and shall become effective upon writing agreement by both parties.

NOW, THEREFORE, the signatory parties have executed this Memorandum of Understanding on the dates affixed by their signatures, with an effective date as herein stated.

NAVAJO NATION
OFFICE OF THE PRESIDENT

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION



Joe Shirley, Jr.
President



Victor Mendez
Director

APR 11 2006

Date

01/04/06

Date

**APPROVED AS
TO FORM:**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY ADOT'S OFFICE OF
GENERAL COUNSEL**

NAVAJO NATION

STATE OF ARIZONA



Legal Representative

(Approval documentation attached)

General Counsel

4/13/06

Date

Date



TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Direct Line: 602.542.8837
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0011-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 25 April 2006

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "James R. Redpath", written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:936111