

NAVAJO COUNTY AGENDA ITEM REQUEST FORM

Meeting Date: April 14, 2015	Time Needed: 5 Minutes										
Requesting Department: Public Works	Presenter(s) Name: William R. Bess, P.E., CFM										
Motion before the Board: Approve Memorandum of Agreement (MOA) between Bureau of Indian Affairs, Navajo Regional Office and Navajo County											
Recommendation: (who, what, where, when, how, etc.) It is recommended that the Board of Supervisors approve this Memorandum of Agreement.											
<p>Background: (why should it be done, what will happen if not approved, etc. include resolution)</p> <p>The Purpose of this MOA is to serve as the master agreement between Navajo County and the BIA for road related maintenance activities and the funding thereof, each such activity to be described in a Task Agreement to be attached hereto. Task Agreements 1-4 are attached hereto. Future Task Agreements, if any, shall be in substantially, the same form, shall describe the effective date, term, amount of Allocated Funds, funding source(s), purpose(s), disbursement schedule and requirements, accounting requirements, and such other terms and conditions as the parties may mutually agree upon, and shall be attached hereto upon approval by both parties. Each Task Agreement shall be subject to the terms and conditions of this MOA.</p> <p>This MOA replaces AGN0090001 between BIA and Navajo County which expired on December 31, 2013.</p>											
Fiscal Impact: (what will it cost, where funds will come from, is it budgeted, etc.) None at this time.											
Reviewed and approved by:	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">County Manager</td> <td style="text-align: center;">County Attorney</td> <td style="text-align: center;">Human Resources</td> <td style="text-align: center;">Finance</td> <td style="text-align: center;">IT</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	County Manager	County Attorney	Human Resources	Finance	IT	<input type="checkbox"/>				
County Manager	County Attorney	Human Resources	Finance	IT							
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
Board Action Taken											
Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	No Action <input type="checkbox"/>	Continued <input type="checkbox"/>	Continued to: _____							
Approved with changes as follows: _____											
Clerk's Notes											
Date:	Initial:										

WRB

REMINDER: Email this coversheet and all backup documentation to **BOS.Clerk** by **Noon the Tuesday before the BOS meeting.**

AGREEMENT NUMBER

MEMORANDUM OF AGREEMENT BETWEEN
BUREAU OF INDIAN AFFAIRS, NAVAJO REGIONAL OFFICE AND
NAVAJO COUNTY, STATE OF ARIZONA

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by and between NAVAJO COUNTY, a political subdivision of the State of Arizona (the "County"), and the BUREAU OF INDIAN AFFAIRS, NAVAJO REGIONAL OFFICE, an agency of the United States Department of the Interior (the "BIA").

Article I
Authority

- 1.1 The County is authorized by A.R.S. §§11-251 and 11-952 to enter into intergovernmental agreements for cooperative action with agencies of the United States and/or Tribal governments.
- 1.2 A.R.S. §11-251 (4) authorizes the County to maintain all public roads within its boundaries.
- 1.3 A.R.S. § 11-251 (29) authorizes the Board of Supervisors of the County to enter into agreements for the maintenance of highways, including those which pass through Indian lands, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress.
- 1.4 The above statutes have been interpreted by the Arizona Attorney General in Opinion No. 186-029 to authorize the expenditure of funds for the maintenance of all public roads within Indian country (as defined in 18 U.S.C. 1151).
- 1.5 The Code of Federal Regulations provides in 25 C.F.R. 170.6 that "The administration and maintenance of Indian Reservation Roads and Bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner (of Indian Affairs) shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System."
- 1.6 25 C.F.R. 70.7 provides that "The Commissioner may enter into an agreement with the State (which is defined to include political subdivisions such as the County) for cooperation in the maintenance of certain Indian Reservation Roads and Bridges, especially at those locations where road projects serve non-Indian land as well as Indian land."
- 1.7 BIA may retain all funding received pursuant to this MOA without depositing the same in the Miscellaneous Receipts Account of the United States Treasury. BIA has the authority to retain these funds and use them for road maintenance that supplements but does not replace maintenance projects funded by appropriated funds. Pursuant to the broad authorities of the Secretary of the Interior over Indian affairs, the regulations in 25 C.F.R. Part 170, and the broad authorities in Title 23 U.S.C.A. (Federal-Aid and Federal Lands Highways Programs) governing Indian reservation roads and intergovernmental cooperation, BIA and State/County cooperation on road maintenance activities is permitted, including BIA's receipt of funding from the State or County for use in the maintenance of Indian reservation roads.

Article II
Purpose

- 2.1 Navajo County has agreed to provide funds to the BIA for the BIA's road-related activities on that portion of the Navajo Reservation within the boundaries of Navajo County, Arizona. BIA affirms that it has the ability to perform such road-related activities and agrees to accept the funds granted by the County pursuant to this MOA.
- 2.2 The parties intend for this MOA to serve as the master agreement between them for road related maintenance activities and the funding thereof, each such activity to be described in a Task Agreement to be attached hereto. Task Agreements 1- 4 are attached hereto. Future Task Agreements, if any, shall be in substantially, the same form, shall describe the effective date, term, amount of Allocated Funds, funding source(s), purpose(s), disbursement schedule and requirements, accounting requirements, and such other terms and conditions as the parties may mutually agree upon, and shall be attached hereto upon approval by both parties. Each Task Agreement shall be subject to the terms and conditions of this MOA.

Article III
Responsibilities

- 3.1 The Navajo County Board of Supervisors, by motion duly, passed at the Board's regular meeting on the date shown in each Task Agreement, shall have approved the expenditure of specified funds (the "Allocated Funds") for specified road-related activities within that portion of the Navajo Reservation located within one or more Supervisorial Districts as indicated in the Task Agreement. (The term "Supervisorial Districts" refers to the five districts into which the County is divided pursuant to the Arizona Revised Statues.)
- 3.2 The Allocated Funds shall be used by the BIA solely for the purpose(s) specified in each Task Agreement.
- 3.3 The Allocated Funds are intended to supplement other monies that are or may become available to the BIA for road-related activities within that portion of the Navajo Reservation located within the Supervisorial District(s) indicated in each Task Agreement. The receipt of the Allocated Funds shall not cause other monies to be diverted or allocated to projects outside that portion of the Navajo Reservation within the Supervisorial District located within the Supervisorial District(s) indicated in each Task Agreement.
- 3.4 The Allocated Funds shall be disbursed to the BIA as shown in each Task Agreement and shall be used solely for the purpose(s) specified therein. The procedure for disbursing the Allocated Funds and accounting for their expenditure shall be mutually agreed upon by the respective financial officers of the parties and shall be indicated in each Task Agreement.
- 3.5 Any Allocated Funds that are unused by the date(s) or time frame(s) shown in each Task Agreement shall be refunded to the County within 30 days unless the Task Agreement has been extended or renewed by mutual written consent of the County and the BIA. Upon the mutual written consent of the County and the BIA, this MOA and/or each Task Agreement may be renewed for one or more additional periods.
- 3.6 The funding described in each Task Agreement is subject to the availability of funds to the

County from the source(s) indicated in the Task Agreement.

- 3.7 Each party warrants that this MOA has been executed by a duly authorized official and that all requisite action has been taken for this MOA to be a valid and binding obligation of the party.

Article IV
Key Officials

- 4.1 The key officials for each party are as follows:

Navajo County
County Manager
Navajo County
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4000
FAX (928) 524-4239

BIA-Navajo Region
Calvin Castillo
BIA-Navajo Regional Office
Division of Transportation
P.O. Box 1060
Gallup, New Mexico 87305
(505) 863-8282
FAX (505) 863-8355

Article V
Reporting, Billing, and Payment

- 5.1 Records and Reports. Records and reports will be maintained by both the County and the BIA for all activities, funding and expenditures related to this MOA and each Task Agreement. Upon request by either party, the other party shall provide access to or copies of all such records and reports.
- 5.2 Funding. Disbursement of Allocated Funds to the BIA, and accounting for expenditures by the BIA, shall be made in accordance with each Task Agreement. While funding may be provided by the County in an amount equivalent to the yearly salary of a BIA employee, the salary of any BIA employee shall be paid directly by BIA and shall not be paid directly to the employee by the County.

Article VI
Term of MOA

- 6.1 This MOA becomes effective on the date of the last signature, and shall remain in force and effect for five years. Either party may propose amendments to this MOA or any Task Agreement by submitting them in writing to the other party at least 30 days before the proposed implementation date. Amendments must be approved in writing by both parties.
- 6.2 In the event of any controversy which may arise out of this MOA or any Task Agreement, the County and the BIA agree to select a procedure and forum mutually acceptable to them to informally resolve such dispute.
- 6.3 Appropriation (Anti-Deficiency Act, 31 U.S.C. §1341): Nothing contained in this Agreement shall be construed as binding the BIA to expend in any one fiscal year any sum in excess of appropriations made by Congress, as augmented by funding pursuant to this MOA, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure

of money in excess of such appropriations.

- 6.4 Nothing in this MOA is intended to--nor shall it be interpreted to--grant or alter any right-of-way easement over roads on the Navajo Reservation or grant or alter the existing jurisdiction of any government over Indian reservation roads on the Navajo Reservation.
- 6.5 Nothing in this MOA is intended to--nor shall it be interpreted to - allocate or shift any current or future liability of a party to this MOA due to such party's acts or omissions to the other party to this MOA.
- 6.6 Nothing in this MOA is intended to--nor shall it be interpreted to- establish or enhance any rights by any person, government, or other entity not a party to this MOA. Nothing in this MOA shall prevent BIA from consulting with representatives of the Navajo Nation and Navajo County, Arizona, concerning BIA's road maintenance activities pursuant to this MOA.

Article VII
Authorized Signatures

IN WITNESS WHEREOF, each party has caused this MOA to be executed by an authorized official on the day of the year set forth by their signatures.

NAVAJO COUNTY

By: Chairwoman, Board of Supervisor

Date

APPROVED AS TO FORM AND AUTHORITY

By: Deputy County Attorney

Date

BUREAU OF INDIAN AFFAIRS

Transportation Program Manager, Navajo Region

Date

Construction & Maintenance Manager, Navajo Region

Date

Task Agreement

Western Navajo, Chinle, and Ft. Defiance Agencies - Division of Transportation

The Navajo County Board of Supervisors, by motion duly passed at the Board's regular meeting on _____, has approved the expenditure of up to \$_____ for salaries for ___ (fill in the blank for number of employees) employee(s) for ___ (fill in the blank for the length of time) months in District ___ (fill in the blank for the District) of () Special Project Road Funds, or () TEA21 Funds, or () Highway User Revenue Funds (check appropriate box) to reimburse the BIA () Western Navajo Agency, () Chinle Agency, or () Ft. Defiance Agency (check appropriate box) for the expense of funding _____employee(s) for ___ months. The employee(s) in this position shall serve as a motor grader operator(s) on BIA system public roads meeting the appropriate Funds criteria in that portion of the Navajo Reservation within Supervisorial District No. (___). Such duties may include, but are not limited, to: operating a motor grader, backhoe, end loader, or truck; installing road signs; mowing vegetation; repairing cattle guards and guardrails; cleaning, repairing, or installing drainage structures; repairing fences; and patching and crack sealing pavement, placing gravel to alleviate a safety hazard when directed by BIA supervisor; and performing similar road maintenance activities. Provided, however, the County understands that the Allocated Funds may allow ___ full time permanent BIA employee(s) to be stationed elsewhere.

The employee(s) is/are not required to be a resident of Navajo County (provided, however, that the BIA shall exercise all reasonable efforts to fill the position(s) with a Navajo County resident). The BIA shall be solely responsible for the hiring and all employment decisions. The County shall have no authority or responsibility whatsoever for the supervision or control of the employee(s) or any other aspect of the employment relationship between the BIA and the employee(s), including worker's compensation or unemployment compensation. The employee(s) shall not be subject to any County personnel policies or eligible for any benefits offered to County employees.

The funding described herein is for ___ months of wages for ___ position(s), commencing on the date the employee(s) starts work for the BIA and continuing until ___ months of wages have been expended on the original employee(s) or any subsequent replacement(s). Any Allocated Funds that are unused as of ___ total months of employment for each position shall be refunded to the County within 30 days unless this Task Agreement has been renewed by mutual consent.

The County warrants to BIA that all equipment loaned under this task order is operational and safe and fit for its intended use.

The Allocated Funds shall be disbursed to the BIA in monthly installments upon receipt of statements setting forth expenses that the BIA has incurred for the purposes for which the funds have been allocated.

The request for funds will be:

1. Sent on a monthly basis to:
Ms. Jeanine Carruthers
Navajo County Public Works Department
P.O.Box 668
Holbrook, AZ 86025

2. Supported by detail showing:
 - a) Employee names and social security numbers.
 - b) Gross amount of earnings for the month.
 - c) Total amount of employee related expense.
3. Signed as accurate and complete statement of expenses for the month.
4. Accompanied by an explanation if there is a deviation in the number of employees that reimbursement is being requested for.
5. Reimbursement to the BIA will be sent to:
BIA Navajo Regional Office
Division of Transportation
P.O. Box 1060
Gallup, New Mexico 87305

Task Agreement

Western Navajo, Chinle, and Ft. Defiance Agencies - Division of Transportation

The Navajo County Board of Supervisors, by motion duly passed at the Board's regular meeting on _____, has approved the expenditure of up to \$_____ for salaries for ___ (fill in the blank for number of employees) employee(s) for ___ (fill in the blank for the length of time) months in District ___ (fill in the blank for the District) () Special Project Road Funds or () TEA21 Funds, or () Highway User Revenue Funds (check appropriate box) to reimburse the BIA () Western Navajo Agency, () Chinle Agency, or () Ft. Defiance Agency (check appropriate box) for the expense of funding ___ employee(s) for ___ months. The employee(s) in this position shall serve as a motor grader operator on BIA system public roads meeting the appropriate Funds criteria in that portion of the Navajo Reservation within Supervisorial District No. (___). Such duties may include, but are not limited, to: operating a motor grader, backhoe, end loader, or truck; installing road signs; mowing vegetation; repairing cattle guards and guardrails; cleaning, repairing, or installing drainage structures; repairing fences; and patching and crack sealing pavement, placing gravel to alleviate a safety hazard when directed by BIA supervisor; and performing similar road maintenance activities. Provided, however, the County understands that the Allocated Funds may allow ___ full time permanent BIA employee(s) to be stationed elsewhere.

It is understood that the employee(s) whose position is/are to be funded by reimbursement from the Allocated Funds shall be a BIA employee under the exclusive supervision and control of the BIA. The employee(s) is/are not required to be a resident of Navajo County (provided, however, that the BIA shall exercise all reasonable efforts to fill the position(s) with a Navajo County resident). The BIA shall be solely responsible for the hiring and all employment decisions. The County shall have no authority or responsibility whatsoever for the supervision or control of the employee(s) or any other aspect of the employment relationship between the BIA and the employee, including worker's compensation or unemployment compensation. The employee(s) shall not be subject to any County personnel policies or eligible for any benefits offered to County employees.

The funding described herein is for ___ months of wages for ___ positions, commencing on the date each employee starts work for the BIA and continuing until ___ months of wages have been expended on the original employee(s) or any subsequent replacement(s). Any Allocated Funds that are unused as of ___ total months of employment for each position shall be refunded to the County within 30 days unless this Task Agreement has been renewed by mutual consent.

The County warrants to BIA that all equipment loaned under this task order is operational and safe and fit for its intended use.

The Allocated Funds shall be disbursed to the BIA in monthly installments upon receipt of statements setting forth expenses that the BIA has incurred for the purposes for which the funds have been allocated.

The request for funds will be:

Sent on a monthly basis to:

- 1) Ms. Jeanine Carruthers
Navajo County Public Works Department
P.O.Box 668
Holbrook, AZ 86025

- 2) Supported by detail showing:
Employee names and social security numbers
Gross amount of earnings for the month
Total amount of employee related expense
- 3) Signed as accurate and complete statement of expenses for the month.
- 4) Accompanied by an explanation if there is a deviation in the number of employees that reimbursement is being requested for.
- 5) Reimbursement to the BIA will be sent to:
BIA Navajo Regional Office
Division of Transportation
P.O. Box 1060
Gallup, New Mexico 87305

In addition to funding ___ employee(s) as described above, the County shall make available to the BIA on a loaner basis ___ (fill in number) ___ (fill in heavy equipment) particularly described herein. These _____ (fill in number) _____ (fill in equipment) shall be made available for use by the employee(s) and other qualified BIA employees in performing maintenance of public roads in that portion of the Navajo Reservation within Supervisorial District ___ (fill in District) of the County. The BIA shall exercise reasonable care over the _____ (fill in piece(s) of equipment) and shall be solely responsible for all operating expenses, including without limitation preventive maintenance, repairs, and risk of loss or destruction (not to exceed agreed upon salvage value of _____) (fill in amount per piece of equipment). The BIA's agreement to pay these costs are subject to the availability of funds. The ___ (fill in pieces of equipment) shall be returned to the County in the same condition as when received, exclusive of reasonable wear and tear, at such time as the County ceases to provide funding for the positions as described above, or at a later date as the County may agree to in writing.

Task Agreement

Western Navajo, Chinle, and Ft. Defiance Agencies - Division of Transportation

The Navajo County Board of Supervisors, by motion duly passed at the Board's regular meeting on _____ has approved the expenditure of up to \$ _____ in District ___ of () Special Project Road Funds, or () TEA 21 Funds, or () Highway User Revenue Funds (check appropriate box) to be used for emergency road maintenance, including the preparation of drainage studies for sites subject to washouts and erosion damage which inhibit safe travel, of BIA public roads which are located on the Navajo Reservation, in _____ Agency, in Navajo County, within Supervisorial District No. ___ of the County. The Allocated Funds shall be used to supplement other monies that are, or may become, available to the Bureau for emergency road maintenance purposes on BIA public roads in that portion of the Navajo Reservation within _____ Agency and Supervisorial District No. ___ of the County.

The receipt of the Allocated Funds shall not cause other monies to be diverted from projects within this area or allocated to projects outside this area. The expenditure of the Allocated Funds may include the employment of personnel or contractors; the acquisition, operation, maintenance, and repair of equipment; and the purchase of necessary materials.

Employees whose positions are funded in whole or in part with Allocated Funds shall work under the sole supervision and control of the employing party. Such an employee is not required to be a resident of Navajo County, but the employing party shall exercise all reasonable efforts to fill the position with a Navajo County resident. The employing party shall be solely responsible for the hiring and all employment decisions. The County shall have no authority or responsibility whatsoever for the supervision or control of the employee, or any other aspect of the employment relationship between the employing party and the employee, including workers' compensation or unemployment compensation. The employee shall not be subject to any County personnel policies or eligible for any benefits offered to County employees.

For any equipment acquired in whole or in part with the Allocated Funds, the acquiring party shall be solely responsible for all expenses, including without limitation preventive maintenance, repairs, and insurance. The County shall have no responsibility or liability whatsoever in regard to such equipment. The BIA shall be responsible for identifying, prioritizing, scheduling, and performing all maintenance activities for which the Allocated Funds are used in whole or in part. It is understood that the County's sole obligation hereunder is to make payment of the Allocated Funds.

The County warrants to BIA that all equipment loaned under this task order is operational and safe and fit for its intended use.

Any Allocated Funds that are unused as of _____ shall no longer be available for distribution pursuant to this Memorandum of Agreement.

The Allocated Funds shall be disbursed to the BIA from time to time upon receipt of statements setting forth expenses that the BIA has incurred (or will incur) for the purposes for which the funds have been allocated. The procedure for disbursing the Allocated Funds and accounting for their expenditure shall be as follows:

The request for funds will be sent to:

Ms. Jeanine Carruthers
Navajo County Public Works Department
P.O.Box 668
Holbrook, AZ 86025

Supported by detail showing:

- A) Employee information:
- i)* Name and Social Security Number
 - ii)* Gross amount of earnings during period of employment
 - iii)* Total amount of employee-related expenses

OR

- B) Equipment acquisition details:
- i)* Type of equipment
 - ii)* Date(s) and Type (s) of acquisition of equipment
 - iii)* Date(s) and Location(s) of subsequent emergency maintenance activities performed by each piece of equipment

OR

- C) Equipment repair details:
- i)* Equipment identification
 - ii)* Repairs performed
 - iii)* Date of repairs
 - iv)* Date(s) and Location(s) of subsequent emergency maintenance activities performed by equipment

OR

- D) Material purchase details:
- i)* Types of materials purchased
 - ii)* Dates when materials were purchased
 - iii)* Locations where materials will be used for emergency maintenance activities

Reimbursement will be sent to:

BIA Navajo Regional Office
Division of Transportation
P.O. Box 1060
Gallup, New Mexico 87305

Task Agreement
Western Navajo, Chinle, and Ft. Defiance Agencies - Division of Transportation

The Navajo County Board of Supervisors, by motion duly passed at the Board's regular meeting on _____ has approved the expenditure of up to \$ _____ in District ____ of () Special Project Road Funds, or () TEA 21 Funds, () or Highway User Revenue Funds (check appropriate box) to be used for the acquisition, operation, repair, or maintenance of road maintenance equipment. Such equipment shall be used for road maintenance of BIA public roads which are located on the Navajo Reservation, in _____ Agency, in Navajo County, within Supervisorial District No. ____ of the County. The Allocated Funds shall be used to supplement other monies that are, or may become, available to the Bureau for road maintenance purposes on BIA public roads in that portion of the Navajo Reservation within _____ Agency and Supervisorial District No. ____ of the County.

The receipt of the Allocated Funds shall not cause other monies to be diverted from projects within this area or allocated to projects outside this area. The expenditure of the Allocated Funds shall only include the acquisition, operation, maintenance, and repair of equipment.

For any equipment acquired in whole or in part with the Allocated Funds, the acquiring party shall be solely responsible for all expenses, including without limitation preventive maintenance, repairs, and insurance. The County shall have no responsibility or liability whatsoever in regard to such equipment. The BIA shall be responsible for identifying, prioritizing, scheduling, and performing all maintenance activities for which the Allocated Funds are used in whole or in part. It is understood that the County's sole obligation hereunder is to make payment of the Allocated Funds.

The County warrants to BIA that all equipment loaned under this task order is operational and safe and fit for its intended use.

Any Allocated Funds that are unused as of _____ shall no longer be available for distribution pursuant to this Memorandum of Agreement.

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The request for funds will be sent to:

Ms. Jeanine Carruthers
Navajo County Public Works Department
P.O. Box 668
Holbrook, AZ 86025

Supported by detail showing:

- A) Equipment acquisition details:
 - i) Type of equipment
 - ii) Date(s) and Type (s) of acquisition of equipment
 - iii) Date(s) and Location(s) of subsequent emergency

maintenance activities performed by each piece of equipment

OR

- B) Equipment operation details:
- i)* Equipment identification
 - ii)* Materials/supplies purchased in order to keep equipment operating

OR

- C) Equipment repair details:
- i)* Equipment identification
 - ii)* Repairs performed
 - iii)* Date of repairs
 - iv)* Vendor performing repairs

OR

- D) Equipment maintenance details:
- i)* Equipment identification
 - ii)* Maintenance performed
 - iii)* Date(s) of maintenance
 - iv)* Supplies +/- or parts purchased to perform maintenance

Reimbursement will be sent to:

BIA Navajo Regional Office
Division of Transportation
P.O. Box 1060
Gallup, New Mexico 87305