

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE NAVAJO NATION
DEPARTMENT OF TRANSPORTATION
AND
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION**

I. PREAMBLE AND BUILDING PRINCIPLES

This Memorandum of Understanding (MOU) is entered into this 1st day of August 2004, 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 New Mexico Department of Transportation, hereinafter referred to as "NMDOT", an executive department of the State of New Mexico.

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 deliver of people, commerce, and goods within the Navajo Nation that is safe and in harmony with nature.

WHEREAS the primary responsibility of NMDOT is to plan, build, and maintain a statewide transportation network that will serve the social and economic interest of its citizens in a productive, cost-efficient, innovative manner.

WHEREAS it is the mutual desire of the Nation and NMDOT 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 Navajo Nation and New Mexico through an improved relationship between the parties.

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, NMDOT respects the continued existence of the Nation's government, values, culture, codes and laws.

WHEREAS, NMDOT 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 New Mexico.

WHEREAS, the Nation has authority, as a sovereign nation, to enter into this MOU and conduct negotiations concerning issues of mutual concern with NMDOT.

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

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 Joint Powers 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 NMDOT mutually agree to the following:

- A. The parties will establish a working group composed of representatives of each to carry out the purposes and objectives of this MOU.
- 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" joint powers 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 state 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 President of the Nation, and the Navajo Nation Council. The representatives to the working group from NMDOT shall be accountable to their supervisors within the New Mexico Department of Transportation and the State of New Mexico.
- 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 Secretary of NMDOT 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 Secretary of NMDOT, in his/her official capacity, or through his/her designee(s), including the District Engineer(s) for Districts One, Three, Five and Six, 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 NMDOT 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

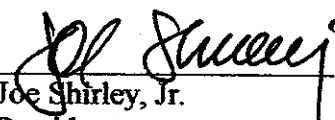
Any amendments or supplements to this Memorandum of Understanding may be proposed by either party, and shall become effective upon writing agreement by both parties.

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.

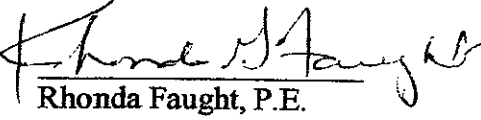
SIGNATURES:

NAVAJO NATION

NEW MEXICO
DEPARTMENT OF TRANSPORTATION



Joe Shirley, Jr.
President



Rhonda Faught, P.E.
Secretary

AUG 25 2004
Date

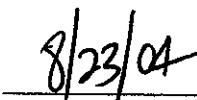
8/31/04
Date

**APPROVED AS
TO FORM:**

NAVAJO NATION



Legal Representative



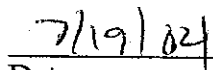
Date

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

NM DEPT. OF TRANSPORTATION



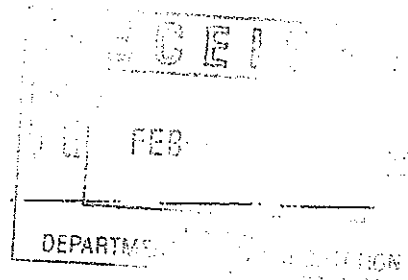
General Counsel



Date

State of New Mexico
Office of the Governor

Bill Richardson
Governor



STATEMENT OF POLICY AND PROCESS

WHEREAS the Navajo Nation is a federally-recognized sovereign nation located within the State of New Mexico;

WHEREAS the Governor of the State of New Mexico ("Governor") recognizes and respects the sovereignty of the Navajo Nation;

WHEREAS the Navajo Nation recognizes and respects the sovereignty of the State of New Mexico ("State");

WHEREAS the Governor and the Navajo Nation want to encourage and promote government-to-government relationships between the Nation and the State based on mutual respect and open communications;

WHEREAS the State and the Navajo Nation recognize the importance of full and open communication and cooperation on issues of shared interest or concern, such as taxation, water rights, education, health care, economic development, law enforcement, and the provision of State services to tribal members, so as to avoid misunderstandings, disagreements and disputes and to facilitate coordinated and cooperative policy formulation and implementation;

WHEREAS the Governor desires to have an open-door policy with the Navajo Nation to voice concerns and discuss issues and to have the Nation's views seriously considered with respect to the formulation and execution of State policy;

WHEREAS, while the Navajo Nation is a sovereign government, the members of the Nation are also citizens of the State;

WHEREAS coordination and cooperation between the Navajo Nation and the Governor are in the best interests of the State, the Nation, and all the citizens of the State, and will promote the equitable and efficient allocation of governmental authority, services, and resources among all citizens of New Mexico;

WHEREAS the Governor and the Navajo Nation agree to establish procedures setting forth the framework to coordinate a cooperative and joint effort to address issues identified by the Governor and the Nation, to seek mutually beneficial solutions and outcomes, and to avoid litigation;

NOW THEREFORE THE UNDERSIGNED HEREBY COMMIT TO THE FOLLOWING PRINCIPLES AND PROCEDURES AND AGREE TO COMPLY WITH THEM TO THE GREATEST EXTENT FEASIBLE:

1. The Governor and the Navajo Nation will establish and promote a relationship of cooperation, coordination, open communication, and good will, and will work in good faith to amicably and fairly resolve issues and differences.
2. The Governor and the Nation's interactions shall be based on a government-to-government relationship. The Governor and Navajo Nation's governing bodies shall direct and cause all departments, agencies, units, and subdivisions of their respective governments under their supervision and control to respect the principle of government-to-government relations in all interactions between the State and Navajo Nation governments.
3. In order to establish a process for meaningful consultation on issues identified by the Governor or the Navajo Nation, issues of interest or concern identified by any of the governments that are parties to this Statement of Policy shall be addressed through the following framework:
 - A. The Governor or the Navajo Nation will notify the other party in writing that it has identified an issue or concern and desires consultation or negotiations on the same;
 - B. The Governor and the Navajo Nation will designate an appropriate person(s) to represent them in the conduct of such consultation or negotiation;
 - C. The representatives so designated will meet as soon as reasonably practicable to discuss the issue and exchange any relevant information or documentation.
 - D. Each representative shall timely inform the leadership of their respective party of the status or outcome of the consultation or negotiations and the leadership shall timely give direction as needed to address or resolve the issue.
 - E. If either party believes that further discussions or negotiations will be unproductive, they will promptly notify the other party.
4. The Governor and the Navajo Nation shall use their best efforts to facilitate an amicable resolution of any dispute prior to the filing of any litigation against the other;
5. The Governor and the Navajo Nation shall consult with each other prior to submitting or causing to be introduced legislation affecting or impacting the other.
6. The Governor and the Navajo Nation shall consult with each other prior to taking any executive or administrative action affecting or impacting the other.

7. The Governor and the Navajo Nation shall use their best efforts to ensure that the State and the Nation do not set forth or cause to be set forth internal or external communications inconsistent with this Statement of Policy.

8. The Governor and the Navajo Nation shall do all things necessary and proper to inform, direct, and cause their respective departments to implement the provisions and intent of this Statement of Policy. All consultations pursuant to this Statement of Policy shall be open and candid amongst the parties to this Policy so that all parties may evaluate for themselves and offer their views concerning the potential impacts and effects of the relevant proposals and pending actions.

9. The Governor and the Navajo Nation will meet together on a regular basis in order to insure that the terms, purpose, and intent of this Statement of Policy are carried out.

10. The Governor and the Navajo Nation will communicate the content of this Statement of Policy to each agency, department, division, or other official representative under the supervision of the Governor and the Nation, and direct and cause them to observe and comply with this Statement of Policy and Process.

Dated this 9th day of May, 2003.



Bill Richardson, Governor
STATE OF NEW MEXICO



Joe Shirley, President
NAVAJO NATION

**RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL**

20TH NAVAJO NATION COUNCIL - Second Year 2004

AN ACTION

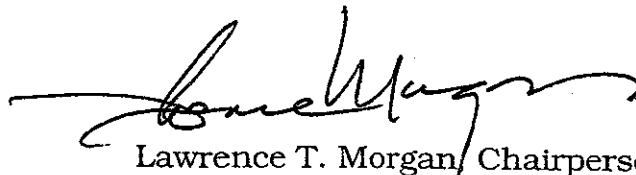
**RELATING TO TRANSPORTATION, AND INTERGOVERNMENTAL RELATIONS,
APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE
NAVAJO NATION AND THE NEW MEXICO DEPARTMENT OF
TRANSPORTATION**

BE IT ENACTED:

1. The Navajo Nation hereby approves and accepts the Memorandum of Understanding between the Navajo Nation Department of Transportation and the New Mexico Department of Transportation, attached hereto as Exhibit A.
2. The President of the Navajo Nation is hereby authorized to execute the Memorandum of Understanding.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 8 in favor and 0 opposed, this 20th day of August, 2004.



Lawrence T. Morgan, Chairperson
Intergovernmental Relations Committee

Motion: Wallace Charley
Second: Willie Grayeyes

TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE

20TH NAVAJO NATION COUNCIL – SECOND YEAR, 2004

A Report

Mr. Speaker,

The **TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE**
to whom has been assigned

LEGISLATION No. 0424-04

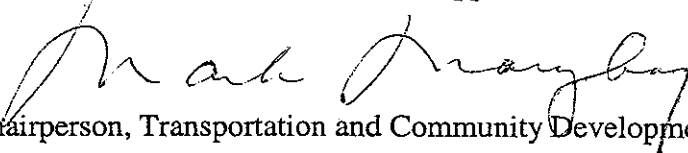
AN ACTION

RELATING TO TRANSPORTATION, AND INTERGOVERNMENTAL
RELATIONS, APPROVING THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE NAVAJO NATION AND THE NEW MEXICO DEPARTMENT OF
TRANSPORTATION

has had it under consideration and reports the same **DO PASS** without any amendments
and therefore referred to the **INTERGOVERNMENTAL RELATIONS
COMMITTEE.**

CERTIFICATION

I hereby certify that the foregoing legislation was duly considered by the Transportation
and Community Development Committee of the Navajo Nation Council at a duly called
meeting at Window Rock, (Navajo Nation), at which a quorum was present and that the
same was passed by a vote of 7 in favor and 0 opposed, this 3rd day of August, 2004.


Chairperson, Transportation and Community Development Committee