

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE; AND
NAABIK'ÍYÁTI' COMMITTEES; APPROVING THE FIRST AMENDMENT TO THE
JOINT POWERS AGREEMENT BETWEEN THE NAVAJO NATION AND SAN JUAN
COUNTY, NEW MEXICO, REGARDING THE OPERATION AND MAINTENANCE OF
SOLID WASTE COMPACTOR AND TRANSFER STATIONS IN SAN JUAN COUNTY

BE IT ENACTED:

WHEREAS:

- A. The Resources and Development Committee of the Navajo Nation Council is the oversight authority over the Navajo Nation Division of Community Development, pursuant to 2 N.N.C. § 501(C)(1). The Solid Waste Management Program is within the Navajo Nation Division of Community Development.
- B. Budget and Finance Committee of the Navajo Nation Council authorizes, reviews, approves and accepts agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon recommendation of the standing committee that has oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter requesting the grant. 2 N.N.C. § 301(B)(15).
- C. The Naabik'íyáti' Committee of the Navajo Nation Council coordinates with all committees the appearance and testimony before non-Navajo governments. 2 N.N.C. § 700(A).
- D. The Solid Waste Management Program has submitted a request to amend the Joint Powers Agreement Between the Navajo Nation and San Juan County, New Mexico, Regarding the Operation and Maintenance of Solid Waste Compactor and Transfer Stations in San Juan County. The

Intergovernmental Relations Committee of the Navajo Nation Council through IGRMA-36-94 approved the original Joint Powers Agreement. IGRMA-36-94 is attached as **Exhibit 3**. The Joint Powers Agreement which was signed by the parties pursuant to IGRMA-36-94 is attached as **Exhibit 4**.

E. The First Amendment to the Joint Powers Agreement is attached as **Exhibit 1**. The First Amendment to the Joint Powers Agreement incorporating the proposed amendments is attached as **Exhibit 2**.

F. It is in the best interest of the Navajo Nation to approve the First Amendment to the Joint Powers Agreement.

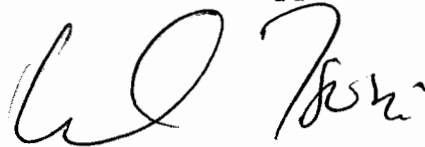
NOW, THEREFORE BE IT RESOLVED THAT:

A. The Navajo Nation hereby approves the First Amendment to the Joint Powers Agreement Between the Navajo Nation and San Juan County, New Mexico, Regarding the Operation and Maintenance of Solid Waste Compactor and Transfer Stations in San Juan County which is attached hereto as **Exhibit 1 and Exhibit 2**.

B. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 11 in favor, 01 oppose, this 26th day of May, 2016.



Leonard Tsosie Pro Tem Chairperson
Naabik'iyáti' Committee

Motion: Honorable Davis Filfred
Second: Honorable Seth Damon

NAVAJO NATION

RCS# 411

Naa'bik'iyati Committee

5/26/2016

04:09:01 PM

Amd# to Amd#

Legislation No. 0103-16

PASSED

MOT Filfred

Approving the First Amendment

SEC Damon

to the Joint Powers Agreement

between the NN & San Juan County

Yea : 11

Nay : 1

Not Voting : 12

Yea : 11

Bates

Chee

Hale

Witherspoon

Begay, K

Damon

Phelps

Yazzie

Bennett

Filfred

Slim

Nay : 1

Tso

Not Voting : 12

Begay, NM

Crotty

Perry

Smith

BeGaye, N

Daniels

Pete

Tsosie

Brown

Jack

Shepherd

Vacant

JOINT POWERS AGREEMENT



BETWEEN THE NAVAJO NATION AND SAN JUAN COUNTY, NEW MEXICO,
REGARDING THE OPERATION AND MAINTENANCE OF SOLID WASTE
COMPACTOR AND TRANSFER STATIONS
IN SAN JUAN COUNTY

This Joint Powers Agreement is made this 7th day of
~~January~~ April, 1994, pursuant to the New Mexico Joint Powers Agreement
Act, N.M.S.A. 1978, Sections 11-1-1 et seq. (Supp. 1993), the
inherent sovereignty of the Navajo Nation, and the Navajo Tribal
Code, 2 N.T.C. § 824 (b)(6), by and between the following
parties:

1. The Navajo Nation ("the Nation");
2. The Board of County Commissioners of San Juan County,
New Mexico {"the County"}.

RECITALS:

WHEREAS, certain portions of the Navajo Nation lie within
the confines of San Juan County, New Mexico;

WHEREAS, the Nation's solid waste landfills within San Juan
County may not be in compliance with the new solid waste
regulations promulgated by the United States Environmental
Protection Agency, and it would be prohibitively expensive to
bring them into compliance with those regulations;

WHEREAS, the County owns a landfill on Crouch Mesa which is
being operated by Waste Management of New Mexico and which is in
compliance with all federal and State regulations governing the
disposal of solid waste;

WHEREAS, the Nation and the County wish to cooperate to provide an efficient and safe means of disposal of solid waste generated in areas of the Nation that lie within San Juan County at the Crouch Mesa Landfill;

WHEREAS, the parties desire to construct, operate and maintain two solid waste "compactor" and transfer station and one solid waste transfer station to collect and process solid waste for disposal at the Crouch Mesa Landfill;

WHEREAS, the parties desire to arrange for transportation of the solid waste deposited at the Stations to the Crouch Mesa Landfill;

WHEREAS, pursuant to the New Mexico Joint Powers Agreement Act, the Navajo Tribal Code and the inherent sovereignty of the Navajo Nation, the parties hereto are authorized to enter into agreements for the purpose of jointly exercising any power common to the parties; and

WHEREAS, it would protect the public health, safety and welfare and be in the best interest of the parties to jointly participate in the operation and maintenance of the solid waste transfer and compactor stations and the transfer station.

NOW THEREFORE, the parties mutually agree as follows:

1. GENERAL PROVISIONS

1.1 Pursuant to the provisions of: the Joint Powers Agreements Act, N.M.S.A. 1978, Sections 11-1-1 through 11-1-7 (Supp.1993),

and the Navajo Tribal Code, 2 N.T.C. § 824 (b) (6), the County agrees to construct and the parties agree to jointly operate and maintain:

- A. One solid waste compactor and transfer station near Shiprock, San Juan County;
- B. One solid waste compactor and transfer station near Upper Fruitland, San Juan County; and
- C. One solid waste transfer station near Sand Springs, San Juan County (herein collectively referred to as ("the Stations")).

1.2 The County, with financial assistance from the United States Indian Health Service, agrees to construct the Stations on land set aside and designated by the Nation for this purpose.

2. CONSTRUCTION

2.1 The County, with financial assistance from the United States Indian Health Service, shall design and construct the Stations.

2.2 The Nation agrees to designate and furnish property upon which the County shall construct the Stations. The Nation shall apply for withdrawal of the property and shall retain title to each parcel and shall also withdraw and retain any required easements or rights-of-way, including utility easements. The Nation agrees to provide the County with a legal description of each parcel, and provide documentation of proper land withdrawal (and Bureau of Indian Affairs approval of same), including property required for ingress, egress and easements.

2.3 The county shall construct the Stations as soon as is practicable, given the constraints of the weather, and expediency.

The County shall determine in which order the Stations shall be constructed.

3. DISPOSAL OF SOLID WASTE

3.1 All solid waste accepted for disposal at the Stations shall be disposed of at the Crouch Mesa Landfill.

3.2 The County shall arrange for the transportation of solid waste from the Stations to the Crouch Mesa landfill. The County may contract with third parties for this service.

3.3 Expenses of transporting the solid waste from the Stations to the Crouch Mesa landfill, as well as any and all costs of disposal at the Crouch Mesa landfill, shall be considered to be operational and maintenance expenses and shall be paid for by the Navajo Nation ~~shared equally by the parties~~ pursuant to Section 5.

3.4 The Stations shall accept waste from all residents of San Juan County and elsewhere, subject only to any disposal or tipping fees that may have been ~~be~~ imposed by the Navajo Nation ~~San Juan County~~ and any fees that may be imposed by the Navajo Nation ~~parties~~ pursuant to Sections 3.5 and Section 4.

3.5 Commercial waste-haulers may be permitted to use the Stations for disposal of solid waste only as agreed by the parties by Amendment to this Agreement. Any such Amendment shall permit commercial waste haulers to use the Stations only if the stations can economically accommodate the volume of waste. Any

such Amendment may impose special fees on commercial waste haulers so that economical disposal of waste at the Stations is assured. Otherwise, commercial waste haulers shall not be permitted to use the Stations and shall be directed by staff to proceed directly to the Crouch Mesa landfill.

3.6 No "special waste," as that term is defined in the Lease Agreement between the County and Waste Management of New Mexico, shall be accepted for disposal at the Stations. A copy of the relevant pages of the Lease Agreement are attached as Exhibit A.

3.7 No hazardous or toxic waste shall be accepted for disposal at the Stations.

3.8 No extremely large or bulky items shall be accepted for disposal at the Stations, such as large pieces of machinery, appliances and the like.

3.9 Liquid waste, such as paint and used motor oil, shall be accepted for disposal at the Stations only as provided for by County policy. Staff shall monitor disposal of liquid waste at the Stations and shall accept or reject liquid waste according to then-current County policy.

4. TIPPING FEES

4.1 The Navajo Nation ~~County Commission~~ may impose a user or "tipping fee" at any or all of the Stations to help defray operating and maintenance expenses. ~~The Nation may also recommend to the County Commission that a user or tipping fee be imposed at the Stations.~~

4.1 In the event a user or tipping fee is imposed, the County shall collect the fee.

4.2 In the event a user or tipping fee is imposed, the revenue generated shall be used to help defray total operating and maintenance expenses of the Stations.

5. OPERATING AND MAINTENANCE EXPENSES

5.1 The Navajo Nation shall pay all ~~County and the Nation agree to contribute equally to the~~ operating and maintenance expenses of the Stations.

5.2 The County shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the parties.

5.3 The County shall provide accounting services, general bookkeeping and record-keeping for the Stations pursuant to Section 11.

5.4 Each month, the County shall prepare a calculation of the operating and maintenance expenses of the stations for the previous month, and shall also calculate the revenue received as a result of any user or tipping fee imposed pursuant to Sections 3.5 and 4. The County shall forward a copy of each month's accounting to the Nation. The Nation shall provide the County with an address to which copies of such accounting will be sent.

5.5 Each year, the Nation shall deposit with the County an amount estimated to be equal to the Nation 's total obligations for operating and maintenance expenses of the Stations for a given fiscal year. The County shall bill the Nation at the beginning of each fiscal year for this amount.

Throughout the year's operation, the County shall credit against the amount deposited the Nation's monthly obligations under Section 5.4. Any amount remaining at the end of a given fiscal year shall be carried forward to be credited against the Nation's obligations

for upcoming years. The amount of any excess shall also be taken into consideration in computing the Nation's estimated contribution for the upcoming year. Any deficit between amounts on deposit and the Nation's actual obligations shall be billed to the Nation on a monthly basis. The Nation shall provide the County with an address to which copies of such billings will be sent. The Nation shall promptly pay any such billings.

6. EQUIPMENT AND FIXTURES

6.1 Any and all equipment, buildings, facilities, or personalty of any kind installed by the County at each station shall remain the property of the County; provided, however, in the event the County fails to remove its equipment, buildings, facilities or personalty from the premises prior to or within thirty (30) days of termination of this Agreement, said property shall become property of the Navajo Nation.

6.2 The parties agree that the equipment, buildings, facilities or personalty purchased by the County and installed at the Stations pursuant to this agreement shall not be considered fixtures and shall not be considered part of the real estate upon which the Stations are to be constructed.

6.3 Any and all equipment, buildings, facilities or personalty shall be disposed of at the end of its useful life by the County.

6.4 Repair or replacement of worn-out or obsolete equipment, buildings, facilities or personalty shall be considered to be operating and maintenance expenses and treated pursuant to Section 5.

7. STAFFING

7.1 The County shall provide appropriate staffing for each Station. Staff shall be fluent in the use of the English and Navajo languages.

7.2 The salary, benefits and other expenses of staff members shall be considered as operating and maintenance expenses of that Station, and treated pursuant to Section 5.

8. TRIBAL, STATE AND FEDERAL LAWS AND REGULATIONS

The Stations shall be constructed, operated and maintained in conformity with all applicable Tribal, State and Federal laws and regulations.

9. HOURS OF OPERATION

San Juan County shall designate the hours of operation of each station, taking into consideration the needs of the local residents, economical and efficient operation of the Stations, and expediency.

10. APPROPRIATED FUNDS

10.1 The County and the Nation agree to use their best efforts to obtain continuing appropriations for their

commitments under this agreement.

10.2 The parties recognize that imposition of user or tipping fees imposed pursuant to Sections 3.5 and Section 4 may reduce or eliminate the requirement that the Navajo Nation ~~each party~~ appropriate and contribute to operation ~~operating~~ and maintenance expenses of the Stations.

10.3 In the event, however, funds are not appropriated in a given year by the Navajo Nation for ~~either party's~~ ~~contribution to the~~ operation ~~operating~~ and maintenance expenses of any Station, San Juan County ~~the other party~~ will have the option of terminating the ~~this~~ Agreement as of the date when the Navajo Nation's ~~other party's~~ funds are exhausted.

10.4 Nothing in this Section shall preclude the parties from agreeing by Amendment to this Agreement to a different allocation of the operating and maintenance expenses of the Stations, or from making other arrangements to keep the Stations open in the event a party has not appropriated sufficient funds to meet its obligations under this Agreement.

11. BOOKS AND RECORDS

11.1 The County shall maintain adequate and correct accounts of the operational and maintenance costs incurred at each Station, which accounts shall be open to inspection at any reasonable time by the parties hereto, their accountants or their agents.

11.2 The County shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency.

11.3 The County shall also render to the parties hereto, at reasonable intervals, such reports and accounting as the parties hereto may from time to time request.

11.4 There shall be strict accountability of all receipts and disbursements by the parties hereto.

12. TERMINATION

12.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

12.2 Any party's participation in this Agreement may be terminated by one hundred-eighty (180) days advance written notice.

12.3 Alternatively, any party's participation in this Agreement may be terminated upon the other party's exhaustion of appropriated funds, as described in Section 10. In the event of exhaustion of appropriated funds, the affected party shall notify the other party of the expected exhaustion of funds as soon as possible before funds are exhausted, but in any event shall provide at least thirty (30) days prior notice of the expected exhaustion of funds. The parties recognize that the sooner the other party is notified of an appropriation problem, the better the chances of finding alternative funding sources.

12.4 Upon termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

12.5 Upon termination of this Agreement, the County shall have discretion to remove from each Station any and all equipment, buildings, facilities or personalty of any kind. The Nation agrees to provide access to the Stations to facilitate the County's removal of the equipment, buildings, facilities or personalty. The County shall remove all property from the Stations within thirty (30) days (pursuant to Section 6.1) and restore the premises (pursuant to Section 22) no later than sixty (60) days following the termination of this Agreement.

12.5 Upon termination of this Agreement, all funds of the Tribe which are held by the County pursuant to Section 5.5, and which have not been applied against operating and maintenance expenses pursuant to Sections 5.4 and 5.5, shall be returned to the Tribe. Any other surplus funds remaining upon termination of this

Agreement shall be returned to the parties in proportion to the contributions made.

13. AMENDMENT

This Agreement may be amended by the parties from time to time, but any amendment shall be in writing, executed by all of the then parties thereto, and approved by the Department of Finance and Administration.

14. SEVERABILITY CLAUSE

If any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or

unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been a part hereof.

15. INSURANCE

15.1 The County shall carry public liability insurance coverage consistent with its responsibilities under the New Mexico Tort Claims Act, N.M.S.A. 1978, § 41-4-1 et seq. (1989 Pamphlet and Supp. 1993). The County shall also carry property damage insurance on its equipment, buildings, facilities or personalty of any kind, and installed at the Stations. The County shall also provide workers' compensation coverage and provide a health insurance plan and other benefits of County employment for staff.

15.2 The expense of obtaining and maintaining insurance shall be the County's sole obligation.

15.3 The insurance provided for under this Section shall be maintained in full force and effect throughout the duration of this Agreement.

15.4 Except for workers' compensation insurance and employee's health plan, for which the County is self-insured, the County shall obtain the coverage described from a reliable insurance company. A copy of the policies shall be provided to the Nation at the Nation's request.

16. INDEMNIFICATION

This Agreement is not intended to shift the liability of any party to the other party. The parties to this Agreement retain whatever liability they would possess for the present

and future acts or failure to act without the existence of this Agreement. To the extent permitted by law, the County agrees to hold the Navajo Nation harmless from any and all losses, liabilities, or other causes of action arising from the negligent or willful acts of the County under this Agreement. The County's agreement in this regard is not intended to cover liability arising out of the Navajo Nation's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the Nation.

To the extent permitted by Navajo Nation laws and the availability of appropriations from the Navajo Nation Council, the Navajo Nation agrees to hold the County harmless from any and all losses, liabilities, or other causes of action arising from the negligent or willful acts of the Navajo Nation under the Agreement. The Nation's agreement in their regard is not intended to cover liability arising out of the County's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the County.

~~Each party hereto ("the indemnifying party") agrees to defend, hold harmless and indemnify the other party ("the indemnified party"), its officers, agents and employees, against any and all claims arising out of any asserted negligent act, error or omission of the indemnifying party which results in a claim against the indemnified party relating to the operation and~~

~~maintenance of the Stations.~~

17. ARBITRATION

In the event of any dispute, the parties shall use their diligent good faith effort to resolve the dispute, and each party shall continue to perform in accordance with the other provisions of this Agreement during the pendency of the dispute.

Any unresolved disputes arising under the Agreement shall be elevated to the County Executive Officer and the Executive Director of the Division of Community Development for resolution. If they do not resolve their dispute administratively, the Agreement may be terminated.

Nothing herein shall be construed, expressly or implied, as a waiver of the sovereign immunity of the Navajo Nation.

~~17.1 All disputes and controversies of every kind and nature between the parties to this Agreement, including but not limited to disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, shall be submitted to arbitration, and shall be conducted according to the procedures set forth below.~~

~~17.2 Either party may demand arbitration by making a demand in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.~~

~~17.3 Within 20 days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a~~

~~third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within 30 days of the request therefor, the appointment shall be made by the American Arbitration Association.~~

~~17.4 The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.~~

~~17.5 The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least 20 days' written notice to the parties.~~

~~17.6 An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.~~

~~17.7 The parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.~~

~~17.8 The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.~~

~~17.9 Nothing contained in this Agreement shall be deemed to~~

~~give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.~~

~~17.10 Failure of either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party, or the failure of either party to comply with the arbitration award, shall amount to a material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.~~

~~17.11 This Agreement is not subject to enforcement under New Mexico's Uniform Arbitration Act, N.M.S.A. 1978, §§ 44-7-1 through 44-7-22.~~

18. ALTERNATIVE DISPUTE RESOLUTION

~~Nothing in Section 17 shall preclude the parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The parties agree that prior to resorting to arbitration as set forth in Section 17, they shall use their best efforts to resolve any dispute by such non-binding and informal means.~~

~~19.~~ 18. WAIVER

Nothing in this Agreement, including the provisions of Section 17, shall be considered a waiver of tribal sovereign immunity of the Nation or a consent to suit in any forum by the parties hereto.

~~20.~~ 19. LIABILITY FOR ENVIRONMENTAL CONTAMINATION

The parties hereto recognize that the real property upon which the Stations may to be located may be proximate to a

closed, and previously unregulated landfill site of unknown contents which may be a source of environmental contamination. The parties further recognize that no interest in real property is conveyed to the County by this exercise of the parties' joint powers. Therefore, the parties agree that the County shall not be held liable for any such environmental contamination of the real property except to the extent that any such contamination is a consequence of the operations of the Stations described herein.

~~21.~~ 20. FUTURE APPROPRIATIONS

Nothing in this Agreement shall be construed as an obligating the parties in the expenditure of funds or for some future payment of funds in excess of appropriations allowed by law.

~~22.~~ 21. RESTORATION

After termination of this Agreement, and following removal of the County's equipment, buildings, facilities or personalty from the premises, the County shall, at its own expense, restore the premises to its original state, or as near as practicable thereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives effective as of the date and year first written above.

BOARD OF COUNTY COMMISSIONERS OF
SAN JUAN COUNTY, MEXICO
By: *[Signature]*
THE MAYOR OF THE NATION
By: *[Signature]*
President

ATTEST:
[Signature]
Cord

APPROVED BY THE DEPARTMENT
OF FINANCE AND ADMINISTRATION

y. tr--"@u. 1, .5, \

—

(Title) Y.11zJ s

(Date) 4/7/94

Approved as to form:

r San Juan County

Attorney for the Navajo Nation

EXHIBIT "A"

1. *"Special Waste" means any waste from a nonresidential source, meeting any of the following descriptions:*
 - a. *A containerized waste (e.g., a drum barrel, portable tank, box, pail, etc.).*
 - b. *A waste transported in a bulk tanker.*
 - c. *A liquid waste.*
 - d. *A sludge waste.*
 - e. *A waste from an industrial process.*
 - f. *A waste from a pollution control process.*
 - g. *Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in a. - f. or h.*
 - h. *Contaminated soil, water, residue, debris and articles from the clean up of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of wastes listed in a. - g.*
 - i. *"Miscellaneous Special Waste" as defined in paragraph 2 of this Contractor's Definition of Special Waste.*
2. *"Miscellaneous Special Waste" - Any waste meeting the descriptions which follow is a "special waste," but is referred to as "miscellaneous special waste":*
 - a. *Chemical waste from a laboratory. (This is limited to discarded containers of laboratory chemicals, lab equipment, lab clothing, debris from lab spills or cleanup and floor sweepings).*
 - b. *Articles, equipment and clothing containing or contaminated with polychlorinated biphenyls (PCB's). (Examples are: PCB capacitors or transformers, gloves or aprons from draining operations, empty drums that formerly held PCB's, etc. Note: PCB solids, semi-solids or liquids delivered in bulk or drums are not "miscellaneous special waste", but are "special waste".)*
 - c. *"Empty" containers of waste commercial products or chemicals. (This applies to a portable container which has been emptied, but which may hold residuals of the*

product or chemical. Examples of containers are: portable tanks, drums, barrels, cans, bags, liners, etc. A container shall be determined "empty" according to the criteria specified at 40 C.F.R. 261.7).

- d. Asbestos containing waste from building demolition or cleaning. (This applies to asbestos-bearing insulation materials, such as wall board, wall spray coverings, pipe insulation, etc. Note: "special waste," but not a "miscellaneous special waste").
- e. Commercial products or chemicals: off-specification, outdated, contraindicated or banned. (This also includes products voluntarily removed from the market place by a manufacturer or distributor, in response to allegations of adverse health effects associated with product use).
- f. Residue and debris from cleanup of spills or releases of a single chemical substance or commercial product or a single waste which would otherwise qualify as a miscellaneous special waste. (Note: residue and debris from spills or releases not meeting this definition are "special waste" not "miscellaneous special waste").
- g. Waste from a medical practitioner, hospital, nursing home, medical testing laboratory, mortuary, taxidermist, veterinarian, veterinary hospital or animal testing laboratory. (This includes any waste produced at these facilities, except residue from incinerators, septic tank pumpings or wastewater treatment sludges which are all "special wastes", but not "miscellaneous special wastes". Note: discarded chemicals from the above facilities should be treated as "chemical waste from a laboratory", as provided in subsection 2.a. above).
- h. Animal waste and parts from slaughterhouses or rendering plants. (This excludes wastes from fur or leather products manufacturers, which are "special wastes").
- i. Waste produced by the mechanical processing of fruit, vegetables or grain. (This includes such wastes as finds, hulls, husks, pods, shells and chaff. Food processing wastes which are aqueous or sludges, or which have been contaminated with dyes, additives or preservatives are "special waste", but not "miscellaneous special waste").
- j. Pumpings from septic tanks used exclusively by dwelling units. (Single family homes, duplexes, apartment buildings, hotels or motels).
- k. Sludge from a publicly owned sewage treatment plant serving primarily domestic users. (i.e., with no substantial industrial or chemical (influent)).
- l. Grease trap wastes from residences, restaurants, or cafeterias not located at industrial facilities.
- m. Washwater wastes from commercial car washes. (Note: this does not include facilities used for washing the exterior of bulk chemical or waste tank trucks).

or for washing out the interior of any truck.

- n. Wastewater wastes from commercial laundries or laundromats. (Note: this does not include waste from a dry cleaning facility or waste from a commercial laundry used by an industry to wash chemical-contaminated clothing from its workers; such wastes are "special wastes").*
- o. Chemical-containing equipment removed from service. (Example: cathode ray tubes, CRT tubes, fluorescent light tubes, etc.).*
- p. Waste produced from the demolition or dismantling of industrial process equipment or facilities contaminated with chemicals from the process. (Note: chemicals or wastes removed or drained from such equipment or facility are "special wastes").*
- q. Closed cartridge filters from dry-cleaning establishments. (Such filters being used to filter used dry-cleaning fluids or solids).*



**FIRST AMENDMENT TO JOINT POWERS AGREEMENT
BETWEEN THE NAVAJO NATION AND SAN JUAN COUNTY, NEW MEXICO
REGARDING THE OPERATION AND MAINTENANCE OF
SOLID WASTE COMPACTING AND TRANSFER STATIONS
IN SAN JUAN COUNTY**

This First Amendment to the Joint Powers Agreement between the Navajo Nation and San Juan County, New Mexico regarding the operation and maintenance of solid waste compacting and transfer stations in San Juan County is dated the ____ day of _____, 2015.

IT IS HEREBY AGREED:

The Joint Powers Agreement between the Navajo Nation and San Juan County dated April 7, 1994 regarding the operation and maintenance of solid waste compactor and transfer stations in San Juan County is amended as follows:

1. Amendment of Section 3. DISPOSAL OF SOLID WASTE

1.1 Section 3.3 is amended to read:

Expenses of transporting the solid waste from the Stations to the Crouch Mesa landfill, as well as any cost of disposal at the Crouch Mesa landfill, shall be considered operational and maintenance expenses and shall be paid for by the Navajo Nation pursuant to Section 5.

1.2 Section 3.4 is amended to read:

The Stations shall accept waste from all residents of San Juan County and elsewhere, subject only to any disposal or tipping fees that may have been imposed by the Navajo Nation and any fees that may be imposed by the Navajo Nation pursuant to Section 3.5 and Section 4.

2. Amendment of Section 4. TIPPING FEES

2.1 Section 4.1 is amended to read:

The Navajo Nation may impose a user or "tipping fee" at any or all stations to help defray operating and maintenance expenses.

3. Amendment of Section 5. OPERATING AND MAINTENANCE EXPENSES

3.1 Section 5.1 is amended to read:

The Navajo Nation shall pay all operating and maintenance expenses of the Stations.

3.2 Section 5.6 is amended to read:

This paragraph is intentionally left blank.

4. Amendment of Section 10. APPROPRIATED FUNDS

4.1 Section 10.2 is amended to read:

The parties recognize that imposition of user or tipping fees imposed pursuant to Section 3.5 and Section 4 may reduce or eliminate the requirement that the Navajo Nation appropriate and contribute to operation and maintenance expenses of the Stations.

4.2 Section 10.3 is amended to read:

In the event, however, funds are not appropriated in a given year by the Navajo Nation for operation and maintenance expenses of any Station, San Juan County will have the option of terminating the Agreement as of the date when the Navajo Nation's funds are exhausted.

5. Amendment of Section 16. INDEMNIFICATION

Section 16 is amended to read:

This Agreement is not intended to shift the liability of any party to the other party. The parties to this Agreement retain whatever liability they would possess for the present and future acts or failure to act without the existence of this Agreement. To the extent permitted by law, the County agrees to hold the Navajo Nation harmless from any and all losses, liabilities, or other causes of action arising from the negligent or willful acts of the County under this Agreement. The County's agreement in this regard is not intended to cover liability arising out of the Navajo Nation's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the Nation.

To the extent permitted by Navajo Nation laws and the availability of appropriations from the Navajo Nation Council, the Navajo Nation agrees to hold the County harmless from any and all losses, liabilities, or other causes of action arising from the negligent or willful acts of the Navajo Nation under the Agreement. The Nation's agreement in their regard is not intended to cover liability arising out of the County's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the County.

6.

Amendment of Section 17. DISPUTE RESOLUTION

Section 17 is amended to read:

In the event of any dispute, the parties shall use their diligent good faith effort to resolve the dispute, and each party shall continue to perform in accordance with the other provisions of this Agreement during the pendency of the dispute.

Any unresolved disputes arising under the Agreement shall be elevated to the County Executive Officer and the Executive Director of the Division of Community Development for resolution. If they do not resolve their dispute administratively, the Agreement may be terminated.

Nothing herein shall be construed, expressly or implied, as a waiver of the sovereign immunity of the Navajo Nation.

7. Amendment of Section 18. ALTERNATIVE DISPUTE RESOLUTION

Section 18 is deleted in its entirety.

8. EFFECTIVE DATE OF FIRST AMENDMENT

This First Amendment to the Joint Powers Agreement dated April 7, 1994 shall not be effective until it is approved by the State of New Mexico Department of Finance and Administration (DFA).

9. EXHIBIT "A" TO FIRST AMENDMENT

The Joint Powers Agreement dated April 7, 1994 is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives effective as of the date and year first written above.

**BOARD OF COUNTY COMMISSIONERS OF
SAN JUAN COUNTY, NEW MEXICO**

By: _____
Keith Johns, Chairman

ATTEST:

Debbie Holmes, County Clerk

THE NAVAJO NATION

By: _____
President

**APPROVED BY THE DEPARTMENT OF
FINANCE AND ADMINISTRATION**

APPROVED AS TO FORM:

By: _____

Attorney for San Juan County

Printed Name: _____

Title: _____

Attorney for Navajo Nation

Date: _____



IGRMA-36-94

Class "C" Resolution
No BIA Action Required.

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

Approving a Joint Powers Agreement Between the Navajo Nation
and San Juan County, New Mexico, Regarding the Operation
and Maintenance of Solid Waste Compactor and Transfer
Stations in San Juan County

WHEREAS:

1. Pursuant to 2 N.T.C., Section 824 (b) (6), the Intergovernmental Relations Committee of the Navajo Nation Council is authorized to approve and accept contracts and grants between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement; and

2. The Resources Committee of the Navajo Nation Council is authorized to oversee and regulate all activities within Navajo Nation lands related to the natural state of resources and the alteration thereof, pursuant to 2 N.T.C., Section 692 (b) (6); and

3. The Navajo Environmental Protection Administration is within the Division of Natural Resources and is authorized to conduct studies and monitor activities and actions affecting environmental resources to ensure the preservation and enhancement of the quality of the Navajo environment; and

4. The Solid Waste Management Program is within the Navajo Environmental Protection Administration and has been allocated monies by the Navajo Nation Council to be utilized by Navajo Nation Chapters for assistance in the management of the operation and maintenance of their solid waste transfer stations; and

5. Through approval of this resolution, the Solid Waste Management Program will expend \$71,131.00 from line item 7990 of the Solid Waste Management Program's budget (3-15588), attached and incorporated as Exhibit "B", for the Navajo Nation's cost of the operation and maintenance of the transfer stations in Upper Fruitland, Shiprock and Sand Springs, New Mexico; and

6. It is in the best interest of the Navajo Nation and the Navajo people that this request be approved because once the three (3) transfer stations are in operation, they will serve twelve (12) chapters: Upper Fruitland, Nenahnezad, Hogback,

COPY

Shiprock, Cudei, Beclabito, Red Valley, Sanostee, Two Grey Hills, Burnham, Sheep Springs and Naschitti Chapters; and

7. Attached hereto as Exhibit "C" is the Resources Committee Resolution RCF-015-94 recommending approval of the Joint Powers Agreement; and

8. The Navajo Environmental Protection Administration's Solid Waste Management Program respectfully submits the proposed Joint Powers Agreement between the Navajo Nation and San Juan County, New Mexico, regarding the operation and maintenance of solid waste compactor and transfer stations in San Juan County as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby approves the Joint Powers Agreement Between the Navajo Nation and San Juan County, New Mexico, attached hereto as Exhibit "A" regarding the operation and maintenance of solid waste compactor and transfer stations in San Juan County.

2. The Intergovernmental Relations Committee of the Navajo Nation Council further authorizes the President of the Navajo Nation to sign the Joint Powers Agreement.

3. The Intergovernmental Relations Committee of the Navajo Nation Council also approves the Solid Waste Management Program to expend \$71,131.00 from line item 7990 of the program's account (3-15588) for the Navajo Nation's cost of the operation and maintenance of the transfer stations in Upper Fruitland, Shiprock and Sand Springs, New Mexico; and recommends to the Navajo Nation Council to carry over funds under account 3-15588-7990 into Fiscal Year 1995.

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, 0 opposed and 0 abstained, this 1st day of March, 1994.


Chairman
Intergovernmental Relations Committee

Motion: Wallace Davis
Second: Kelsey Begay

JOINT POWERS AGREEMENT

**BETWEEN THE NAVAJO NATION AND SAN JUAN COUNTY, NEW MEXICO,
REGARDING THE OPERATION AND MAINTENANCE OF SOLID WASTE
COMPACTOR AND TRANSFER STATIONS
IN SAN JUAN COUNTY**

This Joint Powers Agreement is made this ____ day of January, 1994, pursuant to the New Mexico Joint Powers Agreement Act, N.M.S.A. 1978, Sections 11-1-1 et seq. (Supp. 1993), the inherent sovereignty of the Navajo Nation, and the Navajo Tribal Code, 2 N.T.C. § 824(b)(6), by and between the following parties:

1. The Navajo Nation ("the Nation");
2. The Board of County Commissioners of San Juan County, New Mexico ("the County").

RECITALS:

WHEREAS, certain portions of the Navajo Nation lie within the confines of San Juan County, New Mexico;

WHEREAS, the Nation's solid waste landfills within San Juan County may not be in compliance with the new solid waste regulations promulgated by the United States Environmental Protection Agency, and it would be prohibitively expensive to bring them into compliance with those regulations;

WHEREAS, the County owns a landfill on Crouch Mesa which is being operated by Waste Management of New Mexico and which is in compliance with all federal and State regulations governing the disposal of solid waste;

COPY

WHEREAS, the Nation and the County wish to cooperate to provide an efficient and safe means of disposal of solid waste generated in areas of the Nation that lie within San Juan County at the Crouch Mesa Landfill;

WHEREAS, the parties desire to construct, operate and maintain two solid waste "compactor" and transfer stations and one solid waste transfer station to collect and process solid waste for disposal at the Crouch Mesa Landfill;

WHEREAS, the parties desire to arrange for transportation of the solid waste deposited at the Stations to the Crouch Mesa Landfill;

WHEREAS, pursuant to the New Mexico Joint Powers Agreement Act, the Navajo Tribal Code and the inherent sovereignty of the Navajo Nation, the parties hereto are authorized to enter into agreements for the purpose of jointly exercising any power common to the parties; and

WHEREAS, it would protect the public health, safety and welfare and be in the best interest of the parties to jointly participate in the operation and maintenance of the solid waste transfer and compactor stations and the transfer station.

NOW THEREFORE, the parties mutually agree as follows:

1. GENERAL PROVISIONS

1.1 Pursuant to the provisions of the Joint Powers Agreements Act, N.M.S.A. 1978, Sections 11-1-1 through 11-1-7 (Supp. 1993),

and the Navajo Tribal Code, 2 N.T.C. § 824(b)(6), the County agrees to construct and the parties agree to jointly operate and maintain:

- A. One solid waste compactor and transfer station near Shiprock, San Juan County;
- B. One solid waste compactor and transfer station near Upper Fruitland, San Juan County; and
- C. One solid waste transfer station near Sand Springs, San Juan County (herein collectively referred to as "the Stations").

1.2 The County, with financial assistance from the United States Indian Health Service, agrees to construct the Stations on land set aside and designated by the Nation for this purpose.

2. CONSTRUCTION

2.1 The County, with financial assistance from the United States Indian Health Service, shall design and construct the Stations.

2.2 The Nation agrees to designate and furnish property upon which the County shall construct the Stations. The Nation shall apply for withdrawal of the property and shall retain title to each parcel and shall also withdraw and retain any required easements or rights-of-way, including utility easements. The Nation agrees to provide the County with a legal description of each parcel, and provide documentation of proper land withdrawal (and Bureau of Indian Affairs approval of same), including property required for ingress, egress and easements.

2.3 The County shall construct the Stations as soon as is practicable, given the constraints of the weather, and expediency. The County shall determine in which order the Stations shall be constructed.

3. DISPOSAL OF SOLID WASTE

3.1 All solid waste accepted for disposal at the Stations shall be disposed of at the Crouch Mesa Landfill.

3.2 The County shall arrange for the transportation of solid waste from the Stations to the Crouch Mesa landfill. The County may contract with third parties for this service.

3.3 Expenses of transporting the solid waste from the Stations to the Crouch Mesa landfill, as well as any and all costs of disposal at the Crouch Mesa landfill, shall be considered to be operational and maintenance expenses and shall be shared equally by the parties pursuant to Section 5.

3.4 The Stations shall accept waste from all residents of San Juan County and elsewhere, subject only to any disposal or tipping fees that may be imposed by San Juan County and any fees that may be imposed by the parties pursuant to Sections 3.5 and 4.

3.5 Commercial waste haulers may be permitted to use the Stations for disposal of solid waste only as agreed by the parties by Amendment to this Agreement. Any such Amendment shall permit commercial waste haulers to use the Stations only if the Stations can economically accommodate the volume of waste. Any

such Amendment may impose special fees on commercial waste haulers so that economical disposal of waste at the Stations is assured. Otherwise, commercial waste haulers shall not be permitted to use the Stations and shall be directed by staff to proceed directly to the Crouch Mesa landfill.

3.6 No "special waste," as that term is defined in the Lease Agreement between the County and Waste Management of New Mexico, shall be accepted for disposal at the Stations. A copy of the relevant pages of the Lease Agreement are attached as Exhibit A.

3.7 No hazardous or toxic waste shall be accepted for disposal at the Stations.

3.8 No extremely large or bulky items shall be accepted for disposal at the Stations, such as large pieces of machinery, appliances and the like.

3.9 Liquid waste, such as paint and used motor oil, shall be accepted for disposal at the Stations only as provided for by County policy. Staff shall monitor disposal of liquid waste at the Stations and shall accept or reject liquid waste according to then-current County policy.

4. TIPPING FEES

4.1 The County Commission may impose a user or "tipping fee" at any or all of the Stations to help defray operating and maintenance expenses. The Nation may also recommend to the County Commission that a user or tipping fee be imposed at the Stations.

4.2 In the event a user or tipping fee is imposed, the County shall collect the fee.

4.3 In the event a user or tipping fee is imposed, the revenue generated shall be used to help defray total operating and maintenance expenses of the Stations.

5. OPERATING AND MAINTENANCE EXPENSES

5.1 The County and the Nation agree to contribute equally to the operating and maintenance expenses of the Stations.

5.2 The County shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the parties.

5.3 The County shall provide accounting services, general bookkeeping and record-keeping for the Stations pursuant to Section 11.

5.4 Each month, the County shall prepare a calculation of the operating and maintenance expenses of the Stations for the previous month, and shall also calculate the revenue received as a result of any user or tipping fee imposed pursuant to Sections 3.5 and 4. The County shall forward a copy of each month's accounting to the Nation. The Nation shall provide the County with an address to which copies of such accounting will be sent.

5.5 Each year, the Nation shall deposit with the County an amount estimated to be equal to the Nation's total obligations for operating and maintenance expenses of the Stations for a given fiscal year. The County shall bill the Nation at the beginning of each fiscal year for this amount. Throughout the

year's operation, the County shall credit against the amount deposited the Nation's monthly obligations under Section 5.4. Any amount remaining at the end of a given fiscal year shall be carried forward to be credited against the Nation's obligations for upcoming years. The amount of any excess shall also be taken into consideration in computing the Nation's estimated contribution for the upcoming year. Any deficit between amounts on deposit and the Nation's actual obligations shall be billed to the Nation on a monthly basis. The Nation shall provide the County with an address to which copies of such billings will be sent. The Nation shall promptly pay any such billings.

5.6 Alternatively to Section 5.5, the Nation may elect to meet its obligations under this Agreement on a monthly basis. If this method is elected, the County shall bill the Nation monthly for one-half of the amount the operating and maintenance expenses exceeded revenue in the preceding month. The Nation shall promptly pay any such billings.

6. EQUIPMENT AND FIXTURES

6.1 Any and all equipment, buildings, facilities, or personalty of any kind installed by the County at each Station shall remain the property of the County; provided, however, in the event the County fails to remove its equipment, buildings, facilities or personalty from the premises prior to or within thirty (30) days of termination of this Agreement, said property shall become property of the Navajo Nation.

6.2 The parties agree that the equipment, buildings, facilities or personalty purchased by the County and installed at the Stations pursuant to this Agreement shall not be considered fixtures and shall not be considered part of the real estate upon which the Stations are to be constructed.

6.3 Any and all equipment, buildings, facilities or personalty shall be disposed of at the end of its useful life by the County.

6.4 Repair or replacement of worn-out or obsolete equipment, buildings, facilities or personalty shall be considered to be operating and maintenance expenses and treated pursuant to Section 5.

7. STAFFING

7.1 The County shall provide appropriate staffing for each Station. Staff shall be fluent in the use of the English and Navajo languages.

7.2 The salary, benefits and other expenses of staff members shall be considered as operating and maintenance expenses of that Station, and treated pursuant to Section 5.

8. TRIBAL, STATE AND FEDERAL LAWS AND REGULATIONS

The Stations shall be constructed, operated and maintained in conformity with all applicable Tribal, State and Federal laws and regulations.

9. HOURS OF OPERATION

San Juan County shall designate the hours of operation of each Station, taking into consideration the needs of the local residents, economical and efficient operation of the Stations, and expediency.

10. APPROPRIATED FUNDS

10.1 The County and the Nation agree to use their best efforts to obtain continuing appropriations for their commitments under this agreement.

10.2 The parties recognize that imposition of user or tipping fees imposed pursuant to Sections 3.5 and 4, may reduce or eliminate the requirement that each party appropriate and contribute to operating and maintenance expenses of the Stations.

10.3 In the event, however, funds are not appropriated in a given year for either party's contribution to the operating and maintenance expenses of any Station, the other party will have the option of terminating this Agreement as of the date when the other party's funds are exhausted.

10.4 Nothing in this Section shall preclude the parties from agreeing by Amendment to this Agreement to a different allocation of the operating and maintenance expenses of the Stations, or from making other arrangements to keep the Stations open in the event a party has not appropriated sufficient funds to meet its obligations under this Agreement.

11. BOOKS AND RECORDS

11.1 The County shall maintain adequate and correct accounts of the operational and maintenance costs incurred at each Station, which accounts shall be open to inspection at any reasonable time by the parties hereto, their accountants or their agents.

11.2 The County shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency.

11.3 The County shall also render to the parties hereto, at reasonable intervals, such reports and accounting as the parties hereto may from time to time request.

11.4 There shall be strict accountability of all receipts and disbursements by the parties hereto.

12. TERMINATION

12.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

12.2 Any party's participation in this Agreement may be terminated by one hundred-eighty (180) days advance written notice.

12.3 Alternatively, any party's participation in this Agreement may be terminated upon the other party's exhaustion of

appropriated funds, as described in Section 10. In the event of exhaustion of appropriated funds, the affected party shall notify the other party of the expected exhaustion of funds as soon as possible before funds are exhausted, but in any event shall provide at least thirty (30) days prior notice of the expected exhaustion of funds. The parties recognize that the sooner the other party is notified of an appropriation problem, the better the chances of finding alternative funding sources.

12.4 Upon termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

12.5 Upon termination of this Agreement, the County shall have discretion to remove from each Station any and all equipment, buildings, facilities or personalty of any kind. The Nation agrees to provide access to the Stations to facilitate the County's removal of the equipment, buildings, facilities or personalty. The County shall remove all property from the Stations within thirty (30) days (pursuant to Section 6.1) and restore the premises (pursuant to Section 22) no later than sixty (60) days following the termination of this Agreement.

12.6 Upon termination of this Agreement, all funds of the Tribe which are held by the County pursuant to Section 5.5, and which have not been applied against operating and maintenance expenses pursuant to Sections 5.4 and 5.5, shall be returned to the Tribe. Any other surplus funds remaining upon termination of this

Agreement shall be returned to the parties in proportion to the contributions made.

13. AMENDMENT

This Agreement may be amended by the parties from time to time, but any amendment shall be in writing, executed by all of the then parties thereto, and approved by the Department of Finance and Administration.

14. SEVERABILITY CLAUSE

If any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been a part hereof.

15. INSURANCE

15.1 The County shall carry public liability insurance coverage consistent with its responsibilities under the New Mexico Tort Claims Act, N.M.S.A. 1978, § 41-4-1 et seq. (1989 Pamphlet and Supp. 1993). The County shall also carry property damage insurance on its equipment, buildings, facilities or personalty of any kind, and installed at the Stations. The County shall also provide workers' compensation coverage and provide a health insurance plan and other benefits of County employment for staff.

15.2 The expense of obtaining and maintaining insurance shall be the County's sole obligation.

15.3 The insurance provided for under this Section shall be maintained in full force and effect throughout the duration of this Agreement.

15.4 Except for workers' compensation insurance and employee's health plan, for which the County is self-insured, the County shall obtain the coverage described from a reliable insurance company. A copy of the policies shall be provided to the Nation at the Nation's request.

16. INDEMNIFICATION

Each party hereto ("the indemnifying party") agrees to defend, hold harmless and indemnify the other party ("the indemnified party"), its officers, agents and employees, against any and all claims arising out of any asserted negligent act, error or omission of the indemnifying party which results in a claim against the indemnified party relating to the operation and maintenance of the Stations.

17. ARBITRATION

17.1 All disputes and controversies of every kind and nature between the parties to this Agreement, including but not limited to disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, shall be submitted to arbitration,

and shall be conducted according to the procedures set forth below.

17.2 Either party may demand arbitration by making a demand in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.

17.3 Within 20 days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within 30 days of the request therefor, the appointment shall be made by the American Arbitration Association.

17.4 The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.

17.5 The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least 20 days' written notice to the parties.

17.6 An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.

17.7 As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

17.8 The parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

17.9 The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

17.10 Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

17.11 Failure of either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party, or the failure of either party to comply with the arbitration award, shall amount to a material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.

17.12 This Agreement is not subject to enforcement under New Mexico's Uniform Arbitration Act, N.M.S.A. 1978, §§ 44-7-1 through 44-7-22.

18. ALTERNATIVE DISPUTE RESOLUTION

Nothing in Section 17 shall preclude the parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The parties agree that prior to resorting to arbitration as set forth in Section 17, they shall use their best efforts to resolve any dispute by such non-binding and informal means.

19. WAIVER

Nothing in this Agreement, including the provisions of Section 17, shall be considered a waiver of tribal sovereign immunity of the Nation or a consent to suit in any forum by the parties hereto.

20. LIABILITY FOR ENVIRONMENTAL CONTAMINATION

The parties hereto recognize that the real property upon which the Stations may to be located may be proximate to a closed, and previously unregulated landfill site of unknown contents which may be a source of environmental contamination. The parties further recognize that no interest in real property is conveyed to the County by this exercise of the parties' joint powers. Therefore, the parties agree that the County shall not be held liable for any such environmental contamination of the real property except to the extent that any such contamination is a consequence of the operations of the Stations described herein.

21. FUTURE APPROPRIATIONS

Nothing in this Agreement shall be construed as an obligating the parties in the expenditure of funds or for some future payment of funds in excess of appropriations allowed by law.

22. RESTORATION

After termination of this Agreement, and following removal of the County's equipment, buildings, facilities or personalty from the premises, the County shall, at its own expense, restore the premises to its original state, or as near as practicable thereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives effective as of the date and year first written above.

ATTEST:

Carol Sandy
County Clerk

BOARD OF COUNTY COMMISSIONERS OF
SAN JUAN COUNTY, NEW MEXICO

By: John Deal
Chairman

THE NAVAJO NATION

By: _____
President


**APPROVED BY THE DEPARTMENT
OF FINANCE AND ADMINISTRATION**

By: _____

(Title)

(Date)

Approved as to form:



Attorney for San Juan County

Attorney for the Navajo Nation

CONSENT FORM 3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, ESTHER BEGAY, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Indian Health Services of Navajo Area, W/R, Ariz. to use a portion of my land use area for the following purpose (s): To withdraw two(2) Acres for the establishment of a Solid Waste Transfer Station as mandated by the Environmental Protection Agency.

as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS: _____

4/12/93
Date

Esther Begay
Land User Signature (or thumbprint)
ESTHER BEGAY - NEWCOMB CHAPTER

Census No.

12-2419
Permit No.

WITNESS:

Date

Grazing Committee or Land Board Member

District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained// to the land user in Navajo// or English// (check where applicable).

Field Agent Signature

COF

DATE: 12/04/93
TIME: 00:14:00
PROGRAM: 11

THE RALPH W. TRIM
FINANCIAL - PROS SYSTEM
ACCOUNT STATEMENT IN WHOLE DOLLARS FOR 12/03/93

REP041 2834
PROGRAM 11 F00092
ACCOUNT PAGE 1

ACCT: 3-15548
DATE: 15548

SOLID WASTE MANAGEMENT

TO: SADI HOSKIE
X-6536/62: DEPT. 15

CODE DESCRIPTION	ORIGINAL	REVISED	CURRENT MONTH	FISCAL YEAR	OPEN COMMITMENTS	BALANCE AVAILABLE	PERC USED
1499 OTR MISCELLANEOUS RE				93-		93	0
04TOTAL REVENUES				93-		93	0
1000 PERSONNEL EXPENSES	99,112	126,903	7,320	60,390		66,513	44
1200 PERSONNEL-TEMP		1,200		1,073		127	83
PERSONNEL-WAGES	99,112	126,103	7,320	61,462		68,641	45
1300 EMPL. SHARE-FICA	26,631	22,661	560	4,702		17,960	21
1310 FUTA		34		34			100
1320 SUTA-ARIZONA		152		152			100
1350 GP/LIFE INSURANCE		5,991	659	5,991			100
1360 RETIREMENT		3,321	403	3,321			100
1365 NHIHRSO SAVING PLA		590	69	590			100
1370 WORKMAN'S COMPSELF		1,374	161	1,374			100
TAXES AND BENEFITS	26,631	34,125	1,451	16,155		17,940	47
04TOT WAGE/TAX/BENEF	125,743	162,228	9,171	77,628		84,500	48
2000 TRAVEL EXPENSES	12,952	1,384	30	30		1,353	2
2100 ASSIGNED VEHICLE USE	14,147	17,147	1,954	10,565	169	1,413	45
2200 PERS TRAVEL EXPENSES		7,336	667	5,245	2,091		100
2300 VEHICLE MILEAGE EXP		1,515	271	1,419	96		100
2400 VEHICLE PNTL/OFF-RES		697		517	180		100
2500 COMMERCIAL FARES		1,637	483	1,637			100
2600 CHARTER FARES		383		383			100
TRAVEL EXPENSE	27,099	25,099	3,405	19,796	2,536	2,747	89
3100 OFFICE SUPPLIES	1,425	2,184		1,626	95	443	79
3150 POSTAGE	475	575		147	8	220	42
3200 PRINTING/BINDING	1,900						0
3250 DUES/SUBSCRIPTIONS		200				200	0
3300 OPERATING SUPPLIES	950	2,100	59	1,551		549	74
3350 PHOTOCOPY/REPRO USAGE	1,425	1,925	298	1,723		202	90
SUPPLIES EXPENSE	6,175	6,984	358	5,247	103	1,633	77
4400 COMMUNICATION EXP	950	4,750	315	4,263		487	90
4700 DATA PROC SERVICES	475						
4800 SOFTWARE PURCHASE	950						

Exhibit 11

LOC: 3-15584
OLC: 15584

SOLID WASTE MANAGEMENT

TO: SACTE MOSKIF
X-6536/62: CFPT. 15

SIC CODE DESCRIPTION	BUDGETS		ACTUAL		OPEN COMMITMENTS	BALANCE AVAILABLE	PERCENT USED
	ORIGINAL	REVISED	CURRENT MONTH	FISCAL YEAR			
DATA PROCESSING SVCS	1,425						0
5100 REP/MAINT-EQUIPMENT	400						0
5900 REP/MAINT-OTHER		117,681				117,681	0
REPAIRS & MAINT.	400	117,681				117,681	0
6610 SEMINAR/REGIST. FEES	2,375	1,225		125		1,100	10
6620 TRNG STUDY MATERIALS	475						0
60/TRNG EXP/SCHOLARS	2,850	1,225		125		1,100	10
6700 ADVERTISING/PROMOTION	2,375	1,912	541	1,912			100
7000 MATCHING FUNDS I		67,321				67,321	0
8100 EQUIPMENT	716	996		991		5	99
8000 TRIHAL CONSTRUCTION	52,911	35,490				35,490	0
CAPITALIZED EXPEND.	53,527	36,486				36,486	3
OPERATING EXPENSES	94,801	261,458	4,619	32,336	2,639	226,484	13
TOTAL EXPENDITURES	220,544	423,666	13,790	109,963	2,639	311,084	27
ACCOUNT TOTAL	220,544	423,666	13,790	110,046	2,639	311,041	27

OPEN COMMITMENTS STATUS

ACCOUNT	REF. NO.	DATE	DESCRIPTION	ORIGINAL AMOUNT	LTQ/OUTGOING EXPENDITURES	ADJUST- MENTS	CURRENT AMOUNT
3-15588-2100	0049761	08/27	FLEET MANAGEMENT	600.00	431.30		168.70
3-15588-2200	T588662	04/07	R. TSOSIE 4/7-8/93	80.00			80.00
3-15588-2200	T622699	07/26	E. QUINTANA 7/26-30/	425.00			425.00
3-15588-2200	T622736	10/04	T. SHIRLEY 9/29-10/1	215.00	143.10	71. 0	COMPLETED
3-15588-2200	T622743	10/11	T. SHIRLEY 10/11-12/	120.00	64.98	55. 2	COMPLETED
3-15588-2200	T622744	10/06	J. BIAKENDY 10/6-7/	130.00			130.00
3-15588-2200	T631098	10/22	ARLENE LUTHER	650.00	180.11	469. 9	COMPLETED
3-15588-2200	T631099	10/22	DEARIE MCARTIDE	650.00	192.26	467. 4	COMPLETED
3-15588-2200	T631102	11/09	DELBERT SCOTT	250.00			250.00
3-15588-2200	T631112	11/30	T. SHIRLEY 11/29-30	130.00			130.00
3-15588-2200	T632154	10/14	E. QUINTANA 10/12-15	100.00			100.00

3
3
3
3
3

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving and Recommending that the Intergovernmental Relations Committee of the Navajo Nation Council Approve a Joint Powers Agreement Between the Navajo Nation and San Juan County, New Mexico, Regarding the Operation and Maintenance of Solid Waste Compactor and Transfer Stations in San Juan County

WHEREAS:

1. Pursuant to 2 N.T.C., Section 695 (b) (6), the Resources Committee of the Navajo Nation Council has the power and authority "To oversee and regulate all activities within the Navajo Nation Lands" regarding the disposition and protection of natural resources; and

2. Pursuant to 2 N.T.C., Section 824 (b) (6), the Intergovernmental Relations Committee of the Navajo Nation Council is authorized to approve and accept contracts and grants between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement; and

3. The Navajo Environmental Protection Administration is within the Division of Natural Resources and is authorized to conduct studies and monitor activities and actions affecting environmental resources to ensure the preservation and enhancement of the quality of the Navajo environment; and

4. The Solid Waste Management Program is within the Navajo Environmental Protection Administration and has been allocated monies by the Navajo Nation Council to be utilized by Navajo Nation Chapters for assistance in the management of the operation and maintenance of their solid waste transfer stations; and

5. Through approval of this resolution, the Solid Waste Management Program will expend \$71,131.00 from line-item 7990 of the Solid Waste Management Program budget (3-15588) for the Navajo Nation's cost of the operation and maintenance of the transfer stations in Upper Fruitland, Shiprock and Sand Springs, New Mexico; and

6. It is in the best interest of the Navajo Nation and the Navajo People that this request be approved because once the three transfer stations are in operation, they will serve twelve (12) chapters: Upper Fruitland, Nenahnezad, Hogback, Shiprock, Cudei, Beclabito, Red Valley, Sanostee, Two Grey Hills, Burnham, Sheep Springs, and Naschitti Chapters; and

COPY

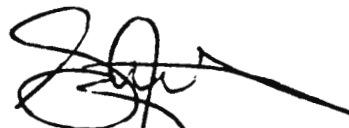
7. The Navajo Environmental Protection Administration's Solid Waste Management Program respectfully submits the proposed Joint Powers Agreement Between the Navajo Nation and San Juan County, New Mexico, regarding the operation and maintenance of solid waste compactor and transfer stations in San Juan County as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

The Resources Committee of the Navajo Nation Council hereby recommends that the Intergovernmental Relations Committee of the Navajo Nation Council approve the Joint Powers Agreement "BETWEEN THE NAVAJO NATION AND SAN JUAN COUNTY, NEW MEXICO, ATTACHED HERETO AS EXHIBIT "A", REGARDING THE OPERATION AND MAINTENANCE OF SOLID WASTE COMPACTOR AND TRANSFER STATIONS IN SAN JUAN COUNTY".

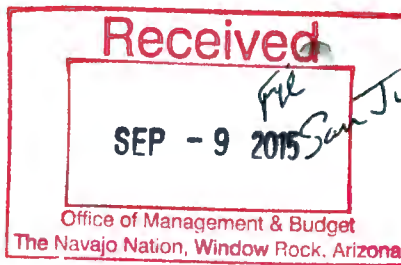
C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Resources 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 5 in favor, 0 opposed and 0 abstained, this 9th day of February, 1994.



George Arthur
Presiding Chairperson

Motion: Andrew Tso
Second: Samuel Yazzie



APR 28 1999
RECEIVED

JOINT POWERS AGREEMENT

BETWEEN THE NAVAJO NATION AND SAN JUAN COUNTY, NEW MEXICO,
REGARDING THE OPERATION AND MAINTENANCE OF SOLID WASTE
COMPACTOR AND TRANSFER STATIONS
IN SAN JUAN COUNTY

This Joint Powers Agreement is made this 7th day of
~~January~~^{April}, 1994, pursuant to the New Mexico Joint Powers Agreement
Act, N.M.S.A. 1978, Sections 11-1-1 et seq. (Supp. 1993), the
inherent sovereignty of the Navajo Nation, and the Navajo Tribal
Code, 2 N.T.C. § 824(b)(6), by and between the following parties:

1. The Navajo Nation ("the Nation");
2. The Board of County Commissioners of San Juan County,
New Mexico ("the County").

RECITALS:

WHEREAS, certain portions of the Navajo Nation lie within
the confines of San Juan County, New Mexico;

WHEREAS, the Nation's solid waste landfills within San Juan
County may not be in compliance with the new solid waste
regulations promulgated by the United States Environmental
Protection Agency, and it would be prohibitively expensive to
bring them into compliance with those regulations;

WHEREAS, the County owns a landfill on Crouch Mesa which is
being operated by Waste Management of New Mexico and which is in
compliance with all federal and State regulations governing the
disposal of solid waste;

WHEREAS, the Nation and the County wish to cooperate to provide an efficient and safe means of disposal of solid waste generated in areas of the Nation that lie within San Juan County at the Crouch Mesa Landfill;

WHEREAS, the parties desire to construct, operate and maintain two solid waste "compactor" and transfer stations and one solid waste transfer station to collect and process solid waste for disposal at the Crouch Mesa Landfill;

WHEREAS, the parties desire to arrange for transportation of the solid waste deposited at the Stations to the Crouch Mesa Landfill;

WHEREAS, pursuant to the New Mexico Joint Powers Agreement Act, the Navajo Tribal Code and the inherent sovereignty of the Navajo Nation, the parties hereto are authorized to enter into agreements for the purpose of jointly exercising any power common to the parties; and

WHEREAS, it would protect the public health, safety and welfare and be in the best interest of the parties to jointly participate in the operation and maintenance of the solid waste transfer and compactor stations and the transfer station.

NOW THEREFORE, the parties mutually agree as follows:

1. GENERAL PROVISIONS

1.1 Pursuant to the provisions of the Joint Powers Agreements Act, N.M.S.A. 1978, Sections 11-1-1 through 11-1-7 (Supp. 1993),

and the Navajo Tribal Code, 2 N.T.C. § 824(b)(6), the County agrees to construct and the parties agree to jointly operate and maintain:

- A. One solid waste compactor and transfer station near Shiprock, San Juan County;
- B. One solid waste compactor and transfer station near Upper Fruitland, San Juan County; and
- C. One solid waste transfer station near Sand Springs, San Juan County (herein collectively referred to as "the Stations").

1.2 The County, with financial assistance from the United States Indian Health Service, agrees to construct the Stations on land set aside and designated by the Nation for this purpose.

2. CONSTRUCTION

2.1 The County, with financial assistance from the United States Indian Health Service, shall design and construct the Stations.

2.2 The Nation agrees to designate and furnish property upon which the County shall construct the Stations. The Nation shall apply for withdrawal of the property and shall retain title to each parcel and shall also withdraw and retain any required easements or rights-of-way, including utility easements. The Nation agrees to provide the County with a legal description of each parcel, and provide documentation of proper land withdrawal (and Bureau of Indian Affairs approval of same), including property required for ingress, egress and easements.

2.3 The County shall construct the Stations as soon as is practicable, given the constraints of the weather, and expediency. The County shall determine in which order the Stations shall be constructed.

3. DISPOSAL OF SOLID WASTE

3.1 All solid waste accepted for disposal at the Stations shall be disposed of at the Crouch Mesa Landfill.

3.2 The County shall arrange for the transportation of solid waste from the Stations to the Crouch Mesa landfill. The County may contract with third parties for this service.

3.3 Expenses of transporting the solid waste from the Stations to the Crouch Mesa landfill, as well as any and all costs of disposal at the Crouch Mesa landfill, shall be considered to be operational and maintenance expenses and shall be shared equally by the parties pursuant to Section 5.

3.4 The Stations shall accept waste from all residents of San Juan County and elsewhere, subject only to any disposal or tipping fees that may be imposed by San Juan County and any fees that may be imposed by the parties pursuant to Sections 3.5 and 4.

3.5 Commercial waste haulers may be permitted to use the Stations for disposal of solid waste only as agreed by the parties by Amendment to this Agreement. Any such Amendment shall permit commercial waste haulers to use the Stations only if the Stations can economically accommodate the volume of waste. Any

such Amendment may impose special fees on commercial waste haulers so that economical disposal of waste at the Stations is assured. Otherwise, commercial waste haulers shall not be permitted to use the Stations and shall be directed by staff to proceed directly to the Crouch Mesa landfill.

3.6 No "special waste," as that term is defined in the Lease Agreement between the County and Waste Management of New Mexico, shall be accepted for disposal at the Stations. A copy of the relevant pages of the Lease Agreement are attached as Exhibit A.

3.7 No hazardous or toxic waste shall be accepted for disposal at the Stations.

3.8 No extremely large or bulky items shall be accepted for disposal at the Stations, such as large pieces of machinery, appliances and the like.

3.9 Liquid waste, such as paint and used motor oil, shall be accepted for disposal at the Stations only as provided for by County policy. Staff shall monitor disposal of liquid waste at the Stations and shall accept or reject liquid waste according to then-current County policy.

4. TIPPING FEES

4.1 The County Commission may impose a user or "tipping fee" at any or all of the Stations to help defray operating and maintenance expenses. The Nation may also recommend to the County Commission that a user or tipping fee be imposed at the Stations.

4.2 In the event a user or tipping fee is imposed, the County shall collect the fee.

4.3 In the event a user or tipping fee is imposed, the revenue generated shall be used to help defray total operating and maintenance expenses of the Stations.

5. OPERATING AND MAINTENANCE EXPENSES

5.1 The County and the Nation agree to contribute equally to the operating and maintenance expenses of the Stations.

5.2 The County shall manage all revenues, maintain all accounts and receive and disburse all funds on behalf of the parties.

5.3 The County shall provide accounting services, general bookkeeping and record-keeping for the Stations pursuant to Section 11.

5.4 Each month, the County shall prepare a calculation of the operating and maintenance expenses of the Stations for the previous month, and shall also calculate the revenue received as a result of any user or tipping fee imposed pursuant to Sections 3.5 and 4. The County shall forward a copy of each month's accounting to the Nation. The Nation shall provide the County with an address to which copies of such accounting will be sent.

5.5 Each year, the Nation shall deposit with the County an amount estimated to be equal to the Nation's total obligations for operating and maintenance expenses of the Stations for a given fiscal year. The County shall bill the Nation at the beginning of each fiscal year for this amount. Throughout the

year's operation, the County shall credit against the amount deposited the Nation's monthly obligations under Section 5.4. Any amount remaining at the end of a given fiscal year shall be carried forward to be credited against the Nation's obligations for upcoming years. The amount of any excess shall also be taken into consideration in computing the Nation's estimated contribution for the upcoming year. Any deficit between amounts on deposit and the Nation's actual obligations shall be billed to the Nation on a monthly basis. The Nation shall provide the County with an address to which copies of such billings will be sent. The Nation shall promptly pay any such billings.

5.6 Alternatively to Section 5.5, the Nation may elect to meet its obligations under this Agreement on a monthly basis. If this method is elected, the County shall bill the Nation monthly for one-half of the amount the operating and maintenance expenses exceeded revenue in the preceding month. The Nation shall promptly pay any such billings.

6. EQUIPMENT AND FIXTURES

6.1 Any and all equipment, buildings, facilities, or personalty of any kind installed by the County at each Station shall remain the property of the County; provided, however, in the event the County fails to remove its equipment, buildings, facilities or personalty from the premises prior to or within thirty (30) days of termination of this Agreement, said property shall become property of the Navajo Nation.

6.2 The parties agree that the equipment, buildings, facilities or personalty purchased by the County and installed at the Stations pursuant to this Agreement shall not be considered fixtures and shall not be considered part of the real estate upon which the Stations are to be constructed.

6.3 Any and all equipment, buildings, facilities or personalty shall be disposed of at the end of its useful life by the County.

6.4 Repair or replacement of worn-out or obsolete equipment, buildings, facilities or personalty shall be considered to be operating and maintenance expenses and treated pursuant to Section 5.

7. STAFFING

7.1 The County shall provide appropriate staffing for each Station. Staff shall be fluent in the use of the English and Navajo languages.

7.2 The salary, benefits and other expenses of staff members shall be considered as operating and maintenance expenses of that Station, and treated pursuant to Section 5.

8. TRIBAL, STATE AND FEDERAL LAWS AND REGULATIONS

The Stations shall be constructed, operated and maintained in conformity with all applicable Tribal, State and Federal laws and regulations.

9. HOURS OF OPERATION

San Juan County shall designate the hours of operation of each Station, taking into consideration the needs of the local residents, economical and efficient operation of the Stations, and expediency.

10. APPROPRIATED FUNDS

10.1 The County and the Nation agree to use their best efforts to obtain continuing appropriations for their commitments under this agreement.

10.2 The parties recognize that imposition of user or tipping fees imposed pursuant to Sections 3.5 and 4, may reduce or eliminate the requirement that each party appropriate and contribute to operating and maintenance expenses of the Stations.

10.3 In the event, however, funds are not appropriated in a given year for either party's contribution to the operating and maintenance expenses of any Station, the other party will have the option of terminating this Agreement as of the date when the other party's funds are exhausted.

10.4 Nothing in this Section shall preclude the parties from agreeing by Amendment to this Agreement to a different allocation of the operating and maintenance expenses of the Stations, or from making other arrangements to keep the Stations open in the event a party has not appropriated sufficient funds to meet its obligations under this Agreement.

11. BOOKS AND RECORDS

11.1 The County shall maintain adequate and correct accounts of the operational and maintenance costs incurred at each Station, which accounts shall be open to inspection at any reasonable time by the parties hereto, their accountants or their agents.

11.2 The County shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency.

11.3 The County shall also render to the parties hereto, at reasonable intervals, such reports and accounting as the parties hereto may from time to time request.

11.4 There shall be strict accountability of all receipts and disbursements by the parties hereto.

12. TERMINATION

12.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in full force and effect, subject to amendments, until terminated by the parties pursuant to this Agreement.

12.2 Any party's participation in this Agreement may be terminated by one hundred-eighty (180) days advance written notice.

12.3 Alternatively, any party's participation in this Agreement may be terminated upon the other party's exhaustion of

appropriated funds, as described in Section 10. In the event of exhaustion of appropriated funds, the affected party shall notify the other party of the expected exhaustion of funds as soon as possible before funds are exhausted, but in any event shall provide at least thirty (30) days prior notice of the expected exhaustion of funds. The parties recognize that the sooner the other party is notified of an appropriation problem, the better the chances of finding alternative funding sources.

12.4 Upon termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of property and a full accounting.

12.5 Upon termination of this Agreement, the County shall have discretion to remove from each Station any and all equipment, buildings, facilities or personalty of any kind. The Nation agrees to provide access to the Stations to facilitate the County's removal of the equipment, buildings, facilities or personalty. The County shall remove all property from the Stations within thirty (30) days (pursuant to Section 6.1) and restore the premises (pursuant to Section 22) no later than sixty (60) days following the termination of this Agreement.

12.6 Upon termination of this Agreement, all funds of the Tribe which are held by the County pursuant to Section 5.5, and which have not been applied against operating and maintenance expenses pursuant to Sections 5.4 and 5.5, shall be returned to the Tribe. Any other surplus funds remaining upon termination of this

Agreement shall be returned to the parties in proportion to the contributions made.

13. AMENDMENT

This Agreement may be amended by the parties from time to time, but any amendment shall be in writing, executed by all of the then parties thereto, and approved by the Department of Finance and Administration.

14. SEVERABILITY CLAUSE

If any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been a part hereof.

15. INSURANCE

15.1 The County shall carry public liability insurance coverage consistent with its responsibilities under the New Mexico Tort Claims Act, N.M.S.A. 1978, § 41-4-1 et seq. (1989 Pamphlet and Supp. 1993). The County shall also carry property damage insurance on its equipment, buildings, facilities or personalty of any kind, and installed at the Stations. The County shall also provide workers' compensation coverage and provide a health insurance plan and other benefits of County employment for staff.

15.2 The expense of obtaining and maintaining insurance shall be the County's sole obligation.

15.3 The insurance provided for under this Section shall be maintained in full force and effect throughout the duration of this Agreement.

15.4 Except for workers' compensation insurance and employee's health plan, for which the County is self-insured, the County shall obtain the coverage described from a reliable insurance company. A copy of the policies shall be provided to the Nation at the Nation's request.

16. INDEMNIFICATION

Each party hereto ("the indemnifying party") agrees to defend, hold harmless and indemnify the other party ("the indemnified party"), its officers, agents and employees, against any and all claims arising out of any asserted negligent act, error or omission of the indemnifying party which results in a claim against the indemnified party relating to the operation and maintenance of the Stations.

17. ARBITRATION

17.1 All disputes and controversies of every kind and nature between the parties to this Agreement, including but not limited to disputes and controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, shall be submitted to arbitration,

and shall be conducted according to the procedures set forth below.

17.2 Either party may demand arbitration by making a demand in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.

17.3 Within 20 days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within 30 days of the request therefor, the appointment shall be made by the American Arbitration Association.

17.4 The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.

17.5 The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least 20 days' written notice to the parties.

17.6 An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.

17.7 As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written Agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

17.8 The parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

17.9 The arbitration provisions of this Agreement shall survive the termination or expiration of this Agreement.

17.10 Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

17.11 Failure of either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party, or the failure of either party to comply with the arbitration award, shall amount to a material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.

17.12 This Agreement is not subject to enforcement under New Mexico's Uniform Arbitration Act, N.M.S.A. 1978, §§ 44-7-1 through 44-7-22.

18. ALTERNATIVE DISPUTE RESOLUTION

Nothing in Section 17' shall preclude the parties from resolving any differences that arise through mediation, informal discussion, or other non-binding methods of dispute resolution. The parties agree that prior to resorting to arbitration as set forth in Section 17, they shall use their best efforts to resolve any dispute by such non-binding and informal means.

19. WAIVER

Nothing in this Agreement, including the provisions of Section 17, shall be considered a waiver of tribal sovereign immunity of the Nation or a consent to suit in any forum by the parties hereto.

20. LIABILITY FOR ENVIRONMENTAL CONTAMINATION

The parties hereto recognize that the real property upon which the Stations may to be located may be proximate to a closed, and previously unregulated landfill site of unknown contents which may be a source of environmental contamination. The parties further recognize that no interest in real property is conveyed to the County by this exercise of the parties' joint powers. Therefore, the parties agree that the County shall not be held liable for any such environmental contamination of the real property except to the extent that any such contamination is a consequence of the operations of the Stations described herein.

21. FUTURE APPROPRIATIONS

Nothing in this Agreement shall be construed as an obligating the parties in the expenditure of funds or for some future payment of funds in excess of appropriations allowed by law.

22. RESTORATION

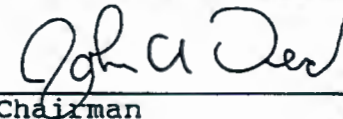
After termination of this Agreement, and following removal of the County's equipment, buildings, facilities or personalty from the premises, the County shall, at its own expense, restore the premises to its original state, or as near as practicable thereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives effective as of the date and year first written above.

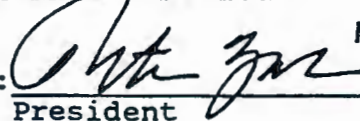
ATTEST:


County Clerk

BOARD OF COUNTY COMMISSIONERS OF
SAN JUAN COUNTY, NEW MEXICO

By: 
Chairman

THE NAVAJO NATION

By: 
President

MAR - 7 1994

APPROVED BY THE DEPARTMENT
OF FINANCE AND ADMINISTRATION

By: David Bloom

Deputy
(Title)

4/7/94
(Date)

Approved as to form:

[Signature]
Attorney for San Juan County

Attorney for the Navajo Nation

EXHIBIT "A"

1. *"Special Waste" means any waste from a non-residential source, meeting any of the following descriptions:*
 - a. *A containerized waste (e.g., a drum barrel, portable tank, box, pail, etc.).*
 - b. *A waste transported in a bulk tanker.*
 - c. *A liquid waste.*
 - d. *A sludge waste.*
 - e. *A waste from an industrial process.*
 - f. *A waste from a pollution control process.*
 - g. *Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in a. - f. or h.*
 - h. *Contaminated soil, water, residue, debris and articles from the clean up of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of wastes listed in a. - g.*
 - i. *"Miscellaneous Special Waste" as defined in paragraph 2 of this Contractor's Definition of Special Waste.*
2. *"Miscellaneous Special Waste" - Any waste meeting the descriptions which follow is a "special waste," but is referred to as "miscellaneous special waste":*
 - a. *Chemical waste from a laboratory. (This is limited to discarded containers of laboratory chemicals, lab equipment, lab clothing, debris from lab spills or cleanup and floor sweepings).*
 - b. *Articles, equipment and clothing containing or contaminated with polychlorinated biphenyls (PCB's). (Examples are: PCB capacitors or transformers, gloves or aprons from draining operations, empty drums that formerly held PCB's, etc. Note: PCB solids, semi-solids or liquids delivered in bulk or drums are not "miscellaneous special waste", but are "special waste".)*
 - c. *"Empty" containers of waste commercial products or chemicals. (This applies to a portable container which has been emptied, but which may hold residuals of the*

EXHIBIT

A

product or chemical. Examples of containers are: portable tanks, drums, barrels, cans, bags, liners, etc. A container shall be determined "empty" according to the criteria specified at 40 C.F.R. 261.7).

- d. Asbestos containing waste from building demolition or cleaning. (This applies to asbestos-bearing waste insulation materials, such as wall board, wall spray coverings, pipe insulation, etc. Note: "special waste," but not a "miscellaneous special waste")
- e. Commercial products or chemicals: off-specification, outdated, contaminated or banned. (This also includes products voluntarily removed from the market place by a manufacturer or distributor, in response to allegations of adverse health effects associated with product use).
- f. Residue and debris from cleanup of spills or releases of a single chemical substance or commercial product or a single waste which would otherwise qualify as a miscellaneous special waste. (Note: residue and debris from spills or releases not meeting this definition are "special waste" not "miscellaneous special waste").
- g. Waste from a medical practitioner, hospital, nursing home, medical testing laboratory, mortuary, taxidermist, veterinarian, veterinary hospital or animal testing laboratory. (This includes any waste produced at these facilities, except residue from incinerators, septic tank pumpings or wastewater treatment sludges which are all "special wastes", but not "miscellaneous special wastes". Note: discarded chemicals from the above facilities should be treated as "chemical waste from a laboratory", as provided in subsection 2.a. above).
- h. Animal waste and parts from slaughterhouses or rendering plants. (This excludes wastes from fur or leather products manufacturers, which are "special wastes").
- i. Waste produced by the mechanical processing of fruit, vegetables or grain. (This includes such wastes as finds, hulls, husks, pods, shells and chaff. Food processing wastes which are aqueous or sludges, or which have been contaminated with dyes, additives or preservatives are "special waste", but not "miscellaneous special waste").
- j. Pumpings from septic tanks used exclusively by dwelling units. (Single family homes, duplexes, apartment buildings, hotels or motels).
- k. Sludge from a publicly owned sewage treatment plant serving primarily domestic users. (i.e., with no substantial industrial or chemical (influent).
- l. Grease trap wastes from residences, restaurants, or cafeterias not located at industrial facilities.
- m. Washwater wastes from commercial car washes. (Note: this does not include facilities used for washing the exterior off bulk chemical or waste tank trucks

EXHIBIT

A

or for washing out the interior of any truck.

- n. Wastewater wastes from commercial laundries or laundromats. (Note: this does not include waste from a dry cleaning facility or waste from a commercial laundry used by an industry to wash chemical-contaminated clothing from its workers; such wastes are "special wastes").*
- o. Chemical-containing equipment removed from service. (Example: cathode ray tubes, batteries, fluorescent light tubes, etc.)*
- p. Waste produced from the demolition or dismantling of industrial process equipment or facilities contaminated with chemicals from the process. (Note: chemicals or wastes removed or drained from such equipment or facility are "special wastes").*
- q. Closed cartridge filters from dry-cleaning establishments. (Such filters being used to filter used dry-cleaning fluids or solids).*

SECTION 164 REVIEW FORMTitle of Document: Amendment 1-San Juan County Transfer Sta Contact Name: BENALLY, JAMESProgram/Division: DIV. OF COMMUNITY DEVELOPMENTEmail: jb.toda@nnswwp.org Phone Number: 928-871-6309

Division Director Approval for 164A: _____

Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

<input type="checkbox"/>	Statement of Policy or Positive Law:			Sufficient	Insufficient
	1. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)				
	1. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

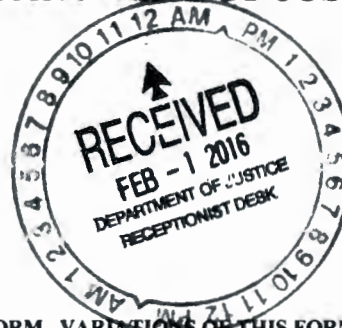
Section 164(B) Final approval rests with the President of the Navajo Nation

<input checked="" type="checkbox"/>	Grant/Funding Agreement or amendment:				
	1. Division:	<u>[Signature]</u>	Date: <u>8/27/15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. OMB:	<u>[Signature]</u>	Date: <u>11/18/15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	3. OOC:	<u>[Signature]</u>	Date: <u>10-15-15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	4. OAG:	<u>[Signature]</u>	Date: <u>10/22/15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Subcontract/Contract expending or receiving funds or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. BRD:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	5. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	M.O.A. or Letter of Assurance expending or receiving funds or amendment:				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
02/01/16 1130a
DATE / TIME
☐ 7 Day Deadline
DOC #: 004586/2
SAS #:
UNIT: ECDW

☒ RESUBMITTAL

(Dec 2015)

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 2/1/2016 DIVISION: DCD
CONTACT NAME: James Benally DEPARTMENT: SWM Program
PHONE NUMBER: 871-6309 E-MAIL: jb.toda@nnswwmp.org
TITLE OF DOCUMENT: Section 164 Review Form # 004586 - Joint Powers Agreement with San Juan County Amendment

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 2/1/16 @ 1pm REVIEWING ATTORNEY/ADVOCATE: Latonia
DATE TIME OUT OF UNIT:

DOJ ATTORNEY / ADVOCATE COMMENTS

Supplement but please make minor changes to the underline / strikeout for the amendment in red

REVIEWED BY: (Print) LBT Date / Time 2/3/16 12:15pm SURNAME BY: (Print) LBT Date / Time 2/3/16 12:15pm

DOJ Secretary Called: James Benally for Document Pick Up on 2/3/16 at 1:14pm By: AH

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013





☒ RESUBMITTAL

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ	
12/14/15	1050a
DATE / TIME	
<input checked="" type="checkbox"/> 7 Day Deadline	
DOC #:	004586
SAS #:	
UNIT:	ECU

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	12/11/2015	DIVISION:	DCD
CONTACT NAME:	James Benally	DEPARTMENT:	SWM Program
PHONE NUMBER:	871-6309	E-MAIL:	jb.toda@nnswwmp.org
TITLE OF DOCUMENT: Section 164 Review Form # 004586 - Joint Powers Agreement with San Juan County Amendment			

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	12/14/15 @ 130 pm	REVIEWING ATTORNEY/ADVOCATE:	Latoria
DATE TIME OUT OF UNIT:			

DOJ ATTORNEY / ADVOCATE COMMENTS

emailed James 12/15 @ 520pm
Per James, he wants to p/4

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
UBT	1/6/16 1152am	UBT	1/6/16 1152am

DOJ Secretary Called: James Benally for Document Pick Up on 12/6/16 at 1159 By: AH

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013





NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
10/21/15 @ 854a
DATE / TIME
<input checked="" type="checkbox"/> 7 Day Deadline
DOC #: 004586
SAS #:
UNIT: ECDW

☐ RESUBMITTAL

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	10/20/2015	DIVISION:	DCD
CONTACT NAME:	James Benally	DEPARTMENT:	SWM Program
PHONE NUMBER:	871-6309	E-MAIL:	jb.toda@nnswwmp.org
TITLE OF DOCUMENT: Section 164 Review Form # 004586 - Joint Powers Agreement with San Juan County Amendment			

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	10/21/15 @ 11am	REVIEWING ATTORNEY/ADVOCATE:	LaTonia
DATE TIME OUT OF UNIT:			

DOJ ATTORNEY / ADVOCATE COMMENTS

insufficient - see memo

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
UBJ	10/22/15 439pm	UBJ	10/22/15 440pm

DOJ Secretary Called: Angie Roan for Document Pick Up on 10/22/15 at 454 By: AH

PICKED UP BY: (Print) DATE / TIME:

NNDOJ/DRRF-July 2013





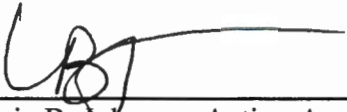
NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: James Benally, Program Manager
Solid Waste Management Department
Division of Community Development

FROM: 
LaTonia B. Johnson, Acting Asst. Attorney General
Economic/Community Development Unit, Dept. Of Justice

DATE: October 22, 2015

SUBJECT: **Document No. 4586: Approving Amendment One (1) to Joint Powers Agreement between the Navajo Nation and San Juan County**

In a memorandum dated June 17, 2015, it was noted that the amendments will have to be approved by the Budget and Finance Committee (BFC) because the original agreement constitutes as an Intergovernmental Agreement. In reviewing the 164 form, it appears that you have marked this document as a Grant or Funding Agreement. This is not correct. This document should have been marked as an Intergovernmental Agreement (IGA) as noted on the 164A document area. In the future, please ensure that you mark the correct area.

Second, because this document is considered as an IGA, BFC will have to approve and the approval will be based on an underline and strike-out version. Now, in reviewing the document, the document was not appropriately done. There were missing words and the new language was not underlined and there were some language that should not have been stricken out. In the June 17th memorandum, I provided an example of how the amendment should be reflected. Please re-review that memorandum and amendments to ensure it is accurate. Lastly, because the dispute resolution as provided in Section 17 has been changed, it appears that Section 18 is no longer needed. Please consult with San Juan County to ensure they are aware and agree with this assessment.

If you have any questions regarding this memorandum, please contact me at 928-871-6933. Thank you.

LBJ/ah/193



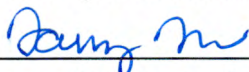
THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT

MEMORANDUM

TO: 2 N.N.C §164 Administration Reviewers

FROM:



Tammy Tso, Accounting Supervisor
Contract Accounting Section
Office of the Controller

DATE: October 2, 2015

SUBJECT: Section 164 Review for Document No. 4586; Amendment No. 1 to the Joint Powers Agreement between the Navajo Nation and San Juan County, New Mexico .

Contract Accounting has reviewed the referenced document and finds it insufficient due to the following:

1. The amendment does not specifically identify what type of funds (General Funds, External Funds) the Nation will use to manage/operate the transfer stations as noted in amendment section 5. Operating and Maintenance expenses.
2. The agreement does not specify whether it is a cost reimbursement agreement and cannot determine if external funds are available for operating and maintenance cost as there is no budget included in the packet.

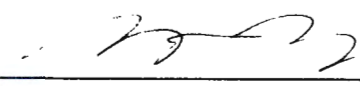
This 164 review packet will be forward to General Accounting for review.

THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

October 8, 2015

TO: Section 164 Review Form Reviewers

FROM: 
Chavez John, Acting Division Director
Division of Community Development

SUBJECT: **Section 164 Review Form # 004586**

The Division of Community Development (DCD), Solid Waste Mangement (SWM) Program is tasked to provide equally to the operations and maintenance expenses for three (3) transfer stations operated and maintained by San Juan County, New Mexico, per the Joint Powers Agreement, Section 5, dated April 7, 1994, between the Navajo Nation and the county. Inasmuch, SWM Program utilizes it annual General Funds allocation to meet this obligation. As such, SWM Program uses its 6960 subaccount to pay for these expenses (See excerpted Budget Form 4).

Should any of the reviewers have concerns or questions, direct them to this program at (928) 871-6309.

Attachment

xc: Files

CHAVEZ JOHN,
Acting Division Director

DIVISION OF
COMMUNITY
DEVELOPMENT

PO Box 1904
Window Rock, AZ
86515

PH: 505.371.8466
Fax: 505.371.8472

WEBSITES:
NNDCCD.org
NavajoChapters.org

Mission:
*Provide
opportunities for the
Navajo communities
to be self-governing
and self-sufficient.*



THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

DCDA-M16001

MEMORANDUM

CHAVEZ JOHN
Acting Division Director

**DIVISION OF
COMMUNITY
DEVELOPMENT**

PO Box 1904
Window Rock, AZ
86515

PH: 505.371.8466
Fax: 505.371.8472

WEBSITES:
NNDCCD.org
NavajoChapters.org

MISSION:
*Provide
opportunities for the
Navajo communities
to be self-governing
and self-sufficient.*

TO : ALL CONCERNED

FROM :


Chavez John, Acting Division Director
Division of Community Development

DATE : October 1, 2015

SUBJECT : **FY 2016 Standing Delegation of Authority**

Effective today, the following individuals will assume the delegation of authority to act in my capacity in my absence from the office. This delegation of authority shall serve to delegate my authority and management of all DCD departments and programs, including signature authority.


1. James Benally, Senior Environmental Specialist, Solid Waste Management Program
2. Norbert Nez, Computer Operations Manager, DCD Administration

Your assistance and cooperation with the delegated personnel will be appreciated.

Acknowledged by:


James Benally, Senior Environmental Specialist
Solid Waste Management Program

Acknowledged by


Norbert Nez, Computer Operations Manager
DCD Administration



J B <jb.toda@nnswwp.org>

SJC JPA Amendment

LaTonia Becenti-Johnson <ljohnson@nndoj.org>
To: JB <jb.toda@nnswwp.org>

Thu, Aug 27, 2015 at 2:20 PM

James,

I am not sure if you are aware, but I am the only Attorney in my unit. So, I have to prioritize my services. I have yet to review the attachment and I will probably not be able to do so until next week or late tomorrow. I don't want to hold up you processing this document. I suggest that you move forward and if there are changes to the underline and strikeout, I can let you know.

Also, this amendment does not have to be approved by the Committee, you can process it under as an amendment to a "Grant" under the 164B process as shown on the attached document.

Sorry, but I will be in touch.

Thanks, LaTonia

—

LaTonia Becenti Johnson, Attorney

Economic and Community Development Unit
Department of Justice/Office of the Attorney General

Navajo Nation
Post Office Box 2010
Window Rock, Arizona 86515
(928) 871-6932 and 6933
(928) 871-6200 (f)
ljohnson@nndoj.org

Notice to Recipient: This email is meant for the only intended recipient of the transmission and may be a communication privileged by law. If you received this email in error, any review, use, dissemination, distribution or copying of this email is strictly prohibited. Please notify the sender immediately of the error by return email and please delete this message from your system. Thank you in advance for your cooperation.

LaTonia Becenti-Johnson <ljohnson@nndoj.org>
To: JB <jb.toda@nnswwmp.org>

Mon, Aug 10, 2015 at 10:21 AM

James,

I am open to deleting the arbitration provision altogether. Perhaps, the following dispute resolution can be used to replace the arbitration provision:

In the event of any dispute, the parties shall use their diligent good faith effort to resolve the dispute, and each party shall continue to perform in accordance with the other provisions of this Agreement during the pendency of the dispute. Any unresolved disputes arising under the Agreement shall be elevated to the _____ and the Executive Director of Division of Community Development for resolution. If they do not resolve their dispute administratively, the Agreement may be terminated.

Nothing herein shall be construed, expressly or implied, as a waiver of the sovereign immunity of the Navajo Nation.

If you would like you can send the above-mentioned italicized provision to the County or if you have another suggestion, please let me know.

Thanks, LaTonia

—

LaTonia Becenti Johnson, Attorney

Economic and Community Development Unit
Department of Justice/Office of the Attorney General

Navajo Nation
Post Office Box 2010
Window Rock, Arizona 86515
(928) 871-6932 and 6933
(928) 871-6200 (f)
ljohnson@nndoj.org

Notice to Recipient: This email is meant for the only intended recipient of the transmission and may be a communication privileged by law. If you received this email in error, any review, use, dissemination, distribution or copying of this email is strictly prohibited. Please notify the sender immediately of the error by return email and please delete this message from your system. Thank you in advance for your cooperation.



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL BILLIE BRANCH
Acting ATTORNEY GENERAL

Received

SEP - 9 2015

Office of Management & Budget
The Navajo Nation, Window Rock, Arizona

M E M O R A N D U M

TO: James Benally, Program Manager
Solid Waste Management Department
Division of Community Development

FROM:


LaTonia B. Johnson, Attorney
Economic/Community Development Unit, Dept. Of Justice

DATE: June 17, 2015

SUBJECT: **RFS No. 15-0794: Review of Amendment One (1) to Joint Powers Agreement between the Navajo Nation and San Juan County**

Upon review of the proposed amendments, it appears that the Navajo Nation will be paying 100% of the operation and maintenance of the facilities. The amendments appear sufficient except for Clause 17. In 2007, the Navajo Nation Council amended the Sovereign Immunity Act and Arbitration Act. The amendments provided a limited waiver of sovereign immunity to allow the Navajo Nation to use arbitration as a form of dispute resolution. Now, this Joint Powers Agreement (JPA) was executed in 1994 prior to the amendments. To ensure it is in conformity with the amendments to the above-mentioned laws, the JPA should be amended as follows:

- Clause 17.1: "shall be submitted to arbitration, according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. Such arbitration shall be conducted in accordance to the procedures set forth below. with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

Memorandum to: James Benally

RE: RFS No. 15-0794: Review of Amendment One (1) to Joint Powers Agreement between the Navajo Nation and San Juan County

June 17, 2015

Page 2

- Clause 17.2: Either party may demand arbitration by making a demand in writing and invoked in accordance with the provision provided in Clause 17.1. Specifically, the Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555. The, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.
- ~~Clause 17.3: Within 20 days after such demand, the other party shall name its arbitrators, or in default of such naming, such arbitrators shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such appointment, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within 30 days of the request therefor, the appointment shall be made by the American Arbitration Association. The arbitration shall be conducted by a single arbitrator selected by the Navajo Nation, unless one of the Parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, two of which shall be chosen by each Party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law;~~
- Clause 17.6: Whether as a result of an award rendered provided herein or of any judicial action to enforce an by a majority of the arbitrationers award resulting from such arbitration, any award against the Nation shall be in strict conformance with the provision of 1 N.N.C. § 554 K(1-6) appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.
- Clause 17.8: notwithstanding clause 17.14, the parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state or tribal court or before an administrative tribunal with respect to any controversy or

Memorandum to: James Benally

RE: RFS No. 15-0794: Review of Amendment One (1) to Joint Powers Agreement between the Navajo Nation and San Juan County

June 17, 2015

Page 3

dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.

- Clause 17.13: Whether in the context of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto, and the application of all provisions herein to the County and its subcontractors, agents, representatives, employees or consultants.
- Clause 17.14: Pursuant to 1 N.N.C. § 554 K and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; neither Party may recover from the other any attorney fees or costs.

While the majority of the above-mentioned is in light of the amendment, I must note that Clause 17.3 was amended to reflect that generally, arbitration is expensive. As such, it is recommended that there is a single arbitrator handling the matter than three (3) arbitrators. I have attached a copy of the Sovereign Immunity Act and Arbitration Act to allow the County to review in light of these proposed amendments.

Second, it is noted there is an indemnifications clause provision in this Agreement. The indemnification requires amendments because the current language indirectly waives the Navajo Nation's sovereign immunity. The Department of Justice proposes the following clause to be replaced with the current clause:

~~Clause 16. Indemnification. Each party hereto ("the indemnifying party") agrees to defend, hold harmless and indemnify the other party ("the indemnified party", its officers, agents and employees, against any and all claims arising out of any~~

Memorandum to: James Benally

RE: RFS No. 15-0794: Review of Amendment One (1) to Joint Powers Agreement between the Navajo Nation and San Juan County
June 17, 2015
Page 4

~~asserted negligent act, error or omission of the indemnifying party which results in a claim against the indemnified party relating to the operation and maintenance of the Stations. This Agreement is not intended to shift the liability of any party to the other party. The parties to this Agreement retain whatever liability they would possess for the present and future acts or failure to act without the existence of this Agreement. To the extent permitted by law, the County agrees to hold the Navajo Nation harmless from any and all losses, liabilities or other causes of action arising from the negligent or willful acts of the County under this Agreement. The County's agreement in this regard is not intended to cover liability arising out of the Navajo Nation's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the Nation. To the extent permitted by Navajo Nation laws and the availability of appropriations from the Navajo Nation Council, the Navajo Nation agrees to hold the County harmless from any and all losses, liabilities, or other causes of action arising from the negligent or willful acts of the Navajo Nation under the Agreement. The Nation's agreement in their regard is not intended to cover liability arising out of the County's negligence or willful misconduct or from the negligence or willful misconduct of agents, employees, or independent contractors responsible to the County.~~

Third, these amendments will have to be approved by the Budget and Finance Committee (BFC) as this agreement constitutes as an Intergovernmental Agreement. As you know, the previous agreement with Coconino County was approved by BFC, and at that time, BFC requested an underline and strike-out version to show the changes. It is recommended that when the amendments are going through the administrative review process that there is an underline and strikeout version along with the document titled "First Amendment to the Joint Powers Agreement."

If you have any questions regarding this memorandum, please contact me at 928-871-6933. Thank you.

LBJ/cb/101

Attachments