



THE NAVAJO NATION

DR. JOE SHIRLEY, JR.
PRESIDENT

BEN SHELLY
VICE PRESIDENT

July 29, 2009



Dr. Christopher Bavasi, Executive Director
Office of Navajo and Hopi Indian Relocation
Post Office Box KK
Flagstaff, AZ 86002

Dear Dr. Bavasi:

Enclosed, for your records, is the Memorandum of Understanding (MOU) that was executed between the Navajo Nation and the Office of Navajo and Hopi Indian Relocation, effective July 13, 2009.

The MOU pertains to business site leasing for the Nahat'a'Dziil Shopping Center, Nahat'a'Dziil, Navajo Nation, Arizona.

Sincerely,

PROJECT DEVELOPMENT DEPARTMENT

Anthony Perry
Department Manager

Enclosure:

cc: Arnold Begay, President, Nahat'a'Dziil Commission Governance (w/enclosure)
Jeanette Jones, Principal Economic Development Specialist, Project Development Department

MEMORANDUM OF UNDERSTANDING



This MEMORANDUM OF UNDERSTANDING, hereinafter referred to as a (“MOU”), is made and entered into this 13th day of July, 2009, by and between the Navajo Nation and the Office of Navajo Hopi Indian Relocation (“ONHIR”).

I. INTRODUCTION

- A. On July 10, 2006, the Navajo Nation received a Secretarial delegation pursuant to 25 U.S.C. 415(e) and the Navajo Nation Business Leasing Regulations of 2005 (“Tribal Regulations”) to issue business site leases on Navajo Nation trust land. This authority was granted specifically to the Navajo Nation Division of Economic Development (“DED”) and the Economic Development Committee of the Navajo Nation Council (“EDC”). DED is the Managing Entity over business site leasing on the Navajo Nation trust land, pursuant to its Master Plan of Operation, Title 2 of the Navajo Nation Code and the Tribal Regulations.
- B. ONHIR is an independent agency in the Executive Branch of the United States Government. As provided in 25 U.S.C. § 640d-10, ONHIR is charged with the responsibility of administering all lands taken into trust for the Navajo Nation pursuant to the Navajo—Hopi Settlement Act, 25 U.S.C. § 640d (“the Act”) and all “final Planning decisions regarding [such] lands.”
- C. As provided in the Act, “such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974.” (25 U.S.C. § 640d-10 (h.))
- D. The Nation, ONHIR and the Nahata Dziil Chapter (“the Chapter”) have identified a 49.48 acre site on trust lands in the Chapter acquired pursuant to the Act as an appropriate location for the Nahata Dziil Shopping Center (“the Shopping Center.”)
- E. The Navajo Nation proposes to diligently pursue funding, construction and leasing of the Shopping Center.
- F. The parties agree that by providing goods and services to Relocates and others and providing construction and post-construction employment to Relocates and others the Shopping Center is in the best interests of Relocates.

MEMORANDUM OF UNDERSTANDING

II. PURPOSE

- A. To have a clear understanding on the roles of the Nation and ONHIR on the issuance of business site leases for the Shopping Center and the management of the Shopping Center.
- B. To have a clear understanding of the party who shall be the Lessor of the business site leases and the Managing Entity of the business site leases for the Shopping Center.
- C. To ensure that all laws of the United States and laws of the Navajo Nation not inconsistent with such Federal Laws are complied with.
- D. To help insure the success of the Shopping Center.

III. IT IS MUTUALLY AGREED BETWEEN THE PARTIES

- A. The form for the business site leases shall be generally governed by the Tribal Regulations, Navajo Nation Business Site Lease Management Plan and the Standard Form Business Site Lease, Part II. with such modifications as may be required to insure that ONHIR's obligations under the laws of the United States are fulfilled.
- B. As such, the Lessor of the business site leases shall be the "Navajo Nation". It is further agreed that ONHIR as administrator of the "New Lands" shall concur in the approval of the business site leases prior to their execution by the Navajo Nation President. This concurrence shall not be unreasonably withheld.
 - a. ONHIR concurrence shall also be required for any leasing transaction that requires the Nation's approval and execution.
 - b. ONHIR concurrence shall also be required in the event the Navajo Nation proposes to allow a Lessee to sell alcoholic beverages.
- C. The Navajo Nation shall manage the construction of the Shopping Center and related infrastructure, and shall obtain such licenses and permits as may be required by applicable law.
- D. Pursuant to the Tribal Regulations and Navajo Nation law, DED shall be the administrator of the business site lease in the capacity of the

MEMORANDUM OF UNDERSTANDING

“Lessor”. It shall also act as the Managing Entity for the business site leases, as defined in the Tribal Regulations.

- a. In the event DED fails to enforce the Lessees’ obligations under the Lease agreements, ONHIR shall have the right, but not the obligation to enforce the Lessees’ obligations under the Lease agreements.
- E. It is anticipated that the infrastructure development of the Shopping Center may be funded by the Nation’s Business and Industrial Development Fund or other sources or lending institutions or through some combination of sources.
- F. Any and all net rentals from the business site leases shall first be used to repay loans until such time the indebtedness is satisfied. Upon the satisfaction of the indebtedness, the net rentals shall be re-directed and used for the purposes of 25 U.S.C. §640d-10(h) (“solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974.”)
 - a. “net rentals” means the gross rentals paid by lessees less the ordinary and necessary expenses of administering the Shopping Center incurred by DED.
 - b. All expenditures “for the benefit of Navajo families residing on Hopi-Partitioned lands as of December 22, 1974” shall be approved in advance by ONHIR.
- G. As allowable under the Tribal Regulations, when the Nahata Dziil Commission Governance receives a delegation of authority from DED and the EDC to issue and administer business site leases, the Navajo Nation will assign its rights under the Shopping Center leases to the Commission Governance. Upon the approval and execution of the novation lease modification Nahata Dziil Governance Commission shall become the Lessor and Managing Entity and DED shall no longer participate in the administration of the business site leases, except for the purpose of the insuring the repayment of the any indebtedness.

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IV. EFFECTIVE DATE AND TERM

- A. This MOU shall become effective on the date it is signed by the President of the Navajo Nation or his authorized representative and the Executive Director of ONHIR.
- B. This MOU shall continue in effect for the term of the business site leases issued for Nahata Dziil Shopping Center.

V. MISCELLANEOUS

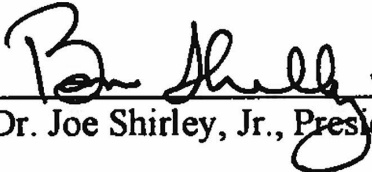
- A. COORDINATION: DED and ONHIR shall cooperatively work together as necessary and as provided herein for the issuance of the business site leases to the future lessees for the Nahata Dziil Shopping Center.
- B. ENTIRE AGREEMENT: This MOU contains all terms and conditions agreed to by the parties herein. No other understanding, oral and otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto. Amendments to this MOU shall be made only by a written agreement hereto signed by both parties to this MOU.
- C. TERMINATION: This MOU can only be terminated by mutual written agreement by both parties.
- D. Nothing herein shall be construed as a waiver, expressly or impliedly, of the sovereign immunity of either party.
- E. NEGOTIATION: In the event a dispute shall arise between the parties to this Agreement, the parties agree to attempt to negotiate a just and equitable settlement thereof. If either party fails or refuses to participate in such negotiations or such negotiations do not result in the Parties resolving the dispute within twenty (20) days after one Party has requested that negotiation begin (and the period is not extended with the consent of the Parties), then either Party may cause the dispute to be referred to mediation.
- F. MEDIATION: The mediation shall take place in a location agreed to through a proceeding conducted for at least four hours by an agreed upon mediator. If the parties cannot select an agreed upon mediator, they may

MEMORANDUM OF UNDERSTANDING

each select a mediator designee who will meet with the opposing party's designee to select a mediator. The parties agree to be responsible for their own costs for mediation. Mediation involves each side of a dispute sitting down in good faith with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties.

IN WITNESS WHEREOF, the parties set their hands this 13th day of July, 2009.

NAVAJO NATION

By:  JUL 13 2009
Dr. Joe Shirley, Jr., President

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

By: 
Dr. Christopher J. Bavasi, Executive Director

NAHATA DZIIL COMMISSION GOVERNANCE

Arnold Dugay - President
 Charon Bell - Vice President
 Ella Katanay - Secretary

Jerry Thompson - Treasurer
 Wayne Lynch - Member

RESOLUTION OF NAHATA DZIIL COMMISSION GOVERNANCE

NDCG-09-05-161

RECOMMENDING AND APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) AMONG NAVAJO NATION, OFFICE OF INDIAN RELOCATION AND NAHATA DZIIL COMMISSION GOVERNANCE TO CONTINUE WITH THE CONSTRUCTION OF THE NAHATA DZIIL SHOPPING CENTER; TO BE ELIGIBLE FOR ANY AVAILABLE CONSTRUCTION FUNDS; AND WITH A CONSENT ON THE BUSINESS SITE LEASE PROCESS TO APPROVE CONCUR AND EXECUTE.

WHEREAS:

1. The Nahata Dziil Commission Governance is certified by the Navajo Nation Council Resolution CAP-36-91 as a local governmental entity of the Navajo Nation government which has the responsibility and authority to promote, protect and preserve the interest and general welfare including the safety of its community, people, programs, and property, etc; and
2. Transportation and Community Development committee of the Navajo Nation by Resolution TCDCAU-66-02, approved governance certification of the Nahata Dziil Commission Governance's Five Management Policies and Procedures pursuant to 26 N.N.C. Section 102 (B), which permits the Nahata Dziil Chapter to exercise local governance authorities contained within 26 N.N.C. Section 103 (D)(1); and
3. The Nahata Dziil Commission Governance is further certified by the Navajo Nation in accordance with its Community Based Land Use Plan, pursuant to Resolution of the Transportation and Community Development Committee of the Navajo Nation Council, to administer its community lands within the New Lands Chapter boundaries and to decide on the best options for its land uses; and
4. Nahata Dziil acquired LOA Five Management System Policies and Procedures on August 16, 2002 (26 NNC 102(A) Section 10; and
5. Acquired Land Use Plan Certification (26 NNC Section 102 (C)) on December 7, 2004; and

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6. Acquired Alternative Governance of Nahata Dziil Chapter to become Nahata Dziil Commission Governance on January 8, 2008.
7. Furthermore, the Nahata Dziil Commission Governance membership, after considerable discussion has determined that it is in the best interest of the Chapter and Chapter memberships, to forward for approval to the duly called Special Commissioners' meeting for community as action on May 01, 2009.


NOW, THEREFORE BE IT RESOLVED THAT:

Recommending and Approving the Memorandum of Understanding (MOU) among Navajo Nation, Office of Navajo and Hopi Indian Relocation, and Nahata Dziil Commission Governance to continue with the construction of the Nahata Dziil Shopping Center, to be eligible for any available construction funds available, and with a consent on the business Site Lease process and approval concurrence and execution.

As allowable under the Tribal Regulation when the Nahata Dziil Commission Governance receives a delegation of authority from DED and the EDC to issue and administer business site leases, the Navajo Nation will assign its rights under the Shopping Center leases to the Commission Governance. Upon the approval and execution of the novation lease modification Nahata Dziil Commission Governance shall become the Lessor and Managing Entity and DED shall no longer participate in the administration of the business site leases.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by and moved for adoption by Commissioner Wayne Lynch, and second by Commissioner Ella Katoney, thoroughly discussed and adopted by a vote of 4 in favor, 0 opposed, at a duly called meeting at Nahata Dziil Commission Governance, NAVAJO NATION, Sanders (Arizona), on this 1st day of May 2009.



Arnold R. Begay, President
Nahata Dziil Commission Governance