

Draft - August 1, 2002
CONSULTATION AND COORDINATION AGREEMENT
Between the State of North Dakota and the
Sovereign Indian Tribes of North Dakota

ARTICLE I - Preamble

Indian Tribes exist in the state of North Dakota. Since time immemorial, indigenous peoples have lived on their homelands in North Dakota with organized societies having distinct native cultures, traditions, and lifestyles. These organized societies have always had and continue to have their own form of autonomous sovereign governments, which predate both the United States and the state of North Dakota.

This agreement, dated _____, 2002, is executed between each of the federally-recognized sovereign Tribes (hereinafter referred to as Tribes) with homelands located within the boundaries of the state of the North Dakota, and the state of North Dakota, through their respective governmental leadership.

The parties hereto acknowledge one another as sovereign, sharing a respect for the values, cultures, and traditions of the citizenship represented by each of the governments. The parties share a desire for an agreement between the state of North Dakota and the Tribes that acknowledges and supports government-to-government relationships.

The parties hereto enter into this AGREEMENT with the understanding that the intent of the AGREEMENT between the Tribes and the state of North Dakota is to ensure the fair and equitable treatment of both the Tribes and the state of North Dakota in a sustaining long-term basis.

ARTICLE II - Statement of Commitment

The commitment by which this AGREEMENT is established between the Tribes and the state of North Dakota shall be the foundation upon which our children will build upon. This foundation is essential to enable state and Tribal governmental leaders to work together toward preserving and protecting the human and natural resources of North Dakota. The work of today and tomorrow will be directed at establishing and sustaining economic vitality, educational opportunity, quality health care, and public safety that will enhance the well-being of all citizens in North Dakota's communities.

In the spirit of understanding and mutual respect, the undersigned leaders of the Tribes and the state of North Dakota shall commit themselves to the following:

- Strengthening efforts to establish and sustain government-to-government relationships with each entity working toward broader understanding of each Tribe's legal and political status as a sovereign government.

- Continuing cooperation by developing channels of communication and institutionalizing government-to-government processes that will promote timely and effective resolution of issues of mutual concern.
- Developing and adopting consultations processes, protocols, and action plans that move all respective parties toward institutionalizing formal government-to-government relationships with the purposes of the AGREEMENT.
- Enhancing communication and coordination through the Governor's commitment to strengthen the roles of Chairperson's office and/or appropriate liaison office.
- Encouraging the North Dakota legislature to establish and sustain a mechanism by which to address issues of mutual concern to both the state and to the Tribes.
- Educating the citizens of North Dakota, particularly the youth as the future leaders, about the Tribal histories, cultures, treaty rights, contemporary Tribal and state government institutions, and the contributions of Indian Tribes to the state of North Dakota and America.
- Working in collaboration to engender mutual understanding and respect and to fight discrimination and racial prejudice.
- Striving to coordinate and cooperate as we seek to enhance the economic resources and infrastructures, protect natural resources, and provide educational, social, and community services that meet the needs of all citizens of North Dakota.

The leaders of state and Tribal governments of North Dakota affirm these commitments, and resolve to move forward in proactive fashion within the government-to-government relationships acknowledged by this AGREEMENT.

Article III - Guiding Principles

1. The following principles shall serve as the underlying premises for the development of government to government relationships between the Tribes and the State of North Dakota:
 - a. The Tribal Nations have the right to self-governance and self-determination in accordance with applicable treaties and applicable federal laws. The Tribes have the right to determine their own political structures and to select their Tribal leaders or representatives in accordance with their respective Tribal Constitutions, By-laws, customs, traditions, and laws.
 - b. The government to government relationships between the State of North Dakota and the Tribal Nations shall be premised upon mutual respect, dignity, and meaningful consultation and consent.
 - c. Based upon principles of Comity the State of North Dakota and the Tribes agree to inform each other, at the earliest available opportunity, of any jurisdictional, legal or proprietary issues or propose actions that may significantly affect the other.

- d. The parties hereto have the right to define their relationships in a spirit of mutual respect, dignity, understanding and with the goal of a peaceful and cooperative coexistence.
- e. The parties hereto shall, in the exercise of their respective political authorities, respect fundamental human rights and freedoms.

Article IV - Guidelines Purposes and Objectives of the Agreement

1. This AGREEMENT further confirms the commitment of the parties to improve upon government to government relationships between the Tribes and the State of North Dakota. This AGREEMENT shall provide a framework for the establishment of lasting and constructive government to government relationships between the State of North Dakota and the Tribes. The objectives of this AGREEMENT shall include but not be limited to: 1) enhancing and improving the communication between the parties; 2) enhancing and improving upon the dispute resolution processes utilized by the parties to prevent adverse effects on any party; and 3) enhancing and improving public recognition, respect and support for Tribal self-governance and self-determination.
2. This AGREEMENT is intended to build confidence in the government to government relationships by setting forth a procedure for which government to government relations shall be implemented. It is further, the purpose of this AGREEMENT to incorporate the procedures set forth in this AGREEMENT into the respective political structures of the parties.
3. The parties hereto further commit to the full implementation, effectiveness and permanence of this AGREEMENT.
4. The parties hereto further intend and commit to provide more effective and efficient services to Tribal Members, and to citizens of the State of North Dakota. As such, the AGREEMENT shall serve as a framework for more specific agreements between two or more of the parties to create policies and mechanisms to resolve or address matters of concern to the Tribes and/or the State of North Dakota.

Article V - Key Principles of the Government to Government Policy

1. The State of North Dakota, the federally recognized tribes with jurisdictions within North Dakota, and the Trenton service area with jurisdictions located within North Dakota have committed to improving and maintaining government to government relations and while acknowledging that communication and cooperation cannot be guaranteed on every issues, this Agreement shall ensure that there remains a durable and effective working relationship for the benefit of all of the parties.
2. In order to honor the commitment set forth in section (1) of this Article, the parties hereto agree that they will:

- a. Work with each other on a government to government level rather than through governmental subdivisions; and
- b. Work to remove any legal and/or procedural impediments that may hinder direct and effective communication and cooperation between the governments and/or governmental programs; and
- c. Work to ensure that the concerns of either party are considered whenever an action or decisions may affect the other's government and or programs; and
- d. Work to encourage cooperation and communication between tribes, state and local governments and/or programs to resolve matters of mutual concern; and
- e. Work with federal agencies that have related responsibilities; and regulatory and program management responsibilities; and
- f. Work to provide mutual assistance as the governments assume new regulatory and program management responsibilities; and
- g. Ensure that the principles set forth herein shall be incorporated into planning and management activities, including but not limited to, program development and implementation, legislative initiatives, and ongoing policy and regulatory processes.

Article VI- Consultation Process and Responsibility

In an effort to promote meaningful and successful consultation the following guiding principles shall be followed by the parties during the consultation process:

- 1. The parties hereto, their agencies and departments commit to consulting with one another on issues that directly affect the other.
- 2. Communication shall involve a two-way dialogue and feedback through face-to-face meetings, telephone calls, correspondence or other means of communication.
- 3. Ongoing frameworks for specific actions, policies and program development shall be utilized based upon the notion that existing relationships promote better communication and prevent the duplication of efforts.
- 4. Tribal interest shall be considered by the state especially in those instances where the state has been delegated a program by the federal government.

5. In any instance where a state or tribal action could directly impact or affect the other there shall be notice to the party that may be affected or impacted to ensure that said party has sufficient time to provide input prior to decisions being made or actions being taken.
6. Good faith efforts shall be made to ensure that consultation occurs and therefore more than one notice shall be given when an action or decisions of one party may affect or impact another party.
7. To maintain the government to government relationship policy officials should participate in the consultation process whenever possible, however delegates of said policy officials shall participate when necessary and appropriate. Each party shall make the determination of who shall represent them during any given consultation.
8. The parties shall make every effort to ensure that honesty and integrity are maintained during the consultation process.
9. The parties shall provide a clear notice and description of the nature of the issue and the potential affect, impact, or conflict that may occur.
10. The parties shall ensure that notice is timely given to a party that may be impacted or affected by an issue and that the potentially affected party is given appropriate time in which to review and respond to requests for consultation.
11. The parties hereto shall determine and develop protocols for consultation. Protocols shall include, but not be limited to, timing, notice, and number of meetings required for meaningful consultation to occur.
12. The state shall recognize that the Tribes are traditionally, culturally and administratively different from one another and shall take differences into account during the consultation process.
13. The parties shall use task forces to develop recommendations on various technical, legal or policy actions to facilitate final decisions by the parties.
14. The parties shall actively participate in the decision-making process to ensure that all views are considered and further to adhere to the terms of this Agreement.
15. Consultation may be formally documented upon the mutual agreement of the parties. Updates on consultation efforts shall be made at the annual State – Tribal Forum for resolution.

Article VII – Dispute Resolution and Amendments

1. Any conflicts arising between any parties hereto pertaining to the meaning, interpretation or methodology of this AGREEMENT shall be brought before the State – Tribal Forum for resolution.
2. Any Tribe may, at any time, raise any issue to any executive decision-making authority of the State of North Dakota. The State of North Dakota may, at any time, raise any issue to any decision-making authority of the Tribe concerned.
3. Parties hereto may propose amendment to this AGREEMENT at any State – Tribal forum. Proposed Amendments must be in writing and circulated to all parties at least ninety (90) days prior to the State – Tribal Forum. Proposed Amendments may be approved by resolution to otherwise, and said amendment shall only take effect upon approval by all parties hereto.

Article VIII – Compliance

Recognizing the inevitability that there may rise an occasion where this Agreement is not adhered to in whole or in part or in the event that consultation fails, there is a need to ensure that each party has procedures in place to respond to such occasion.

1. The parties hereto shall develop and implement dispute resolution procedures. These procedures shall, at a minimum, address a means to identify areas of dispute and a means to ensure that identified disputes are resolved. Mediation, agreed fact-finding mechanisms, or other alternative dispute resolution methods may be utilized.
2. The parties hereto further understand, however, that should the parties fail to reach an agreement to any given dispute, either party shall be free to pursue any action it deems appropriate, including but not limited to, litigation, however, the parties shall make every reasonable effort to prevent litigation.

Article IX – Sovereignty Disclaimers

1. By executing this AGREEMENT, no party waives any rights, including treaty rights, immunities, sovereign immunities, or jurisdiction it may possess. This AGREEMENT in no way diminishes any rights or protections afforded any persons or entities, whether party or not, under tribal, state, federal or international law. This AGREEMENT shall be construed as a policy directive and does not create legally binding or enforceable rights to any party hereto.
2. This AGREEMENT shall in no way alter, affect or diminish the unique relationship that exists between tribal and Federal governments or any other government.

Article X – Tribal and State Roles and Responsibilities

This Article is intended to address those agencies that do not fall within the control or supervision of the Governor's Office or within the control or supervision of the Tribal Council's that are party to this Agreement. This Article shall provide a means for various governmental agencies and departments to participate in and consequently becomes subject to this Agreement. In an effort to ensure that a means exists for agencies and/or Department to opt into this Agreement, the following shall outline and detail their respective roles and responsibilities in the event that they choose to opt into this Agreement:

A. State Government Roles and Responsibilities

Each state Agency, Office or Department, not subject to the control and supervision of the Governor's Office, which chooses to opt in to this Agreement, must become a signatory hereto in accordance with Article XIII of this Agreement. In the event that a state Agency, Office or Department opts into the Agreement, said Agency, Office or Department shall fulfill the following roles and responsibilities:

1. Each office, agency or department shall make every effort to comply with the provisions of this Agreement and shall make every effort to uphold the spirit and purpose of the same: and
2. Each office, agency or department shall develop a plan to implement the government to government policy set forth herein; and
3. Each office, agency or department shall make every effort to work with related offices, agencies or departments of the tribes to cooperate and consult on issues that may affect or impact tribal offices, agencies or departments, so long as said consultation is not specifically precluded by their respective agencies, offices or departments. Consultations shall be made and conducted in accordance with Article VII herein.

B. Tribal Government Roles and Responsibilities.

Each tribal agency, office, or department, not subject to the control of the tribal government, which chooses to opt in to this Agreement, must become a signatory hereto in accordance with Article Xiii of this Agreement. In the event that a tribal agency, Office or department opts into the Agreement, said agency, office or departments, shall fulfill the following roles and responsibilities:

1. Each Office, Agency, or Department shall make every effort to comply with the provisions of this Agreement and shall make every effort to uphold the spirit and purpose of the same; and

2. Each Office, Agency, or Department shall develop a plan to implement the government to government policy set forth herein; and
3. Each Office, Agency or department shall make every effort to work with related Offices, Agencies or Departments of the State to cooperate and consult on issues that may affect or impact state Offices, Agencies or Departments, so long as said consultation is not specifically precluded by their respective Agencies, Offices or Departments. Consultations shall be made and conducted in accordance with Article VII herein.

Article XI – State – Tribal Forum

1. The parties hereto recognize that there shall be a need for an established forum to encourage ongoing communication by the parties in the spirit of the AGREEMENT. In order to ensure that such a forum exists, a State – Tribal Forum shall be established and shall include State and Tribal government political leaders or their designees, the Governor or Governor’s designee, and appropriate cabinet officials. Representatives from the legislative and judicial branches shall be invited to attend to further enhance the ongoing communication and the spirit of this AGREEMENT.
2. The State – Tribal Forum shall be held on an annual basis at a location that is agreed upon by the parties. The date for the first State – Tribal Forum shall be set within ninety (90) days of the signing of this AGREEMENT.
3. The first State – Tribal Forum shall address the development of committees to address issues that are relevant to more than one State agency in accordance with Article VII, Section (C) (2) herein.
4. By executing this AGREEMENT, no party waives any rights, including treaty rights, immunities, sovereign immunities or jurisdictions it may possess. This AGREEMENT in no way diminishes any rights or protections afforded any persons or entities, whether party or not, under tribal, state, federal or international law. This AGREEMENT shall be construed as a policy directive and does not create legally binding or enforceable rights to any party hereto. By signing this AGREEMENT, no party is making any admissions or submissions and this document may not be used in a Court of Law.
5. This AGREEMENT shall in no way alter, affect or diminish the unique relationship that exists between tribal and federal government or any other government.

Article XII – Signatories and Participation

1. The Parties encourage Tribes that are not original signatories to join said AGREEMENT as subsequent signatories with full rights and responsibilities as

detailed herein and in any amendments that shall be approved subsequent to this AGREEMENT.

2. Upon ninety (90) days written notice to the other parties, any party hereto may withdraw participation from this AGREEMENT.
3. All signatories shall promote respect for and full realization of this AGREEMENT.
4. Initial parties have executed this agreement on _____, the _____ day of _____, 20 < and have agreed to work diligently to fulfill their respective obligations and commitments herein stated.

