



August 8, 2018

Kevin DuPuis, Chairman
Fond du Lac Reservation
1720 Big Lake Road
Cloquet, MN 55720

Signing Ceremony: Indian Employment Memorandum of Understanding

Dear Chairman DuPuis,

On July 12, I had the pleasure to formerly sign with you the Indian Employment Memorandum of Understanding.

Thank you again for welcoming us to the Fond du Lac Reservation. This Memorandum of Understanding (MOU) is designed to foster Indian Employment on MnDOT projects, on and near the Fond du Lac Reservation.

Thank you also to those who worked on the MOU to capture our mutual goal of promoting employment for Fond du Lac Band members. This document will help MnDOT and the Fond du Lac Band to work cooperatively together. I invite you to find the Memorandum of Understanding enclosed.

Finally, thank you for sharing the issue presented in the August 1st letter. Tribal Affairs will work with the Fond du Lac Band, at a technical level, to find a working solution. I propose to organize a Consultation meeting with the Fond du Lac Council once our respective technical staffs have met.

Sincerely,

Charles A. Zelle,
Commissioner of MnDOT

Enclosure: Memorandum of Understanding

By Certified Mail

CC: Fond du Lac Reservation: Attorney
Fond du Lac Reservation: TERO Director
MnDOT District Engineer
MnDOT Tribal Liaison



Indian Employment Memorandum of Understanding



The Fond du Lac Band of Lake Superior Chippewa through its Reservation Business Council (RBC) and the State of Minnesota through its Department of Transportation (MNDOT), agree to work together to increase employment of American Indians on Transportation Projects located on and near the Fond du Lac Reservation. The RBC and MNDOT agree to work together to safeguard, as much as possible, the Band's cultural resources during the design and completion of projects located on and near the Fond du Lac Reservation.

These goals are consistent with Section 140(d), Title 23 of the United States Code, Governor Mark Dayton's Executive Order 13-10 signed in August 2013, and the Government-to-Government Transportation Accord signed in April 2002 by MNDOT, the Federal Highway Administration (FHWA), and the Fond du Lac Band of Lake Superior Chippewa's sovereign rights and obligations governing lands within the boundaries of the State of Minnesota.

MNDOT and the RBC agree to the following cooperative actions to achieve this goal:

MNDOT and the RBC, acting jointly through the MNDOT District Engineer or delegated Representative, and the Fond du Lac Tribal Employment Rights Office (TERO) and Tribal Historic Preservation Office (THPO) will meet annually to review long range plans and the three-year program. MNDOT District Representatives and the Band's TERO and THPO Officers will agree on construction projects to receive special attention and special actions to encourage Indian employment and to safeguard the Band's cultural resources.

MNDOT, acting through its Project Manager, will include special provisions encouraging Indian employment for each project designated to receive special attention and special actions encouraging Indian employment. Any projects on the Fond du Lac Reservation will require the Contractor to submit a Compliance Plan to the TERO. The format for that plan will be supplied by the TERO. The RBC will submit compliance review requests to the MNDOT Office of Civil Rights. MNDOT Office of Civil Rights will accommodate such requests based on available resources and overall priorities.

The RBC, acting through their TERO, will identify Band members with skills related to those needed for the construction project, recruit Band members for MNDOT training, contractor training, and on-the-job training (OJT) positions, meet with unions to establish union requirements for Band members on off-reservation transportation projects where the successful bidder has an agreement to hire union labor, and educate contractors in the goals and requirements for tribal employment. Any on-reservation employment is prohibited from requiring union membership as a condition of employment (FDL Ord. #03/07, *Prohibiting Compulsory Membership in a Labor Organization as a Condition of Employment on the Fond du Lac Reservation*).

Following are key steps to be taken by MNDOT and the Fond du Lac Band of Lake Superior Chippewa in addressing Indian employment matters and THPO consultation on MNDOT construction projects.

I. ANNUAL REVIEW OF PLANS AND PROJECTS

- a. Annually, the MNDOT District Engineer, or delegated Representative, and the TERO Officer and Roads Director will review MNDOT's long range plans and three-year programs. The Band representatives will identify projects they consider to be within a reasonable commuting distance from the Fond du Lac Reservation, pursuant to FDL Ord. #12/94, *Tribal Employment Rights*. A MNDOT Project Manager contact will be identified for each of these projects.
- b. Annually, MNDOT will provide the THPO with digital map files of known upcoming projects in areas of interest, defined in the 106 Consultation Agreement between the FHWA and the Fond du Lac Band of Lake Superior Chippewa. The THPO will identify known projects considered to have cultural resource potential, and communicate that information to the MNDOT District Engineer or delegated Representative. This does not exempt MNDOT from other State and Federal requirements for cultural resource management and historic preservation.

II. PROJECT SPECIFIC EMPLOYMENT AND CULTURAL RESOURCES ISSUES

- a. During project development, the MNDOT Project Manager and Fond du Lac TERO will communicate directly regarding specific Indian employment issues.
- b. During project development, the MNDOT Cultural Resources Unit, MNDOT Project Manager, and Fond du Lac THPO will communicate directly regarding specific cultural resource issues. This does not exempt MNDOT from other State and Federal collaborative requirements.

III. CONTRACT SPECIAL PROVISIONS

- a. MNDOT Project Managers will include the S-Special Provisions Relating to Indian employment in every project located on or within a reasonable commuting distance from the Fond du Lac Reservation. The MNDOT Project Manager will contact the TERO Officer to verify the person to be listed in the S-Special Provisions Relating to Indian employment as the point of contact for all contractors preparing bids.

IV. TERO FEES

- a. MNDOT must require the Contractor to pay the Fond du Lac TERO Office a 3% (three percent) rate for the percentage of work completed on the reservation on all MNDOT projects completed on the reservation.
- b. RBC agrees that the TERO Fee of 3% (three percent) will apply to all MNDOT construction projects, completed on the reservation.

V. PRE-BID MEETINGS

- a. The MNDOT Project Manager will invite the Fond du Lac TERO Officer to any pre-bid meetings for MNDOT projects on or near the Fond du Lac Reservation.

- b. The TERO Officer will be invited to attend, or arrange for a representative to attend, any pre-bid meetings to which an invitation is extended in order to address Indian employment matters.

VI. PRECONSTRUCTION CONFERENCES

- a. Once a project requiring Fond du Lac TERO compliance is let and awarded, the MNDOT Project Engineer will notify the TERO Officer of the successful bidder and extend an invitation to the preconstruction conference.
 - i. The TERO Officer will supply the successful bidder with a Fond du Lac TERO Compliance form, to be filled out and filed with the TERO pursuant to FDL Ord. #12/94, *Tribal Employment Rights*.
- b. For any project that requires Fond du Lac THPO attention, the MNDOT Project Engineer will notify the THPO of the successful bidder and extend an invitation to the preconstruction conference.

VII. EVALUATION OF EMPLOYMENT SUCCESS

- a. The MNDOT Project Manager will contact the TERO Officer to discuss success/progress in carrying out the Compliance Plan at least once during any project meeting the criteria set forth above.

The signatories to this agreement recognize that this Memorandum of Understanding is a first step, and will direct their staff to continue to meet on a quarterly basis to assess success and build stronger relationships. This document may be amended or modified by the respective parties, at any time agreed upon, if needed.

This Memorandum of Understanding is hereby agreed to by:

MN Department of Transportation

 7/12/18

Charles A. Zelle, Commissioner Date

 7/24/18

Department of Transportation Contract Management Date

Fond du Lac Band of Lake Superior Chippewa

 7-12-18

Kevin R. Dupuis, Sr., Chairman Date

 7-16-18

Ferdinand Martineau, Jr., Secretary/Treasurer Date