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REGULATION AND LICENSING

STATE TRIBAL COLLABORATION &

COMMUNICATIONS POLICY

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DECEMBER 18, 2009

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Section I. Background

In 2003, Governor Bill Richardson and 21 out of 22 Indian Tribes, Nations, and Pueblos of New Mexico adopted the 2003 Statement of Policy and Process (“Statement”), to “establish and promote a relationship of cooperation, coordination, open communication and good will, and [to] work in good faith to amicably and fairly resolve issues and differences.” The Statement directs state agencies to interact with the tribal governments and provides that such interaction “shall be based on a government-to-government relationship” aimed at furthering the purposes of meaningful government-to-government consultation.

In 2005, Governor Bill Richardson issued Executive Order 2005-004 mandating that the Executive State agencies adopt pilot tribal consultation plans with the input of the 22 New Mexico Nations, Tribes and Pueblos.

On March 19, 2009, Governor Bill Richardson signed the State Tribal Collaboration Act into law. The STCA reflects the commitment of the state to work together with tribal leaders on a true government-to-government basis. The STCA institutionalizes the intergovernmental relationship through several interdependent components and provides a consistent approach through which the State and the Nations, Tribes and Pueblos can work together to better collaborate and communicate on issues of mutual concern.

In the fall of 2009, pursuant to the STCA, the Efficient Services for New Mexico Group, comprised of the Department of Finance and Administration, the Department of Information Technology, the General Services Department, the State Personnel Office, Regulation and Licensing and the Taxation and Revenue Department, met with representatives from New Mexico’s Indian Nations, Tribe and Pueblos to develop an overarching tribal policy that:

- Promotes effective communication and collaboration between the state agency and New Mexico Indian Nations, Tribes and Pueblos;
- Promotes positive government-to-government relations between the state and New Mexico Indian Nations, Tribes and Pueblos;
- Promotes cultural competency in providing effective services to New Mexico Indian Nations, Tribes and Pueblos; and
- Establishes a method for notifying employees of the state agency.

The Regulation and Licensing State Tribal Collaboration and Communication Policy (hereinafter Policy) meets the intent of the STCA and defines the Agency’s commitment to collaborate and communicate with New Mexico’s Indian Nations, Tribes, and Pueblos.

The Agency submits this Policy to meet the intent of the STCA, and the interests of the Agency and the 22 Tribal Governments.

Section II. Purpose

The Policy is to involve and include Tribal Governments in the development of policies, programs and services administered by the Agency to enhance communication and mutual

cooperation, identify issues of mutual concern, examine ways to design solutions, and develop programs and services that meet the needs of Tribes. The Policy establishes the Agency's commitment to work with Tribal Governments to strengthen intergovernmental relationships and promote coordinated collaboration.

Section III. Principles

Recognize and Respect Sovereignty. The State and Tribal Governments are sovereign governments. Government sovereignty must be respected and recognized in government-to-government consultation and collaboration between the Agency and Tribal Governments. Tribal Governments have the inherent sovereignty to govern their own affairs. The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy.

Government-to-Government Relations. The Agency recognizes the importance of full and open communication, collaboration, and cooperation with New Mexico's Tribes. The Agency further recognizes that the Tribes singularly or collectively, as sovereign entities, may have an interest in the Agency's policies and programs that affect tribal interests or tribal members. The Agency further recognizes the value of dialogue between Tribes and the Agency with regard to those policies and programs.

Efficiently Addressing Tribal Issues and Concerns. The Agency recognizes the value of Tribal input to Agency programs and services. Thus it is important that Tribal interests are reviewed and considered during the Agency's policy development process.

Collaboration and Mutual Resolution. The Agency and Tribes recognize that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies and shall work in good faith to address and mutually resolve concerns.

Informal Communications. Agency and Tribes recognize that formal consultation may not be required in all situations or interactions. Staff for the Agency and Tribes may communicate outside the consultation process, not negating the protocol or authority of the Agency and Tribes to request formal consultation.

Section IV. Definitions

The following definitions shall apply in this Policy:

American Indian or Alaska Native – Pursuant the STCA means:

- A. Individuals who are members of any federally recognized Indian tribe, nation or pueblo;
- B. Individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or
- C. Individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs.

Collaboration – Collaboration is a recursive process in which two or more parties work together to achieve a common set of goals. Collaboration may occur between the state and tribes and their respective agencies or departments and may involve other Indian organizations if needed. Collaboration is the timely and accurate day-to-day communication and joint efforts that lay the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow up as needed.

Communication – Verbal, electronic or written exchange of information between the state and tribal governments.

Consensus – Consensus is a decision making method of reaching agreement through a participatory process that includes appropriate state and tribal governments and officials, actively solicits input and participation of state and tribal decision makers, encourages cooperation in reaching agreement on the best possible decision for those affected and offers opportunity for input in the decision making process. The parties should endeavor to conduct deliberations in good faith in accordance with the processes outlined in this Policy.

Consultation – Consultation requires an enhanced form of communication that emphasizes trust and respect. It also requires a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is mutually satisfying deliberation that results in collaboration and joint decision making. Consultation with tribal governments is uniquely a government to government process. In this government to government consultation process, the goals are (a) to reach consensus during decision making and; (b) whether or not consensus is reached, at the end of the process the parties have honored each other's sovereignty.

Cultural Competency – Refers to an individual or organization's ability to interact effectively with people of different cultures. Operationally, cultural competency is the act of integrating knowledge about individuals and groups of people into specific standards, policies, practices and attitudes that are used in appropriate cultural settings to increase the quality of services.

Culturally Relevant – Describes a condition where programs or services are provided according to the clients' cultural backgrounds.

Linguistic Competency – refers to one's capacity to communicate effectively and convey information in a manner that is easily understood by diverse audiences including persons of limited English proficiency, those who have low literacy skills or are not literate, and individuals with disabilities.

Government to Government – Describes the relationship between tribes and the federal government. It is also used to describe the relationship and protocols between tribes and other governments, such as the state.

Indian Organizations – Indian organizations represent or provide services to Alaska Natives and/or Native Americans living on tribal lands, and/or urban areas, and/or off tribal land.

Internal Agency Operation Exemption – Refers to internal agency operations and processes not subject to this Policy. Each agency has the authority and discretion to determine what internal operations processes are exempt from the processes contained in this Policy.

Internal Tribal Government Operations Exemption – Refers to certain internal tribal government operations not subject to this Policy. Each tribal sovereign government has the authority and discretion to determine what internal processes are exempt from the processes contained in this Policy.

Participation – Participation is an ongoing activity that allows all interested parties to engage one another through negotiation, compromise and problem solving to reach a desired outcome.

State Sovereignty – Each state is a sovereign entity in our federal system and has governmental powers except to the extent the states have agreed in our constitutional framework to the supremacy of federal laws and treaties.

Tribal Implications – Refers to state legislation, regulations and other policy statements or actions that have substantial direct effects on one or more Indian nations, tribes or pueblos, or on the relationship between the state and tribal governments.

Tribal Officials – Elected or duly appointed officials of Indian Tribal governments or authorized intertribal organizations.

Tribal Sovereignty – Native American tribes are recognized in federal law as possessing sovereignty over their members and their territory. The sovereignty tribes possess is inherent, which means that it comes from within the tribe itself and existed before the founding of the United States. Tribal sovereignty is not absolute, but rather is subject to certain limits resulting from the unique relationship of the tribes to the United States. Under federal law, tribes retain all aspects of their original sovereignty except those that have been given up by treaty or taken away by congressional action or divested by implication of their dependent status. In addition to inherent sovereignty, tribal governments may also exercise authority delegated to them by Congress.

Tribes – The New Mexico Indian Tribes, Nations or Pueblos that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a as updated periodically.

Section V. General Provisions

A. Collaboration and Communication

1. To promote effective communication and collaboration between the Agency and the Tribes relating to this Policy, the Agency shall endeavor to:

- (a) Communicate with each Tribe and establish:

- (i) Preferred methods of communication (formal and informal);
- (ii) Issues or areas of tribal interest relating the individual Agency programs or activities;
- (iii) Appropriate tribal contacts relating to each program area interest;
- (iv) Tribal interest in collaborative or cooperative opportunities with the Agency.

(b) Conduct face-to-face meetings between the appropriate state and tribal policy and/or technical level staff to increase understandings of any proposed actions and enhance development of effective outcomes and solutions.

2. Tribal Liaisons. To improve state-tribal interactions, enhance communications and resolve potential issues in improving the delivery of agency services to Tribes, State Tribal Liaisons shall work with Tribal Leaders, staff and their programs in developing policies or implementing program changes.

3. Role of Tribal Advisory Bodies. The Agency may disseminate information and/or solicit advice and recommendations from Tribal advisory organizations or committees to involve Tribes in policy development prior to the more formal consultation contained in this Policy. Input derived from such activities will not be defined as tribal consultation.

4. Establishment of Work Groups. The Agency and Tribes may choose to establish a work group and/or task force to develop recommendations. (See, e.g., sample procedures at Attachment A.) Work Groups can be implemented on their own to address or develop more technical aspects of policies or programs separate or in conjunction with the formal consultation process. The work group shall, to the extent possible, consist of members from the Agency and the tribes.

5. Consultation.

(a) Applicability. Tribal consultation is most effective and meaningful when conducted before taking action that impacts Tribal Governments and people. The State and Tribes acknowledge that a best case scenario may not always exist, and that the parties may not have sufficient time or resources to fully consult on a relevant issue. If a process appropriate for consultation has not already begun, this Policy recommends initiating consultation as soon as possible thereafter. (See, e.g., sample procedures at Attachment B.) The principle focus for government-to-government consultation is with tribal governments through their respective elected or duly appointed tribal officials. Nothing herein shall restrict or prohibit the ability or willingness of tribal officials and the Agency Head to meet directly on matters that require direct consultation. The Agency and Tribes agree the principle of leader-to-leader communication, collaboration and cooperation is always the first step in government-to-government consultation in accordance with the STCA.

(b) Areas of Consultation. The Agency shall make a good faith effort to review all proposed policies, rulemakings, or other aspects of programmatic actions that may have tribal impacts and determine whether tribal consultation should be called to provide Tribal Governments with an opportunity for an exchange of information and opinion prior to making a

decision. The Agency shall endeavor to notify Tribal Governments and inquire whether Tribal consultation should occur. Tribal Officials have the discretion to decide whether to engage in the consultation process.

(c) Limitation on Consultation.

i. The Policy shall not diminish any administrative or legal remedies otherwise available by law to the Agency or a Tribal Government.

ii. The Policy does not prevent the Agency and Tribal Governments from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal, State or Tribal laws or regulations.

iii. Final Decision Making Authority: The Agency retains the final decision-making authority with respect to actions undertaken by the Agency and within the Agency jurisdiction.

B. Cultural and Linguistic Competency

1. Support ongoing professional development and in-service training for all organizational levels for building knowledge, awareness and skills in the area of cultural and linguistic competence.

2. Review or create policies to assure that new staff is provided with training, technical assistance and other supports necessary to work within culturally and linguistically diverse communities.

3. Hold meeting with tribal leadership or staff on tribal land.

4. Require department representatives and designated supervisors to attend periodic training in tribal culture, relations, and legal status designed to create an awareness of the unique nature of tribal governments and an understanding of and sensitivity to, Native American issues.

Section VI. Dissemination of Policy

1. Upon adoption of this Policy, the Agency shall distribute this Policy to all employees. This policy shall also be incorporated into the Agency's policy and procedure manual.

2. The Agency shall ensure that all employees will receive pertinent training on the Policy.

Section VII. Amendments and Review of Policy

At least once a year, the Agency and the Tribes shall review and evaluate the effectiveness of the Policy. The Policy shall be revised as needed upon mutual agreement of the parties.

Section VIII. Effective Date

The Policy shall become effective upon the date signed by the Head of the Agency.

Section IX. Sovereign Immunity

This Policy does not waive, alter or diminish the sovereignty of the State of New Mexico and Tribal Governments, nor does it affect federal or tribal protected rights for individual American Indians or Alaska Natives, or any other rights under self-determination, self-governance, or other applicable Federal, Tribal or State laws.

Section X. Confidentiality

The Agency shall protect and exhibit a high degree of respect and sensitivity regarding confidential information provided by Tribal Governments and staff, and shall ensure confidentiality where possible to the extent provided by State and Federal law.

Section XI. Closing Statement/Signatures

The Agency hereby adopts the Regulation and Licensing Tribal Communication and Collaboration Policy.



Agency Head

12/18/09

Date

Attachment A

Sample Work Group Procedures

DISCLAIMER: The following illustration serves only as sample procedures for State-Tribal Work Groups. The inclusion of this Attachment does not mandate the adoption of these procedures by a work group. Whether these, or alternative procedures, are adopted remains the sole discretion of the Agency Head and/or as duly-delegated to the Work Group.

1. Establishment of Work Groups. The Agency and tribes may choose to establish a work group and/or task force to develop recommendations. The work group shall, to the extent possible, consist of members from the Agency and the tribes.
2. Membership on Work Groups. The Agency shall solicit tribal membership on work groups. The Agency shall widely publicize the solicitation with the intent to reach all tribes, and request the tribes appoint tribal members in writing for work groups. Membership should be composed of Tribal and Agency members. If Agency or tribal leadership changes, work group membership shall be re-designated as appropriate.
3. Meeting Notices. Written notices announcing meetings shall identify the purpose, work group, task force preliminary responsibility, time frame and other specific tasks. All meetings shall be open and widely publicized by the Group Member Agency offices and tribal offices.
4. Work Group Procedures. The work group may establish procedures to govern the meetings. Such procedures will include, but are not limited to, the following:
 - a. Selection of tribal and state co-chairs to represent the work group and to serve as lead coordinators to ensure the tribal consultation policy is adhered to;
 - b. Defining roles and responsibilities of individual work group members;
 - c. Process for decision-making to arrive at a final product, which may consist of direct participation in work groups or providing timely and written comments from tribal and state agencies or both;
 - d. Process for determining drafting and dissemination of all final work group products, including data sharing materials subject to policy, procedures and/or federal or state statutes;
 - e. Defining an appropriate timeline; and
 - f. Attendance of meetings related to the work group. Members of the work group shall make good faith effort to attend all meetings.
5. Work Group Responsibility. The work group will develop final recommendations for the Group Member Agency and tribal review and/or approval.

6. Work Group Parameters. Parameters shall determine the lines of authority, responsibility and boundaries, definition of issues and delineation of negotiable and non-negotiable points.

7. Work Group Final Products. Once the work group has created a final draft recommendation or policy, it will initiate the following process to facilitate implementation or additional consultation:

a. Distribution. The work group will distribute the draft recommendation to the Tribal Governor or President, the Group Member Agency Secretary and Group Member Agency tribal liaison for review and comment.

b. Comment. The tribes and the Group Member Agency will return comments to the work group, which will meet in a timely manner to discuss the comments and determine the next course of action.

i. If the work group considers the policy to be substantially complete as written, the work group will forward the proposed policy to the group member agency and the tribes for finalization.

ii. The work group will record any contrary comments, disagreements and/or dissention in the final report.

iii. If, based on the comments, the work group determines that the policy should be rewritten; it will reinitiate the consultation process to redraft the policy.

iv. If the Group Member Agency and the Tribes accept the policy as is, the work group will accomplish the final processing of the policy.

8. Recommendations. The Group Member Agency and Tribes should seriously consider any work group final recommendations for actions or implementation.

9. Implementation. Once the collaboration process is complete and the Group Member Agency and Tribes have finalized the recommendation, the Group Member Agency and Tribal work group co-chairs shall be responsible for broadly distributing the final recommendation to the Group Member Agency departments and Tribal leaders.

10. Evaluation. At the conclusion of the work group collaboration process, the work group participants will participate in an evaluation of the work group collaboration process. The evaluation will measure outcomes and make recommendations for improving the work group collaboration process.

Attachment B

Sample Consultation Procedures

DISCLAIMER: The following illustration serves only as sample procedures for State-Tribal Collaboration. The inclusion of this Attachment does not mandate the adoption of these procedures. Whether these, or alternative procedures, are adopted remains the sole discretion of the Agency Head and/or duly-delegated representatives.

1. Initiation.

a. Consultation may be initiated by the Governor of the State of New Mexico.

b. Consultation may be initiated by the Agency either requesting consultation or alerting Tribal Governments as early as possible to allow for sufficient consultation of programmatic actions that the Agency determines to warrant consultation. Additional procedures for consultation may be developed to assist in the implementation of the Consultation Plan. Consultation shall be held wherever practical, including Tribal Government locations.

c. Consultation may be initiated at the request of Tribal Governors or Presidents or duly authorized Tribal Officials.

d. Consultation shall be required when applicable Federal, State, or Tribal law or regulations require consultation.

2. Written Notification. Written notification for consultation by the Agency or Tribal Governments shall:

a. Identify the proposed programmatic action to be consulted upon and provide information relating to the programmatic action.

b. Identify personnel who are authorized to consult on behalf of the Agency or Tribal Government(s).

3. Delegation. The Agency Secretary may delegate consultation compliance oversight to the Agency Deputy Secretary or other senior Agency staff. A Tribal Governor or President may delegate consultation compliance oversight to a Tribal Official or delegated representatives. Both the Agency and Tribal Governments will be responsible for ensuring the implementation of the Agency Tribal Collaboration and Communication Policy.

a. Consultation shall be between the Agency and Tribal Officials or their delegated representatives with authority to negotiate on their behalf. Consultation on a Programmatic

Action requiring compliance with applicable Federal, State, or Tribal laws, shall be undertaken and coordinated by the Agency Office of the Secretary, Agency Division Directors and Bureau Chiefs, Agency Office of General Counsel, and selected Agency staff. Agency staff is encouraged to maintain regular informal communication and cooperation with Tribal Governments, Tribal Officials, and Tribal environmental staff.

b. Agency and Tribal Governments shall identify and update points of contact on an annual basis.

4. Consultation Process.

a. Notification.

i. Within 5 days of receipt of a written request for consultation by one or more Tribal Governments delivered to the Secretary of the Agency, the Agency shall contact the Tribal Government(s) to schedule a Tribal consultation meeting before final agency action.

ii. Upon a written invitation for consultation by the Secretary of the Agency to one or more Tribal Governments:

(1) The Tribal Government(s) shall accept the invitation within 10 days. If no Tribal Government accepts the invitation, the Agency shall issue a second written invitation to the Tribal Government(s).

(2) If no Tribal Government accepts the second invitation within 7 days, the Agency may conclude that Tribal consultation is not required and may proceed with the proposed action. The second invitation must indicate that if the Tribal Government chooses not to accept the invitation within 7 days, that the Agency will conclude that no consultation is required.

b. Consultation.

i. The Agency shall contact the Tribal Government(s) within 10 days of receipt of a request for consultation or an acceptance of an invitation for consultation to schedule a meeting. The Agency encourages meeting with all interested Tribal Government(s) at one time, but will meet with individual Tribal Governments at the request of the Tribal Governor, President, or other delegated Tribal Official.

ii. The Tribal Government(s) may submit written comments to the Agency within 10 days after the initial meeting. The Tribal Government(s) also may request an additional meeting with the Agency.

iii. The Agency shall schedule additional meetings as deemed necessary by the Agency or if requested by the Tribal Government(s).

iv. Tribal consultation shall be deemed complete when the initial meeting has been conducted and the Tribal Government(s) have been satisfied, or at the conclusion of the final meeting.

