

RESOLUTION NO. 127-09

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION RATIFYING AN AGREEMENT WITH THE UNITED STATES OF AMERICA, DEPARTMENT OF TRANSPORTATION, INDIAN RESERVATION AND ROADS PROGRAM

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

WHEREAS, the U.S. Congress has found that the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations; and that the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

WHEREAS, self-governance has authorized the Nation to plan, conduct, consolidate, administer, and receive funding for all programs, services, functions and activities as authorized under the authority granted by section 202(d)5 of Chapter 2 of Title 23, United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU);

WHEREAS, in 1993 the Cherokee Nation executed a Compact of Self-Governance and was one of the participants in the IRR Pilot Project in 1999 and has successfully operated its own roads program since that time;

WHEREAS, Resolution Number 21-90 approved on February 10, 1990 first authorized Principal Chief Wilma Mankiller to enter a self-governance annual funding agreement with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act, P.L. 93-638 as amended;

WHEREAS, Legislative Act 15-01, approved on May 22, 2001 authorized the Principal Chief to execute Treaties, Memorandums of Agreement, Contracts, Compacts and Other Agreements on Behalf of the Nation; with ratification by the Council;

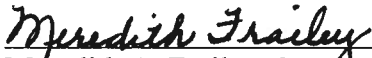
WHEREAS, the Principal Chief or his/her designee has negotiated and executed the Indian Reservation Roads Program Agreement entered into by the Administrator, Federal Highway Administration for and on behalf of the United States Department of Transportation;

WHEREAS, receiving funding directly from Federal Highway Administration is expected to be less cumbersome and result in timely payment to the Nation.


BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation hereby ratifies the Agreement with The United States Of America, Department Of Transportation, Indian Reservation and Roads Program entered into on August 25, 2009 for Indian Reservation Roads programs, services, functions, and activities and including all routine funding attachments to such agreement as they are negotiated from time-to-time.

CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 16th day of November, 2009, having 16 members present, constituting a quorum, by the vote of 16 yea; 0 nay; 0 abstaining.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation


ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 20th day of November, 2009.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation

**INDIAN RESERVATION ROADS PROGRAM
AGREEMENT
BETWEEN
CHEROKEE NATION
AND THE
UNITED STATES DEPARTMENT OF
TRANSPORTATION**

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority: This Indian Reservation Roads Program Agreement (hereinafter “the Agreement”) is entered into by the Administrator, Federal Highway Administration, (hereinafter “Administrator”), for and on behalf of the United States Department of Transportation (hereinafter “DOT”) and by the Cherokee Nation (hereinafter “the Nation”) (collectively hereinafter the “Parties”), under the authority of the Constitution of the Nation and by authorization of the Tribal Government, a copy of which is attached hereto, and under the authority granted by section 202(d)(5) of Chapter 2 of Title 23, United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005), and the Delegations of Authority set forth in 49 CFR § 1.48(b)(29). This agreement will be implemented in a manner consistent with Executive Order 13175 (Nov. 6, 2000, 65 Fed. Reg. 67249) (Consultation and Coordination with Indian Tribal Governments) and the DOT’s Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999), as amended by SAFETEA-LU. This Agreement authorizes the Nation to perform the planning, research, design, engineering, construction, and maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to the Cherokee Nation Reservation or a community of the Nation and are eligible

for funding pursuant to 25 CFR Part 170. This Agreement is made pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFTEA-LU, the Indian Reservation Roads (IRR) Program regulations (25 CFR Part 170), and in accordance with the Indian Self-Determination and Education Assistance Act (hereinafter “the ISDEAA”), Pub. L. 93-638, as amended (25 U.S.C. § 450 et seq.).¹

Section 2. Purpose: The purpose of this Agreement is as follows:

- (1) to transfer to the Nation all of the functions and duties that the Secretary of the Interior would have performed with respect to a program or project under Chapter 2 of Title 23, United States Code, other than those functions and duties that cannot be legally transferred under the ISDEAA, together with such additional activities as the Nation may perform under SAFETEA-LU and the IRR Program regulations (25 CFR Part 170);
- (2) to carry out the Federal Highway Administration’s (FHWA) statutory requirements pursuant to section 1119 of SAFETEA-LU and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Nation;
- (3) to provide the Nation or its designee, under the attached Referenced Funding Agreement (RFA), its formula share of IRR Program funds pursuant to 25 CFR Part 170, and those additional amounts as the Administrator determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project, together with such additional Federal Lands Highways funds as the Nation may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other

¹ The Tribe and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and its implementing regulations (25 CFR Parts 900 and 1000) to this Agreement. It is expressly understood that through the execution of this Agreement, neither party waives any rights regarding the application of the aforementioned Act and its regulations to this Agreement and no precedent is established for future agreements with this Tribe or any other Indian Tribe. The parties agree to work in good faith to resolve this issue in future agreements.

appropriation to the Department of Transportation (DOT). The Eastern Oklahoma Bureau of Indian Affairs (BIA) Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202(d)(2)(F)(i) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and the attached RFA (Attachment A).

ARTICLE II – TERMS, PROVISIONS, and CONDITIONS

Section 1. Effective Date and Term: This Agreement shall become effective upon the date of its approval and execution by authorized representatives of the Nation and the Administrator and shall extend through fiscal year 2011, subject to any changes in statutory authorization.

Section 2. Funding:

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202(d)(5)(E), as amended by section 1119(g)(4) of Pub. L. 109-59, the Administrator shall provide to the Nation or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Nation would otherwise receive for the IRR program in accordance with the funding formula applicable to the IRR Program (25 CFR Part 170, Subpart C), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Nation's IRR Program or projects. The Parties agree to annually provide the Nation the amounts that would have been withheld for the costs of the BIA for administration of the Nation's program or projects as provided in 23 U.S.C. § 202(d)(5)(E) and further identified in Attachment A to this Agreement.

B. Upon the execution of this Agreement and the RFA by both Parties, and subject to the availability of funds and the determination of the Nation's annual Relative Need Distribution Factor (RNDF) percentage, the Administrator shall notify the Nation or its designee, in accordance with Article IV, section 5, that the funds identified in the RFA are available. The Nation shall submit electronic banking information under an ACH Vendor/Miscellaneous Payment Enrollment Form (see Attachment B) to the Administrator and the Administrator shall

provide to the Nation a single advance payment in the amount identified in the attached RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to section 1119(g)(5)(B) of SAFETEA-LU (23 U.S.C. § 202(d)(5)), all funds shall be paid to the Nation without regard to the organizational level at which the Department of the Interior or the DOT has previously carried out under the Federal Lands Highways Program, the programs, functions, services, or activities (PFSAs) involved.

D. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs are an eligible cost and the Nation may use their IRR Program allocation to pay such costs. The Nation shall include a line item for Contract Support Costs in the Nation's project construction budgets. The Nation may also include, as eligible Contract Support Costs, one-time start-up costs and pre-award costs incurred by the Nation in the initial year of this Agreement in accordance with 25 U.S.C. §§ 450j-1(a)(5) and (6). The Parties acknowledge that no additional IRR Program funds are available for Contract Support Costs.

E. Funds advanced to the Nation under this Agreement shall be used by the Nation as permitted under 23 U.S.C. § 202(d) and 25 CFR Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Agreement. The Nation reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Nation pending disbursement for a purpose authorized under the Agreement shall be placed in appropriate savings, checking or investment accounts. For purposes of this Agreement, such funds when invested or deposited by the Nation shall be subject to the following:

(i) Advanced funds not immediately spent for program activities may be invested only in obligations of the United States, in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in

obligations of the United States or securities that are guaranteed by the United States;

(ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;

(iii) Interest and investment income that accrue on any funds provided for by agreement become the property of the Nation in accordance with the provisions of 25 U.S.C. § 450j(b) and may be used on projects identified on an FHWA approved IRR TIP (section 1119(c) of SAFETEA-LU).

(iv) Upon the receipt of funds under this Agreement, the Nation shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Nation may accumulate multiple annual allocations of IRR Program funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list (25 CFR Part 170).

F. The Nation may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122, 25 CFR §§ 170.300 – 303, and other applicable laws.

G. 1. The Nation may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122 with the expectation of payment of IRR Program funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the Nation elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Administrator agrees (i) to maintain the project(s) on the FHWA-approved TIP until all debt instruments, including interest thereon, are repaid in full by the Nation, and (ii) at the option and direction of the Nation (after receipt of electronic banking information on the Payment Enrollment Form by the Administrator), to provide all or a portion of the funds the Nation is eligible to receive under this Agreement

directly to a trustee or other depository so designated by the Nation pursuant to the provisions of any RFA received by the Administrator thereunder.

2. The designation of an eligible debt financing instrument for reimbursement with funds awarded under this Agreement shall not –

- a) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principle or interest on the eligible debt financing instrument entered into by the Nation; or
- b) create any right of a third party against the United States for payment under the eligible debt-financing instrument.

H. As authorized by 25 CFR § 170.301, the Nation may use IRR Program funds to:

- (i) leverage other funds; and
- (ii) pay back loans or other finance instruments for a project that:
 - (a) the Nation paid for in advance of the current year using non-IRR Program funds, including Tribal funds; and
 - (b) was included in an FHWA-approved IRRTIP.

I. The Nation may use IRR Program funds awarded under this Agreement to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

J. The Parties agree that this Agreement is entered into, and that funds are made available to the Nation, in accordance with the ISDEAA pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU. Payments made by the Administrator under this Agreement shall be made in accordance with Article II, Section 2.B. herein. In the event

funds due the Nation under this Agreement are not paid to the Nation in accordance with the requirements of Article II, Section 2.B., the Parties shall rely upon the dispute resolution provisions set forth in Article II, Section 4 of this Agreement.²

Section 3. Powers: The Nation shall have all powers that the Secretary of the Interior would have exercised in administering the funds provided to the Nation for such program under 23 U.S.C. § 202(d), except to the extent that such powers are powers that inherently cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to the Secretary of the Interior's powers under 25 CFR Part 170, together with such duties and responsibilities as may be performed by an Indian Nation under the 25 CFR Part 170 regulations or as are otherwise permitted by law.

Section 4. Dispute Resolution: In the event of a dispute arising under this Agreement, the Nation and the Administrator agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized in 25 CFR § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes. The Administrator agrees to resolve disputes at the lowest possible staff level and by consent whenever possible.

Section 5. Construction of this Agreement: This Agreement shall be construed in a manner to facilitate and enable the transfer of programs authorized by 23 U.S.C. § 202, as amended by SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005).

Section 6. Activities to be Performed: The activities covered by this Agreement are:

- Transportation Planning;
- Construction Management;
- Program Administration;
- Design;
- Development of Environmental Package ;
- Right-of-way and Utility Relocation;

² The language of footnote 1 is incorporated by reference herein.

- Construction;
- Transit Project Management;
- Road Maintenance as authorized under SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU; and
- Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR Part 170, as each may be amended by SAFETEA-LU, or other applicable law.

Section 7. Limitation of Costs: The Nation shall not be obligated to continue performance under this Agreement that requires an expenditure of funds in excess of the amount of funds awarded under this Agreement or the RFA. If, at any time, the Nation has reason to believe that the total amount required for performance of this Agreement, or a specific activity conducted under this Agreement or the RFA would be greater than the amount of funds provided under this Agreement or the RFA, the Nation shall provide reasonable notice to the Administrator. If the Administrator does not increase the amount of funds allocated under this Agreement or the RFA, the Nation may suspend performance of the Agreement until such time as additional funds are made available.

Section 8. Carryover: Any funds provided to the Nation under this Agreement or the RFA which have not been expended at the conclusion of the fiscal year in which such funds were allocated shall remain in the custody of the Nation and be used for the purposes authorized under this Agreement. Determination of the priority and amount of funds to be used for each program, function, service or activity shall be the responsibility of the Nation, except as limited by law or otherwise proscribed by this Agreement.

Section 9. Applicable Regulations: 25 CFR Part 170, and any amendments thereto apply to this Agreement.³ The Nation may seek a waiver of these regulations to the extent permitted by law and as set out in 25 CFR §§ 170.625 and 170.626.

³ The language of footnote 1 is incorporated by reference herein.

Section 10. Use of Tribal Facilities and Equipment: The Parties agree that the Nation shall be permitted to utilize IRR Program and other Federal Lands Highway funds awarded under this Agreement to pay such lease/rental rates, as well as to maintain such facilities and equipment when performing PFSAs under this Agreement. For purposes of this Agreement, in those cases where the Nation reasonably determines, and provides written notice and analysis documentation to the Administrator that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that the purchase of construction equipment shall be an allowable cost to the Nation, as permitted under 25 CFR Part 170, Appendix A to Subpart G, so long as not more than 25% of the Nation's IRR Program funds are used for this purpose.

ARTICLE III – RESPONSIBILITIES OF THE NATION

A. Health and Safety: In exercising responsibility for carrying out the eligible programs and projects under this Agreement, the Nation assures the Administrator that within available funding, they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering and construction activities performed. To this end, and within available funding, the Nation agrees to obtain or provide qualified personnel, equipment, materials, and services necessary to administer the transportation programs, including opportunities that provide for Indian preference in employment and sub-contracting as mandated by 25 U.S.C. § 450e(b).

B. Program Standards and Regulations: The Nation agrees to initiate and perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU. Additionally, the Nation may, at its sole option, adopt applicable FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Nation under this Agreement.

C. Plans, Specifications and Estimate (PS&E) Approval Authority:

(1) Nation and BIA owned facilities. The Nation is authorized to review and approve plans, specifications and estimates (“PS&E”) project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by section 1119(e) of SAFETEA-LU (amending § 202(d)(2) of Chapter 2 of Title 23, United States Code), and will provide a copy of said PS&E approval to the facility owner. The Nation hereby:

- a) provides assurances under this Agreement that the construction will meet or exceed applicable health and safety standards;
- b) agrees to obtain the advance review of the PS&E from a State-licensed civil engineer who has certified that the PS&E meet or exceed the applicable health and safety standards; and
- c) agrees to provide a copy of the State-licensed civil engineer’s certification to the Deputy Assistant Secretary for Tribal Government Affairs, with a copy to the Federal Lands Highways Associate Administrator and BIA.

(2) Facilities owned or maintained by a public authority other than the Nation or the BIA. In the interest of building stronger government-to-government relations in transportation planning and coordination, the Nation voluntarily agrees to perform its PS&E review and approval function as to facilities owned or maintained by a public authority, as that term is defined in 23 U.S.C. § 101(a)(23), as follows. For a facility owned or maintained by a public authority other than the BIA or the Nation, in addition to satisfying the requirements of paragraph (C)(1) herein, the Nation further agrees to:

- (a) provide the applicable public authority an opportunity to review and comment on the Nation’s PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Nation and the public authority states otherwise;
- (b) allow the applicable public authority at least 30 days for review and comment on the PS&E package, unless the Nation and the public authority agree upon a longer period of time;

- (c) before soliciting bids for the project(s), certify in writing to the Administrator that it afforded the applicable public authority an opportunity to review and comment on the PS&E package and such written comments have been reviewed and addressed by the Nation. ⁴

D. Transportation Planning and Inventory: Within available funding, the Nation further agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated inventory of roads and bridges and to develop the annual IRR Transportation Improvement Program (IRRTIP).

E. Easements, Maintenance and Utility Agreements, Environmental Assessments: In coordination with local jurisdictions and to the extent required by Federal law and 25 CFR Part 170, the Nation agrees to develop appropriate construction easements, maintenance and utility agreements needed for the construction of IRR facilities carried out under this Agreement. The Nation agrees to perform all environmental and archeological review functions under this Agreement in accordance with 25 CFR Part 170, Section 6002 of SAFETEA-LU, codified at 23 U.S.C. § 139, and other applicable laws.

F. Construction:

1) In accordance with the FHWA-approved IRR-TIP, the Nation agrees to initiate and complete IRR construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall periodically ensure that construction engineering is performed according to applicable FHWA, BIA or Tribal standards which meet or exceed federal standards.

2) The Nation agrees to expend IRR Program funds on:

⁴ The Parties agree that these procedures establish no precedent for future agreements with this Tribe or any other Indian tribe, nor waives any rights of the Parties.

- (a) program and administrative expenses authorized under:
 - (i) this Agreement;
 - (ii) 25 CFR Part 170, as amended by SAFETEA-LU;
 - (iii) OMB Circular A-87; or
 - (iv) other applicable law; and
- (b) construction activities on projects that are listed on an FHWA-approved IRR TIP.

3) Once an IRR construction project is completed, the Nation will prepare for the Administrator a final construction report and as-built plans for final inspection in accordance with 25 CFR Part 170.

4) The Nation agrees to allow FHWA Officials or by mutual agreement, a delegated representative of FHWA, the opportunity to visit project sites on a monthly basis or at critical project milestones, provided that FHWA gives the Nation reasonable advance written notice. These visits are intended to allow FHWA to carry out its oversight and stewardship responsibilities for the IRR Program or project(s) assumed by the Nation under this Agreement. FHWA will not provide direction or instruction to the Nation's contractor or any subcontractor at any time.

G. Reporting Requirements: The Nation shall provide the Administrator a courtesy copy of its annual single agency audit report; semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using an SF269A - Financial Status Report (Short Form) or such similar form as is used by the DOT. The Nation shall provide the Administrator the semi-annual reports within ninety-days (90-days) following the conclusion of the reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR

Section 1. Provision of Funds: The Administrator shall provide funds pursuant to the RFA to the Nation to carry out this Agreement in accordance with Article II, Section 2 of this Agreement.

Section 2. Authorize Project Work: The Administrator authorizes the Nation to carry out preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects carried out by the Nation under this Agreement for PFSAs and projects/facilities included on an FHWA-approved IRRTIP in accordance with the approved PS&E packages, this Agreement, and applicable laws and regulations.

Section 3. Coordination with BIA:

A. The Administrator shall coordinate with the Bureau of Indian Affairs (BIA) concerning transportation functions and activities delegated by law to that agency to aide the Nation in the proper and efficient administration of the PFSAs performed by the Nation under this Agreement.

B. The Administrator will encourage a representative of the BIA, with knowledge of the IRR Program, to meet at least annually with a designee of the Nation and the Administrator to review their respective duties and obligations under SAFETEA-LU, the IRR Program, applicable regulations, and this Agreement with the goal of identifying actions which the Nation, the Administrator and the BIA can take to ensure the Nation's successful administration of the transportation PFSAs carried out under this Agreement.

Section 4. Coordination with Public Authorities: The Administrator, or his authorized FHWA representative, upon the Nation's request, shall coordinate with representatives of a public authority to assist the Nation during the public authority's review of a PS&E package or final inspection of a completed project to ensure that the public authority's input during the

review and comment period, or during the final inspection does not interfere with the Nation's efficient administration of projects performed under this Agreement.

Section 5. Designated Officials: All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Nation:

The Principal Chief
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465

To the FHWA:

Associate Administrator
Federal Lands Highways (HFL-1)
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-316
Washington, D.C. 20590

With a copy to:

Self-Governance Administrator

Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465

With a copy to:

Indian Reservation Roads Program Manager
(HFPPD-1)
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-311
Washington, D.C. 20590

Section 6. Federal Construction Standards: The Administrator may provide information about Federal construction standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable federal standards, the Tribe's proposed standards will be accepted. The Administrator may also accept commonly used industry construction standards, including design and construction standards adopted by the State of Oklahoma.

Section 7. Joint Inspection: The Administrator shall conduct the final project inspection jointly with the Nation and facility owner and shall provide the BIA a letter of acceptance for the purpose of including the completed project in the BIA's IRR Program Inventory. The applicable public authority and BIA will be invited to observe the final inspection.

Section 8. Technical Assistance: Upon the request of the Nation and subject to the availability of funds, the Administrator shall provide or make available technical assistance to the Nation to aide the Nation in carrying out its responsibilities under this Agreement.

Section 9. Reporting: The Administrator shall provide the Nation with semi-annual reports on program matters of common concern to the parties. The times for these reports are identical to those set out in Article III, Section 1(G).

Section 10. Notice of Additional Funds: If the Administrator receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent IRR Program funds, the Administrator shall promptly notify the Nation regarding such funding so that the Nation may apply for any funds they may be eligible to receive on the same basis as any other Indian tribe.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services: The Nation shall be eligible, under this Agreement, to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) set forth in 25 CFR Part 170, as well as other funds of the DOT, not included in this Agreement, which are available to Nation on a competitive, formula, or other basis, including non-recurring funding such as High Priority Project funding, and Congressional earmarks such as Public Lands Highways Discretionary grants. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Administrator to Administer the Program: The Nation is administering a federal program under the authority of SAFETEA-LU, in accordance with the ISDEAA. In order for the Nation to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement, the Administrator shall provide the Nation with all releasable data and information necessary to carry out the PFSAs assumed by the Nation under this Agreement.

Section 3. Sovereign Immunity: Nothing in this Agreement shall be construed as–

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Nation; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Section 4. Trust Responsibility: Nothing in this Agreement shall absolve the United States from any responsibility to individual Indians and the Nation, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and the Nation.

Section 5. Federal Tort Claims Act/Insurance: In accordance with the provisions of Public Law 101-512, Title III, § 314, 104 Stat. 1959, as amended Public Law 103-138, Title III, § 308, 107 Stat. 1416 (25 U.S.C. § 450f, note), for purposes of Federal Tort Claims Act coverage under this Agreement, the Nation and its employees are deemed to be employees of the Federal government while performing work under this Agreement. This status is not changed by the source of the funds used by the Nation to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Nation. The Nation is also authorized to use the funds provided under this Agreement to purchase such insurance coverage as may be necessary and prudent, in the determination of the Nation.

Section 6. Indian and Tribal Preference:

A. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program. Under 25 U.S.C. § 450e(b) and 23 U.S.C. § 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.

B. The Nation's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.

Section 7. Severability: Should any portion or provision of this Agreement be held invalid, it is the intent of the Parties that the remaining portions or provisions thereof continue in full force and effect.

Section 8. Termination of the Agreement: On the date of the termination of the Agreement by the Nation as authorized under 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU, or if the Administrator makes a specific written finding and provides notice to the Nation in accordance with this Agreement that the Nation is no longer eligible to receive funding under this section as authorized under section 1119(g)(4) of SAFETEA-LU, the Administrator shall allocate the funds that would have been provided to the Nation under the Agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law; provided however, that if the Nation disputes the Administrator's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Administrator shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute. At the Nation's election, the Nation may perform such functions, services and activities as it chooses to include in an ISDEAA contract or agreement to be entered into with the Secretary of the Interior upon the termination of this Agreement.

Section 9. Reserved

Section 10. Amendments: Any modification of this Agreement shall be in the form of a written amendment and shall require the signed agreement of a duly authorized representative of the Nation and the Administrator. The Parties agree to work together in good faith, following the implementation of this Agreement, to identify additional issues or matters that should be addressed in this Agreement subject to the Parties' mutual written consent.

Section 11. Good Faith: The Parties agree to exercise the utmost good faith in the implementation and interpretation of this Agreement and agree to consider and negotiate such additional provisions as may be required to improve the delivery and cost-effectiveness of transportation services.

Section 12. Successor Agreements:

A. Indian Reservation Roads Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Indian Reservation Roads Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation, which succeeds SAFETEA-LU.

B. Referenced Funding Agreement. Ninety-days (90-days) before the expiration of each year's RFA, the Parties shall commence negotiation of the subsequent year's RFA.

Cherokee Nation

**U.S. Department of Transportation
Federal Highway Administration**

By 
Chad Smith, Principal Chief

By 
Victor Mendez, Administrator

Date

9/9/09

Date

**ADMINISTRATIVE
CLEARANCE**

Dept/Program:

Signature/Initial _____ Date _____

Group Leader:

Signature/Initial _____ Date _____

Finance (if needed):

Signature/Initial _____ Date _____

Government Resources:

Signature/Initial _____ Date _____

Administration Approval:

Melinda 10/13/09
Signature/Initial _____ Date _____

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

Brittain 10/13/09
Signature/Initial _____ Date _____

Standing Committee & Date:

Community Serv. 10/19/09

Chairperson:

Buzzard
Signature/Initial _____ Date _____

Returned to Presenter:

_____ Date _____

**Cherokee Nation
Act/Resolution Proposal Form**

Act Resolution

A RESOLUTION RATIFYING AN AGREEMENT WITH THE
UNITED STATES OF AMERICA, DEPARTMENT OF
TRANSPORTATION, INDIAN RESERVATION AND ROADS

TITLE: PROGRAM

DEPARTMENT CONTACT: Vickie Hanvey

RESOLUTION PRESENTER: Vickie Hanvey

COUNCIL SPONSOR: Harley Buzzard

NARRATIVE:

The purpose of this resolution is to approve an Indian Reservation and Roads Program agreement with the U.S. Department of Transportation. Receiving funding directly from the Federal Highway Administration is expected to be less cumbersome and result in timely payment to the Cherokee Nation.

10-13-09P04:49 RCVD