

RESOLUTION NO. 22-16

COUNCIL OF THE CHEROKEE NATION

**A RESOLUTION RATIFYING AN AGREEMENT WITH THE
UNITED STATES DEPARTMENT OF TRANSPORTATION FOR THE
TRIBAL TRANSPORTATION PROGRAM**

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

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; and

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 through the course of dealings of the United States with Indian tribes; and

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 (b)7 of Title 23, United States Code; and

WHEREAS, Resolution No. 21-90 authorized the first self-governance annual funding agreement with the Secretary of the Interior under the Demonstration Project of the Indian Self-Determination and Education Assistance Act, P.L. 93-638 as amended; and

WHEREAS, the Nation executed a permanent Compact of Self-Governance in 1993 and has successfully operated its own roads program since that time; and

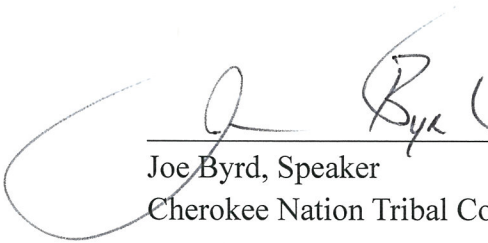
WHEREAS, Legislative Act 15-01 authorized the Principal Chief to execute treaties, memorandums of agreement, contracts, compacts and other agreements on behalf of the Nation; with ratification by the Council; and

WHEREAS, the Principal Chief or his/her designee has negotiated a Tribal Transportation Program Agreement with the Administrator, Federal Highway Administration for and on behalf of the United States Department of Transportation.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation hereby ratifies the Tribal Transportation Program Agreement negotiated with the United States Department of Transportation for programs, services, functions, and activities and including all routine funding attachments to such agreement as they are negotiated from time-to-time.

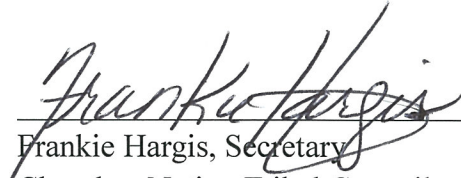
CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 14th day of March, 2016, having 15 members present, constituting a quorum, by the vote of 15 yea; 0 nay; 0 abstaining.




Joe Byrd, Speaker
Cherokee Nation Tribal Council

ATTEST:




Frankie Hargis, Secretary
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 22 day of March, 2016.



Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:



Chuck Hoskin Jr., Secretary of State
Cherokee Nation

**TRIBAL TRANSPORTATION PROGRAM
AGREEMENT
BETWEEN
THE CHEROKEE NATION
AND THE
UNITED STATES DEPARTMENT OF
TRANSPORTATION**

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Tribal Transportation 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 and By-Laws of the Tribe and by resolution of the Tribal Government, a copy of which is attached hereto, and under the authority granted by Chapter 2 of Title 23, United States Code, as amended by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94, (Dec. 4, 2015) and the Delegations of Authority set forth in 49 CFR § 1.85. 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); the Presidential Memorandum on Tribal Consultation dated November 5, 2009; the DOT’s Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999); and the U.S. DOT Tribal Consultation Plan found at <http://www.fhwa.dot.gov/tribal/news/consultation.html>; all as amended by the FAST Act. 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

Nation____ FHWA_____

projects that are located on or which provide access to the Cherokee Nation or a community of the Nation and are eligible for funding pursuant to the Tribal Transportation Program (TTP) regulations (25 CFR Part 170). This Agreement is made pursuant to 23 U.S.C. § 202 (b)(7) and 25 CFR Part 170 as amended by the FAST Act, 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 purposes of this Agreement are 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 the FAST Act and 25 CFR Part 170;
- (2) to carry out the Federal Highway Administration’s (FHWA) statutory requirements pursuant to the FAST Act and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Nation; and
- (3) to provide the Nation or its designee, under a Referenced Funding Agreement (RFA), its formula share of TTP funds pursuant to the FAST Act and 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

¹ The Nation and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and it’s 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.

Highways funds as the Nation may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other appropriation to the Department of Transportation (DOT), as well any other federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be made available to the Nation under an agreement to transfer such funds approved by the Administrator or his designee. The Bureau of Indian Affairs Eastern Oklahoma Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202 (a)(6) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and in approved RFAs.

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 remain in effect and be automatically extended for the maximum period authorized by any statutory extensions to the FAST Act until amended pursuant to Article V, Section 11, or terminated pursuant to Article V, Section 9.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b)(7), 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 TTP formula in accordance with 23 U.S.C § 202 (b)(3), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Nation’s TTP 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 (b)(7)(E) and further identified on the an approved RFA.

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 funding percentage per 23 U.S.C § 202(b)(3), 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 to the Administrator and the Administrator shall provide to the Nation a single advance payment in the amount identified in the 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 Federal fiscal year basis.

C. Pursuant to 23 U.S.C. § 202(b)(7)(B), 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 TTP 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 preaward 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 TTP funds are distributed pursuant to a statutory formula to the federally recognized Tribes in the United States. A Tribe's total share of TTP funds includes all direct and indirect costs associated with the TTP. The Parties expressly acknowledge there are no additional TTP funds available for any additional indirect costs, which are incurred.

E. Funds advanced to the Nation under this Agreement shall be used by the Nation as permitted under 23 U.S.C. § 202(a)(1) and 25 CFR Part 170, as amended by the FAST Act, 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 Tribal

Transportation Improvement Program (TTIP), 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 may not be reprogrammed for other purposes and therefore shall be placed in a savings, checking or investment account containing only funds transferred under this Agreement, which is separated from, and tracked independently of, all other tribal 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 and activities identified on an FHWA approved TTIP; and
- (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 TTP funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on an FHWA approved TTIP 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, as amended by the FAST Act.

G. 1. The Nation may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122, as amended by the FAST Act, with the expectation of payment of TTP 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 TTIP 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 § 170.228, the Nation may use TTP funds to:

- (i) leverage other funds; and
- (ii) pay back loans or other finance instruments for a project that:

Nation____ FHWA_____

- (a) the Nation paid for in advance of the current year using non-TTP funds, including tribal funds;
- (b) was included in an FHWA-approved TTIP; and
- (c) was included in the National Tribal Transportation Facility Inventory (NTTFI) before commencement of construction.

I. The Nation may use TTP 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 (b)(7), as amended by the FAST Act. 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 (b)(7)(H), 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 Tribe 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 under 25 CFR § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes.

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

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 the FAST Act.

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

- Transportation Planning;
- Construction Management;
- Program Administration;
- Design;
- Construction;
- Road Maintenance as authorized under 23 U.S.C. § 202 (a)(8)(A), as amended by the FAST Act;
- Development and negotiation of Tribal-State Road Maintenance agreements authorized under 23 U.S.C. § 202 (a)(8)(C), as amended by the FAST Act;
- Other TTP Program-eligible activities authorized under Chapter 2 of Title 23 (including TTP Planning, Safety, and Bridge) or 25 CFR Part 170, as each may be amended by the FAST Act, or other applicable law; and
- Other activities authorized under Chapter 1 of Title 23, as amended by the FAST Act, or other applicable law including activities funded under agreements developed under 23 U.S.C. § 202 (a)(9).

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.

Section 10. Use of Tribal Facilities and Equipment. The Parties agree that the Nation shall be permitted to utilize TTP, other Federal Lands Highway funds, and additional TTP-eligible 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 TTP Program funds or a maximum of \$500,000 are used for this purpose.

ARTICLE III – RESPONSIBILITIES OF THE NATION

Section 1. A. Health and Safety. In exercising responsibility for carrying out the

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

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 the FAST Act. 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) Tribal 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 23 U.S.C. § 202 (b)(5), and will provide a copy of said PS&E approval to the facility owner and FHWA. 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 meets or exceeds 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 FHWA and the 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)(20), 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 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 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 public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevent the Nation from proceeding with the project.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

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

BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated NTTFI of TTP eligible facilities per 23 U.S.C. § 202(b)(1), and to develop the annual national TTP Transportation Improvement Program (TTPTIP).

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, and 25 CFR 169 if applicable, the Nation agrees to develop appropriate construction easements or right-of-ways, maintenance and utility agreements needed for the construction of TTP facilities carried out under this Agreement. The Nation agrees to perform all environmental and archeological review functions under this Agreement in accordance with 23 U.S.C. § 139, 25 CFR Part 170, and other applicable laws, as amended by the FAST Act.

F. Construction.

(1) In accordance with the FHWA-approved TTIP, the Nation agrees to initiate and complete TTP construction projects in accordance with the approved PS&E and any tribally-approved change orders and shall 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 TTP funds on:

(a) program and administrative expenses authorized under:

- (i) this Agreement;
- (ii) 25 CFR Part 170, as amended by the FAST Act;
- (iii) 2 CFR Part 200; or
- (iv) other applicable laws; and construction activities on projects that are listed on an FHWA- approved TTIP.

(3) Once a TTP 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 §§ 170.472 through 170.474.

(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 TTP 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 with a courtesy copy of its annual single agency audit report within 30 days of its submission to the Federal Audit Clearinghouse. If the Nation is not required to carry out a single agency audit, then the Nation shall provide the Administrator with an annual review in accordance with its approved financial management systems or procedures. Additionally, in order to assist the Nation with fulfilling the requirements of 23 U.S.C. § 201 (c)(6)(C), FHWA will establish an electronic data reporting system and the Nation shall be responsible for inputting the data into that system no later than June 30 and December 31 of each year. From that data, a report will be generated by FHWA and BIA for the Secretaries. The Nation acknowledges its understanding that the submittal of its data is mandated by statute, and that non-compliance with this requirement will initiate the dispute resolution process as identified in Article II, Section 4 and could result in the termination of this Agreement by the Administrator.

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,

Nation____ FHWA_____

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 TTIP 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 TTP Program, to meet at least annually with a designee of the Nation and the Administrator to review their respective duties and obligations under the FAST Act, the TTP, 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:

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

With a copy to:

Tribal Transportation Director
Cherokee Nation
P. O. Box 948Tahlequah, OK 74465

To the FHWA:

Associate Administrator
Federal Lands Highways (HFL1)
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-316
Washington, D.C. 20590

With a copy to:

Director – Office of Tribal Transportation
Program Manager (HFPPD-9)
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-314
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 Nation’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 notify the BIA Regional Office that construction has been completed in accordance with the project plans and specifications for the purpose of project acceptance, inclusion, or data update in the BIA’s TTP Inventory.

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 TTP 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 Nation.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services. The Nation shall be eligible, under this Agreement, to receive additional TTP funds on the same basis as other Indian Tribes according to statutory formula as provided by 23 U.S.C. § 202 (b)(3), as well as other funds which are available to the Nation on a competitive, formula, or other basis, including non-recurring funding such as any federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be credited to the TTP as provided by 23 U.S.C. § 202 (a)(9) and made available to the Nation, but only under the terms of an agreement to transfer such funds that is acceptable to, and approved by, the Administrator or his designee. 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 its TTP under the authority of the FAST Act, in accordance with the ISDEAA, and by resolution of the tribal government. 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 Pub.L. 101-512, Title III, § 314, 104 Stat. 1959, as amended Pub.L. 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. In full recognition of and without undermining the federal tort claims protection provided in this section, the Parties understand and agree that prudent project management requires that tribal contractors purchase adequate workers compensation, auto and general liability insurance when completing construction projects funded under this Agreement. Accordingly, the Nation shall include in any construction contracts entered into with funds provided under this Agreement a requirement that tribal contractors maintain workers compensation, auto and general liability insurance coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance

requirement does not apply to the Nation itself.

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 TTP. Under 25 U.S.C. § 450e(b), 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 TTP.

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

C. With respect to 23 U.S.C. § 202 (a)(10), the Nation shall have established procurement management standards which shall provide for full and open competition in accordance with 25 C.F.R. Part 900, Subpart F, as authorized by 23 U.S.C. § 202 (b)(7)(G) and (H). Tribal labor and tribal force account procedures may be employed on any tribal transportation project pursuant to 23 U.S.C. § 202 (a)(3). If the Nation wishes to use a procurement method that is not provided for in its established procurement management standards or its tribal force account procedures for a particular tribal transportation project, the FHWA shall promptly review and respond to a written request from the Nation justifying the alternative procurement method. In making its decision, FHWA shall work within the project procurement schedule and comply with the liberal construction requirements of 25 C.F.R. § 170.2(h) and the federal obligations set forth in 25 C.F.R. § 170.103.

Section 7. Program Review. The Nation agrees to allow FHWA officials or their designees/representatives to perform an annual cursory review of the Nation's TTP. The review is intended to allow FHWA to carry out its oversight and stewardship responsibilities for the TTP assumed by the Nation under this Agreement. FHWA will provide a draft written report to the Nation within 45 days of the completion of its review and comment. After receipt of comments from the Nation, or after an additional 45 days, the report will be put into final form and

Nation____ FHWA_____

distributed accordingly.

Section 8. 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 9. Termination of the Agreement. In the event the Nation wishes to terminate this Agreement, the Nation shall notify the Administrator in writing of its intention to do so, including specifying the effective date of termination. On the date of the termination of the Agreement by the Nation as authorized under 23 U.S.C. § 202 (b)(7)(J), or if the Administrator makes a specific written finding that the Nation has failed to comply with the terms of this Agreement and provides notice to the Nation that it is no longer eligible to receive funding under this section as authorized under the FAST Act, 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 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 10. N/A

Section 11. 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 12. Good Faith. The Parties agree to exercise the utmost good faith in the

Nation ____ FHWA ____

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 13. Successor Agreements.

A. Tribal Transportation Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Tribal Transportation 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 the FAST Act.

B. Referenced Funding Agreement. Ninety (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 _____

By _____

Bill John Baker
Principal Chief

Gregory G. Nadeau
Administrator

Date

Date

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

**A RESOLUTION RATIFYING AN AGREEMENT WITH
 THE UNITED STATES DEPARTMENT OF
 TRANSPORTATION FOR THE TRIBAL
 TRANSPORTATION PROGRAM**

TITLE:

DEPARTMENT CONTACT: Michael Lynn

RESOLUTION PRESENTER: Michael Lynn

COUNCIL SPONSOR: Frankie Hargis

NARRATIVE:

<u>ADMINISTRATIVE CLEARANCE</u>	
Dept/Program:	
Signature/Initial	Date
Executive Director:	
<i>Ron Duval</i> <i>3/1/16</i>	
Signature/Initial	Date
Treasurer: (Required: Grants/Contracts/Budgets)	
Signature/Initial	Date
Government Relations:	
Signature/Initial	Date
Administration Approval:	
<i>Bill J. Fisher</i> <i>3-1-16</i>	
Signature/Initial	Date
<u>LEGISLATIVE CLEARANCE:</u>	
Legal & Legislative Coordinator:	
<i>S. S. Suttan</i> <i>3/2/16</i>	
Signature/Initial	Date
Standing Committee & Date:	
<i>Community Services</i> <i>3/14/16</i>	
Chairperson:	
<i>hargis</i>	
Signature/Initial	Date
Returned to Presenter:	
	Date