

**Funding Agreement
between
the Cherokee Nation
and
the Secretary of Health and Human Services
of the
United States of America**

Effective October 1, 2008

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Attachments:

Attachment A: [Reserved]

Attachment B: Consolidated Table

**B1: Cherokee Nation FY 2009 Consolidated Funding
(Stable Base & Not in Stable Base Funding Worksheet)**

Attachment C: OTSG Reports

**C1: Self-Governance Funding Agreement ("FA") Table
(Cherokee Nation (FA#60G930002A), May 29, 2008)**

Attachment D: Program Funding

D1: Program Funding Table

Attachment E: Oklahoma City Area Tribal Shares Funding

E1: FY 2009 Cherokee TOTAL Area Office Tribal Shares Tables

E2: FY 2009 Cherokee Area Office Tribal Shares Tables

E3: FY 2009 Creek to Cherokee Area Office Tribal Shares Tables

Attachment F: IHS Headquarters Tribal Shares Funding

F1: Cherokee Nation FY 2009 - HQ Tribal Shares Table #4

**F2: Cherokee Nation FY 2008 HQTS Total (Prepared by Oklahoma City Area
Office)**

**Attachment G: 2009 Estimated Area and Headquarters Facilities Appropriation Funds
(based on FY 2008 Actual Funding)**

G1: Table 4F Cherokee Nation (including Muskogee)

G2: Table 4F W.W. Hastings

**Funding Agreement
between
the Cherokee Nation
and
the Secretary of Health and Human Services
of the
United States of America**

Effective October 1, 2008

This Funding Agreement is entered into by and between the Cherokee Nation, represented by the Principal Chief pursuant to the Constitution of the Cherokee Nation, and the Secretary of Health and Human Services of the United States of America ("Secretary") represented by the Director of the Indian Health Service ("Director").

Section 1 — Obligations of the IHS.

1.1 Generally. Pursuant to this Funding Agreement, the Indian Health Service ("IHS") shall provide funding and services identified herein and as provided in the *Compact between the Cherokee Nation ("Nation") and the United States ("Compact")*. The IHS shall remain responsible for performing all Federal residual programs, services, functions and activities ("PSFAs"). IHS's responsibilities under the Indian Health Care Improvement Act and the Indian Self-Determination and Education Assistance Act, as amended, ("the Act") are unchanged by the Compact and Funding Agreement, except to the extent the Nation has assumed PSFAs under these agreements.

In addition, although funds are provided from Headquarters and Area Office in support of the Compact and this Funding Agreement, the IHS will continue to make available to the Nation, PSFAs from both Oklahoma City Area Office ("OCAO") and Headquarters unless 100 percent of the total tribal shares for these PSFAs have been specifically included in this Funding Agreement. IHS will consult with the Nation with regard to reorganization of Headquarters, OCAO or Service Unit PSFAs that have not been included in this Funding Agreement if such reorganization may substantially affect either the accessibility, availability or delivery of such PSFAs to the Nation, which includes closing a unit or changing a major category of service at the Claremore Indian Hospital (Claremore Hospital). The Nation will consult with IHS regarding reorganization if the reorganization will substantially affect accessibility, availability or delivery of a major category of service at Claremore Hospital. The IHS PSFAs for which the Nation does not assume responsibility and receive associated funding under this Funding Agreement will remain the responsibility of the IHS. These include, but are not limited to, the PSFAs described in sections 1.2 [Claremore Service Unit and Associated PSFAs] through 1.8 [Real Property and Facilities Support].

1.2 Claremore Service Unit and Associated PSFAs.¹

1.2.1 Claremore Service Unit. Inpatient and outpatient direct and associated services at Claremore Hospital; the outpatient contract health service program for Tulsa County (except for the portions within the Muscogee (Creek) Nation), Rogers County, and Wagoner County; and the inpatient contract health services program for Big Cabin and Ketchum communities in Craig County, Nowata County (except for the South Coffeyville community), Tulsa County (except for the portions within the Muscogee (Creek) Nation), and for Delaware, Mayes, Rogers, Wagoner, and Washington counties..

1.2.2 Associated Tribal Shares at OCAO and Headquarters. Tribal Shares at the OCAO and Headquarters levels associated with support for all retained PSFAs located in the Claremore Service Unit.

1.3 RPMS Functions. The Nation agrees to compact all OCAO shares and certain Headquarters shares. For continuing PSFAs, the Nation will continue to compact and the IHS will continue to retain the same Headquarters RPMS functions as in previous years. For the W. W. Hastings Indian Hospital (Hastings Hospital) the Nation has not compacted certain National Division of Information Resources (DIR) Support, which consists of the "Premium Package" less "Telecommunication Management Services." The PSFAs that the Nation has not compacted include the following: National Database Services, Software Development and Maintenance Services, and System Support/Training Services. Each of these categories are listed in the Title V DIR Worksheet #1, provided by the IHS for FY 2008 negotiations and received by the Nation on April 25, 2008. The DIR Telecommunication package will be reorganized in 2010.

The IHS agrees to work collaboratively with the Nation to achieve data consolidation or data sharing with regard to the records of individuals who receive services from both the IHS and the Nation, in accordance with the law and section 1.4.3 [HIPAA Compliance].

1.4 Other IHS Responsibilities. Unless funds are specifically provided by IHS, IHS retains all PSFAs and the Nation will not be denied access to, or associated services from, IHS Headquarters or OCAO. Specifically, the Nation will receive the following services from the IHS:

1.4.1 Access to Training and Technical Assistance. To the extent funds are retained by the IHS, the Nation shall have access to training, continuing education, and technical

¹/Although IHS has retained the inpatient and certain outpatient PSFAs at the Claremore Hospital, the Nation has assumed certain outpatient services at the facility for which space and equipment have been designated. The Nation shall be entitled to the continuing use of such square footage as was allocated to such activities at the time the Nation assumed responsibility for the service. Prior to IHS restricting the Nation's access, IHS and the Nation shall negotiate programmatic space requirements and funding associated with such space. See 25 U.S.C. § 450(c), section 1(b)(8)(C).

assistance in the manner and to the same extent the Nation would have received such services if it were not participating in Self-Governance.

1.4.2 Intellectual Property. IHS, through contracts, grants, sub-grants, license agreements, or other agreements may have acquired rights or entered into license agreements directed to copyrighted material. The Nation may use, reproduce, publish, or allow others to use, reproduce, or publish such material only to the extent that IHS's contracts, grants, sub-grants, license agreements, or other agreements provide that IHS has the right to do so or provide that IHS may extend its rights to the Nation and IHS determines that it will extend its rights to the Nation. The Nation's use of any such copyrighted material and licenses is limited to the scope of use defined in the agreements.

1.4.3 HIPAA Compliance. IHS retains the responsibility for complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") for retained IHS health care component activities. The Nation also is responsible for complying with HIPAA. IHS and the Nation will share patient information consistent with the patient treatment, payment and health care operations exceptions to disclosure rules under HIPAA.

1.4.4 Residual PSFAs. The IHS will make all residual PSFAs available to the Nation on the same basis that such PSFAs are made available to IHS directly operated health programs and the health programs of other Tribes.

1.4.5 Reports. Any reports or information required under section 2.2.2 of the Compact [Information regarding Services of the IHS] shall be provided within 60 days of the request by the Nation.

1.5 Certain Underground Storage Tank and CFC Projects. In addition to the Maintenance and Improvement funds transferred to the Nation under this Agreement, IHS has allocated funding for two projects at the Hastings Hospital: (1) removal of an underground storage tank, estimated at \$75,000; and (2) replacement of pieces of chlorofluorocarbon (CFC) refrigerant bearing equipment, estimated at \$425,000. The IHS will retain responsibility for carrying out these projects until and unless the Nation chooses to assume them. The Nation may, upon notification to the IHS, assume all or a portion of such projects under one or more Construction Project Agreements, and such agreements shall be incorporated as addenda after they are executed.

1.6 Dentrrix. Hastings Hospital has met all eligibility requirements to participate in the Dentrrix Electronic Dental Record (EDR) system and has been placed in the queue for implementation. After the transfer of PSFAs to the Nation, Hastings Hospital will continue its eligibility for the program on the same basis as other Federal and Tribal health programs and its current position in the queue will not be affected by the transfer of PSFAs to the Nation.

1.7 Pharmacy Residency. The current Pharmacy Residency Program will continue to be operated at Hastings Hospital. The Nation will be eligible to participate in the Pharmacy Residency Program in the future on the same basis as other Federal and Tribal health programs.

1.8 Real Property and Facilities Support. IHS will retain responsibility for all activities associated with the management of federal real property assets within the Tahlequah Service Unit, including lease activities, use agreements, disposition and transfer of real property, funds allocation, maintenance of federal real property inventory, ensuring compliance with all requirements applicable to federally-owned property, and approval of major construction activities.

Section 2 – Obligations of the Nation. This Funding Agreement obligates the Nation to be responsible to administer and to provide health PSFAs, identified in section 3 [Tribal Programs and Budget], to eligible individuals pursuant to section 4.4 of the Compact [Eligibility for Services], utilizing the resources transferred under this Funding Agreement. This Funding Agreement further authorizes the Nation to consolidate and redesign PSFAs as provided in the Act, and sections 4.4 [Eligibility for Services], 4.5 [Reallocation, Redesign and Consolidation], and 4.6 [Consolidation with Other Programs] of the Compact.

Section 3 – Tribal Programs and Budget. The Nation agrees, subject to the availability of funding, to administer, provide, and be responsible for the health PSFAs identified below in accordance with the Compact and this Funding Agreement. For the purposes of the Funding Agreement, the Nation's General Budget Categories consolidate related health PSFAs as described in this section, or as necessary to fully provide for the needs of persons served under this Funding Agreement.

3.1 Programs, Services, Functions and Activities. The Nation is committed to and strives to provide quality health services. It does so, subject to the availability of funding, through direct, referral and contract services. Section 3 identifies only PSFAs within the authority of the IHS and which may be assumed by the Nation.

3.1.1. Clinical and Ancillary Services. The Nation provides a full range of inpatient and outpatient health care services. These services include, but are not limited to:

3.1.1.1 Clinical Services. Clinical inpatient and outpatient health services include, but are not limited to, acute, chronic, therapeutic, and preventive health services; emergency medicine; family practice; internal medicine; pediatric medicine; podiatric medicine; family planning; OB-GYN services; maternal and child health, including well baby and child screening, diagnosis and treatment; surgery; infectious disease treatment and consultation; immunizations and vaccinations; interdisciplinary assessment and treatment planning; behavioral health evaluation, diagnosis, and treatment, including detoxification; swing bed and aftercare; inter-and intra-agency care and care management; preventative health services, including screening, diagnosis, and treatment; and comprehensive services to victims of sexual assault.

3.1.1.2 Ancillary Health Services. Ancillary health services are provided at levels sufficient to support medical diagnosis and treatment, and include, but are not limited to: physical therapy; occupational therapy; recreational therapy; speech language pathology; respiratory therapy; imaging services, including radiology, teleradiology, mammography, ultrasound, and bone density screening; audiology; laboratory services, including microbiology

and drug screening analysis; biomedical services; social services; nutrition and dietary services; environmental services; medical supply and equipment distribution services to patients; and pharmaceutical services, which shall, at the option of the Nation include notification of availability of mail order pharmaceutical services.

3.1.1.3 Patient Transport for Medically Necessary Services. The Nation transports patients to receive services on-site, such as specialty clinics and health seminars, and at off-site health provider locations.

3.1.1.4 Clinical Consultation and Mentorship. Licensed health professionals provide consultation, supervision and mentorship of other health providers, including clinical precepting, mentoring and shadowing.

3.1.2 Dental Services provides comprehensive services to raise the dental health and lower the incidence of dental disease, including oral surgery, dental prosthetic appliances and dental lab services.

3.1.3 Optometry and Ophthalmology Program provides comprehensive ophthalmologic and optometric services, including, but not limited to, vision assessment, eye evaluation, retinal assessment, frame adjustment and repair, contact lens fitting, providing frames, eyeglass lenses, low vision aids and contact lens, eye injury treatment, and eye disease treatment.

3.1.4 Emergency Services.

3.1.4.1 EMS provides search and rescue, emergency medical services and participation in local responder teams, providing health and medical services as part of community patrols; and

3.1.4.2 Medevac and Ambulance Services provides urgent and critical care ambulance services.

3.1.5 Behavioral Health Services provides comprehensive child and adult inpatient, residential, outpatient and home-based behavioral health services including, but not limited to:

3.1.5.1 mental health evaluation and therapy, psychiatric care, psychological testing, psychotherapy, family and group counseling, marriage and couples therapy, grief counseling, anger management, youth programs, and medication management;

3.1.5.2 substance abuse (including methamphetamine, inhalants, and other illicit drugs, alcohol, and prescription drugs) assessment, detoxification, treatment, education and aftercare, testing, and intervention;

3.1.5.3 Fetal alcohol syndrome and fetal alcohol effects diagnostic and treatment services;

3.1.5.4 emergency voluntary and involuntary mental health and substance abuse commitment processes, and case management services for clients with complex behavioral health needs, intensive case management, individual, family and group therapy and life management skills, and psycho-social educational skills training; and

3.1.5.5 assessment and evaluation of situations affecting children, adults and elders, including conditions that place the individual at risk of mental, physical, sexual or emotional harm, and associated referral and treatment services.

3.1.6 Diabetes Prevention, Treatment and Control provides comprehensive programs to reduce the incidence of and treat diabetes and its complications through diabetes prevention and metabolic syndrome risk factor reduction programs; community and individual education and treatment; diabetes support groups; diabetes clinics; blood sugar screening; diabetes registry; increasing access to physical activity for communities and exercise programs; medication management; diabetes self-management education program; blood pressure control classes; podiatric, pedorthic and other foot care services; team approach to clinical management; case management; supporting communities and schools interested in organizing their own community health promotion projects; school and community-based healthy lifestyle activities; community-based diabetes care and community presentations; interventions focused on changing behavior through building and maintaining social support networks; and community health promotion policy development.

3.1.7 Traditional Medicine. Traditional medicine health services emphasizes awareness prevention and knowledge in the area of nutrition, physical health and spiritual health through traditional medicines and healing techniques. Traditional medicine includes counseling on healthy living practices, advice and application of traditional herbal and other natural remedies, maternal care, behavioral health and counseling, direct traditional medical treatment in coordination with existing western medicine services, and training of traditional healing practitioners regarding such coordination.

3.1.8 Child Welfare and Family Services:

3.1.8.1 Clinical Habilitation Services provides comprehensive clinical habilitation and rehabilitation programs, and related services, designed to assist individuals and their families to lead healthy, productive lives and engage fully in age-appropriate activities; such programs include, but are not limited to, for higher risk individuals vocational rehabilitation, assistance, education and training;

3.1.8.2 Child Abuse and Neglect Services provides prevention and intervention services to respond to child physical abuse; sexual abuse, and neglect and other conditions that place a child at physical or emotional risk, including, but not limited to, support services for children, youth, and families, therapeutic activity and educational services aimed at recovery and healthy living skills and relationship development; individual, family and group counseling; family reunification support services; and may participate in multi-disciplinary team and/or activities related to (1) foster home finding and supportive services, including health

related aspects of recruitment and certification of foster homes; (2) collaboration with tribal, state, county, and city child protection and law enforcement agencies and other child and family advocacy programs; and (3) facilitation and support of efforts to find permanent safe homes, including health-related aspects of recruitment of potential adoptive families, conducting home studies and providing other support services;

3.1.8.3 Child Development Services provides developmental assessments, evaluation, treatment, health education, and related services.

3.1.9 Family Health provides comprehensive family health services including, but not limited to providing in-home care visits; prenatal and sudden infant death syndrome prevention education, and immunizations.

3.1.10 Nutrition Services provides supplemental foods; nutrition education; counseling and other services for individuals at nutritional risk, including pregnant women, children and elders; and breast-feeding support and education.

3.1.11 Contract Health Care provides purchase of health services, through a contractual or open-market basis, not otherwise available or accessible to eligible beneficiaries. Program administration includes, but is not limited to, patient advocacy, and monitoring of patient care for appropriateness of services and medical necessity.

The Nation administers the outpatient contract health services program for: Big Cabin and Ketchum communities in Craig County, and in Adair, Cherokee, Delaware, Mayes, Muskogee, Nowata, Sequoyah, and Washington counties. The Nation administers the inpatient contract health services program for Adair, Cherokee, and Sequoyah counties.

3.1.12 Community Based Programs: Health programs, which include, but are not limited to the following:

3.1.12.1 Injury Prevention. Community safety and injury prevention program that may include collaboration with Tribal, local, state and Federal governments and agencies directed at preventing intentional and unintentional injuries and death; and services for the protection of individuals impaired by alcohol and substance abuse and mental health crises;

3.1.12.2 Domestic Violence Prevention provides domestic violence prevention and response, including advocacy and participation in community sexual assault response teams;

3.1.12.3 Community Health and Wellness provides information, education and programs to promote healthy lifestyles and to prevent disease, including media presentations and public service announcements; nicotine control/cessation; dietetics and nutrition services, including services associated with health promotion and disease prevention events; cooking classes to promote healthy diets and prevent obesity; employee presentations and classes for community groups and schools; drug and alcohol education and prevention for schools and communities; sex education; HIV/AIDS/STD education; cancer prevention education and activities; injury prevention activities including parenting classes; community and

individual activity and preventive health and wellness programs and life skills programming; wellness activities (including wellness centers in which exercise, recreational, social and other activities occur); tuberculosis screening and testing; needle stick and blood borne pathogen prevention and treatment; and immunizations and vaccinations;

3.1.12.4 Home Care and Other Community Based Services provides, through a combination of western methods and traditional modalities, home care and other community based services, which include assistance with activities of daily living such as bathing, dressing, laundry, light housekeeping, cooking, vital signs, and medication reminders. These services are provided to individuals who are unable to meet their own needs. Home and community based services also provides: respite, chore, nutrition, transportation and other supportive services including various senior programs and activities, and engages in planning and development of additional services.

3.1.12.5 Medical Support. The Nation may provide palliative and other end-of-life services, as well as comprehensive care management; transitional care; and skilled nursing care services; and medical, public health, and preventive health services may be provided in support of long term care and assisted living homes.

3.1.13 Environmental Health and Engineering and Sanitation Facilities:

3.1.13.1 Environmental Health and Engineering provides a wide range of environmental/public health services, testing and inspections, including activities related to:

3.1.13.1.1 safe water, sewer, and solid waste systems for homes and communities (including testing, design, installation, construction, and connections; training and technical assistance for operation and maintenance);

3.1.13.1.2 home sanitation and safety;

3.1.13.1.3 all tribally operated facilities associated with the PSFAs described in this Funding Agreement;

3.1.13.1.4 biomedical engineering support for medical equipment;

3.1.13.1.5 preventive maintenance, repair and consultation for the purchase and installation and maintenance of biomedical, medical, radiological and dental patient care equipment;

3.1.13.1.6 medical equipment management consultation, installation, repair, surveys and inspection, and support to help ensure that medical equipment management plans at Tribal locations operate optimally and safely and meet all applicable regulations and compliance standards, such as those set forth by The Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) or other accrediting body;

3.1.13.1.7 assisting Tribal health facilities to locate and acquire new and used replacement equipment;

3.1.13.1.8 emergency response;

3.1.13.1.9 recreation/celebration sanitation;

3.1.13.1.10 injury prevention;

3.1.13.1.11 food protection and safety;

- 3.1.13.1.12 Head Start, day care, and school issues;
- 3.1.13.1.13 development and implementation of policies and procedures (e.g., blood borne pathogen written plan, sharps injury log, post-exposure evaluation and follow-up packet, etc.);
- 3.1.13.1.14 radiation protection surveys of all medical and dental radiology equipment;
- 3.1.13.1.15 infection control, including development of policies and procedures, program evaluations, and direct intervention;
- 3.1.13.1.16 occupational health and safety;
- 3.1.13.1.17 epidemiology;
- 3.1.13.1.18 communicable disease prevention;
- 3.1.13.1.19 environmental review program, including NEPA site assessment and approval;
- 3.1.13.1.20 indoor/outdoor air quality and pollution assessment;
- 3.1.13.1.21 hazardous materials and communication program to reduce, minimize, and/or prevent adverse impacts of such material, including Material Safety Data Sheet program, radon/lead based paint, asbestos assessment;
- 3.1.13.1.22 safety preparedness, including life safety code development, training, implementation and compliance;
- 3.1.13.1.23 water quality evaluation, including surface and underground water sampling and testing;
- 3.1.13.1.24 underground and above-ground storage tank safety program;
- 3.1.13.1.25 vector control, including dog bite prevention and rabies control; and
- 3.1.13.1.26 fire prevention training, inspections, and maintenance.

3.1.13.2 Sanitation Facilities Construction ("SFC") Funds. The Nation will administer SFC funding as authorized by 25 U.S.C. § 458aaa-8. These SFC funds for regular projects, housing projects, and special projects will be identified, paid, and expended in accordance with a Construction Project Agreement to be negotiated pursuant to 25 U.S.C. § 458aaa-8 and 42 C.F.R. Part 137 Subpart N. These Construction Project Agreements may include multiple projects as determined by the Nation. The Construction Project Agreements shall be incorporated into this Funding Agreement as Addenda as the Construction Project Agreements are executed. For the purposes of addressing the environmental considerations for each construction project, the Nation, as authorized by Tribal Council Resolution 16-04, has elected to assume all Federal environmental responsibilities for construction projects under 25 U.S.C. § 458aaa-8. The Nation therefore assumes all compactable responsibilities and associated funding, regardless of the level of administration of the IHS.

3.1.13.3 Community Response and Disaster Preparedness and Response. Plans and implements prevention, mitigation, preparation, response and recovery efforts due to natural, man-made, and biological events and/or disasters;

3.1.14 Benefit Outreach provides assistance to individuals in obtaining alternative funding for health care services.

3.1.15 Administration and Support Services provides support to health services of the Nation including, but are not limited to:

3.1.15.1 Generally: administrative functions include facilities and equipment management, maintenance and improvements; housekeeping and linen services; security; central sterile supply; mailroom functions; inventory control; budget development and maintenance; third party billing (including patient data collection on reimbursable services, utilization review, insurance verification, and billing and collection from third party payors including Medicaid, Medicare, and private insurance); Medicare cost report development and cost allocation processes; grant writing, legal consultation and representation; accounting functions; contract development and management; purchasing management; and technology management;

3.1.15.2 Human Resources provides personnel services including staffing, recruitment, retention, job classification, pay and benefits administration, training, continuing education and development, employee relations, human resources information systems; infection control, and staff health education;

3.1.15.3 Compliance Coordination promotes responsible, ethical behavior and business practices consistent with the Nation's mission, vision, and values; provides facility accreditation oversight and coordination; risk management; HIPAA compliance; policy and procedure development and enforcement; and quality improvement activities;

3.1.15.4 Patient Registration includes administrative services such as RPMS data entry; medical manager data entry maintenance; and health information management.

3.1.15.5 Materiel Management and Purchasing provides materiel management for the acquisition, storage and distribution of supplies and equipment.

3.1.15.6 Facility Management and Planning provides technical assistance, planning, design, engineering, management and general contracting for construction, maintenance, repair (including HVAC and fire alarm system maintenance) and operation of all health facilities operated by the Nation, including both Federal facilities and those leased or owned by the Nation and assures NEPA compliance. These facilities include administrative and program facilities related to the operation of all health programs carried out under this Funding Agreement.

3.1.15.7 Management Information Systems. The Nation agrees to compact all Area Management Information Services that support PSFAs assumed by the Nation. For continuing PSFAs, the Nation will continue to compact and the IHS will continue to retain the same Headquarters RPMS functions as in previous years. The Nation agrees to compact Headquarters funding for Telecommunications Management Services for associated telecommunications network, data movement as well as technical assistance and problem resolution pertaining to telecommunications that support the Hastings Hospital.

3.1.16 Legislative and Executive Branches of the Cherokee Nation: The tribally elected council and the Principal Chief, and their designees, provide policy and direction for all the Nation's health related activities.

3.1.17 Public Health and Epidemiology. The Nation carries out public health, epidemiology and health research functions. These activities include, but are not limited to: collecting and receiving personally identifiable health information for the purposes of (1) preventing or controlling disease, injury, or disability; (2) reporting disease, injury and vital events such as birth and death; and (3) conducting public health investigations, surveillance, and interventions, including the maintenance of disease and injury registries.

3.1.18 Health Professional Training. The Nation provides, manages and tracks training and development to provide and increase the knowledge and skills of current and future employees through training, career pathways, staff development, management and leadership training, post-secondary education, and other health provider training provided directly and with other support.

3.1.19 Residency Programs. The Nation may provide health professional residency programs, which are accredited by the discipline-specific nationally recognized professionally accredited body or affiliated with an accredited university residency program, including general practice and advance general practice dental residency and pharmacy residency programs.

In FY 2009, the Nation will continue to operate the accredited dental residency program located at the Hastings Hospital. The OCAO will provide a minimum of one-time non-recurring funding of \$162,265 to support the program through June 30, 2008 for salary and benefit cost of the residency director, one resident and related travel cost. Additional or future year funding for the dental residency program is to be determined.

3.2 Other Programs/Services Funded. This Funding Agreement includes PSFAs resulting from tribal redesign, or consolidation, reallocation or redirection of funds, including its own funds or funds from other sources, provided that such redesign, or consolidation, reallocation or redirection of funds must satisfy the conditions of 25 U.S.C. § 458aaa-5(e) and results in carrying out PSFAs that may be included in the Funding Agreement pursuant to 25 U.S.C. § 458aaa-4 and section 4.6 of the Compact [Consolidation with Other Programs].

3.3 Non-IHS Funding. The Nation will complement and supplement the PSFAs described in section 3 [Tribal Programs and Budget] with funding from sources other than the IHS through this Funding Agreement, subject to the availability of such other funding. Consistent with sections 4.5 [Reallocation, Redesign and Consolidation], 4.6 [Consolidation with Other Programs], and 4.7 [Program Income, including Medicare/Medicaid] of the Compact, non-IHS funds will be added to or merged with funds provided by the IHS through this Funding Agreement.

3.4 Federal Tort Claims Act. The Federal Tort Claims Act applies to the Nation's

PSFAs under this Funding Agreement, as provided in 25 U.S.C. § 458aaa-15(a) (which incorporates 25 U.S.C. § 450f(d) and Section 314 of P.L. 101-512) and section 5.3.1 of the Compact [Federal Tort Claims Act Coverage]. The extent of Federal Tort Claims Act coverage is described more specifically in 25 C.F.R. §§ 900.180-900.210. The Nation understands that whether the Federal Tort Claims Act applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

3.5 Facilities and Locations. The Nation provides the PSFAs described in this Funding Agreement in more than one facility or location. The Nation may provide services outside the service delivery area in support of these PSFAs.

3.6 Health Status Reports. Pursuant to section 3.11 of the Compact [Health Status Reports], the Nation will make health status reports.

3.7 Reserved.

3.8 Personal Property.

3.8.1 Ownership, Inventory and Transfer.² All personal property owned by the IHS used principally at the Hastings Hospital in support of PSFAs assumed under this Funding Agreement will be made available to the Nation consistent with 25 U.S.C. § 458- aaal1(c) and 42 C.F.R. § 137.215. The IHS will provide the Nation a completed inventory of all such property. The Nation will identify the property for which it requests to accept title and responsibility and such property will be transferred by IHS to the Nation on October 1, 2008. The Nation will identify the property that will remain the property of the United States and which shall either be provided by the IHS for the use by the Nation or moved out of the Hastings Hospital facility by the IHS.

3.8.2 Management of Federally-Owned Property. IHS property officials will maintain a current listing of all Federal property used by the Nation. The Nation will be responsible for maintenance and accounting of all Federal property in accordance with the IHS Property Management standards. The Nation's property custodial officer will provide an annual report to the IHS of all Federal property used by the Nation and an annual reconciliation of the property listing will be completed with the IHS property officer. If the annual report shows discrepancies, or if the annual report determines a loss of property, the Nation will be invoiced for the value of the missing or damaged property.

²/The IHS and Nation expect that the inventories and decisions by the Nation will be complete prior to October 1, 2008. The parties agree that to the extent this process is not complete prior to October 1, 2008, the Nation will review and respond to inventories presented by IHS within 30 days of receipt. Property selected by the Nation for ownership shall be transferred to it by the IHS as soon as possible. Property that the Nation chooses not to accept and not to continue to use will be removed by IHS within 30 days after the Nation responds to the inventory.

The IHS and the Nation have jointly agreed that the Indian Health Service will retain certain funds for property management services (e.g. cost of performing Federal inventory functions, cost of recording property transactions in the property system, Sunflower costs for each item entered and maintained on the property system, and exercise of the rights IHS has under warranty agreements). The amount to be retained by IHS and invoiced to the Nation shall be determined, as set forth in section 3.8.3 [Property Management Fees]. Upon transfer of the property to the Nation or notice by the Nation that it no longer wishes to use the property, the remaining retained funds shall be transferred to the Nation.

3.8.3 Property Management Fee.

3.8.3.1 Basic Fee. If the Nation chooses to continue to use more than 50 items of property, the annual per item fee shall be calculated by dividing \$49,920.83 by the total number of items on the Federal inventory for the Hastings Hospital. If the Nation chooses to continue to use fewer than 50 items of property, the annual fee shall be \$1,200. The basic fee shall be retained by IHS.

3.8.3.2 Sunflower Data Entry Fees. In addition to the basic fees under section 3.8.3.1 [Basic Fee], for each item the Nation chooses to continue to use, the Nation is responsible for Sunflower entry fees of \$36.36 per month per item for capitalized property over \$25,000 and \$0.43 per month per item for property valued between \$5,000 and \$25,000. The IHS will retain an amount equivalent to two months data entry fees. The IHS will issue an invoice at the beginning of each month for the data entry fees. The Nation will pay each invoice within 15 days of receipt. Periodic reconciliation of data entry fees will be done by IHS and provided to the Nation, with final reconciliation and adjustments occurring within 30 days after the end of the fiscal year or transfer of the last item of property to the Nation or into Federal possession, whichever occurs first.

3.9 Federal Real Property

3.9.1 Generally. (a) As provided in § 512(c) of the Act, the IHS, acting within its authority as an agency of the United States, does hereby authorize the Nation to utilize all of the Federally owned "real property," including all lands, buildings, structures, and related facilities, including all utility systems, as listed in the facility inventory and site plan for the Hastings Hospital. The title to these facilities, presently owned by the United States and identified on the facility inventory and site plan as real property, shall remain with the United States. The IHS has agreed that the Nation may use such real property subject to the terms, conditions, and provisions applicable for the use and maintenance of the real property identified for use in connection with this Funding Agreement until such time as the Nation may request title to such real property and it is transferred by the United States to the Nation.

3.9.2 Use and Occupancy. Use and occupancy of the real property described in section 3.9.1 [Generally] by the Nation shall be without costs or expense to the IHS, except as would otherwise be expended in support of this facility and as otherwise provided in this Funding Agreement, and under the general supervision of the Oklahoma City Area Director, and subject also to such further requirements as may be imposed on other Federal facilities of the

IHS. Upon notice by the Nation, the IHS will exercise its rights, under warranty agreements on such real property and the fixtures therein for any maintenance, repair or replacement covered by such agreements.

3.9.3 Facility Assessment and Management. Nation agrees to collaborate with the United States on scheduling and conducting facility condition assessment surveys and meeting necessary reporting requirements for energy data and vendor activity on Federally-owned facilities under Nation management, in accordance with the following subparagraphs:

3.9.3.1 Scheduling. The IHS must keep its facility condition assessment current (i.e. not more than five years old). The Nation agrees to collaborate with the OCAO on scheduling and conducting facility condition assessment surveys for Federally-owned facilities under Nation management. The costs of these surveys will be estimated in concert with the Oklahoma City Area Facilities Board.

3.9.3.2 Inventory. The IHS must keep an accurate and current inventory of real property assets. The Nation agrees to provide the certification annually to the OCAO for any new, replaced, or added space to a Federally-owned facility, or other changes in space utilization.

3.9.3.3 Energy Data. The IHS must report Energy Data for Federal facilities. Nation agrees to submit to OCAO energy data, as specified in the OCAO energy spreadsheet.

3.9.3.4 Capital Improvements. For projects started before October 1, 2005, the IHS must report all capital improvements made to Federal facilities which exceed \$25,000. For projects starting on or after October 1, 2005, the IHS must report all capital improvements made to federal facilities which exceed \$100,000. Nation agrees to provide a Final Real Property Closeout Report as specified in the OEHE Technical Handbook, Real Property, Chapter 30, to OCAO on each project within 120 days of its beneficial use of the facility. The Nation agrees to provide the applicable report by March 31 of each fiscal year.

3.9.3.5 NEPA. Unless under section 3.1.13.1.19 [Environmental Health and Engineering, NEPA] the Nation has assumed National Environmental Protection Act (NEPA) functions in accordance with Section 509 of the Act and 42 C.F.R. § 137.285-312, and must carry out NEPA responsibilities associated with projects carried out by the Nation on federal property to which NEPA applies.

3.9.3.6 Planning. When planning to fund a construction project using non-IHS funds in a Federal facility or on Federally-owned land, Nation will notify the OCAO in order to initiate the approval process.

3.9.4 Condition on Return of Management.

3.9.4.1 Routinely. If Nation elects to no longer use the real property described in section 3.9.1, prior to returning the use to the IHS, the Nation agrees it will, at its own sole and total expense except as provided in subparagraph 3.9.4.2 [Catastrophes], ensure the

property is in the same or better conditions as that existing at the time of use and occupancy, excepting normal wear and tear.

3.9.4.2 Catastrophes. Major or catastrophic repairs or facility replacement due to extraordinary or unforeseen events are not required unless additional funding amounts are provided by the IHS.

3.9.5 Hazardous Substances. In conformance with 42 C.F.R. § § 137.215, the Secretary shall determine the presence of any hazardous substance activity on such real property, as defined in 41 C.F.R. 101-47.202.2(b)(10). The Secretary shall provide the Nation information concerning the presence of any hazardous substance activity, such as, the type, and quantity of hazardous substances, and the date of storage, release or disposal of said hazardous substances. Federal facilities occupied by the Nation shall be eligible for funds on the same basis as other IHS Federally-owned facilities to address mandatory environmental requirements. The Nation will be advised of all remedial actions necessary to protect human health and the environment with respect to any such substance remaining on the property prior to transfer of title. The Nation does not take on any responsibility and liability for any hazardous substance activity on such real property prior to its use and occupancy.

Section 4 — Amounts Available in the Fiscal Year

4.1 Funding Amounts. To carry out the PSFAs described in section 3 of this Funding Agreement, the Nation has reallocated funding as the Nation deemed necessary as a consolidated Tribal Government budget. The funds made available to the Nation pursuant to the Compact and Title V of the Act are subject to reductions only in accordance with 25 U.S.C. § 458aaa-7(d) and 25 U.S.C. § 450j-1. Under this Funding Agreement, IHS agrees to make available in FY 2009 the amounts identified in the following documents, which are incorporated by reference:

- | | | |
|------------|-----|--|
| Attachment | B: | Consolidated Table |
| | B1: | Cherokee Nation FY 2009 Consolidated Funding
(Stable Base & Not in Stable Base Funding Worksheet) |
| Attachment | C: | OTSG Reports |
| | C1: | Self-Governance Funding Agreement ("FA") Table
(Cherokee Nation (FA#60G930002A), May 29, 2008) |
| Attachment | D: | Program Funding |
| | D1: | Program Funding Table |
| Attachment | E: | Oklahoma City Area Tribal Shares Funding |
| | E1: | FY 2009 Cherokee TOTAL Area Office Tribal Shares Tables |
| | E2: | FY 2009 Cherokee Area Office Tribal Shares Tables |
| | E3: | FY 2009 Creek to Cherokee Area Office Tribal Shares Tables |
| Attachment | F: | IHS Headquarters Tribal Shares Funding |
| | F1: | Cherokee Nation FY 2009 - HQ Tribal Shares Table #4 |

F2: Cherokee Nation FY 2008 HQTS Total (Prepared by Oklahoma City Area Office)

Attachment G: 2009 Estimated Area and Headquarters Facilities Appropriation Funds (based on FY 2008 Actual Funding)
G1: Table 4F Cherokee Nation (including Muskogee)
G2: Table 4F W.W. Hastings

In subsequent fiscal years, the Nation and IHS will negotiate and agree on revisions to the Attachments above prior to the end of the previous fiscal year. Upon agreement, the renegotiated Attachments will supersede the previous year's Attachments.

4.2 Stable Base Funding. The funding identified in Attachment B as base funding is to be provided by the IHS to the Nation as an annual base amount for a three-year funding period beginning October 1, 2008, through September 30, 2011. Pursuant to 42 C.F.R. §§ 137.120 - .125, funding identified is the Nation's Tribal base and will not be recalculated during the term of this base funding agreement, but will be adjusted annually only to reflect changes in Congressional appropriations by sub-sub activity excluding earmarks; by mutual agreement; or as a result of retrocession or reassumption. The establishment of a Stable Base Budget as defined herein does not preclude the Nation from including additional PSFAs, and associated funds, which had not previously been assumed by the Nation.

4.3 Funding Not in Stable Base. Funding for PSFAs assumed by the Nation, identified in Attachment B as non-stable base funding, shall be furnished, subject to the availability of appropriations, to the Nation and expended in accordance with applicable Federal law.

4.4 Transitional IHS PSFAs and Funds.

4.4.1 Generally. Generally, IHS will make every reasonable effort to facilitate an orderly transition of the funds associated with operation of the Hastings Hospital and will provide all funding required by Section 106(a)(1) of the Act and as otherwise provided for in this Funding Agreement.

4.4.2 Carryover and De-Obligated Funds. Any "No-Year" funds remaining unobligated from the Hastings Hospital budget on September 30, 2008, including de-obligated funds arising from the Hastings Hospital "No-Year" obligations (excluding maintenance and improvement funds and equipment funds), shall be paid by the IHS to the Nation under this Funding Agreement subject to the following terms.

4.4.2.1 Initial Reserve. For Fiscal Year 2009, the IHS shall retain a reserve of 20% of the un-obligated balance of each "No-Year" account other than maintenance and improvement funds and equipment funds for the Hastings Hospital to liquidate "No-Year" obligations of the Hastings Hospital. The purpose of this reserve is to maintain available funding for potential under-obligations directly related to "No-Year" obligations recorded for Hastings Hospital "No-Year" accounts.

4.4.2.2 Reserve Adjustments. At the end of the first year, the IHS shall reduce the amount held in reserve for the Hastings Hospital "No-Year" accounts to no more than fifty (50) percent of the initial reserve amount under section 4.4.2.1. At the beginning of each fiscal year, the IHS shall compare the reserve to the total outstanding obligations for Hastings Hospital. At the beginning of any fiscal year in which the reserve is higher than the total outstanding obligations for Hastings Hospital, the reserve shall be adjusted to be no higher than the total outstanding obligations of the "No-Year" accounts. As adjustments are made to the reserve, the IHS shall pay the difference to the Nation no later than November 30 of the applicable fiscal year.

4.4.2.3 De-Obligated Funds. The IHS shall review the "No-Year" obligations for Hastings Hospital at least quarterly and any de-obligated funds in excess of the reserve amount shall be paid to the Nation within 30 days.

4.4.2.4 Final Payment. Upon the closing of all obligations recorded for each Hastings Hospital "No-Year" account, the IHS shall pay the Nation the remaining balance of the applicable reserve account within 30 days.

4.4.2.5 Reporting.

4.4.2.5.1 Initial Report. No later than October 31, 2008, the IHS shall provide the Nation with a report that details the un-obligated balance of each "No-Year" account from which funds were reserved for the Hastings Hospital and on all unliquidated obligations directly related to each such account.

4.4.2.5.2 Periodic Reports. No later than April 1, 2009, and at six month intervals thereafter until final payment to the Nation under paragraph 4.4.2.4 [Final Payment] has been made, the IHS shall provide the Nation a report detailing the status of each unliquidated obligation directly related to each such account.

4.5 Contract Support Costs.

4.5.1 Calculation. The Nation's contract support costs associated with ongoing PSFAs, and new PSFAs associated with the Hastings Hospital, will be determined in accordance with Sections 508(c), 519(b) and 106(a) of the Act, the IHS Contract Support Costs Policy (IHM 6-3, or its successor), and any statutory restrictions imposed by Congress. The amounts identified pursuant to this paragraph will be adjusted in accordance with Sections 508(c), 519(b) and 106(a) of the Act and the IHS Contract Support Costs Policy (IHM 6-3, or its successor), as a result of changes in program bases, the Nation's Indirect Cost Rate, pass-through and negotiated direct contract support costs.

4.5.2 Payment. In accordance with these authorities and available appropriations for contract support costs, the parties agree that under this Funding Agreement the Nation will receive no less than the direct and indirect contract support costs in the amounts set forth in Attachment C, subject to Sections 106(b)(2) and 508(d)(1)(C)(ii) of the Act. These amounts were determined using the FY 2008 IHS contract support costs appropriation and the Nation's direct

cost base and indirect rate as of June 23, 2008, and will be adjusted as set forth in Sections 508(c), 519(b), and 106(a) of the Act, the IHS Contract Support Costs Policy (IHM 6-3, or its successor), and as a result of changes in program bases, Tribal contract support costs need, and available contract support costs appropriations. Any adjustments to these amounts, including adjustments for contract support costs associated with the ongoing Muskogee Health Center PSFAs or the new and expanded Hastings Hospital PSFAs, will be reflected in future modifications to this Funding Agreement.

The parties agree that payment of contract support costs shall be subject to the availability of appropriations, and that such costs shall not be paid in the absence of available appropriations.

4.5.3 Availability of Funds for New or Expanded PSFAs. IHS has informed the Nation that it does not anticipate that funds will be available in FY 2009 to pay the Nation any contract support costs for the operation of the Hastings Hospital, although the final structure and content of the FY 2009 appropriation is not known at the time this funding agreement is being executed. The Nation has informed IHS that it still wishes to contract for the new or expanded PSFAs associated with the Hastings Hospital, even if appropriations may not be available to pay the Nation's contract support costs, in whole or in part. Although the Nation will go forward with contracting for the operation of the Hastings Hospital, the Nation anticipates strategic reductions in program operations to cover any resulting contract support costs shortfall. The parties have discussed this possibility and have agreed that, in the event such reductions occur, the reductions will neither endanger the public health nor otherwise trigger either the rejection or the reassumption provisions of the Act concerning delivery of health care services.

4.6 Increases. The Nation is eligible for all funding increases associated with the funding in Attachment B on the same basis as other Tribes, for services, inflation, Pay Act, population growth, Indian Health Care Improvement Fund, and all other increases associated with the funding in Attachment B that may from time to time be appropriated by Congress or allocated by IHS. The Nation will be eligible for non-recurring and earmarked funds consistent with applicable law, funding formulas agreed to by Tribes in the Oklahoma City Area, and on the same basis as other Tribes.

4.7 Reimbursements.

4.7.1 Transferring Reimbursements to the Nation. The IHS shall transfer to the Nation all reimbursements received on or after October 1, 2008, from Medicare, Medicaid, other third-parties and the Catastrophic Health Emergency Fund ("CHEF") arising from care provided or funds expended by the Nation and from care provided by the IHS at the Hastings Hospital.³ The transfer of Medicaid, Medicare and other third-party reimbursements shall be made by IHS to the Nation as the funds are received by IHS. Such reimbursements shall be made within 45 days after receipt by the IHS.

³/See section 4.7.2 of this Funding Agreement regarding processing and funding of CHEF claims.

4.7.2 Processing CHEF Requests. The Nation will submit requests and documentation for CHEF resources to OCAO for processing. OCAO will submit the requests to IHS Headquarters East for funding determinations. Funding due the Nation resulting from CHEF cases submitted through the OCAO to IHS Headquarters shall be identified and added by means of an adjustment to this Funding Agreement in accordance with section 7.5.2.3 [Funding Increases; (Amendments); (CHEF)] when such funding is approved and made available. The IHS shall be responsible for notifying the Nation of the status of all funding requests pertinent to the CHEF.

4.7.3 Credits and Refunds. IHS will promptly transmit to the Nation or provide as a credit to the Nation's account in National Supply Service Center (NSSC) any finalized refunds or credits received by IHS as the result of activities or purchases carried out by the IHS at the Hastings Hospital or by the Nation.

4.8 Statutorily Mandated Grants. In accordance with 25 U.S.C. § 458aaa-4(b)(2) and its implementing regulations, the parties agree that the Secretary will add the Nation's FY 2009 Diabetes grant(s), and any other statutorily mandated grant awarded through the IHS to the Nation, to this Funding Agreement after these grants have been awarded. Grant funds will be paid to the Nation as a lump sum advance payment through the PMS grants payment system. The Nation will use interest earned on such funds to enhance the statutorily mandated grant program, including allowable administrative costs. The Nation will comply with all terms and conditions of the grant award for statutorily mandated grants, including reporting requirements, and will not reallocate grant funds nor redesign the grant program, except as provided in the implementing regulations or the terms of the grant.

4.9 Other Funds Due the Nation.

4.9.1 Reconciliation and Adjustment. For the reasons noted throughout section 4 of this Funding Agreement [Amounts Available in the Fiscal Year] and because the funds under the previous year's Funding Agreement have not been fully identified or reconciled as of the time this Funding Agreement is being executed, all amounts to be paid in the fiscal year for this Funding Agreement are based on prior year appropriations and are subject to amendment to reflect the full amount due for this fiscal year. IHS will provide sufficient documentation to facilitate the Nation's reconciliation of the amounts due under this Funding Agreement to the cash actually received by the Nation.

4.9.2 Year End Resources. In addition to the amounts otherwise provided, the Nation shall be eligible to receive a tribal share for which it meets the eligibility criteria of any unobligated funds existing as of the end of the fourth quarter of each fiscal year, including but not limited to, the IHS Headquarters Management Initiatives and Director's Emergency Fund line items (excepting those with X-year funds) (1) where the Tribe's full annual share for that funding category was not identified in Funding Agreement Attachments listed in section 4.1 [Funding Amounts] or for which the total funds available for distribution to Indian tribes in those categories for the applicable fiscal year increased after execution of this Funding Agreement, and (2) where the funds involved were not subject to a Congressional earmark that precludes distribution to the Nation.

4.10 Funding Adjustments.

4.10.1 Due to Congressional Actions. The parties to this Funding Agreement recognize that the total amount of the funding in this Funding Agreement is subject to adjustment due to Congressional action in appropriations acts. Upon enactment of relevant appropriation acts or other law affecting availability of funds to the IHS, the amounts of funding provided to the Nation in this Funding Agreement shall be adjusted as necessary, and the Nation has been notified of such action, subject to any rights which the Nation may have under this Funding Agreement, the Compact, or the law.

4.10.2 Muscogee (Creek) Nation.

4.10.2.1 Resolutions. The Muscogee (Creek) Nation authorized the Nation to carry out PSFAs under Resolution Number TR 96-14, enacted October 26, 1996. Should the Cherokee Nation fail to provide to the IHS a resolution from the Muscogee (Creek) Nation authorizing the Cherokee Nation to carry out PSFAs of Hastings Hospital prior to September 30, 2008, the funds associated with the Muscogee (Creek) Nation's share of Hastings Hospital will not be included in the funding provided to the Cherokee Nation under this Funding Agreement. These amounts are detailed in Attachments B, D, E, and F.

4.10.2.2 Contracting or Compacting. Should the Muscogee (Creek) Nation assume responsibility after October 1, 2008, for PSFAs (or portions thereof) provided for under this Funding Agreement, adjustment to funding amounts and responsibilities of the Cherokee Nation under this Funding Agreement will occur pursuant to 42 C.F.R. §§ 137.235 - .238.

Section 5 — Payment Schedule

5.1 Payment Schedule.

5.1.1. Generally. Payment shall be made as expeditiously as possible and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. The Secretary shall make available the funds identified and agreed upon under section 4.1 [Funding Amounts] by paying the total amount as provided for in the Funding Agreement in advance lump sum, as permitted by law, or as provided in section 5.2 [Periodic Payments] or otherwise in this Funding Agreement. The first payment shall be made within ten (10) calendar days after the date on which the Office of Management and Budget apportions the appropriations for that funding year for the PSFAs subject to the Funding Agreement or within ten calendar days after the effective date of the Funding Agreement, whichever is later. The Prompt Payment Act, Chapter 39 of Title 39, United States Code, shall apply to the payment of funds due under this Compact and the Funding Agreement negotiated thereunder.

5.1.2 Exceptions. Except as provided in sections 6 [Buyback] and 5.2 [Periodic Payments], all funds identified in section 4 [Amounts Available in the Fiscal Year] of this

Funding Agreement shall be paid to the Nation, in accordance with section 3.3.1 [Payment Schedule] of the Compact; payment to the Nation to be made as follows:

One annual payment in lump sum to be made in advance by wire transfer.

5.2 Periodic Payments. Payment of funds otherwise due to the Nation under this Funding Agreement, which are added or identified after the initial payment is made, shall be made promptly to the Nation by wire transfer within ten (10) days after distribution methodologies and other decisions regarding payment of those funds have been made by the IHS.

Section 6 – Buyback. The Nation may choose to purchase from the IHS any goods and services transferred from the IHS to the Nation under the Compact and this Funding Agreement. The IHS shall provide any such goods and services to the Nation on a reimbursable basis, including payment in advance with subsequent adjustment. 42 C.F.R. § 137.95.4 Under a Continuing Resolution, nothing in this provision shall require the Nation to provide payment in advance to the IHS to the extent IHS has not paid the Nation funds, associated with the activity, due under this Funding Agreement.

6.1 Intergovernmental Personnel Act (“IPA”)/Memorandum of Agreement (“MOA”) Personnel Employed by the Nation.

6.1.1 Cost and Reconciliation. Resources are included in this Funding Agreement for MOAs and IPAs employed by the Nation .5 The Nation is responsible to pay the actual salary and benefit costs for each IPA and MOA. In addition to the salary and benefit costs, the Nation shall pay full cost recovery fees for the administration of the IPA/MOAs. The full cost recovery fee for MOAs in FY 2009 for Headquarters are expected to be \$4,516.16 and for Area shall be \$202.52 per MOA per year. The full cost recovery fee for each IPA per year will be \$946 in FY 2009, \$899 in FY 2010, and \$854 in FY 2011.

The invoice will be issued at the beginning of each month, based on full cost recovery fees for the actual number of IPA/MOAs and an estimate of salary and benefit costs based on actual costs for salary and benefits incurred for the previous month, provided the October 1, 2008, invoice and advance payment shall include an amount to be agreed upon between IHS and the Nation associated with the new IPA/MOAs that are effective October 1, 2008. The Nation agrees to pay the IHS invoices by the 15th of the month. Periodic reconciliation of payments against actual salary and benefit costs and related full cost recovery fees shall be done by the IHS and provided to the Nation, with final reconciliation and adjustments occurring within 30 days after the end of the fiscal year.

4/The IHS and the Nation intend to have agreed on the amount of the initial invoice no later than September 1, 2008 so Nation can make its advance payment on or before October 1, 2008.

5/These resources include \$130,000 recurring funding from Area. The individual IPAs and MOAs are not attached to, nor incorporated by reference into, this Funding Agreement.

6.1.2 Severance Pay. The severance pool, which the Nation contributes to will be responsible for all costs associated with severance pay relative to all Special Purpose IPA and MOA staff separations occurring as a result of the Nation's compacting IHS programs and services. Resources required to fund these costs will in no way reduce the negotiated Funding Agreement amount or tribal shares.

6.1.3 Availability. Upon request of the Nation, the IHS will assist in assigning IPA/MOA employees to be assigned to the Nation

6.2 National Supply Service Center ("NSSC").

6.2.1 Access. In accordance with section 3.12.2 [Other Supply Sources] of the Compact and 25 U.S.C. § 458aaa-(e) and 458aaa-15(a), the Nation shall have access to the pharmaceuticals and supplies through the IHS. It is the intention of the parties that the Nation may continue to purchase, at its option, pharmaceuticals, medical and other supplies from the National Supply and Services Center or its successor.

6.2.2 Reimbursement and Cost Reconciliation. The NSSC estimated operating cost for FY 2009 is \$3,500,000. Based on this estimated operating cost (for FY2009), the full cost recovery fees will not exceed 1.95% for pharmaceutical purchases and management (Pharmaceutical Prime Vendor), 3% for medical supply purchase and management (Medical Surgical Prime Vendor), and 8% for other medical and warehouse supplies that will be assessed on purchases by the Nation from NSSC. The OCAO will continue to make every effort to reduce operating costs at the NSSC.

Any fees collected in excess of the actual operating costs of NSSC will be distributed or credited proportionally to all NSSC users based on their fees paid during the applicable fiscal year.

At the beginning of each fiscal year, the OCAO will invoice the Nation for a 60-day advance payment, based upon the total billing for the previous year, provided the October 1, 2008, advance payment shall include an amount to be agreed upon between IHS and the Nation associated with the history of pharmaceutical and supply purchases at Hastings Hospital in the previous year. The OCAO will invoice monthly for actual purchases. The advance payment will be applied to the final billing for the fiscal year or, at the option of the Nation may be carried over to the next year. The OCAO will submit an annual reconciliation to the Nation within 30 days of the end of the fiscal year for review and concurrence. At the option of the Nation, any excess payments by the Nation may be used as a credit against otherwise required monthly payments or refunded to the Nation.

6.3 Contracts, Leases, and Other Agreements.

6.3.1 Administration. In accordance with section 3.12.2 [Other Supply Source] of the Compact and 25 U.S.C. § 458aaa-7(e) and 458aaa-15(a), at the request of the Nation, the Nation will have access to goods and services under contracts, leases and other agreements entered into by Hastings Hospital or the OCAO for the benefit of the Hastings Hospital. Upon

request by the Nation, the Nation will also have access to goods and services under contracts, leases and other agreements entered into by the OCAO if such contract, lease or other agreement could be reasonably extended to the Nation and if the vendor agrees and if the level of effort by the OCAO is determined reasonable based on work load consideration.

The full cost recovery fee for administration of the contracts, leases, and other agreements shall be funded in accordance with section 6.3.2 [Reimbursement and Cost Reconciliation].

A list of each such contract, lease, and other agreement shall be appended to this Funding Agreement and the list amended from time to time as necessary by mutual agreement of the IHS and the Nation. The list shall include (1) the "not to exceed amount" of the contract, lease or other agreement applicable to the PSFAs of the Nation, (2) the renewal date (if any), and (3) the termination date. A copy of each contract, lease and other agreement on the list will be provided to the Nation by IHS, but shall not be appended to, nor incorporated into, this Funding Agreement. The IHS will not take action to renew or terminate a contract, lease, or other agreement on the list without consultation with the Nation in advance. The IHS will not amend a contract, lease or other agreement on the list in a way that would affect the availability of goods or services to the Nation or that would result in increased costs to the Nation without consultation with the Nation in advance. The IHS and Nation will cooperate in the administration of the listed contracts, leases and other agreements to assure that the vendors comply with all contract, lease or other agreement terms.

6.3.2 Reimbursement and Cost Reconciliation. The full cost recovery fee for administration of the contracts, leases, and other agreements described in section 6.3.1 [Administration] shall be \$1432.48. The OCAO will make every effort to reduce the cost of administration. Any fees collected in excess of the actual cost of administration will be distributed or credited to the Nation.

On October 1, 2008 the IHS will invoice the Nation for a 30-day advance payment based upon 1/12th of the estimated obligations under the contracts, leases, and other agreements, plus the applicable full cost recovery fees. The OCAO will invoice monthly for actual costs incurred plus the applicable full cost recovery fees. The advance payment will be applied to the final billing for the fiscal year or, at the option of the Nation, may be carried over to the next year. The OCAO will submit an annual reconciliation to the Nation within 30 days of the end of the fiscal year for review and concurrence. At the option of the Nation, any excess payments by the Nation may be used as a credit against otherwise required monthly payments or refunded to the Nation.

Section 7 — Amendment or Modification of this Funding Agreement.

7.1 Form of Amendments. Except as otherwise provided in this Funding Agreement, the Compact, or by law, any modifications of this Funding Agreement shall be in the form of a written amendment executed by the Nation and the United States.

7.2 [Reserved]

7.3 Due to Addition of IHS Retained or New Programs. Should the Nation determine that it wishes to provide a PSFA of the IHS for which funding has been retained by IHS and which is not included in this Funding Agreement, the IHS and the Nation shall negotiate an amendment to this Funding Agreement to incorporate the new PSFA and related funding.

7.4 Due to Availability of Additional Funding. The Nation shall be eligible for any increases in funding and new programs for which it would have been eligible had it been administering programs under a self-determination contract, rather than under the Compact and this Funding Agreement, and this Funding Agreement shall be amended to provide for timely payment of such new funds to the Nation.

7.5 Funding Increases.

7.5.1 Written consent of the Nation shall be required for issuing amendments to increase funding, except as provided in section 7.5.2.

7.5.2 Amendments to add funds to this Funding Agreement that do not require written consent may include, but are not limited to:

7.5.2.1 Program/OCAO/HQ mandatories, Pay Act, population growth and Indian Health Care Improvement Fund;

7.5.2.2 Program/OCAO/HQ End-of-Year Distributions;

7.5.2.3 CHEF reimbursements;

7.5.2.4 CHS Deferred Services;

7.5.2.5 Routine Maintenance & Improvement; or

7.5.2.6 Medicare collections and reimbursements.

7.5.3 Within two weeks after any increase in funding provided under subsection 7.5.2, the IHS shall provide the Nation with written documentation of the sub-sub activity source and distribution formula for the funding. Such amendments shall be without prejudice to the rights of the Nation under section 3.9 of the Compact [Disputes].

7.6 Decreases and Delays. Except pursuant to section 4.9.1 [Due to Congressional Actions], this Funding Agreement shall not be modified to decrease or delay any funding except pursuant to written agreement of the parties.

7.7 Procedures for Amending or Modifying This Funding Agreement.

7.7.1 Submission of Amendments and Final Offer. Amendments or modification proposed by the Nation shall be submitted in writing to the Oklahoma City Area Director with a copy to the IHS, Office of Tribal Self-Governance. If the parties are unable to agree, in whole or in part, on the terms of the amendment (including funding levels), the Nation may submit a final offer pursuant to 25 U.S.C. § 458-6(b), which shall be processed in accordance with 25 U.S.C. § 458aaa-6(b)-(d)) and 42 C.F.R. Part 137 Subpart H.

7.7.2 Execution. Amendments to this Funding Agreement may be executed on behalf of the Nation by the Nation's Principal Chief or his designee.

Section 8 — Third Party Recoveries.

8.1 Received by the Nation. Any funds recovered by the Nation through the filing, litigating, or settling a claim against a third party to require that third party to pay for services previously provided to IHS-eligible beneficiaries by the Nation, shall be the property of the Nation.

8.2 Federal Medical Care Recovery Act (FMCRA) Claims. On October 1, 2008, the names of patients of Hastings Hospital subject to unresolved FMCRA claims shall be transferred to the Nation for its pursuit of reimbursement under 42 U.S.C. § 1621e. The IHS will not continue to litigate or settle any of these FMCRA claims after October 1, 2008. Any funds received by IHS from a FMCRA claim of Hastings Hospital after October 1, 2008, will be transferred to the Nation.

Section 9 – Title I Provisions Applicable to This Funding Agreement. As authorized in 25 U.S.C. § 458aaa-15(b), the Nation exercises its option to include the following provisions of Title I of the Act as part of this Funding Agreement, and these provisions shall have the force and effect as if they were set out full in Title V of the Act.

- 9.1 25 U.S.C. § 450b(e) (definition of "Indian Tribe");
- 9.2 25 U.S.C. § 450h(b) (related to grants for health facility construction and planning, training and evaluation);
- 9.3 25 U.S.C. § 450h(d) (related to duty of IHS to provide technical assistance);
- 9.4 25 U.S.C. § 450j(a)(1) (exemption from Federal procurement and other contracting laws and regulations);
- 9.5 25 U.S.C. § 450j(o) (storage of patient records);
- 9.6 [Reserved]
- 9.7 25 U.S.C. § 450l(c), section 1(b)(8)(A) (access to reasonably divisible property);
- 9.8 25 U.S.C. § 450l(c), section 1(b)(8)(C) (joint use agreements);
- 9.9 25 U.S.C. § 450l(c), section 1(b)(8)(D) (acquisition of property);
- 9.10 25 U.S.C. § 450l(c), section 1(b)(8)(E) (confiscated or excess property);
- 9.11 25 U.S.C. § 450l(c), section 1(b)(F) (screener identification);
- 9.12 25 U.S.C. § 450l(c), section 1(b)(9) (availability of funds);
- 9.13 25 U.S.C. § 450l(c), section 1(d)(1)(B)(1) (construction of contract);
- 9.14 25 U.S.C. § 450l(c), section 1(d)(1)(B)(2) (good faith);
- 9.15 25 U.S.C. § 450l(c), section 1(d)(1)(B)(3) (programs retained);
- 9.16 25 U.S.C. § 450l(c), section 1(f)(2)(B) (incorporation by reference); and
- 9.17 25 U.S.C. § 450m-1 (judicial and administrative remedies).

Section 10 — Memorializing Disputes. The parties to this Funding Agreement may have failed to reach agreement on certain matters that remain unresolved and in dispute. Such matters may be set forth in an attachment to this Funding Agreement, which shall be identified as "Memorialization of Matters Remaining in Dispute." This Attachment shall not be considered a

part of this Funding Agreement, but is attached for the purpose of recording matters in dispute for future reference, discussion and resolution as appropriate. This attachment should not be construed as an admission against either party. The Nation does not waive any remedy the Nation may have under the law with regard to these issues and any others not listed herein.

Section 11 – Severability.

11.1 Except as provided in this section, this Funding Agreement shall not be considered invalid, void or voidable if any section or provision of this Funding Agreement is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction

11.2 The parties will seek agreement to amend, revise or delete any such invalid, unlawful or unenforceable section or provision, in accordance with the provisions of this Funding Agreement.

Section 12 — Effective Date and Duration. This Funding Agreement is effective on October 1, 2008, and will remain in effect until September 30, 2011, or until a subsequent agreement is negotiated and becomes effective pursuant to section 3.10 of the Compact [Subsequent Funding Agreements].

**Funding Agreement between Cherokee Nation and Secretary, HHS
Effective October 1, 2008**

**United States of America
Secretary of Health and Human Services**

By: _____
Director, Indian Health Service

Date: _____

Cherokee Nation

By: _____
Chad Smith
Principal Chief

Date: 7/24/2008
