

**TO ENTER INTO A TRIBAL TRANSPORTATION PROGRAM AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS**

**IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION**

**RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL**

**A COUNCIL BILL**

**TO APPROVE** a Tribal Transportation Program (TTP) Agreement between the Choctaw Nation of Oklahoma and the United States Department of the Interior, Bureau of Indian Affairs.

**WHEREAS**, the Tribal Council of the Choctaw Nation is committed to protecting and preserving the interests of the Nation and its members;

**WHEREAS**, the Choctaw Nation of Oklahoma wishes to execute a TTP Agreement with the United States Department of the Interior, Bureau of Indian Affairs under the authority granted by Title 23 of the United States Code, as amended by the Surface Transportation Reauthorization Act of 2021 (STRA-21), Div. A of Pub. L. 117-58 (November 15, 2021), and the Delegations of Authority set forth in 25 U.S.C. §§ 1, 1a, and 2;

**WHEREAS**, the Tribal Council of the Choctaw Nation of Oklahoma believes establishing a TTP Agreement with the United States Department of the Interior, Bureau of Indian Affairs under the authority set forth above will further protect and preserve those interest of the Nations and its Members; and


**WHEREAS**, the Choctaw Nation of Oklahoma maintains the stability, accountability, and capability necessary to facilitate those duties associated with a TTP Agreement.

**THEREFORE BE IT ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma hereby approves the execution of all necessary documents required to establish a TTP Agreement between the Choctaw Nation of Oklahoma and the United States Department of the Interior Bureau of Indian Affairs.

**BE IT FURTHER ENACTED** by the Tribal Council that this Bill be cited as approval that the Chief or his designee, is authorized to prepare, execute, deliver and file any and all agreements, certificates, instruments and documents, in such form and with such terms and provisions as the Chief of the Nation, or his designee, may approve, and to take such other action as he, she or they may deem proper or appropriate, to carry out the intent and purposes of the foregoing enactments.

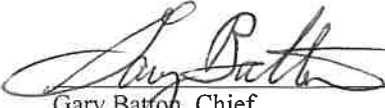
**CERTIFICATION**

*I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on September 10, 2022. I further certify that the foregoing Council Bill CB- 166 -22 was adopted at such meeting by the affirmative vote of twelve ( 12) members, zero ( 0) negative votes, and zero ( 0) abstaining.*

  
Thomas Williston, Speaker  
Choctaw Nation Tribal Council

**TO ENTER INTO A TRIBAL TRANSPORTATION PROGRAM AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS**

  
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Ronald Perry, Secretary  
Choctaw Nation Tribal Council

  
\_\_\_\_\_  
Gary Batton, Chief  
Choctaw Nation of Oklahoma

Date 9-13-22

**TO ENTER INTO A TRIBAL TRANSPORTATION PROGRAM AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS**

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**Purpose/Need of Council Bill:**

**Title of Council Bill:** TO ENTER INTO A TRIBAL TRANSPORTATION PROGRAM AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS

**Agency:** Bureau of Indian Affairs

**CNO Department:** Transportation, Roads, and Bridges

**Request by:** Jim Sallee, Director of Transportation, Roads and Bridges; Buddy Bell, Senior Director of Construction; Ron Abney, Executive Director of Tribal Property Operations; Kelly McKaughan, SEO Integrated Services

**TRIBAL TRANSPORTATION PROGRAM AGREEMENT  
BETWEEN THE  
THE CHOCTAW NATION OF OKLAHOMA  
AND THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**ARTICLE I – AUTHORITY AND PURPOSE**

**Section 1. Authority.** This Tribal Transportation Program Agreement (Agreement) is entered into by the Director of the Bureau of Indian Affairs, (“Director,” which term shall mean the Director or his designee, as appropriate), for and on behalf of the United States Department of the Interior, Bureau of Indian Affairs (BIA) and by the Choctaw Nation of Oklahoma (“Tribe,” and together with the Director or the BIA, 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 23 U.S.C. §§ 201–202, as amended by the Surface Transportation Reauthorization Act of 2021 (STRA-21), Div. A of Pub. L. 117-58 (November 15, 2021), also colloquially known as the “Bipartisan Infrastructure Law,” or “BIL” (together, the “Tribal Transportation Program” or “TTP”), and the Delegations of Authority set forth in 25 U.S.C. §§ 1, 1a, and 2. 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 and Strengthening Nation-to-Nation Relationships dated January 26, 2021, and authorizes the Tribe to perform the transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities that are located on, or provide access to, the Choctaw Nation of Oklahoma) or a community of the Tribe that are eligible for funding under the TTP, 25 C.F.R. Part 170 and 23 C.F.R. Part 661 (together, the “TTP Regulations”). This Agreement is made pursuant to 23 U.S.C. § 202 (a)(2)(B), the TTP Regulations, and in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, as amended (25 U.S.C. §§ 5301, et seq.), including for purposes of Federal Tort Claims Act coverage.

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

A. to transfer to the Tribe all of the functions and duties that the Secretary of the Interior would have performed with respect to a program or project under the TTP and the TTP Regulations, other than those functions and duties that cannot be legally transferred under the ISDEAA, together with such additional activities as the Tribe may perform under STRA-21; and

B. to provide the Tribe or its designee, under this Agreement, its formula share of TTP funds pursuant to STRA-21 and the TTP Regulations, together with such additional Federal Lands Highways funds as the Tribe may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other appropriation to the Department of Transportation, as well any other state-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be credited to the TTP or otherwise made available to the Tribe under an agreement to transfer such funds approved by the Director or his designee.

C. to provide the Tribe or its designee, under this Agreement, such available prior year funds remaining under the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94 (December 4, 2015), the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141 (July 6, 2012), or the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005), as the Tribe wishes to receive, provided that:

(i) FAST Act and MAP-21 funds transferred to the Tribe under this Agreement shall be administered in accordance with this Agreement; and

(ii) SAFETEA-LU funds transferred to the Tribe under this Agreement shall be administered in accordance with this Agreement, except that in accordance with Section 1118 of SAFETEA-LU only 25% of such funds may be used for eligible road maintenance activities; and

(iii) FAST Act, MAP-21, SAFETEA-LU or other funds previously transferred to the Tribe shall continue to be administered in accordance with the Tribe's FAST Act, MAP-21 and/or SAFETEA-LU Program Agreement approved by the Director on July 21, 2016, that the Parties now mutually agree shall be amended to add the reporting requirements in Article III, Section 7., herein, and extended until such funds are expended or returned to the Director.

## 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 Tribe and the Director and it shall automatically extend for the period authorized by any statutory extensions of STRA–21 or until all funds transferred to the Tribe under this Agreement have either been expended or returned to the Director, whichever occurs last.

**Section 2. Funding.**

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b)(4), the Director shall provide to the Tribe or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Tribe would otherwise receive for the TTP as determined by Tribe’s annual funding percentage under 23 U.S.C. § 202 (b)(3), TTP planning funds described in 23 U.S.C. § 202 (c), together with such other funds as may be made available under, or credited to, the TTP for the Tribe to carry out eligible activities authorized by the TTP and the TTP Regulations. Not later than 30 days after the date that funds are made available to the Director, the funds shall be distributed to, and made available for immediate use.

B. Upon the execution of this Agreement and a Referenced Funding Agreement (RFA) by both Parties, and subject to the availability of funds identified in the preceding Paragraph A., the Director shall notify the Tribe or its designee, in accordance with Article IV, Section 1 of this Agreement, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information as required by the ACH Vendor/Miscellaneous Payment Enrollment Form and register in the Treasury Department's Automated Standard Payment System (ASAP) to receive the funds into its account. The Director shall provide to the Tribe a single advance payment in the amount identified in the RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form and notification of the Tribe’s enrollment in ASAP. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to 25 C.F.R. §§ 170.607 – 170.608, Contract Support Costs (CSCs) are an eligible cost and the Tribe may use their TTP allocation to pay such costs. The Tribe shall include a line item for CSCs in the Tribe’s project construction budgets. The Tribe may also include, as eligible CSCs, one-time start-up costs and pre-award costs incurred by the Tribe in the initial year of this Agreement similar to 25 U.S.C. §§ 5325 (a)(5) and (6). The Parties

acknowledge that TTP funds are distributed pursuant to a statutory formula to the federally recognized tribes participating in the TTP and that the Tribe's total share of TTP funds includes all direct and indirect costs associated with the TTP. The Parties also acknowledge that there are no additional TTP or other funds from the Department of the Interior that are available for any additional CSCs incurred by the Tribe.

D. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202 (a)(1), the TTP Regulations, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on its FHWA-approved Tribal Transportation Improvement Program (TTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe 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 Tribe 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; and
- (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; and
- (iii) Interest and investment income that accrue on any funds provided for by this Agreement become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 5324 (b) and may be used on projects and activities identified on a FHWA approved TTIP; and
- (iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of TTP funds when necessary

to fund an eligible project that requires more than one fiscal year of funding and is identified on a FHWA-approved TTIP.

E. The Tribe may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.227 – 230, and other applicable laws.

F. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 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 Tribe elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Director agrees (i) to maintain the project(s) on a FHWA-approved TTIP until all debt instruments, including interest thereon, are repaid in full by the Tribe, and (ii) at the option and direction of the Tribe (after receipt of electronic banking information on the Payment Enrollment Form and notice that the Tribe has enrolled in ASAP by the Director), to provide all or a portion of the funds the Tribe is eligible to receive under this Agreement directly to a trustee or other depository so designated by the Tribe pursuant to the provisions of any RFA received by the Director thereunder.

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

- (i) 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 Tribe; or
- (ii) create any right of a third party against the United States for payment under the eligible debt financing instrument.

H. As authorized by 25 C.F.R. § 170.228, the Tribe may use TTP funds to:

- (i) leverage other funds; and
- (ii) pay back loans or other finance instruments for a project that:
  - (a) the Tribe paid for in advance of the current year using non-TTP funds, including Tribal funds; and
  - (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 Tribe 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 acknowledge that this Agreement is entered into, and funds are made available to the Tribe, pursuant to 23 U.S.C. §§ 202 (a)(2)(B) and in accordance with the ISDEAA, including for purposes of Federal Tort Claims Act coverage. Payments under this Agreement shall be made in accordance with Article II, Section 2.B. herein. In the event funds due the Tribe under this Agreement are not paid to the Tribe 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.

**Section 3. Powers.** The Tribe shall have all powers that the Secretary of the Interior (“Secretary”) would have exercised in administering the funds provided to the Tribe for the TTP under 23 U.S.C. § 202 (b)(6), except to the extent that such powers are inherently Federal and cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to, the Secretary’s powers under the TTP Regulations, together with such duties and responsibilities as may be performed by the Secretary or an Indian tribe under the TTP Regulations, or as are otherwise permitted by law.

**Section 4. Dispute Resolution.** In the event of a dispute arising under this Agreement, the Tribe and the Director agree to use mediation, conciliation, arbitration and other dispute resolution procedures authorized under 25 C.F.R. § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes. The Director agrees to attempt 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. §§ 201-202 and Chapter 1 of Title 23.

**Section 6. Activities to be Performed.** Consistent with the provisions of 23 U.S.C. § 202 (a)(1) and the TTP Regulations, the activities to be performed by the Tribe under this Agreement may include:

- Transportation Planning; and
- Program Administration; and
- Design; and

- Preliminary Engineering (including the use of Tribal Environmental Policy Act (TEPA) processes and procedures to satisfy compliance with the National Environmental Policy Act (NEPA) and other environmental and cultural resource requirements); and
- Construction; and
- Construction Engineering; and
- Construction Management; and
- Road Maintenance as authorized under 23 U.S.C. § 202 (a)(8)(A), (the greater of 25% of the funds allocated to the Tribe through the TTP funding formula under 23 U.S.C. § 202 (b) or \$500,000 may be expended for the purpose of eligible road maintenance activities, excluding road sealing that shall not be subject to any limitation); and
- Development and negotiation of Tribal-State road maintenance agreements authorized under 23 U.S.C. § 202 (a)(8)(C); and
- Other TTP-eligible activities authorized under Chapter 1 or 2 of Title 23, the TTP Regulations or other applicable law, including activities funded under agreements developed under 23 U.S.C. § 202 (a)(9); and
- No other negotiated activities.

**Section 7. Limitation of Costs.** The Tribe 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. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity or project conducted under this Agreement would be greater than the amount of funds provided under this Agreement, the Tribe shall provide reasonable notice to the Director and may suspend performance of this Agreement until such time as additional funds are made available.

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

**Section 9. Applicable Regulations.** The TTP Regulations and 2 C.F.R. Part 200 apply to this Agreement, together with any amendments thereto, except where there is a conflict, in which case the TTP Regulations shall control. The Tribe may seek a waiver of these regulations to the extent permitted by law and as provided by 25 C.F.R. §§ 170.625 and 170.626.

**Section 10. Use of Tribal Facilities and Equipment.** The Parties agree that the Tribe shall be permitted to utilize TTP, other Federal Lands Highway funds, and additional TTP-eligible funds awarded under this Agreement to pay lease/rental rates for facilities and equipment, as well as to maintain such facilities and equipment when performing contractible activities under this Agreement. Consistent with subparagraph (49)(i) of Appendix A to Subpart B of 25 C.F.R. Part 170, in those cases where the Tribe reasonably determines and provides written notice and analysis documentation to the Director that the purchase of construction equipment is more cost effective than the leasing of construction equipment, such equipment may be purchased upon written approval from the BIA. As permitted by subparagraph (49)(ii) of Appendix A to Subpart B of 25 C.F.R. Part 170, the purchase of maintenance equipment shall be an allowable cost to the Tribe, provided that not more than the greater of 25% or \$500,000 of the Tribe's annual TTP funds may be used for the purchase of maintenance equipment and any other maintenance activities. Funding for the purchase of construction or maintenance equipment must be identified on an FHWA-approved TTIP prior to expenditure.

### **ARTICLE III – RESPONSIBILITIES OF THE TRIBE**

**Section 1. Health and Safety.** In exercising responsibility for carrying out the eligible programs and projects under this Agreement, the Tribe assures the Director that within available funding, the Tribe 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 Tribe 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. §§ 5307 (b) and (c).

**Section 2. Program Standards and Regulations.** The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of the TTP

Regulations. Additionally, the Tribe 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 that meet or exceed federal standards to facilitate operation or administration of any aspect of the TTP under this Agreement.

**Section 3. Plans, Specifications and Estimates Approval Authority.**

A. Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates (“PS&E”) for project packages in accordance with the requirements of 25 C.F.R. §§ 170.460 through 170.463 and will provide a copy of the PS&E approval to the facility owner and BIA. The Tribe shall:

- (i) provide assurances under this Agreement that the construction will meet or exceed applicable health and safety standards; and
- (ii) obtain the advance review of the PS&E from a civil engineer licensed by the State in which the project is located who has certified that the PS&E meets or exceeds the applicable health and safety standards; and
- (iii) provide a copy of the State-licensed civil engineer’s certification to the Director.

B. Facilities owned or maintained by a public authority other than the Tribe or the BIA.

In the interest of building stronger government-to-government relations in transportation planning and coordination, the Tribe 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). For a facility owned or maintained by a public authority other than the BIA or the Tribe, in addition to satisfying the requirements of paragraph (A)(i) of this Section, above, the Tribe further agrees to:

- (i) provide the public authority an opportunity to review and comment on the Tribe’s PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Tribe and the public authority states otherwise; and
- (ii) allow the public authority at least 30 days for review and comment on the PS&E package, unless the Tribe and the public authority agree upon a longer period of time; and
- (iii) prior to soliciting bids for the project(s), certify in writing to the Director 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 Tribe from proceeding with the project.

**Section 4. Transportation Planning and Inventory.** Within available funding, the Tribe agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated NTTFI of TTP-eligible transportation facilities as required by 23 U.S.C. § 202 (b)(1). The Tribe further agrees to update its Long Range Transportation Plan (LRTP) at least once every five (5) years, including submitting the Tribe's draft LRTP to BIA for a mid-point review in accordance with 25 C.F.R. § 170.412.

**Section 5. Easements, Maintenance/Utility Agreements, Environmental Assessments.** In coordination with local jurisdictions, and to the extent required by Federal law, the TTP Regulations and 25 C.F.R. Part 169, if applicable, the Tribe agrees to develop appropriate construction easements or rights-of-way, maintenance and utility agreements needed for carrying out the construction of TTP facilities under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement, except those functions that are inherently Federal and cannot be transferred, in accordance with 23 U.S.C. § 139, the TTP Regulations, and other applicable laws.

**Section 6. Construction.**

A. In accordance with the FHWA-approved TTIP, the Tribe agrees to initiate and complete TTP construction projects in reasonable conformity with the approved PS&E and any Tribally-approved change orders and shall ensure that adequate management of the TTP construction project is performed according to applicable BIA, FHWA or Tribal standards that meet or exceed federal standards.

B. The Tribe agrees to expend TTP funds:

(i) on program and administrative expenses authorized under:

- (a) this Agreement;
- (b) the TTP Regulations, as amended by STRA-21;
- (c) 2 C.F.R. Part 200; or
- (d) other applicable law; and

(ii) construction activities on projects listed on a FHWA-approved TTIP; and

(iii) in a manner consistent with the Buy America requirement of 23 U.S.C. § 313.

C. Once a TTP construction project is completed, the Tribe shall prepare for the Director a final construction report and as-built plans for final inspection in accordance with the

TTP regulations at 25 C.F.R. §§ 170.472 through 170.474 and 25 C.F.R. Part 169, if applicable.

D. The Tribe agrees to allow BIA officials or, by mutual agreement, a delegated representative of BIA, the opportunity to visit project sites at critical project milestones or other mutually agreeable times, provided that BIA gives the Tribe reasonable advance written notice. These visits are intended to allow BIA to carry out its oversight and stewardship responsibilities for the TTP or project(s) assumed by the Tribe under this Agreement. BIA will not provide direction or instruction to the Tribe's contractor or any subcontractor at any time.

**Section 7. Reporting Requirements.**

A. If the Tribe must have a Single Audit as required by 2 C.F.R. § 200.501, it shall provide the Director with a courtesy copy of the Tribe's annual Single Audit report within 30 days of its submission to the Federal Audit Clearinghouse. If the Tribe is not required by 2 C.F.R. § 200.501 to carry out a Single Audit for a specific fiscal year, then the Tribe shall provide a written statement to the Director certifying that a Single Audit is not required for that fiscal year.

B. The Tribe shall also provide the Director with its annual and semi-annual financial status reports for the TTP and other funds awarded under this Agreement using a Federal Financial Report, SF-425, within sixty (60) days following the conclusion of each reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

C. Additionally, in order to assist the Tribe with fulfilling the reporting requirements of 23 U.S.C. §201 (c)(6)(C) applicable to all recipients of TTP funds, BIA and FHWA have established an electronic data reporting system known as the Tribal Transportation Program Online Reporting Tool (PORT). The Tribe shall be responsible for inputting all of its required data into PORT no later than December 30 of each year. From that data, a report will be generated by BIA and FHWA for the Secretary and the Secretary of Transportation, respectively. The Tribe acknowledges its understanding that timely submission of its data is mandated by statute and that non-compliance with this requirement may be a sole basis for withholding available TTP funds until the Tribe complies with this paragraph or, in the event the Tribe fails to achieve compliance within a reasonable time, termination of this Agreement by the Director.

**ARTICLE IV – RESPONSIBILITIES OF THE DIRECTOR**

**Section 1. Provision of Funds.** The Director shall provide funds to the Tribe in accordance with Article II, Section 2 of this Agreement.

**Section 2. Authorize Project Work.** The Director authorizes the Tribe to carry out transportation planning, preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects that are otherwise contractible under this Agreement related to projects/facilities included on an FHWA–approved TTIP in accordance with the approved project packages, this Agreement, and applicable laws and regulations.

**Section 3. Coordination with Public Authorities.** The Director, upon the Tribe’s request, shall coordinate with representatives of a public authority to assist the Tribe 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 Tribe’s efficient administration of projects performed under this Agreement.

**Section 4. Designated Officials.** All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Tribe:

Chief  
The Choctaw Nation of Oklahoma  
P.O. Box 1210  
Durant, Oklahoma 74702-1210

To the BIA:

Director  
Bureau of Indian Affairs  
United States Department of the Interior  
1849 C Street, N.W., MS 4606 MIB  
Washington, D.C. 20240

With a copy to:

Transportation Director  
The Choctaw Nation of Oklahoma  
P.O. Box 1210  
Durant, Oklahoma 74702-1210

With a copy to:

Chief, Division of Transportation  
Bureau of Indian Affairs  
United States Department of the Interior  
1849 C Street, N.W., MS 3645 MIB  
Washington, D.C. 20240

**Section 5. Federal Construction Standards.** The Director may provide information about Federal construction standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable federal standards, the Tribe's proposed standards will be accepted. The Director may also accept commonly used industry construction standards, including design and construction standards adopted by the State where the project is constructed.

**Section 6. Joint Inspection.** The Tribe shall conduct the final project inspection jointly with the Director and the facility owner for the purpose of BIA's acceptance of the construction project or activity, and for the purpose of updating the NTTFI.

**Section 7. Technical Assistance and Retained Services.**

A. Technical Assistance. Upon the request of the Tribe and subject to the availability of funds, the Director shall provide or make available technical assistance to the Tribe to aid the Tribe in carrying out its responsibilities under this Agreement.

B. Retained Services. Upon the request of the Tribe, the Director may provide planning, preliminary engineering and construction engineering by direct service to the Tribe under the terms of a Retained Services Addendum (RSA). The RSA shall be negotiated and agreed upon before any direct services are commenced by the Director or his designees, and any funds associated with the RSA shall remain with the Regional TTP office. Any funds remaining after the direct services identified in the RSA are completed shall be returned to the Tribe.

**Section 8. Notice of Availability of Additional Funds.** If the Director receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent TTP funds, the Director shall promptly notify the Tribe regarding such funding so that the Tribe may apply for any funds they may be eligible to receive on the same basis as any other Indian tribe.

## **ARTICLE V – OTHER PROVISIONS**

**Section 1. Eligibility for Additional Funding and Services.** The Tribe 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 not included in this Agreement that are available to Tribe on a competitive, formula, or other basis,



including non-recurring funding such as TTP High Priority Projects, Bridge, or Safety funds, Congressional earmarks, other discretionary grant programs and 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 Tribe, but only under the terms of an agreement to transfer such funds that is acceptable to, and approved by, the Director or his designee. Whenever there are errors in calculations or other mistakes regarding estimates of available funding that 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 Director to Administer the Program.**

The Tribe is administering a federal program under the authority of STRA-21 and by resolution of the Tribal government. In order for the Tribe to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement, the Director shall provide the Tribe with all releasable data and information necessary to carry out the contractible activities assumed by the Tribe under this Agreement.

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

- A. affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or
- B. authorizing or requiring the termination of any existing trust responsibility of the United States to Indians.

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

**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 by Pub. L. 103-138, Title III, § 308, 107 Stat. 1416 (25 U.S.C. § 5321), for purposes of Federal Tort Claims Act coverage under this Agreement, the Tribe and its employees are deemed to be employees of the Federal government while performing TTP work under this Agreement. This status is not changed by the source of the funds used by the Tribe to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe. The Tribe 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 Tribe. In full recognition of and without undermining the Federal Tort Claims Act 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 carrying out construction projects funded under this Agreement. Accordingly, the Tribe shall include in any construction contracts entered into with funds provided under this Agreement a requirement that Tribal contractors maintain workers compensation, auto, general liability insurance and bond coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance requirement does not apply to the Tribe 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. §§ 5307 (b) and (c), 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 Tribe's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.

C. As required by 23 U.S.C. § 202 (a)(10), the Tribe shall establish procurement management standards providing 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)(6)(A). 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 Tribe 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 BIA shall promptly review and respond to a written request from the Tribe justifying the alternative procurement method. In making its decision, BIA 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.** In compliance with 25 C.F.R. § 170.703, the Tribe agrees to allow BIA and/or FHWA officials or their designees/representatives (Review Team), to perform a TTP review, including but not limited to on-site and virtual reviews. The TTP review is intended to allow BIA to carry out its oversight and stewardship responsibilities for the TTP assumed by the Tribe under this Agreement.

**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 that the Tribe wishes to terminate this Agreement, the Tribe shall notify the Director in writing of its intention to do so, including specifying the effective date of termination, and thereafter the Director shall continue to provide transportation services in accordance with applicable law. In the event the Director makes a specific written finding that the Tribe has failed to comply with the terms of this Agreement and provides notice to the Tribe that it is no longer eligible to receive funding under this Agreement, at the Tribe's election, the Tribe may perform such contractible activities of the TTP 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. If the Tribe disputes the Director's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Director shall suspend any decision to transfer funds pending the outcome of the dispute.

**Section 10. (RESERVED FOR ANY SPECIAL CONDITIONS/ISSUES)**

**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 Tribe and the Director. 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 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. Negotiation of a Successor Tribal Transportation Program Agreement.**

Consistent with the provisions of Article II, Section 1 herein, the Parties shall commence negotiation of a successor Tribal Transportation Program Agreement only after the enactment of the highway reauthorization legislation that succeeds STRA-21.

**Section 14. Electronic or Digital Signature Election and Authorization.**

A. The Parties are not required to electronically execute and transmit this Agreement, the RFA, RSA (if applicable), or any Amendments of each, by e-mail attachment PDF but the Tribe may choose to do so, and only in such event shall the following be applicable:

- (i) the Parties agree that an electronic PDF of this Agreement, the RFA, RSA (if applicable), and any Amendments of each, in its entirety bearing their respective authorized signatures shall act as their legally binding execution of each document; and
- (ii) that the Tribe shall attach and transmit to the Director an electronic PDF of its Tribal government resolution or other official action authorizing its representative to sign this Agreement, the RFA, RSA (if applicable), and Amendments of each, on the Tribe's behalf; and
- (iii) that execution of this Agreement, the RFA, RSA (if applicable), and any Amendments of each in such a manner shall have the same effect as an original handwritten signature and the electronic counterparts shall together constitute one and the same instrument.

**Section 15. Counterparts and Electronic Copies.** This Agreement may be executed in exact counterparts, electronically scanned, and transmitted via e-mail attachment to the other Party, each of which shall be deemed the original, and all of which together shall constitute one and the same instrument.

**The Choctaw Nation of Oklahoma**

**United States Department of the Interior  
Bureau of Indian Affairs**

By \_\_\_\_\_  
Gary Batton  
Chief

By \_\_\_\_\_  
Darryl LaCounte  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date