



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

JOINT RESOLUTION 15-01-122-12

A JOINT RESOLUTION FOR ENTERING INTO A GOVERNMENT TO GOVERNMENT AGREEMENT FOR BIA INDIAN RESERVATION ROADS (IRR) FUNDING

- WHEREAS, the Mille Lacs Band Assembly is a duly elected governing body of the Mille Lacs Band of Ojibwe, a federally-recognized Indian Tribe; and
- WHEREAS, the Mille Lacs Band Assembly is empowered by 3 MLBSA § 2(d) to adopt resolutions to promote the general welfare of the people; and
- WHEREAS, the Chief Executive is empowered to exercise all executive political authority for the Mille Lacs Band of Ojibwe; and
- WHEREAS, this agreement will replace the 638 contract that the Band has been performing construction projects with the BIA; and
- WHEREAS, this agreement allows more flexibility on spending BIA funds; and
- WHEREAS, as long as a project is on the Bands approved TTIP the Band can use this funding without addendums to contracts; and
- WHEREAS, funds will be directly deposited to the Band, allowing the Band to make interest on the funds; and
- WHEREAS, the Band will also be able to charge a 3% indirect cost to constructions projects and utilize this cost into the Bands general fund; and
- WHEREAS, attached is the BIA IRR Government to Government Agreement signed by the Chief Executive.

NOW THEREFORE BE IT RESOLVED, that the Mille Lacs Band Assembly and the Chief Executive do hereby intend to enter into a government to government agreement with the Bureau of Indian Affairs, wherein IRR funding is dispersed directly to the band, beginning with the Fiscal Year 2012.

WE DO HEREBY CERTIFY, that the foregoing resolution was duly concurred with and adopted at a special session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present held on the 2nd day of May, 2012 at Vineland, Minnesota by a vote of 2 FOR, 0 AGAINST, 0 SILENT.

DISTRICT I

43408 Odena Drive • Onamia, MN 56359
(320) 532-4181 • Fax (320) 532-4209

DISTRICT II

36666 State Highway 65 • McGregor, MN 55760
(218) 768-3311 • Fax (218) 768-3903

DISTRICT IIA

2605 Chiminising Drive • Isle, MN 56342
(320) 676-1102 • Fax (320) 676-3432

DISTRICT III

45749 Grace Lake Road • Sandstone, MN 55072
(320) 384-6240 • Fax (320) 384-6190

URBAN OFFICE

1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

IN WITNESS WHEREOF, we, the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly to be affixed to this resolution and forwarded to the Chief Executive for Concurrence.



Curt Kalk, Speaker of the Assembly

IN CONCURRENCE, with the action of the Speaker of the Assembly, I, set my hand to this resolution.



Marge Anderson, Chief Executive

OFFICIAL SEAL OF THE BAND

**INDIAN RESERVATION ROADS PROGRAM
AGREEMENT
BETWEEN
THE MILLE LACS BAND OF OJIBWE
AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Indian Reservation Roads Program Agreement (hereinafter “the Agreement”) is entered into by the Director of the Bureau of Indian Affairs, (hereinafter “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 (hereinafter “BIA”) and by the Mille Lacs Band of Ojibwe (hereinafter “the Tribe”) (collectively hereinafter the “Parties”), under the authority of the Constitution and By-Laws of the Tribe and by resolution of the Tribal Government, a copy of which is attached hereto, and under the authority granted by 23 U.S.C. § 204 (b) (2), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59 (SAFETEA-LU), 119 Stat. 1144 (August 10, 2005), 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). This Agreement authorizes the Tribe to perform the planning, research, design, engineering, construction, and maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to the Mille Lacs Reservation or a community of the Tribe that are eligible for funding pursuant to 25 CFR Part 170 (IRR regulations). This Agreement is made pursuant to 23 U.S.C.

§ 204 (b) (2), as amended by section 1119 (h) of SAFETEA-LU, the IRR regulations, and as authorized by the Indian Self-Determination and Education Assistance Act (hereinafter “the ISDEAA”), Pub. L. 93-638, as amended (25 U.S.C. §§ 450, et seq.), 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 23 U.S.C. §§ 201-204, other than those functions and duties that cannot be legally transferred under the 23 U.S.C. § 202 (d) (3), together with such additional activities as the Tribe may perform under SAFETEA-LU and the IRR regulations;
- B. to carry out the statutory requirements pursuant to section 1119 of SAFETEA-LU and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe;
- C. to provide the Tribe or its designee, under this Agreement, its formula share of IRR Program funds under the IRR regulations.

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 shall extend for the maximum period authorized by any statutory extensions to SAFETEA-LU. In the event SAFETEA-LU is reauthorized in whole or in part, this agreement shall continue to the extent authorized by law until a successor agreement is negotiated by the parties.

Section 2. Funding.

- A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (3), 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 IRR program in accordance with the funding formula applicable to the IRR Program as described in Subpart C of the IRR regulations.
- B. Upon the execution of this Agreement and the RFA by both Parties, and subject to the availability of funds and the determination of the Tribe's annual Relative Need Distribution Factor (RNDF) percentage, 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 under an ACH Vendor/Miscellaneous Payment Enrollment Form (see Attachment B) to the Director and the Director shall provide to the Tribe a single advance payment in the amount identified in the attached RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.
- C. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs (CSCs) are an eligible cost and the Tribe may use their IRR Program 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. The Parties acknowledge that no additional IRR Program or other funds from the Department of the Interior are available for CSCs.
- D. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202 (d), as amended by SAFETEA-LU, the IRR regulations, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement shall be placed in an appropriate savings, checking or investment account containing only IRR program funds

transferred under this Agreement. 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;

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

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

(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 IRR Program funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list.

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

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 IRR Program funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the 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 the FHWA-approved TIP 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 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 CFR § 170.301, the Tribe may use IRR Program funds to:

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

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

J. The Parties agree that this Agreement is entered into and funds are made available to the Tribe pursuant to 23 U.S.C. § 204 (b) (2) (B) and as authorized by the ISDEAA for purposes of Federal Tort Claims 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 would have exercised in administering the funds provided to the Tribe for the IRR Program under 23 U.S.C. § 202 (d), except to the extent that such powers are inherently Federal and cannot be transferred. Such powers shall include, but are not limited to, the Secretary of the Interior's powers under the IRR regulations, together with such duties and responsibilities as may be performed by the Secretary under the IRR 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 CFR § 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. § 202, as amended by SAFETEA-LU, and Chapter 1 of Title 23, as amended.

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

- Transportation Planning;
- Construction Management;
- Program Administration;
- Design;
- Construction;
- Road Maintenance as authorized under 23 U.S.C. § 204 (c) (not more than 25% of the funds allocated to a tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU; and
- Other IRR Program-eligible activities authorized under Chapter 1 or 2 of Title 23, or the IRR regulations, as each may be amended by SAFETEA-LU or other applicable law.

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 or the RFA. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity conducted under this Agreement or the RFA would be greater than the amount of funds provided under this Agreement or the RFA, the Tribe shall provide reasonable notice to the Director. If the Director does not increase the amount of funds allocated under this Agreement or the RFA, the Tribe may suspend performance of this Agreement until such time as additional funds are made available.

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

Section 9. Applicable Regulations. The IRR regulations and any amendments thereto apply to this Agreement. The Tribe may seek a waiver of these regulations to the extent permitted by law and as set forth in 25 CFR §§ 170.625 and 170.626.

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

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, they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering and construction activities performed. To this end, and within available funding, the 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. § 450e (b).

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 IRR regulations, as amended by SAFETEA-LU. 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 which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe 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”) project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by section 1119 (e) of SAFETEA-LU (amending 23 U.S.C § 202 (d) (2)), and provide a copy of said PS&E approval to the facility owner. 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 with a copy to the BIA and the Federal Lands Highways Program administrator.

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) (23). 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), 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;
- (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;
 - (a) 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 further agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated inventory of roads and bridges and to develop the annual IRR TIP.

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

Section 6. Construction.

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

B. The Tribe agrees to expend IRR Program funds on:

- (i) program and administrative expenses authorized under:
 - (a) this Agreement;
 - (b) the IRR regulations, as amended by SAFETEA-LU;
 - (c) OMB Circular A-87; or
 - (d) other applicable law; and
- (ii) construction activities on projects that are listed on a FHWA-approved IRRTIP.

C. Once an IRR 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 IRR regulations, 25 C.F.R. Part 169 and other applicable laws or regulations.

D. The Tribe agrees to allow BIA officials or, by mutual agreement, a delegated representative of BIA, the opportunity to visit project sites on a monthly basis or at critical project milestones, provided that BIA gives the Tribe reasonable advance written notice. The Tribe also agrees to allow BIA and/or FHWA officials to perform an annual review of the Tribe's IRR program. These visits are reviews are intended to allow BIA to carry out its oversight and stewardship responsibilities for the IRR Program 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. The BIA agrees to provide a written report to the Tribe summarizing its project visit or program review within 45 days of each visit or review.

Section 7. Reporting Requirements. The Tribe shall provide the Director a copy of its annual single agency audit report; semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using a SF425 – Federal Financial Report, SF2 - Financial Status Report (Short Form) or such similar form as is used by the DOI or the DOT, as applicable. The Tribe shall provide the Director the semi-annual reports within ninety (90) days following the conclusion of the reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

ARTICLE IV – RESPONSIBILITIES OF THE DIRECTOR

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

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

Section 3. Coordination with 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:

Chairman/President
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, MN 56539

To the BIA

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

With a copy to:

Tribal Transportation Director
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamai, MN 56539

With a copy to:

Chief, Division of Transportation
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W., MS 4512 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 of Minnesota.

Section 6. Joint Inspection. The Director shall conduct the final project inspection jointly with the Tribe and facility owner for the purpose of BIA's acceptance of the construction project or activity and for the purpose of including the completed project in the BIA's IRR Program Inventory.

Section 7. Technical Assistance and Direct Service.

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. **Direct Service.** Upon the request of the Tribe, the Director may provide planning, preliminary engineering and construction engineering services to the Tribe under the terms of a Direct Service Addendum (DSA). The DSA shall be negotiated and agreed upon before any direct services are commenced by the Director or his designees, and any funds associated with the DSA shall remain with the Regional IRR program office. Any funds remaining after the direct services are completed shall be returned to the Tribe.

Section 8. Reporting. The Director shall provide the Tribe with semi-annual reports on program matters of common concern to the parties. The times for these reports are identical to those set out in Article III, Section 7.

Section 9. 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 IRR Program 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 IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) as set forth in IRR regulations, as well as other funds not included in this Agreement, which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as High Priority Project funding, and Congressional earmarks such as Public Lands Highways Discretionary grants. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Director to Administer the Program. The Tribe is administering a federal program under the authority of SAFETEA-LU, in accordance with the 23 U.S.C. § 204 (b) (2) 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 PFSA's 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 with respect to the Indian people.

Section 4. Trust Responsibility. Nothing in this Agreement shall absolve the United States from any responsibility to individual Indians and the 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. § 450f, note), 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 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 protection provided in this section, the Parties understand and agree that prudent project management requires that Tribal contractors purchase adequate workers compensation, auto and general liability insurance when completing construction projects funded under this Agreement. Accordingly, the 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 IRR Program. Under 25 U.S.C. § 450e (b) and 23 U.S.C. § 204 (e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.

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

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

Section 8. Termination of the Agreement. On the date of the termination of the Agreement by the Tribe as authorized under 23 U.S.C. § 202 (d) (3), or if the Director makes a specific written finding and provides notice to the Tribe in accordance with this Agreement that the Tribe is no longer eligible to receive funding under this section, at the Tribe's election, the Tribe may perform such functions, services and activities as it chooses to include in an ISDEAA contract or agreement to be entered into with the Secretary of the Interior upon the termination of this Agreement.

Section 9. Special Conditions/Issues. None

Section 10. Amendments. Any modification of this Agreement shall be in the form of a written amendment and shall require the signed agreement of a duly authorized representative of the 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 11. Good Faith. The Parties agree to exercise the utmost good faith in the implementation and interpretation of this Agreement and agree to consider and negotiate such additional provisions as may be required to improve the delivery and cost-effectiveness of transportation services.

Section 12. Successor Agreements.

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

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

Section 13. Electronic Signature Election and Authorization.

A. The Parties are not required to execute, electronically scan, and transmit this Agreement, the RFA, DSA (if applicable), or any Amendments of each, by electronic means but the Tribe may choose to do so, and only in such event shall the following Paragraphs (i), (ii) and (iii) be applicable:

(i) The Parties agree that an electronically scanned exact counterpart of this Agreement, the RFA, DSA (if applicable), and any Amendments of each, in its entirety bearing their respective authorized signatures shall act as their legally binding execution of this Agreement; and

(ii) That the Tribe shall include an electronically scanned copy of its tribal government resolution or other official action authorizing its representative to enter into this Agreement, the RFA, DSA (if applicable), and Amendments of each, on the Tribe's behalf as an attachment to the counterpart it sends to the Director; and

(iii) That execution of this Agreement 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 14. Counterparts and Facsimiles. This Agreement may be executed in exact counterparts and transmitted via facsimile to the other Party, each of which shall be deemed the original, and all of which together shall constitute one and the same instrument.

Mille Lacs Band of Ojibwe

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

By Marge Anderson
Marge Anderson
Chief Executive

By _____
Michael Black
Director

4-19-12
Date

Date