



THE MILLE LACS BAND OF  
**OJIBWE INDIANS**

*Legislative Branch of Tribal Government*

**JOINT RESOLUTION 15-03-199-13**

**A JOINT RESOLUTION APPROVING A TRIBAL TRANSPORTATION  
AGREEMENT BETWEEN THE MILLE LACS BAND OF OJIBWE  
AND THE BUREAU OF INDIAN AFFAIRS**

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 Branch authority for the Mille Lacs Band of Ojibwe; and

WHEREAS, the Mille Lacs Band of Ojibwe (the "Band") has a continuing need to construct and maintain roads, bridges, trails and parking lots located on lands under the jurisdiction of the Band; and

WHEREAS, the Band acknowledges that a more effective way to perform these responsibilities is to enter into a Tribal Transportation Program Agreement with the Bureau of Indian Affairs ("BIA").

NOW THEREFORE BE IT RESOLVED, that the Mille Lacs Band of Ojibwe hereby agrees to enter into a Tribal Transportation Program Agreement, Referenced Funding Agreement and Services Agreement with the Bureau of Indian Affairs, a copy of which is attached hereto as Exhibit A.

WE DO HEREBY CERTIFY, that the foregoing resolution was duly concurred with and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present held on the 19<sup>th</sup> day of March, 2013 at Vineland, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

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

**DISTRICT I**

43408 Oodena 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 Chimimising 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**

1433 E. Franklin Avenue, Ste. 7c • Minneapolis, MN 55404  
(612) 872-1424 • Fax (612) 872-1257

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

  
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Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**

**TRIBAL TRANSPORTATION 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 Tribal Transportation 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 Chapter 2 of Title 23, United States Code, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141 (July 6, 2012), 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 dated November 5, 2009; 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 (TTP regulations), as amended by MAP-21. This Agreement is made pursuant to 23 U.S.C. § 202 (a) (2) (B), the TTP 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 and application of the Prompt Payment Act.

**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 Chapter 2 of Title 23, United States Code, other than those functions and duties that cannot be legally transferred under 23 U.S.C. § 202 (b) (5) (G), together with such additional activities as the Tribe may perform under MAP-21 and the TTP Regulations;
- B. to carry out the statutory requirements pursuant to section 1119 of MAP-21 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 TTP funds pursuant to MAP-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, that may be made available to the Tribe under an agreement to transfer such funds approved the Director or his designee.
- D. to provide the Tribe or its designee, under this Agreement, such available prior year funds remaining under 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 such funds, as well as any other SAFETEA-LU or other Federal Highway Trust Funds previously transferred to the Tribe, shall continue to be administered in accordance with the Tribe's G2G IRR Program Agreement approved by the Director on 5/23/2012, which the Parties now mutually agree shall be 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 shall automatically extend for the maximum period authorized by any statutory extensions to MAP-21. In the event MAP-21 is reauthorized in whole or in part, this agreement shall continue to the extent authorized by law until a successor agreement is negotiated and executed by the parties. Additionally, the Parties mutually acknowledge that certain prior year funds described in Article I, Section 2.D., may be transferred under this Agreement provided that the funds shall be administered and expended in accordance with SAFETEA-LU and the TTP regulations including, but not limited to, that 25% of such funds may be used for eligible road maintenance activities.

**Section 2. Funding.**

- A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b) (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 TTP as described in 23 U.S.C. § 202 (b) within thirty (30) days of the receipt of such funds from the Federal Highway Administration (FHWA).
- B. Upon the execution of this Agreement and the Referenced Funding Agreement (RFA) by both Parties, and subject to the availability of funds and the determination of the Tribe's annual funding percentage under 23 U.S.C. § 202 (b) (3), 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 (see Attachment B) and register in the Treasury Department's Automated Standard Payment System (ASAP) to receive G2G payments into its account. 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 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 23 U.S.C. § 202 (b) (7) (B), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior has previously carried out the programs, functions, services, or activities (PFSAs) involved.
- D. Pursuant to 25 CFR §§ 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. §§ 450j-1(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 there are no additional TTP or other funds from the Department of the Interior are available for any additional CSCs which are incurred.
- E. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202 (a) (1) and the TTP regulations, as amended by MAP-21, 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 Tribal Transportation Improvement Program (TTP-TIP), 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 TTP 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).
  - (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 which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list.
- F. 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, as amended by MAP-21.
- G. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122, as amended by MAP-21, 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 the FHWA-approved TTP-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 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.

- H. 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.
- I. As authorized by 25 CFR § 170.301, 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 TTP-TIP.
- J. 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.
- K. The Parties agree that this Agreement is entered into and funds are made available to the Tribe pursuant to 23 U.S.C. § 202 (b) (7) and as authorized by the ISDEAA for purposes of Federal Tort Claims Act coverage and application of the Prompt Payment Act. 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 TTP under 23 U.S.C. § 202 (b) (7) (H), 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 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 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 MAP-21, and Chapter 1 of Title 23, as amended.

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

- Transportation Planning;
- Program Administration;
- 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);
- Construction;
- Construction Engineering;
- Construction Management;
- Road Maintenance as authorized under 23 U.S.C. § 202 (a) (8) (A), as amended by MAP-21 (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 which shall not be subject to any limitation);
- 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, or the TTP regulations, as each may be amended by MAP-21 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 TTP regulations as modified by MAP-21 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 TTP, other Federal Lands Highway funds, and additional TTP-eligible funds awarded under this Agreement to pay such lease/rental rates, as well as to maintain such facilities and equipment when performing 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 TTP regulations, provided that not more than 25% or a maximum of \$500,000 of the Tribe's TTP funds may be 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 TTP regulations, as amended by MAP-21. 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 23 U.S.C § 202 (b) (5), and will 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) (20). 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;
  - (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.<sup>1</sup>

**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 TTP-eligible transportation facilities as required by 23 U.S.C. § 202 (b) (1) and to develop the annual TTP-TIP.

**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, maintenance and utility agreements needed for the construction of TTP 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 23 U.S.C. § 139, the TTP regulations, and other applicable laws.

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<sup>1</sup> The Parties agree that these procedures establish no precedent for future agreements with this Tribe or any other Indian tribes, nor waives any rights of the Parties.

**Section 6. Construction.**

- A. In accordance with the FHWA-approved TTP-TIP, the Tribe agrees to initiate and complete TTP construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall ensure that adequate management of the TTP construction project is performed according to applicable BIA, FHWA or Tribal standards which meet or exceed federal standards.
- B. The Tribe agrees to expend TTP funds on:
  - (i) program and administrative expenses authorized under:
    - (a) this Agreement;
    - (b) the TTP regulations, as amended by MAP-21;
    - (c) OMB Circular A-87; or
    - (d) other applicable law; and
  - (ii) construction activities on projects that are listed on a FHWA-approved TTP-TIP.
- 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, 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 at critical project milestones or other mutually agreeable times, 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 TTP. These visits and reviews 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. 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 semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using a Federal Financial Report, SF425, 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 PFSA's related to projects/facilities included on an FHWA-approved TTP-TIP 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:

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

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:

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

With a copy to:

Chief, Division of Transportation  
Bureau of Indian Affairs  
United States 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 TTP Inventory.

**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 services 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 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 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 which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as the Tribal High Priority Projects Program funding, Bridge Program Funds, Congressional earmarks, and other discretionary grants programs such as, but not limited to, Public Lands Highways Discretionary grants; additionally, any state-aid funds under Chapter 1 of Title 23, United States Code, that may be 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 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 MAP-21, in accordance with the 23 U.S.C. § 202 (a) (2) (B) 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 TTP. Under 25 U.S.C. § 450e (b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.

- B. The Tribe's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.
- C. In accordance with 23 U.S.C. §§ 202 (a) (3) and (a) (10), the Tribe shall establish and follow procurement management standards regarding competition.

**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.** In the event 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 and provides notice to the Tribe in accordance with this Agreement that the Tribe is no longer eligible to receive funding under this Agreement, at the Tribe's election, the Tribe may perform such PFSAs 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 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. Tribal Transportation Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Tribal Transportation Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation which succeeds MAP-21.
- 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, RSA (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, RSA (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, RSA (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 \_\_\_\_\_  
Melanie Benjamin  
Chief Executive

By \_\_\_\_\_  
Michael Black  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## REFERENCED FUNDING AGREEMENT

### Pursuant to **Mille Lacs Band of Ojibwe's** **Tribal Transportation Program Agreement (INSERT AGREEMENT #)** **With the Bureau of Indian Affairs for Fiscal Year 2013**

**Section 1. Authority.** This Referenced Funding Agreement (RFA) is entered into by the Director, Bureau of Indian Affairs (BIA), on behalf of the Secretary of the Interior, and by the **Mille Lacs Band of Ojibwe** ("Tribe," and together with the BIA collectively, the "Parties"), pursuant to the Tribal Transportation Program Agreement (Program Agreement) between the Parties for comprehensive transportation planning, research, design, engineering, construction, maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on, or which provide access to, the **Mille Lacs Band of Ojibwe** along with related program administration activities and associated transportation services authorized by Chapter 2 of Title 23, United States Code, amended by Section 1119 of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), Pub. L. 112-141, (July 6, 2012), 25 C.F.R Part 170, as amended by MAP-21, and in accordance with the Indian Self-Determination and Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended (25 U.S.C. 450 et seq.), for purposes of Federal Tort Claims Act coverage, application of the Prompt Payment Act and by resolution of the Tribe's governing body.

**Section 2. Effective Date.** If the Program Agreement is in effect, this RFA is effective upon its approval and execution by authorized representatives of the Tribe and BIA; alternatively, if the Program Agreement is not in effect, this RFA shall become effective only upon approval of the Program Agreement by authorized representatives of the Tribe and BIA.

**Section 3. Purpose.** The purpose of this RFA is to set forth specific conditions for Fiscal Year 2013 funding under the Program Agreement, including terms that identify the specific programs, functions, services and activities (PFSAs) to be performed, the funds to be provided, the time and method of payment, and such other provisions to which the Parties agree.

**Section 4. Activities to be Performed.** The activities covered by this RFA and as further detailed in the Tribally-approved Transportation Improvement Program (TTIP) attached hereto as an Exhibit are:

- Transportation Planning, including TTP Program inventory update;
- Program Administration;
- Preliminary Engineering;
- Construction;
- Construction Engineering;
- Construction Management
- Road Maintenance as authorized by 23 U.S.C. § 202 (a) (8) (A);
- Repayment of Financing Instruments and Tribal Transportation Program (TTP) eligible costs as defined in the Tribe's Advance Construction Agreement;
- Development and negotiation of Tribal-State road maintenance agreements as authorized 23 U.S.C. § 202 (a) (8) (C);

- Other TTP-eligible activities authorized under Chapter 2 of Title 23 or 25 C.F.R. Part 170, as amended by MAP-21.

**Section 5. Summary of Funds.** The total amount and sources of funding provided under this RFA are as follows:

Balance of Prior Year Funds (If Applicable)

IRR Program RNDF funds:	\$ 0
IRR Program Transportation Planning (2%)	\$ 0
Population Adjustment Factor (PAF)	\$ 0
IRR Bridge Program Funds	\$ 0
IRR High Priority Project Funds	\$ 0
Tribe's Share Program/Project-related Administrative Funds	\$ 0
Other Prior Year Funding: (DESCRIBE HERE IF ANY; IF NONE DELETE THIS LINE)	\$ 0
<b>Total Prior Year Funding</b>	<b>\$ 0</b>

FY 2013 Tribal Transportation Program Funds other FHWA funds:

TTP Funds	\$437,378.82
TTP Transportation Planning Funds (2%)	\$ 9,940.43
Tribal High Priority Projects Program Funds	\$0
Tribal Transportation Facility Bridge Program Funds	\$0
TTP Tribal Safety Funds	\$0
Other Federal Lands Highways Program Funds: (DESCRIBE HERE IF ANY; IF NONE DELETE THIS LINE)	\$0
Other Federal Highway Administration Funds from Chapter 1 of Title 23: (DESCRIBE HERE IF ANY - ATTACH TRANSFER AGREEMENT)	\$0
Funds Retained by Region per Retained Services Addendum (IF NONE DELETE THIS LINE)	\$ 23,500.00
<b>Total FY 2013 Funds:</b>	<b>\$423,819.25</b>
<b>Total Amount for this RFA:</b>	<b>423,819.25</b>

**Section 6. Eligibility for Additional Funding and Services.** The Tribe shall be eligible for additional TTP funds on the same basis as other Indian tribes according to the statutory distribution in 23 U.S.C. § 202 (b), as well as other funds, not included in this RFA, which are made available to tribes on a competitive, formula, or other basis, including non-recurring funding. 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 7. Time and Method of Payment.** Subject to the availability of funds, and the execution of this RFA by both Parties, the Director shall provide to the Tribe or its designee the funds identified in Section (5) of this RFA in a single advance payment within thirty (30) calendar days. This transfer shall be made electronically. The final amounts available in the fiscal year are subject to the determination of the Tribe's share under Article II, Section 2.B of the TTP Program Agreement.

**Section 8. Other Provisions.**

- A. Use of Funds Advanced. Funds advanced to the Tribe shall be used by the Tribe as permitted under 23 U.S.C. § 202 and 25 C.F.R. Part 170, both as amended by MAP-21, other applicable laws, and for the purposes authorized under the Program Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on its FHWA-approved Transportation Improvement Program (TIP), so long as such funds are used in accordance with Federal appropriations law. Further, funds advanced to the Tribe pending disbursement for a purpose authorized under the Program Agreement shall be placed in appropriate savings, checking or investment accounts as further detailed in the Program Agreement. As provided in 25 C.F.R. § 170.607, contract support costs are an eligible item out of the Tribe's Program allocation and will be included in project construction budgets prepared by the Tribe. The Tribe may apply its most current negotiated Indirect Cost Rate to the funds paid under this RFA to determine the amount of funds that may be used by the Tribe to pay eligible contract support cost expenses associated with carrying out the Program Agreement.
- B. Carryover. As provided in Article II, Sec. 8 of the Program Agreement, any funds which are paid to the Tribe under this RFA which have not been expended by the Tribe at the conclusion of the Federal fiscal year shall remain in the custody of the Tribe and be used for the purposes authorized herein and under the Program Agreement.

**Section 10. Amendments.** Except as otherwise provided by the Program Agreement, any modification of this RFA shall be in the form of a written amendment and shall require the signatures of the authorized representatives of the Tribe and the Director.

**Section 11. Retained Services.** In accordance with Article IV, Section 7.B., of the Program Agreement, and upon agreement of both parties, the Director will perform the activities identified in the attached "Retained Services Addendum" (RSA), if any. The funds identified in said addendum shall be retained by the Director. Any funds retained under this RSA yet unexpended by the Director on September 1<sup>st</sup> of the respective funding year shall be obligated to the Tribe's Program Agreement prior to September 30<sup>th</sup> of the respective funding year.

**Section 12. Notice of Availability of Additional Funds** - If the Bureau of Indian Affairs receives notice of the availability of additional FY 2013 funding for any purpose authorized under the Program Agreement and RFA, including the availability of unspent TTP funds, the Director shall promptly notify the Tribe regarding such funding so that the Tribe may access and apply for any funds they may be eligible to receive.

**Section 13. Successor Funding Agreements** - Ninety (90) days before the expiration of this RFA, the Parties shall commence negotiation of a successor RFA.

**Mille Lacs Band of Ojibwe**

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

By \_\_\_\_\_  
Melanie Benjamin  
Chief Executive

By \_\_\_\_\_  
Michael Black  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# RETAINED SERVICES ADDENDUM

## Pursuant to Mille Lacs' Tribal Transportation Program Agreement With the Bureau of Indian Affairs for Fiscal Year 2013

This Retained Services Addendum (RSA) sets forth those services and functions to be performed by the Secretary pursuant to **Section 11 – Retained Services** of the Mille Lacs' 2013 Referenced Funding Agreement (RFA). This RSA shall become effective upon approval by authorized representatives of the Secretary and the Mille Lacs Indian Reservation.

1. The projects and activities identified below are part of an approved Transportation Improvement Program (TIP), as governed by federal law and regulations.
2. Each of the projects and activities identified below shall be funded in the amount estimated on the aforementioned TIP.
3. The estimated amounts listed below shall be used by the BIA in performance of the services designated herein for the Tribe.
4. The BIA agrees to use professionals qualified to perform the Retained Services.
5. The Tribe agrees the estimated costs are fair and reasonable and consents to the BIA's use of qualified personnel to perform the services described below.
6. A summary description of the scope of work follows:

<u>Project</u>	<u>Services</u>	<u>Estimated Cost</u>
A. Mosey Drive	Construction Engineering	\$ 2,500.00
B. Mitigomizh Street	Construction Engineering	\$ 2,500.00
C. Government Center Parking Lot	Preliminary Engineering Construction Engineering	\$ 6,000.00 \$ 2,500.00
D. Government Center East Parking Lot	Construction Engineering	\$ 2,500.00
E. INVENTORY	Inventory Updates	\$ 7,500.00
TOTAL ESTIMATED COSTS		\$23,500.00

In accordance with Article IV, Section 7.B., of the Tribal Transportation Program Agreement, the funds identified in this RSA shall be retained by the Secretary.

The Parties agree that the amount identified above is an estimate and that the Secretary shall have the authority to expend more or less on each project and/or activity identified, so long as the actual costs do not exceed the total estimated amount listed above.

In the event the Secretary requires additional funds beyond those identified above, or the Tribe requests the Secretary perform additional activities, this RSA shall be amended accordingly.

Finally, the Parties agree that any funds retained under this RSA that are unexpended by the Secretary on September 1<sup>st</sup> of the respective funding year shall be obligated to the Tribe's Program Agreement by September 30<sup>th</sup> of that funding year.

Approved:

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

\_\_\_\_\_  
Todd P. Kennedy, P.E.  
Regional Road Engineer, Midwest Region

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diane Rosen  
Regional Director, Midwest Region

\_\_\_\_\_  
Date

Approved:

Mille Lacs Indian Reservation

\_\_\_\_\_  
Melanie Benjamin  
Chief Executive

\_\_\_\_\_  
Date

# Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

1720 Big Lake Rd  
Cloquet, MN 55720  
Phone (218) 879-4593  
Fax (218) 879-4146

RESOLUTION # 1058/13



## ADOPTION OF THE TRIBAL TRANSPORTATION PROGRAM AGREEMENT, REFERENCED FUNDING AGREEMENT AND SERVICES AGREEMENT

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enact the following Resolution:

- Chairwoman  
Karen R. Diver
- Secretary/Treasurer  
Ferdinand Martineau, Jr.
- Dist. I Representative  
Wally Dupuis
- Dist. II Representative  
Sandra M. Shabliash
- Dist. III Representative  
Kevin R. Dupuis Sr.
- Executive Director  
Tribal Programs  
Chuck Walt
- Executive Director  
Enterprises  
Michael Himango

WHEREAS, the Fond du Lac Band of Lake Superior Chippewa are a sovereign people, who occupy the Fond du Lac Reservation and retain their aboriginal rights of self-government and self-determination pursuant to the Treaty of LaPointe of September 30, 1854, 10 Stat. 1109; the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq.; the common law of the United States; and as recognized by the United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the duly-constituted governing body of the Fond du Lac Band, to exercise the responsibilities of self-government and management over the Band's affairs; and

WHEREAS, the Fond du Lac Reservation has a continuing need for construction and maintenance of roads, bridges, trails and parking lots; and

WHEREAS, the Fond du Lac Reservation Business Committee, acting as the Road Committee for the Fond du Lac Reservation, establishes road construction and maintenance priorities; and

WHEREAS, the Fond du Lac Reservation is obligated to adopt the Tribal Transportation Program Agreement, Referenced Funding Agreement, and ~~the~~ <sup>the</sup> Services ~~Agreement~~ <sup>Agreement</sup> to allow continued commitments to the Fond du Lac Roads Program. *Adendum*

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee hereby establishes this resolution to adopt the following documents the Tribal Transportation Program Agreement, Referenced Funding Agreement, and Services ~~Agreement~~ <sup>Agreement</sup>:

*The Returned Adendum:*  
CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on February 13 2013 on the Fond du Lac Reservation.

Karen R. Diver  
Chairwoman

Ferdinand Martineau, Jr.  
Secretary-Treasurer