



THE MILLE LACS BAND OF
OJIBWE INDIANS
Legislative Branch of Tribal Government

JOINT RESOLUTION 18-04-50-20

A JOINT RESOLUTION APPROVING THE INTERGOVERNMENTAL FUNDSTRANSFER AGREEMENT AMONG THE MINNESOTA DEPARTMENT OF TRANSPORTATION, THE UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS, AND THE MILLE LACS BAND OF OJIBWE

WHEREAS, the Mille Lacs Band Assembly (“Band Assembly”) is the duly-elected governing body of the Mille Lacs Band of Ojibwe (“Band”), a federally-recognized Indian Tribe; and

WHEREAS, pursuant to 3 MLBSA § 2(d), the Band Assembly has the power to adopt resolutions to promote the general welfare of the Band; and

WHEREAS, pursuant to 4 MLBSA § 2, the Chief Executive is empowered to exercise the Executive Branch powers of the Band; and

WHEREAS, the Band Assembly and Chief Executive have established as a priority the improvement of the spiritual, physical, mental, social, and economic wellbeing of the people of the Band; and

WHEREAS, the Band Assembly and Chief Executive recognize the need to improve safety in the Band’s communities by ensuring opportunities to make pedestrian crossing across Highway 169 safer for adults, children, and those with disabilities; and

WHEREAS, the Band previously entered into a Cooperative Construction Agreement with the Minnesota Department of Transportation for the HAWK Beacon System; and

WHEREAS, the Intergovernmental Funds Transfer Agreement (“Agreement”) details the process in which funding will be made available to implement the HAWK Beacon System;

WHEREAS, the Band Assembly and the Chief Executive recognize there are no additional fund matching required by the Band as the funds will be covered by the Minnesota Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED that the Band Assembly and Chief Executive do hereby authorize and approve the intergovernmental funds transfer agreement among the Minnesota Department of Transportation, the United States Department of the Interior Bureau of Indian Affairs, and the Mille Lacs Band of Ojibwe.

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 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

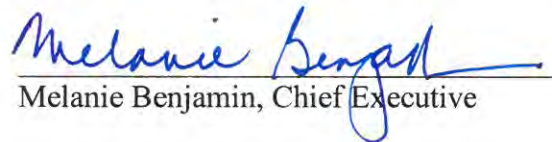
1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

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 7th day of January, 2020 at Nayahshing, 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.


Sheldon Boyd, Speaker of Assembly

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


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND

HS

INTEROFFICE MEMORANDUM

TO: A.P.B. & BAND ASSEMBLY

CC: ANGEL DAHER, MANAGING ATTORNEY
MIKE MOILANEN, CMD DIRECTOR OF PLANNING

FROM: CALEB DOGEAGLE, OSG

SUBJECT: INTERGOVERNMENTAL FUND TRANSFER AGREEMENT
AMONG THE MN DEPT. OF TRANS. & THE BIA & THE MILLE
LACS BAND OF OJIBWE

DATE: 9/24/2019



The Office of the Solicitor General has completed its review of the submitted contractual document(s).

Due to the requirement of the Mille Lacs Band of Ojibwe to provide matching funds in the amount of \$72,398.00, this agreement must be ratified by the Mille Lacs Band of Ojibwe Band Assembly in accordance with 7 MLBSA § 26 and 3 MLBSA § 2. An addendum has been added to this agreement for the purposes of ensuring appropriate ratification.

The Office of the Solicitor General also notes that Section G, subparagraph 6 of the agreement does state that, by virtue of entering into this agreement, the Band does *not* waive sovereign immunity in the event of a dispute, nor does it consent to jurisdiction in state court. Subparagraph 7 includes similar language for the state of Minnesota. Accordingly, any dispute that arises between the parties pursuant to this agreement would likely be settled in federal court, at which time the Band would have to re-assert its defense of sovereign immunity.

If you have any further questions or concerns, please contact me at (320) 532-4733.

Caleb Dogeagle
Solicitor General
Mille Lacs Band of Ojibwe

#5

**INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
AMONG THE
MINNESOTA DEPARTMENT OF TRANSPORTATION
AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
AND THE
MILLE LACS BAND OF OJIBWE**

This Intergovernmental Fund Transfer Agreement (“Agreement”) is entered into by and among the Minnesota Department of Transportation (“State”), the United States Department of the Interior – Bureau of Indian Affairs (“BIA”), and the Mille Lacs Band of Ojibwe (“Tribe”), a federally recognized Indian Tribe (together with the BIA and the State, the “Parties”).

WHEREAS, the Tribe, in cooperation with the State, wishes to make available United States Department of Transportation – Federal Highway Administration (“FHWA”) Surface Transportation Block Grant Transportation Alternatives Program (“Program”) funds authorized by 23 U.S.C. §§ 131 for construction of a Hawk Beacon System at Ataage Drive and United States Highway 169 (“Project”) as more fully described in the approved 2019-2022 Minnesota State Transportation Improvement Program (“STIP”) and Addendum A to this Agreement; and

WHEREAS, the Project will be carried out on a transportation facility that is listed on the National Tribal Transportation Facility Inventory (“NTTFF”); and

WHEREAS, in accordance with 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9), the State desires to transfer to the Tribe, via BIA, contract and obligation authority in the sum of \$289,590 (“Funds”) so the Tribe may carry out the Project in accordance with Addendum A; and

WHEREAS, under the Fixing America’s Surface Transportation Act (“FAST Act”), P.L. 114-94 (December 4, 2015), the Congress of the United States appropriated Federal-aid funds to be apportioned or allocated to the State for use on State and local agency priorities throughout the State; and

WHEREAS, Section 1118 of the FAST Act. reauthorized the Tribal Transportation Program (“TTP”) under 23 U.S.C. § 202, which distributes on a tribal shares basis funds for eligible planning and construction activities on transportation facilities that are located within, or provide access to, tribal lands; and

WHEREAS, the BIA and the United States Department of Transportation – Federal Highway Administration – Office of Federal Lands Highway (“FHWA”) jointly administer the TTP pursuant to a Memorandum of Agreement; and

WHEREAS, the State and BIA wish to support the Tribe's involvement in the improvement of road safety, planning and construction of infrastructure to facilitate and support economic development and other activities that are within, or provide access to, the Tribe's lands consistent with the purposes of the TTP; and

WHEREAS, the Project will be administered in accordance with all applicable Federal requirements including, but not limited to, the National Environmental Policy Act ("NEPA") and the regulations governing the TTP at 25 C.F.R. Part 170; and

WHEREAS, 23 U.S.C. § 202 (a)(9) – Cooperation, provides that the cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and that any funds received from a State, county, or local subdivision shall be credited to appropriations available for the TTP; and

WHEREAS, the State and the Tribe have requested that BIA accept the Funds from the State, via FHWA, and transfer the Funds to the Tribe, that BIA accepts all stewardship and oversight responsibility involving the use of the Funds by the Tribe, and that Federal-aid matching fund requirements shall be met by the Tribe as provided in Addendum A.

NOW THEREFORE, the Parties agree as follows –

A. Project Identification and Source of Funding

1. As described in Addendum A, the Tribe and State have identified the need and agreed upon a plan to carry out the Project.
2. The State has agreed that the Project will be carried out by the Tribe under the terms of Addendum A.
3. As described above, Congress has appropriated the Funds to carry out the Project and the Funds were made available to the State.
4. The Funds are not part of any appropriations made available by the Congress for obligation by FHWA or the BIA for the TTP.

B. Authority for this Agreement

1. The authority for this Agreement is 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9).
2. This Agreement shall not constitute a contract, compact, annual funding agreement, or other agreement under the Indian Self Determination and Education Assistance Act ("ISDEAA"), P.L. 93-638, as amended, and no provisions of the ISDEAA are specifically adopted, incorporated by reference, or otherwise included in this Agreement.

C. State Responsibilities

1. Pursuant to 23 U.S.C. § 104 (f)(3)(A), the State shall request that the FHWA Division Office transfer the Funds to FHWA – Federal Lands Highway Headquarters and onward to the BIA, in furtherance of implementation of 23 U.S.C. § 202 (a)(9)(B).
2. The State shall provide certain services or activities for the Project as described in Addendum A, if any.
3. The State shall be relieved of all stewardship and oversight obligations involving the Funds upon transfer of the Funds to BIA.

D. BIA Responsibilities

1. BIA shall accept the Funds from the State. Upon receipt of the Funds BIA shall become responsible for all stewardship and oversight obligations involving use of the Funds by the Tribe in accordance with Addendum A, the terms of which are incorporated by reference and fully made part of this Agreement.
2. Subject to the requirements described in Paragraph E.1, below, BIA shall transfer the Funds to the Tribe.
3. BIA shall continue carrying out program management and oversight of the Project in accordance with the TTP, its regulations at 25 C.F.R. Part 170 and any applicable Federal law, but this Agreement shall not bind FHWA or BIA to provide funds from other sources for designing, constructing, managing or supervising the Project.

E. Mille Lacs Band of Ojibwe's Responsibilities

1. The Tribe shall establish a separate bank account to receive the Funds from BIA and transmit the bank, name, address, routing, and account numbers to BIA within ten business days of full execution of this Agreement.
2. In accordance with Addendum A, the Tribe will undertake and perform only those eligible activities associated with the Project that are allowed under Title 23 of the United States Code and any applicable regulations at Parts 23 or 25 of the Code of Federal Regulations.
3. In the event that the Tribe does not carry out the Project or the entirety of Funds transferred pursuant to this Agreement are not expended, the Tribe agrees to return the remaining Funds to the State upon written demand of the State and agreement by the Tribe, whose agreement shall not be unreasonably withheld.
4. The Tribe shall invite State representatives to participate in the final inspection of the Project, as well as any other activities as provided under Addendum A.

F. Transfer of Funds from BIA to the Mille Lacs Band of Ojibwe

BIA shall notify the Tribe when the Funds are received from the State and available for transfer. If the Tribe has not already done so, the Tribe shall provide BIA with its bank information described in Paragraph E.1, above. BIA shall then transfer the Funds to the Tribe within ten business days of receipt of the Funds from the State or the Tribe's banking information, whichever BIA receives last.

G. General Provisions

1. BIA shall not act as a surety or guarantor of any Tribal or State private, commercial, or governmental financing instrument obtained for the planning, design or construction of the Project.
2. BIA shall not be liable under any theory of law or equity to transfer to the Tribe under this Agreement any funds other than the Funds that are the subject of this Agreement.
3. Should any portion or provision of this Agreement be held invalid, the remaining portions or provisions shall continue in full force and effect.
4. This Agreement is binding upon the signatories hereto not as individuals but solely in their capacities as officials of their respective governments and each acknowledges that he or she is authorized to execute this Agreement on behalf of their respective government.
5. This Agreement contains all of the terms and conditions governing the transfer of Funds from the State to BIA and on to the Tribe. No other terms or conditions apply. Any amendment or modification of the Agreement must be made in writing and signed by the authorized representative of the Tribe, the State, and BIA.
6. Nothing in this Agreement shall be construed as a waiver of the Tribe's sovereign immunity regarding the activities undertaken by the Tribe as described generally herein or in Addendum A, including any contracts, grants or subcontracts entered into between the Tribe and third parties necessary for the Project. The Tribe does not, by entering into this Agreement, consent to the jurisdiction of a State court to hear any claims or disputes arising under this Agreement, whether arising as claims against the Tribe itself, its wholly owned entities, or any employee of the Tribe performing work hereunder. No Tribe employee shall be subject to the jurisdiction of the State's courts as a result of having performed work associated with the Project.
7. Nothing in this Agreement shall be construed as a waiver of the State's sovereign immunity or of any limitation of liability afforded to the State by its laws. The State does not, by entering into this Agreement, consent to the jurisdiction of a tribal court to hear any claims or disputes arising under this Agreement, whether arising as claims against the State itself or against any employee of the State performing work hereunder. No State employee shall be subject to the jurisdiction of the Tribe's court as a result of having performed design, inspection, or other work associated with the Project.

H. Authorized Representatives. Each authorized representative below will have the responsibility to administer and, unless otherwise noted, serve as the main point of contact for the Project described in this Agreement and Addendum A.

For the BIA:

Todd Kennedy
Regional Road Engineer
Bureau of Indian Affairs – Midwest Region
5600 W. American Blvd., Suite 500
Bloomington, MN 55437
Office (612) 725-4551
Cell (612) 810-4553
Email Todd.kennedy@bia.gov

For the Tribe:

Percy Benjamin
Commissioner of Community Development
Mille Lacs band of Ojibwe
43408 Oodena Drive
Onamia, MN 56359
Office (320) 532-4181
Email Percy.benjamin@millelacsband.com

For the State:

Lynnette Roshell
Project Development Engineer
395 John Ireland Boulevard
Mail Stop 500
St. Paul, MN 55155
Office (651) 366-3822
Email Lynnette.roshell@state.mn.us

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

By _____
State Aid Engineer

Date _____

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION**

By _____
Commissioner of Administration

Date _____

MILLE LACS BAND OF OJIBWE

By _____

Date _____

Approved as to form:

By  _____
Solicitor General

Date 9/24/19

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

By _____
Darryl LaCounte
Director

Date _____

Approved as to form:

By _____
Andrew S. Caulum
Office of the Solicitor
- Division of Indian Affairs

Date _____

ja 12-26-19



ADDENDUM A
to the
INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
among the
MINNESOTA DEPARTMENT OF TRANSPORTATION
and the
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
and the
MILLE LACS BAND OF OJIBWE

PROJECT	Hawk Beacon System at Ataage Drive and U.S. Highway 169 in the Vineland Community
SOURCE OF FUNDING	FHWA Transportation Alternatives Program
FUND AMOUNT	\$289,590
TRIBAL MATCHING FUNDS	\$72,398
TOTAL PROJECT FUNDS	\$361,988

INTRODUCTION

The Mille Lacs Band of Ojibwe ("Tribe") has elected to enter into an Intergovernmental Fund Transfer Agreement ("Agreement") with the Minnesota Department of Transportation ("State") and the United States Department of the Interior - Bureau of Indian Affairs ("BIA") providing United States Department of Transportation - Federal Highway Administration ("FHWA") Transportation Alternatives Program funds in the amount of \$289,590 ("Funds") for construction of a Hawk Beacon System at Ataage Drive and United States Highway 169 in the Tribe's Vineland Community ("Project").

PROJECT

The Project provides for construction of a Hawk Beacon System to improve pedestrian safety in the Tribe's Vineland Community. The Project is integrated with and empowered by the Tribe's Long Range Transportation Plan and the Tribe's Transportation Improvement Program for the Project has been approved by FHWA.

SCOPE OF AGREEMENT

The parties agree to cooperate to ensure the implementation of the Project as follows:

1. The State agrees to:
 - a. Request that FHWA's Minnesota Division Office transfer the Funds to Federal Lands Highway – Headquarters and onwards to the BIA transfer to the Tribe under its Tribal Transportation Program Agreement (“PA”) with the Director of the BIA;
 - b. Rely on BIA for stewardship and oversight responsibility for the Funds and the Project; and
 - c. Upon request, cooperate with the Tribe and BIA in the implementation of the Project and cooperate in Project reviews deemed necessary by BIA.

2. BIA agrees to:
 - a. Accept the Funds from the State and credit the Funds to the TTP for use by the Tribe;
 - b. Provide oversight and ensure that the Funds are utilized in accordance with all applicable laws and regulations;
 - c. Administer the funds and transfer them to the Tribe under the normal procedures provided by the Tribe's TTP Agreement (“PA”);
 - d. Provide the State with copies of the Tribe's semi-annual Project reports required under the Tribe's PA;
 - e. Upon request, provide records to the State and cooperate in any type of Project reviews; and
 - f. Provide the final Project closeout report to the State for review and acceptance, as required under the Tribe's PA.

3. Tribe agrees to:
 - a. Receive the Funds in accordance with its current PA which authorizes the Tribe, as public authority under 23 U.S.C. § 101 (a)(20), to carry out all but the inherently Federal functions of the TTP; and
 - b. Carry out the Project in accordance with all applicable Federal laws and regulations; and
 - c. Comply with all aspects of the Tribe's PA including project reporting, oversight, and closeout requirements; and
 - d. Notify BIA and the State of Project completion and timely respond to inquiries regarding the Project prior to completion.

AUTHORIZED REPRESENTATIVES

Each authorized representative below will have the responsibility to administer and, unless otherwise noted, serve as the main point of contact for the Project described in this Addendum A and the Agreement:

For BIA:

Todd P. Kennedy
Regional Road Engineer
5600 W. American Blvd., Suite 500
Bloomington, MN 55437
Work (612) 725-4551
Cell (612)-810-4553
Email todd.kennedy@bia.gov

For the Tribe:

Percy Benjamin
Commissioner of Community Development
Mille Lacs Band of Ojibwe Indians
43408 Oodena Drive
Onamia, MN 56359
Work (320) 532-4181
Email Percy.benjamin@millelacsband.com

For the State:

Lynnette Roshell
Project Development Engineer
395 John Ireland Boulevard
Mail Stop 500
St. Paul, MN 55155
Work (651) 366-3822
Email Lynnette.roshell@state.mn.us