

**TRIBAL TRANSPORTATION PROGRAM
AGREEMENT
BETWEEN
THE KETCHIKAN INDIAN COMMUNITY
AND THE
UNITED STATES DEPARTMENT OF
TRANSPORTATION**

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Tribal Transportation Program Agreement (hereinafter “the Agreement”) is entered into by the Administrator, Federal Highway Administration, (hereinafter “Administrator”), for and on behalf of the United States Department of Transportation (hereinafter “DOT”) and by the Ketchikan Indian Community (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 Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94, (Dec. 4, 2015) and the Delegations of Authority set forth in 49 CFR § 1.85. 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; the DOT’s Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999); and the U.S. DOT Tribal Consultation Plan found at <http://www.fhwa.dot.gov/tribal/news/consultation.html>; all as amended by the FAST Act. 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 Ketchikan Indian Community or a community of the Tribe and are eligible for funding pursuant to the Tribal Transportation Program (TTP) regulations (25 CFR Part 170). This Agreement is made pursuant to 23 U.S.C. § 202 (b)(7) and 25 CFR Part 170, as amended by the FAST Act, 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.).⁷⁷

Section 2. Purpose. The purposes of this Agreement are as follows:

- (1) 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 the ISDEAA, together with such additional activities as the Tribe may perform under the FAST Act and 25 CFR Part 170;
- (2) to carry out the Federal Highway Administration’s (FHWA) statutory requirements pursuant to the FAST Act and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe; and
- (3) to provide the Tribe or its designee, under a Referenced Funding Agreement (RFA), its formula share of TTP funds pursuant to the FAST Act and 25 CFR Part 170, and those additional amounts as the Administrator determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of

⁷⁷ The Tribe and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and its implementing regulations (25 CFR Parts 900 and 1000) to this Agreement. It is expressly understood that through the execution of this Agreement, neither party waives any rights regarding the application of the aforementioned Act and its regulations to this Agreement and no precedent is established for future agreements with this Tribe or any other Indian Tribe. The parties agree to work in good faith to resolve this issue in future agreements.

the program or project, 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 (DOT), as well any other federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be made available to the Tribe under an agreement to transfer such funds approved by the Administrator or his designee. The Bureau of Indian Affairs Alaska Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202 (a)(6) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and in approved RFAs.

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 Administrator and shall remain in effect and be automatically extended for the maximum period authorized by any statutory extensions to the FAST Act until amended pursuant to Article V, Section 11, or terminated pursuant to Article V, Section 9.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b)(7), the Administrator 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 formula in accordance with 23 U.S.C § 202 (b)(3), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe’s TTP or projects. The Parties agree to annually provide the Tribe the amounts that would have been withheld for the costs of the BIA for administration of the Tribe’s program or projects

as provided in 23 U.S.C. § 202 (b)(7)(E) and further identified on the an approved RFA.

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 funding percentage per 23 U.S.C § 202(b)(3), the Administrator shall notify the Tribe or its designee, in accordance with Article IV, section 5, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information under an ACH Vendor/Miscellaneous Payment Enrollment Form to the Administrator and the Administrator shall provide to the Tribe a single advance payment in the amount identified in the RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a Federal 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 or the DOT has previously carried out under the Federal Lands Highways Program, the programs, functions, services, or activities (PFSAs) involved.

D. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs are an eligible cost and the Tribe may use their TTP Program allocation to pay such costs. The Tribe shall include a line item for Contract Support Costs in the Tribe's project construction budgets. The Tribe may also include, as eligible Contract Support Costs, one-time start-up costs and preaward costs incurred by the Tribe in the initial year of this Agreement in accordance with 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 in the United States. A Tribe's total share of TTP funds includes all direct and indirect costs associated with the TTP. The Parties expressly acknowledge there are no additional TTP funds available for any additional indirect costs 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 25 CFR Part 170, as amended by the FAST Act, 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 (TTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement may not be reprogrammed for other purposes and therefore shall be placed in a savings, checking or investment account containing only funds transferred under this Agreement, which is separated from, and tracked independently of, all other tribal accounts. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:

(i) Advanced funds not immediately spent for program activities may be invested only in obligations of the United States, in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed by the United States;

(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 and activities identified on an FHWA approved TTIP; and

(iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of TTP funds when necessary to fund an eligible project which requires more than

one fiscal year of funding and is identified on an FHWA approved TTIP or a tribal priority list (25 CFR Part 170).

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 the FAST Act.

G. 1. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122, as amended by the FAST Act, 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 Administrator agrees (i) to maintain the project(s) on the FHWA-approved TTIP until all debt instruments, including interest thereon, are repaid in full by the Tribe, and (ii) at the option and direction of the Tribe (after receipt of electronic banking information on the Payment Enrollment Form by the Administrator), 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 Administrator thereunder.

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

- a) 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
- b) 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 § 170.228, the Tribe may use TTP funds to:

- (i) leverage other funds; and
- (ii) pay back loans or other finance instruments for a project that:
 - (a) the Tribe paid for in advance of the current year using non-TTP funds, including tribal funds;
 - (b) was included in an FHWA-approved TTIP; and
 - (c) was included in the National Tribal Transportation Facility Inventory (NTTFI) before commencement of construction.

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

J. The Parties agree that this Agreement is entered into, and that funds are made available to the Tribe, in accordance with the ISDEAA pursuant to 23 U.S.C. § 202 (b)(7), as amended by the FAST Act. Payments made by the Administrator 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.⁷⁸

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 such program under 23 U.S.C. § 202 (b)(7)(H), except to the extent that such powers are powers that inherently cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to the Secretary of the Interior's powers under 25 CFR Part 170, together with such duties and responsibilities as may be performed by an Indian Tribe under the 25 CFR Part 170 regulations or as are otherwise permitted by law.

⁷⁸ The language of footnote 1 is incorporated by reference herein.

Section 4. Dispute Resolution. In the event of a dispute arising under this Agreement, the Tribe and the Administrator 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 Administrator agrees 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 the FAST Act.

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. § 202 (a)(8)(A), as amended by the FAST Act;
- Development and negotiation of Tribal-State Road Maintenance agreements authorized under 23 U.S.C. § 202 (a)(8)(C), as amended by the FAST Act;
- Other TTP Program-eligible activities authorized under Chapter 2 of Title 23 (including TTP Planning, Safety, and Bridge) or 25 CFR Part 170, as each may be amended by the FAST Act, or other applicable law; and
- Other activities authorized under Chapter 1 of Title 23, as amended by the FAST Act, or other applicable law including activities funded under agreements developed under 23 U.S.C. § 202 (a)(9).

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 Administrator. If the Administrator does not increase the amount of funds allocated under this Agreement or the RFA, the Tribe may suspend performance of the Agreement until such time as additional funds are made available.

Section 8. Carryover. 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. 25 CFR Part 170, and any amendments thereto apply to this Agreement.⁷⁹ The Tribe may seek a waiver of these regulations to the extent permitted by law and as set out 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 PFSAs 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 Administrator 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 25 CFR Part 170, Appendix A to Subpart G, so long as not more than 25% of the Tribe's TTP Program funds or a maximum of \$500,000 are used for this purpose.

⁷⁹ The language of footnote 1 is incorporated by reference herein.

ARTICLE III – RESPONSIBILITIES OF THE TRIBE

Section 1. A. Health and Safety. In exercising responsibility for carrying out the eligible programs and projects under this Agreement, the Tribe assures the Administrator 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).

B. Program Standards and Regulations. The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by the FAST Act. 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.

C. Plans, Specifications and Estimate (PS&E) Approval Authority.

(1) 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 and FHWA. The Tribe hereby:

(a) provides assurances under this Agreement that the construction will meet or exceed applicable health and safety standards;

(b) agrees to obtain the advance review of the PS&E from a State-licensed civil engineer who has certified that the PS&E meets or exceeds the applicable health and safety standards; and

(c) agrees to provide a copy of the State-licensed civil engineer's certification to the Deputy Assistant Secretary for Tribal Government Affairs, with a copy to the FHWA and the BIA.

(2) 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), as follows. 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 (C)(1) herein, the Tribe further agrees to:

- (a) 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;
- (b) 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;
- (c) before soliciting bids for the project(s), certify in writing to the Administrator 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.⁸⁰

D. 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 NTTFI of TTP eligible facilities per 23 U.S.C. § 202(b)(1), and to develop the annual national TTP Transportation Improvement Program (TTPTIP).

E. Easements, Maintenance and Utility Agreements, Environmental Assessments. In coordination with local jurisdictions and to the extent required by Federal law and 25 CFR Part 170, and 25 CFR 169 if applicable, the Tribe agrees to develop appropriate construction easements or right-of-ways, 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 in accordance with 23 U.S.C. § 139, 25 CFR Part 170, and other applicable laws, as amended by the FAST Act.

F. Construction.

(1) In accordance with the FHWA-approved TTIP, 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 construction engineering is performed according to applicable FHWA, BIA or tribal standards which meet or exceed federal standards.

(2) The Tribe agrees to expend TTP funds on:

(a) program and administrative expenses authorized under:

⁸⁰ The Parties agree that these procedures establish no precedent for future agreements with this Tribe or any other Indian Tribe, nor waives any rights of the Parties.

- (i) this Agreement;
- (ii) 25 CFR Part 170, as amended by the FAST Act;
- (iii) 2 CFR Part 200; or
- (iv) other applicable laws; and

(b) construction activities on projects that are listed on an FHWA-approved TTIP.

(3) Once a TTP construction project is completed, the Tribe will prepare for the Administrator a final construction report and as-built plans for final inspection in accordance with 25 CFR §§ 170.472 through 170.474.

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

G. Reporting Requirements. The Tribe shall provide the Administrator with a courtesy copy of its annual single agency audit report within 30 days of its submission to the Federal Audit Clearinghouse. If the Tribe is not required to carry out a single agency audit, then the Tribe shall provide the Administrator with an annual review in accordance with its approved financial management systems or procedures. Additionally, in order to assist the Tribe with fulfilling the requirements of 23 U.S.C. § 201 (c)(6)(C), FHWA will establish an electronic data reporting system and the Tribe shall be responsible for inputting the data into that system no later than June 30 and December 31 of each year. From that data, a report will be generated by FHWA and BIA for the Secretaries. The Tribe acknowledges its understanding that the submittal of its data is mandated by statute, and that non-compliance with this requirement may be a sole basis for termination of this Agreement by the Administrator.

ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR

Section 1. Provision of Funds. The Administrator shall provide funds pursuant to the 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 Administrator 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 TTIP in accordance with the approved PS&E packages, this Agreement, and applicable laws and regulations.

Section 3. Coordination with BIA.

A. The Administrator shall coordinate with the Bureau of Indian Affairs (BIA) concerning transportation functions and activities delegated by law to that agency to aide the Tribe in the proper and efficient administration of the PFSAs performed by the Tribe under this Agreement.

B. The Administrator will encourage a representative of the BIA, with knowledge of the TTP Program, to meet at least annually with a designee of the Tribe and the Administrator to review their respective duties and obligations under the FAST Act, the TTP, applicable regulations, and this Agreement with the goal of identifying actions which the Tribe, the Administrator and the BIA can take to ensure the Tribe's successful administration of the transportation PFSAs carried out under this Agreement.

Section 4. Coordination with Public Authorities. The Administrator, or his authorized FHWA representative, 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 5. 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
Ketchikan Indian Community

429 Deermount St
Ketchikan, AK 99901

To the FHWA:

Associate Administrator
Federal Lands Highways (HFL-1)
U.S. Department of Transportation
1200 New Jersey Ave, SE,
Room E61-316
Washington, D.C. 20590

With a copy to:

Tribal Transportation Director
Ketchikan Indian Community

429 Deermount St
Ketchikan, AK 99901

With a copy to:

Director – Office of Tribal Transportation
Program Manager (HFPD-9)
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE,
Room E61-314
Washington, D.C. 20590

Section 6. Federal Construction Standards. The Administrator 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 Administrator may also accept commonly used industry construction standards, including design and construction standards adopted by the State of Alaska.

Section 7. Joint Inspection. The Administrator shall conduct the final project inspection jointly with the Tribe and facility owner and shall notify the BIA Regional Office that construction has been completed in accordance with the project plans and specifications for the purpose of project acceptance, inclusion, or data update in the BIA's TTP Inventory.

Section 8. Technical Assistance. Upon the request of the Tribe and subject to the availability of funds, the Administrator shall provide or make available technical assistance to the Tribe to aide the Tribe in carrying out its responsibilities under this Agreement.

Section 9. Reporting. The Administrator 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 1(G).

Section 10. Notice of Additional Funds. If the Administrator receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent TTP funds, the Administrator 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 which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as any federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be credited to the TTP as provided by 23 U.S.C. § 202 (a)(9) and made available to the Tribe, but only under the terms of an agreement to transfer such funds that is acceptable to, and approved by, the Administrator 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 Administrator to Administer the Program. The Tribe is administering its TTP under the authority of the FAST Act 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 Administrator shall provide the Tribe with all releasable data and information necessary to carry out the PFSAs assumed by the Tribe under this Agreement.

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

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or
- (2) 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 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 and general liability insurance 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. With respect to 23 U.S.C. § 202 (a)(10), the Tribe shall have established procurement management standards which shall provide for full and open competition in accordance with 25 C.F.R. Part 900, Subpart F, as authorized by 23 U.S.C. § 202 (b)(7)(G) and (H). Tribal labor and tribal force account procedures may be employed on any tribal transportation project pursuant to 23 U.S.C. § 202 (a)(3). If the Tribe wishes to use a procurement method that is not provided for in its established procurement management standards or its tribal force account procedures for a particular tribal transportation project, the FHWA shall promptly review and respond to a written request from the Tribe justifying the alternative procurement method. In making its decision, FHWA shall work within the project procurement schedule and comply with the liberal construction requirements of 25 C.F.R. § 170.2(h) and the federal obligations set forth in 25 C.F.R. § 170.103.

Section 7. Program Review. The Tribe agrees to allow FHWA officials or their designees/representatives to perform an annual review of the Tribe's TTP. The review is intended to allow FHWA to carry out its oversight and stewardship responsibilities for the TTP assumed by the Tribe under this Agreement. FHWA will provide a draft written report to the

Tribe within 45 days of the completion of its review and comment. After receipt of comments from the Tribe, or after an additional 45 days, the report will be put into final form and distributed accordingly.

Section 8. Severability. Should any portion or provision of this Agreement be held invalid, it is the intent of the Parties that the remaining portions or provisions thereof continue in full force and effect.

Section 9. Termination of the Agreement. In the event the Tribe wishes to terminate this Agreement, the Tribe shall notify the Administrator in writing of its intention to do so, including specifying the effective date of termination. On the date of the termination of the Agreement by the Tribe as authorized under 23 U.S.C. § 202 (b)(7)(J), or if the Administrator makes a specific written finding that the Tribe has failed to comply with the terms of this Agreement and provides notice to the Tribe that it is no longer eligible to receive funding under this section as authorized under the FAST Act, the Administrator shall allocate the funds that would have been provided to the Tribe under the Agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law; provided that if the Tribe disputes the Administrator's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Administrator shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute. 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 10. N/A

Section 11. Amendments. Any modification of this Agreement shall be in the form of a written amendment and shall require the signed agreement of a duly authorized representative of the Tribe and the Administrator. The Parties agree to work together in good faith, following the implementation of this Agreement, to identify additional issues or matters that should be addressed in this Agreement subject to the Parties' mutual written consent.

Section 12. Good Faith. The Parties agree to exercise the utmost good faith in the implementation and interpretation of this Agreement and agree to consider and negotiate such additional provisions as may be required to improve the delivery and cost-effectiveness of transportation services.

Section 13. 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 the FAST Act.

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.

Ketchikan Indian Community

**U.S. Department of Transportation
Federal Highway Administration**

By _____
Richard Jackson
President

By _____
Gregory G. Nadeau
Administrator

Date

Date