

MEMORANDUM OF AGREEMENT
between the CHEROKEE NATION and
MUSKOGEE COUNTY

This Memorandum of Agreement (hereinafter referred to as "Agreement") is made and entered into this _____ day of _____, 2023, by and between Cherokee Nation, P.O. Box 948, Tahlequah, Oklahoma 74465 (hereinafter referred to as the "NATION"), and the Board of County Commissioners of Muskogee County, P.O. Box 2307, Muskogee, Oklahoma 74402-2307 (hereinafter referred to as the "COUNTY").

WITNESSETH:

WHEREAS, the NATION wishes to enter into an agreement with the COUNTY to provide construction, improvement, right-of-way acquisition, and/or utility relocations for roads and/or bridges within said county, and

WHEREAS, the COUNTY hereby affirms it is an independent entity in accordance with the laws of the State of Oklahoma and the Internal Revenue Service, and further maintains it is qualified, willing, and able to perform the services herein described, and

NOW, THEREFORE, and in consideration of the mutual covenants, promises, agreements, understandings, and conditions herein contained, the parties hereto mutually promise to the other, agree and understand as follows, to wit:

TERM: The term of this Agreement shall be from October 01, 2023, through September 30, 2024, unless canceled or extended in writing by both parties hereto.

TRIBALLY FUNDED PROJECTS:

The COUNTY agrees to: submit a road/bridge improvement request in accordance with the guidelines established by the NATION; and, upon written notification of approval by the NATION, the COUNTY agrees to construct road and/or bridge projects with COUNTY forces and agrees to be reimbursed by the NATION for the cost of the materials upon satisfactory completion of the work from the funds allocated by the NATION for said projects. The COUNTY further agrees to:

1. Grade, drain, resurface, or construct projects in accordance with Oklahoma Department of Transportation or County Specifications and Standards or equivalent.
2. Be entirely responsible for the initiation, environmental aspects, construction, and completion for all work associated with the projects.

3. Install permanent signs in accordance with Oklahoma Department of Transportation Specifications.
4. Install descriptive signs, provided by the NATION, at each end of the projects explaining the name of the project, funding source, etc.
5. Maintain said projects upon completion at no cost or liability to the NATION.
6. Periodic inspections and monitoring the progress of said projects by the NATION.
7. A final inspection by the NATION to determine satisfactory completion of said projects.
8. Submit an original invoice to the Cherokee Nation Department of Transportation accompanied by suitable evidence of expenditures made by the COUNTY in the execution of said projects.
9. The withholding of funds by the NATION should the COUNTY fail to complete any portion of said projects under this MOA.

FEDERALLY FUNDED REIMBURSEMENT PROJECTS:

For projects authorized by the NATION in which the COUNTY is hired to perform engineering or construction related activities for reimbursement of the NATION's federal funds, the COUNTY agrees to:

1. Comply with federal audit standards.
2. Perform any of the following activities: environmental compliance, design, right-of-way research and document preparation, right-of-way valuations if necessary, right-of-way acquisition, and utility coordination and/or utility relocations in accordance with either federally approved standards or equivalent state standards of the Oklahoma Department of Transportation and in accordance with the scope of work approved by the NATION.
3. Submit proper invoices, along with evidence of expenditures to the NATION for reimbursement.

FEDERALLY FUNDED PASS-THROUGH PROJECTS:

For projects authorized by the NATION in which the NATION'S federal funds are utilized as a pass-through to the COUNTY to match COUNTY funding or for the COUNTY to comply with state obligation requirements for engineering or construction related activities, the COUNTY agrees to:

1. Comply with federal audit standards.
2. Perform any of the following activities: environmental compliance, design, right-of-way research and document preparation, right-of-way valuations if necessary, right-of-way acquisition, and utility coordination and/or utility relocations in accordance with either federally approved standards or equivalent state standards of the Oklahoma Department of Transportation and in accordance with the scope of work approved by the NATION.
3. Construct road and bridge projects in accordance with the plans, specifications, and estimate approved by the NATION.
4. Install permanent signs in accordance with Oklahoma Department of Transportation Specifications.
5. Install descriptive signs, provided by the NATION, at each end of the projects explaining the name of the project, funding source, etc.
6. Maintain said projects upon completion at no cost or liability to the NATION.
7. Periodic inspections and monitoring the progress of the projects by the NATION.
8. Submit proper invoices for the payment of activities approved by the NATION.

COMPENSATION:

In consideration and compensation for services rendered by the COUNTY, the NATION agrees to:

1. Pay all invoices submitted by the COUNTY covered under this agreement.
2. Reimburse the COUNTY for invoices submitted under Tribally Funded Projects and Federally Funded Reimbursement Projects.
3. Make appropriate payment to the COUNTY for invoices submitted under Federally Funded Pass-Through Projects.

GENERAL PROVISIONS:

The following general provisions apply to this agreement:

1. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the United States and where applicable, the laws of the Cherokee

Nation. If it should appear that any of the Agreement terms are in conflict with any rule of law or statutory provision of the United States, or where applicable, with any rule of law or statutory provision of the Cherokee Nation, such conflicting term(s) shall be deemed inoperative and null and void insofar as it may be in conflict with such law or statutory provision, and shall be deemed modified to conform to such rule of law or statutory provision. However, such conflict shall not operate to nullify or void the entire Agreement.

2. This Agreement contains the complete expression of the parties' agreement with respect to the subject matter hereof, and shall bind the parties, their successors and assigns. There are no previous or contemporary understandings, representations, or warranties not set forth herein. No subsequent amendment or modification of this Agreement shall be of any force or effect unless in writing and signed by the parties to be bound thereby. No provision of this Agreement shall be considered waived by the NATION unless such waiver is in writing and signed by the NATION. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the provisions of this Agreement unless expressly stipulated in such waiver. The party's further state to the best of their knowledge, no employee of the NATION who exercises any functions or responsibilities in connection with the performance hereunder has any personal interest, direct or indirect, in this Agreement. This Agreement shall supersede any and all written or oral statements, agreements, and/or representations of the parties made prior to or contemporaneously with the execution hereof. The parties agree their respective performances hereunder shall be governed by an obligation of good faith.
3. This Agreement may be terminated or canceled by either party with or without cause, upon thirty-days (30) written notice of intention to the authorized representatives of each party signed below. In the event this Agreement is terminated or canceled by either party, the NATION shall compensate the COUNTY only for services performed up to the date of termination and/or cancellation.
4. The NATION and the COUNTY hereby agree the services specified in this Agreement may not be delegated or assigned without the prior written consent of the NATION.
5. This Agreement shall not be construed to constitute a joint venture, partnership, nor other form of agreement creating a joint liability between the parties. Each party shall be responsible and liable for the acts and omissions of its respective agents and employees.
6. The COUNTY certifies to the best of its knowledge and belief that neither the COUNTY, nor any of its principals, are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal, state, local, or tribal agency. The COUNTY also certifies to the best of its knowledge and belief that it has not, within a three-year-period preceding this Agreement, been

convicted of or had a civil judgment rendered against it for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or subcontract; violation of federal or state antitrust statutes relating to submission of offers or commissions or embezzlement, theft, forgery, bribery, falsifications or destruction of records, and/or making false statements; and is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision. The COUNTY certifies it has not within a three-year period preceding this Agreement, had one or more contracts terminated for default by a federal, state, local, or tribal agency.

7. The parties hereto stipulate and agree the NATION is a sovereign nation in accordance with the laws of the Internal Revenue Service, and further maintains it is qualified, willing, and able to perform the services herein described. Any employee, agent, and/or representative furnished hereunder shall be deemed to be the NATION'S employee, agent, and/or representative exclusively.
8. The NATION'S obligation for payment under this Agreement is contingent upon the availability of appropriated funds from which payment for services can be made. Funds are available for performance under this Agreement when appropriated or authorized by the Tribal Council of the Cherokee Nation. No legal liability on the part of the NATION for any payment may arise hereunder until funds are made available by the designated officer of the NATION for performance and until the COUNTY receives notice of availability from the NATION'S designated officer through issuance of a purchase order.
9. TERO: The Cherokee Nation shall to the greatest extent feasible give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises. All contracting is required to comply with procedures for selection of Contractors and Sub-contractors as set forth in legislation pertaining to preference to Indians in the awarding of contracts, Section 7(b) of the Indian Self-Determination Act if applicable, as well as the Cherokee Nation Acquisition Management Policies and Procedures. The successful Contractor will insert this clause in every subcontract in connection with the project
10. TAXES, FEES, ASSESSMENTS: The COUNTY accepts full and exclusive liability for the payment of any and all taxes and assessments which may now or hereafter be imposed by tribal, local, state, or federal governments, including without limitation, all applicable TERO fees, sales tax, use power, gross receipts, or other taxes levied with respect to materials furnished or work performed by the COUNTY, or payments made to the COUNTY through issuance of a purchase order including but not limited to, building permits, COUNTY'S licenses, specialty permits required by law to be issued to the COUNTY, and/or transportation permits. The COUNTY and its subcontractor's shall, in addition to the above, comply with the NATION' S job site procedures and regulations.

All notices required hereunder shall be sent via U.S. Mail, postage paid, as follows:

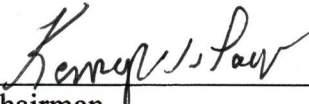
To the NATION: Cherokee Nation Department of Transportation
Attention: Andy Quetone, Director
P.O. Box 948
Tahlequah, OK 74465

with a copy to: Cherokee Nation Acquisition Management
Attention: Contracts Office
P.O. Box 948
Tahlequah, OK 74465

To the COUNTY: Board of County Commissioners of Muskogee County
Attention: Chairman
P.O. Box 2307
Muskogee, OK 74402-2307

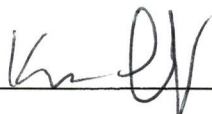
In witness whereof, the parties hereto have subscribed their names on the date set forth herein:

BOARD OF COUNTY COMMISSIONERS
OF MUSKOGEE COUNTY:



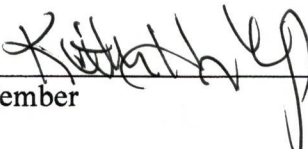
Chairman

Date



Member

Date



Member

Date

CHEROKEE NATION:

Andy Quetone, Director
Department of Transportation

Date

Michael Lynn, Executive Director
Department of Transportation & Infrastructure

Date

Chuck Hoskin, Jr., Principal Chief
Cherokee Nation

Date