

IV. Referenced Funding Agreements (RFA)

Overview. The RFA outlines the specific conditions during a Fiscal Year for funding under the Program Agreement. It includes the 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 other provisions to which the Parties agree.

A. Definition:

Referenced Funding Agreement (RFA) – A document between the FHWA or the BIA and a Tribe which sets forth specific conditions for Fiscal Year funding under the Program Agreement. It includes the terms that identify the specific programs, functions, services and activities to be performed, the funds to be provided, the time and method of payment, and such other provisions to which the Parties agree. (See **Example 4.1 – FHWA RFA**)

B. Statutory/Regulatory Requirements:

- Section 202(d)(5) of Chapter 2 of Title 23, United States Code
- SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (Aug. 10, 2005)
- Indian Self-Determination and Education Assistance Act, Pub. L. 93-638
- 25 U.S.C. § 450 et seq.
- 49 C.F.R. 1.48(b)(29)

C. Guidelines/Procedures:

Once the Program Agreement has been approved, the following procedures will be followed:

- 1. Tribal Transportation Improvement Program (TTIP).** Prior to approval of the RFA, the Tribes should have an approved TTIP. A Tribe may already have an approved TIP through the OSG or the BIA.
- 2. Tribal Coordination.** FHWA Tribal Coordinator or the BIA FPOC will meet with the Tribe and BIADOT on an as needed basis to identify projects, activities, and functions associated with the RFA.
- 3. Project Related Administrative Expenses (PRAE).** Based on the identified projects, activities, and functions, the FHWA-FLH-HQTS determines the PRAE. As necessary, the FHWA-FLH-HQTS will meet with the BIA Region to negotiate the PRAE that will be done by the FHWA. Those expenses that will be done by BIA will be based on the project Engineering and Construction Engineering Administration activities/responsibilities of each agency. Their respective cost will be agreed upon using the PM&O/PRAE distribution tables, and the PRAE activity list.
- 4. Negotiate any remaining contractible projects/activities.** The FHWA Tribal Coordinator or the BIA FPOC, Tribe, and BIA will negotiate any contractible projects, activities, or functions that remain with the BIA and those that will be funded from the Tribal Transportation Allocation Methodology (TTAM) share (inventory updates, inventory input, etc.). The respective funds must be provided from the agreement in advance of any funds transferred to the Tribe. FHWA or BIA will finalize the negotiation and provide courtesy copy to BIADOT.

- 5. Notification funds Available.** Upon notifying the BIADOT, remaining funds will be withheld or withdrawn from affected BIA Regions by FHWA-FLH-HQTS.

- 6. RFA Approval.** Upon acceptance by FHWA or BIA, the RFA is executed between the Tribe and FHWA-FLH-HQTS or the appropriate BIA office. The FHWA Tribal Coordinator or the BIA FPOC prepares a RFA form based on the current year Tribal shares and any other applicable funding. The RFA is then sent to the Tribe for signature. After Tribal signature, the RFA is returned to the FHWA Tribal Coordinator or the BIA FPOC who will send to FHWA-FLH-HQTS or the appropriate BIA office for signature. Once signed the funds are considered obligated which begins the 30-day timeframe to allocate funds to the Tribe. Once the funds are deposited into the Tribe's bank account, the funds are considered expended.

Example 4.1 – FHWA RFA (NOTE: BIA RFA is slightly different to reflect BIA references)

DTFH69-FY-H-000XX

Amendment #x (if applicable)

REFERENCED FUNDING AGREEMENT

**Pursuant to (INSERT NAME OF TRIBE)'s
Indian Reservation Roads Program Agreement
With the Department of Transportation
for Fiscal Year 2011**

(a) Authority. This agreement, denoted a Referenced Funding Agreement (hereinafter “RFA”) is entered into by the Administrator, Federal Highway Administration (hereinafter “FHWA”) on behalf of the Secretary of Transportation, and by the (INSERT NAME OF TRIBE) (hereinafter the “Tribe”) (collectively hereinafter the “Parties”), pursuant to the Indian Reservation Roads Program Agreement (hereinafter “Program Agreement”) between the parties for comprehensive transportation planning, research, design, engineering, construction, related program administration activities, and associated transportation services for the (INSERT NAME OF TRIBE) (INSERT Reservation/Alaska Native Village/Consortium) authorized by the section 202(d)(5) of Chapter 2 of title 23, United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144 (Aug. 10, 2005), and in accordance with the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended (25 U.S.C. § 450 et seq.), and the Delegations of Authority set forth in 49 C.F.R. 1.48(b)(29), and by resolution of the Tribal Council.

(b) Effective Date. This RFA shall be effective as of October 1, 2010, following its approval and execution by authorized representatives of the Tribe and FHWA.

(c) Purpose. The purpose of this RFA is to set forth specific conditions for Fiscal Year 2011 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.

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

- Transportation Planning, including IRR Program inventory update;
- Construction Management;
- Program Administration;
- Design;
- Construction;
- Road Maintenance (as authorized under SAFETEA-LU section 1119(i));
- Repayment of Financing Instruments and IRR Program eligible costs as defined in the Tribe’s Advance Construction Agreement;
- Development and negotiation of Tribal-State road maintenance agreements authorized under § 1119(k) of SAFETEA-LU;
- Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 C.F.R. Part 170, as each may be amended by SAFETEA-LU, or other applicable law.

(e) Summary of Funds to be Provided. The total amount of funding provided under this Funding Agreement is identified below:

Balance of Prior Year Funds

IRR Program RNDF funds:	\$	TBD
Transportation Planning (2%)	\$	TBD
Population Adjustment Factor (PAF)	\$	TBD
Tribe's share of Program/Project-related administrative funds per SAFETEA-LU Section 1119(g)(5)(e)	\$	<u>TBD</u>
Total Prior Year Funding	\$	TBD

FY 2011 IRR Program, IRRBP and other FLH funds:

IRR Program RNDF Funds	\$	TBD
Transportation Planning (2%)	\$	TBD
Population Adjustment Factor (PAF)	\$	TBD ¹
IRR High Priority Projects	\$	00.00
IRR Bridge Program Funds	\$	00.00
Other FLH Program Funds	\$	00.00
Tribe's share of Program/Project-related administrative funds per SAFETEA-LU Section 1119(g)(5)(e)	\$	<u>TBD</u>
Total FY 2011 IRR Program, IRRBP and other FLH Funds:	\$	TBD ²

Total Amount for this RFA: **\$ TBD**

¹ PAF is not calculated until at least \$275 million is made available to the IRR Program.

² The Parties acknowledges that the funds shown in this RFA reflect the amounts made available in the FY 2011 as a result of passage of P.L. 111-322 which resulted in 155/365 of FY10 Program levels being made available.

SUMMARY

Amount of this RFA	\$	TBD
Amount provided through prior FY 2011 RFAs	\$	<u>0.00</u>
Total Amount Provided through FY 2011 RFAs	\$	TBD

(f) Eligibility for Additional Funding and Services. The Tribe shall be eligible for additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) set forth in 25 C.F.R. Part 170, 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.

(g) Time and Method of Payment. Subject to the availability of funds, and the execution of this RFA by both Parties, the Administrator shall provide to the Tribe or its designee the funds identified in Section (e) 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 annual RNDF percentage under Article II, Section 2.B of the IRR Program Agreement.

(h) Other Provisions.

(1) Use of Funds Advanced. Funds advanced to the Tribe shall be used by the Tribe as permitted under 23 U.S.C. § 202(d) and 25 CFR Part 170, both as amended by SAFETEA-LU, 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 CFR § 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.

(2) 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.

(i) **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 signed agreement of the Tribe and the Administrator.

(j) **Notice of Additional Funds.** If the Department of Transportation receives notice of the availability of additional FY 2011 funding for any purpose authorized under the Program Agreement and RFA, including the availability of unspent IRR Program funds, the Administrator 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.

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

(INSERT NAME OF TRIBE)

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

By _____

By _____

(INSERT NAME OF SIGNATORY),

John R. Baxter, PE,
Associate Administrator,
for Office of Federal Lands Highway

(Insert Title)

Date

Date

LOA: Fund (15X0F11050); Budget Year (0000); BPAC (114F11E500); Object Class Code (25304)